

**United Nations Human Rights Committee**  
**Geneva, Switzerland**

**Mutabar Tadjibayeva**  
**v.**  
**Republic of Uzbekistan**

Individual Communication

Submitted pursuant to Article 2 of the First Optional Protocol to the International Covenant  
on Civil and Political Rights

18 December 2012

## Contents

1. Information concerning the communication.....	4
2. Summary of Violations:.....	5
3. Statement of Facts.....	6
3.1. Arrest, harassment, ill-treatment and torture by authorities: July 2002- April 2005.....	7
3.2. Rape at Bektemir District Department of Internal Affairs- 15 April 2005.....	9
3.3. Arbitrary arrest and detention at Ferghana Oblast Police Department.....	10
3.4. Unlawful arrest on 7 October 2005 and subsequent arbitrary detention.....	11
3.5. Arbitrary detention and ill-treatment at Ferghana Remand Centre No 10.....	13
3.6. Arbitrary detention and torture at Kuyi Chirchik district police station.....	14
3.7. Trial before Tashkent Oblast Criminal Court.....	15
3.8. Tashkent Remand Center No 1, women’s ward.....	17
3.9. Imprisonment at women’s colony.....	17
3.10. Prolonged solitary confinement.....	18
3.11. Lack of access to medical treatment in the women’s colony.....	20
3.12. Forced Surgery.....	21
3.13. Following Release.....	22
4. Pursuit of domestic remedies.....	23
4.1. Arrest, harassment, ill-treatment and torture by authorities: July 2002- April 2005.....	23
4.2. Arrest on 7 October 2005 and subsequent detention up to 30 January 2006.....	24
4.3. Trial.....	25
4.4. Imprisonment in Women’s colony.....	26
4.5. Following release from Women’s colony.....	27
5. Admissibility of the Communication.....	27
5.1 Exhaustion of domestic remedies.....	27
5.2. The Communication does not constitute an abuse of the right of submission.....	32
5.3. Conclusion.....	33
6. Violations of the Covenant.....	33
6.1. Violation of Article 7.....	34
6.2. Violation of Article 2 (3) separately and in conjunction with Article 7.....	42
6.3. The violations are consistent with widely reported torture and ill-treatment in Uzbekistan...	43
6.4. Violation of Article 10.....	44
6.5. Violation of Article 9.....	45
6.6. Violation of Article 14.....	49
6.7. Violation of Article 17.....	52
6.8. Violation of Article 19 (2), 21, 22.....	54
6.9. Violation of Article 26.....	56
7. Remedies sought.....	57

8. List of Annexes for the Communication: Mutabar Tadjibayeva v Uzbekistan .....	59
9. Jurisprudence for the Communication: Mutabar Tadjibayeva v Uzbekistan.....	67

## 1. Information concerning the communication

### THE AUTHOR

<b>Name</b>	Tadjibayeva <sup>1</sup>
<b>First Name</b>	Mutabar
<b>Nationality</b>	Uzbek
<b>Date &amp; Place of Birth</b>	25 August 1962; Margilan, Ferghana Region, Uzbekistan
<b>Present residential address</b>	Paris, France
<b>Address for correspondence on this communication</b>	c/o The Redress Trust, Ground Floor, 87 Vauxhall Walk, London SE 11 5HJ

### VICTIM

<b>Name</b>	Mutabar Tadjibayeva
<b>Nationality</b>	Uzbek

### REPRESENTATION

The Author is represented by the REDRESS Trust, and the International Federation for Human Rights (FIDH).<sup>2</sup>

### STATE PARTY

The Republic of Uzbekistan

---

<sup>1</sup> The Author's name is spelt differently in a variety of publications due to translation from Uzbek to English, and Russian to English. For the purposes of the communication, the spelling Mutabar Tadjibayeva is used, while the original spelling in publications referred to remains unchanged.

<sup>2</sup> Power of Attorney signed by the Author, **Annex A1**.

## 2. Summary of Violations:<sup>3</sup>

1. From 2002 throughout to October 2005, police and other state authorities such as the Uzbek National Service of Security (NSS) detained, inflicted cruel, inhuman or degrading treatment ('ill-treatment') or punishment and/or tortured the Author on various occasions. The Author was arbitrarily arrested and detained, denied protection, not provided with timely access to a lawyer of her choice and subjected to an unfair trial on account of her work as a human rights defender. The Uzbek authorities also interfered without justification with the Author's right to freedom of expression, peaceful assembly and association. The Author was discriminated against on the grounds of her sex and political opinion. She was not afforded any remedy for the violations suffered, which the Uzbek authorities failed to investigate.
2. On 15 April 2005, unidentified officials arrested the Author in Tashkent and brought her to the Bektemir District Department of Internal Affairs where she was interrogated by police officers about her human rights activities. Subsequently, one of the police officers took her to an office within the Bektemir District Department of Internal Affairs where three unidentified men beat and raped her several times. She was eventually released the same day without charge.
3. On 7 October 2005, police officers arrested the Author at her home in Margilan. She was charged with extortion, and was denied her right to access a lawyer of her choice. She was placed in detention together with convicted persons, and was not brought before a judge or other judicial authority to review the lawfulness of her detention. During her pre-trial detention, which lasted until 30 January 2006, detention officials denied her access to medical care. The Author was not allowed to see any visitors from December 2005 to April 2006. Her lawyers were denied access to their client on several occasions and were not allowed to speak to the Author confidentially. In addition, her lawyers were threatened that they should not speak to the media about the Author's case, that their families would be harmed if they continued to represent the Author. The prosecution informed the Author's lawyer on 24 December 2005 that its case against the Author had been broadened from two to eighteen charges under the Uzbek criminal code. The Prosecution provided the Author's lawyers with only 15 days to study the 13 volumes of its case against the Author before her trial started on 30 January 2006.
4. During her trial, the Author was not allowed to meet her lawyers outside the court room. Her lawyers could not call crucial witnesses for her defence, and the Court prevented cross-examination of key prosecution witnesses. International observers described her trial and the case against her as baseless, dubious and politically motivated.<sup>4</sup> On 6 March 2006 the Tashkent Criminal Court found the Author guilty of 13

---

<sup>3</sup> See further the Author's Affidavit, 27 April 2012 ('the Author's Affidavit'), **Annex A2**.

<sup>4</sup> See Hansard, House of Commons, Written Answers for 20 March 2006 Debate in the House of Commons: "the process and outcome do little to dispel the widely held belief that this and other recent cases were politically motivated..." "I am deeply concerned by the sentences passed recently on Mutabar Tojibayeva..", at <http://www.publications.parliament.uk/pa/cm200506/cmhansrd/vo060320/text/60320w26.htm>; see US Embassy Cable- 06Tashkent261, 'Tajibayeva Trial Opens with Charges of U.S. and French Support', 1 February 2006, with US embassy trial observer describing the case against the Author as "based on a dubious complaint from a man who bought and sold fish from Tajibayeva's fishing farm. It has since been transformed into a mass of allegations accusing her of spreading lies in attempts to subvert the government", published by Wikileaks, available at <http://wikileaks.org/cable/2006/02/06TASHKENT261.html>, **Annex A3**; see also 'Complaint on Appeal to 'Judicial board for appeals of Tashkent regional court for criminal cases', (unofficial translation), May 2006, Annex E7.

crimes and convicted her to 8 years imprisonment. No review of the trial record was allowed by decision of the same court on 21 April 2006. The 'Judicial Board of Appeal Instance of the Tashkent Regional Court for Criminal Cases' dismissed the Author's "Complaint on Appeal" on 30 May 2006.

5. Subsequent to her conviction on 6 March 2006, the Author was imprisoned for almost two years in the 'women's colony' under inhuman conditions amounting to torture. She spent 112 days in solitary confinement and was deliberately exposed to freezing conditions resulting in a worsening of her medical condition. She was humiliated and repeatedly subjected to severe forms of ill-treatment by prison guards who physically attacked the Author, forced her to stand naked in the cold until she fell unconscious, hung her with handcuffs from a hook in a prison cell and who encouraged her to commit suicide. She did not have access to her lawyers for almost two years from 8 July 2006 to 2 June 2008, the day of her release. She was equally not allowed to receive any visits from her family or friends from January 2007 to August 2007. When her medical condition deteriorated as a result of her detention conditions, she was denied adequate medical treatment. The isolation, the prison regime and treatment suffered, and the complete denial of rights drove the Author to a state in which she attempted suicide.
6. On 18 March 2008, the Author was operated on against her will. The authorities failed to inform the Author about the reasons for her operation, and failed to inform the Author that her uterus was to be removed during the surgery. The lack of adequate medical care following the operation, and lack of medical information about the reasons for the operation and lack of consent to perform the operation led the Author to believe she would die, and made subsequent treatment difficult as doctors could not identify the reasons for her surgery.
7. The Author did not obtain a remedy in regards to any of the abovementioned violations.
8. The Author submits that the Republic of Uzbekistan violated Article 2 (3) of the Covenant separately and in conjunction with Articles 7, Articles 7, 9 (1), (2), and (4), 10 (1) and 2 (a), 14 (1) and (3) (b) and (e) and (5), 19 (2), 21, 22 and 26.

### **3. Statement of Facts**

9. The Author was born on 25 August 1962 in Margilan, Ferghana Region in Eastern Uzbekistan. Since 15 March 2009, she lives in Paris, France, where she obtained refugee status on 2 December 2009. The Author is an independent journalist and human rights activist. She is the founder and head of the human rights organisation "*Ut Yuturakyar*" ('Club of Flaming Hearts' or 'Fiery Hearts Club') which she is now running from Paris. The organisation was initially founded in 2000 as an organisation within the '*People's Democratic Party*', the President's party, to combat drug trafficking in the region. After successfully contributing to a reduction of drug usage and assistance to vulnerable groups in Ferghana region, the organisation's mandate was to be extended to cover all regions of Uzbekistan.<sup>5</sup> When the organisation increasingly began to raise allegations of human rights violations committed by government authorities, the Author was expelled

---

<sup>5</sup> See also Trial Judgment, 6 March 2006, Annex E3, pp. 45-46.

from the party and the organisation split from the *People's Democratic Party* in 2002. It became a separate, independent and internationally recognised human rights organisation with a wider mandate to include general human rights work, including monitoring the human rights situation in the region, representing journalists and others prosecuted in court, as well as assisting victims of torture and other ill-treatment to bring their cases to court.<sup>6</sup> The Author is also one of the founders of the national movement '*Civil Society*' and a 2005 Nobel Peace Prize Nominee.<sup>7</sup> In November 2008, she received the Martin Ennals Award for Human Rights Defenders.<sup>8</sup> In December 2008, *Ut Yuturakyar* was awarded the 'Medaille de la République Française de la Liberté, Egalité, Fraternité'. In March 2009, the US State Department awarded the Author with the "International Women of Courage Award".<sup>9</sup>

10. Following the split from the People's Democratic Party in 2002, the Author was arrested and harassed by police and other state authorities such as the Uzbek National Service of Security (NSS) on numerous occasions on account of her human rights activities.<sup>10</sup>

### **3.1. Arrest, harassment, ill-treatment and torture by authorities: July 2002- April 2005**

11. In May 2002, the Author publicly exposed human rights violations committed by law enforcement agents of the NSS in Durmen village, Ahunbabaevski district, Ferghana Oblast.<sup>11</sup> On 1 July 2002, two police officers working at the Kirgulin Region Department of Internal Affairs arrested the Author at around 9pm.<sup>12</sup> The police officers did not inform her about the reasons for her arrest. They took her to the Kirgulin regional police department where she was detained in a basement cell. The Author was not charged and her requests for a lawyer were ignored. At around 10pm that evening, she was taken to the head of the police department, Mr Akram Botirov, to be interrogated about her human rights activities. Mr Botirov verbally abused and humiliated the Author, calling her a dirty whore, and threatened to rape her when he realised that the Author was recording the interrogation with a tape recorder. When the Author was brought back to her cell, the deputy head of the police department, Mr Saifuddin Tillaev, came into her cell and beat her with a truncheon, pushed her around, kicked her with his feet and hit the Author's head on the door of the cell, causing her severe pain. Tillaev also tore the Author's clothes and threatened to rape her. The officer then continued to

---

<sup>6</sup>Further information, including the organisation's articles of association and sources of funding, is available on the website of "*Ut Yuturakyar*" at <http://www.jarayon.com> (in Uzbek).

<sup>7</sup> See Nobel Peace Prize Proposal, **Annex A4**; see also UN Special Rapporteur on Violence against Women, E/CN.4/2006/61/Add.1, 27 March 2006, paras.201-203, **Annex A5**.

<sup>8</sup>Martin Ennals Award for Human Rights Defenders, Winner 2008, at [http://www.martinennalsaward.org/index.php?option=com\\_content&view=category&id=39&layout=blog&Itemid=73&lang=en&limitstart=19](http://www.martinennalsaward.org/index.php?option=com_content&view=category&id=39&layout=blog&Itemid=73&lang=en&limitstart=19); Martin Ennals Award for Human Rights Defenders, Narrative Report 2008, **Annex A6**.

<sup>9</sup> See U.S. Department of State, 'The Secretary of State's 2009 International Women of Courage Awards, 5 March 2009, at <http://www.state.gov/r/pa/prs/ps/2009/03/120070.htm>. In 2011, **Annex A7**; the Author returned the award in protest over the 2011 Women of Courage Award to Roza Otunbayeva, who, during her presidency in Kyrgyzstan, did not stop clashes between ethnic Kyrgyz and Uzbeks, see <http://www.bbc.co.uk/news/world-asia-pacific-12677394>.

<sup>10</sup> See Annex A4, Section 7, entitled 'What are the difficulties she is confronted with in her work, including personal risk/ cost, impact on family, etc.'

<sup>11</sup> Annex A2, para.5.

<sup>12</sup>Some of the officers responsible for the human rights violations in Durmen village were later convicted, see Institute for War and Peace Reporting, 'Uzbekistan: Officers Jailed Over Torture Death, 14 November 2005, at <http://iwpr.net/report-news/uzbekistan-officers-jailed-over-torture-death>.

interrogate her for about 2-3 hours, again about her human rights activities and attempts to denounce human rights violations in Durmen.<sup>13</sup>

12. The Author was presented to a judge the following day on 2 July 2002, where she heard for the first time that she was charged with offending an officer and refusing to follow police orders. She was not represented by a lawyer throughout the hearing, despite her requests to be so represented. The judge ordered the Author's release from detention due to a lack of evidence against her, yet transferred the case to the Kirgili District Prosecutor's Office for the investigation against her to be continued. The investigation was eventually dismissed due to a lack of evidence.
13. A criminal investigation into the Author's arrest and ill-treatment was opened on 5 September 2002. Despite a medical examination of the Author revealing bruises consistent with the Author's ill-treatment, the investigation was closed very soon thereafter without leading to charges of those responsible. No reasons were provided to the Author for the closure of the investigation.<sup>14</sup>
14. On 5 December 2002, the head of the public order unit of the Ministry of Interior of Ferghana Region, called the Author and told her that she would be taken by police the next day to attend a trial hearing held in response to a past demonstration allegedly organised by the Author to protest against human rights violations committed by the authorities. She had not been previously informed about any charges or trial against her. The Author therefore believed that the main reason for summoning her to attend the hearing on 6 December was to arrest her and to prevent her from mobilising citizens of Ferghana to participate in a demonstration against violations of the Constitution by the authorities scheduled for 8 December 2002. The Author went into hiding in Durmen village for five days. Meanwhile, police and soldiers were conducting daily house to house searches in Durmen to find her and her daughter, leaving the Author distressed and fearing for her as well as her daughter's safety.<sup>15</sup>
15. On 15 June 2003, the Author and a colleague were protesting outside the Ferghana Regional Prosecutor's Office against continued human rights violations and the judiciary which they accused of protecting the authorities alleged to be responsible. The mayor of Ferghana city had previously dismissed the Author's request to hold a demonstration, arguing that it would be contrary to Article 33 of the Constitution.<sup>16</sup> In these circumstances, the Author and her colleague decided to organise a picket, which does not require permission. During the picket, 8-10 women attacked the Author and her colleague. The Author believed them to be prostitutes who had been ordered by the law and order authorities to stop the Author's protest, a reported practice of police authorities in Uzbekistan.<sup>17</sup> The Author and her colleague were beaten, their posters

---

<sup>13</sup> Annex A2, para.6.

<sup>14</sup> Commission on Human Rights, 59<sup>th</sup> Session, Mission Report by Special Rapporteur on Torture, Mission to Uzbekistan, E/CN.4/2003/68/Add.2, 3 February 2003, paras. 56-57, **Annex A8**; see also Court Order of 5 September 2002 (in Uzbek), **Annex A9**.

<sup>15</sup> Center for Journalism in Extreme Situations, 'Disappearance of Uzbek journalist and human rights defender Mutabar Tadjibaeva, 11 December 2002, at <http://www.lenta.cjes.org/?m=12&y=2002&lang=eng&nid=18482>.

<sup>16</sup> Constitution of the Republic of Uzbekistan, 8 December 1992, Article 33, providing for the freedom of assembly, subject to 'grounds of security.'

<sup>17</sup> See Institute for War & Peace Reporting, 'Uzbekistan: Police and Prostitutes in Unholy Alliance', 17 November 2005, at <http://iwpr.net/report-news/uzbekistan-police-and-prostitutes-unholy-alliance>; Centralasia.ru, 'By order of the Uzbek police, prostitutes



destroyed and personal items stolen. The authorities failed to intervene and protect the Author and her colleague from the attack. The authorities also failed to initiate an investigation against any of the 8-10 women who had attacked the Author and her colleague. Charges were filed against the Author for organizing an unlawful demonstration, yet these were later dismissed on 14 August 2003.

16. A similar incident occurred on 20 August 2003, when the Author and three of her colleagues were picketing near the building of Oltiariq District Prosecutor's Office, calling for the resignation of officials from the Prosecutor's Office and of the governor of the district who were believed to be involved in drug trafficking and other criminal activities in the region.<sup>18</sup> A group of approximately fifty women attacked the Author and her colleagues with rocks and bricks. The Author was strangled and her clothes were torn until she was naked. The authorities were present during the attack but failed to intervene, filming the event instead. The attack left the Author hospitalised for 14 days.<sup>19</sup> While a case was opened against the Author for holding an illegal demonstration, the criminal court of Ferghana Oblast on 2 February 2004 confirmed that the picket was lawful and did not constitute a demonstration.<sup>20</sup>
17. In early December 2003, the director of the public order unit of the Ferghana police told the Author that she will not have much longer to live if she continued with her human rights work. On 13 December 2003, the Author was involved in a traffic accident in which she broke her left hand and suffered a concussion. At the time of the accident, the Author was travelling in a taxi on her way back to Margilan from Tashkent, where she had unsuccessfully tried to see the Minister of Internal Affairs to complain about the threats made against her. She was in the car with four other people- the driver, his son, and two other unknown passengers. They were travelling on a quiet road when a truck cut off the taxi she was travelling in, and the car behind the taxi crashed into her side of the taxi, leaving her as the only one injured. The Author believes that the accident was staged by the authorities, given its timing and circumstances. The authorities did not investigate the Author's complaint.

### **3.2. Rape at Bektemir District Department of Internal Affairs- 15 April 2005**

18. In spring 2005, the situation in the Andijan region of Eastern Uzbekistan was characterized by growing tensions due to the trial of 23 businessmen who were accused of terrorism.<sup>21</sup> Daily demonstrations against their trial took place before the court, bringing together an increasing number of demonstrators. On 4 April 2005, the Author sent a telegram to the President of Uzbekistan warning about potential unrest in the Andijan region.<sup>22</sup> On 15 April 2005, while in Tashkent for a press conference, the Author was kidnapped by four plain clothed men believed to be security officers at around 9am

---

and pimps beat defenders', 25 August 2003, at <http://www.centrasia.ru/newsA.php?st=1061763000> (in Russian) and 'Ferghana prostitutes admit that they are "fed" police', 20 March 2005, at <http://www.centrasia.ru/newsA.php?st=1111303800> (in Russian).

<sup>18</sup>Photo of the Author and colleagues picketing outside the Oltiariq district prosecutor's office, **Annex A10**.

<sup>19</sup> Photos of the Author's neck injuries, and examination at hospital, **Annex A11**.

<sup>20</sup> Annex A2, para.13.

<sup>21</sup> Report of the UN High Commissioner for Human Rights and Follow-Up to the World Conference on Human Rights, Report of the Mission to Kyrgyzstan by the Office of the United High Commissioner for Human Rights (OHCHR) Concerning the Events in Andijan, Uzbekistan, 13-14 May 2005, E/CN.4/2006/119, 1 February 2006, paras.8-9, **Annex B1**.

<sup>22</sup>Telegram sent by the Author on 4 April 2005 (in Uzbek), **Annex B2**

in the centre of the city. They bundled her into a car and handed her over to Tursunboy Rahmattylaev, the head of the Anti-Terrorist Department. Rahmattylaev took her in a car to the *Hotel Tashkent*, where a plain clothed man unknown to the Author took her to the Bektemir District Department of Internal Affairs.

19. Three officials present in an office of the building interrogated the Author. They insulted and humiliated her for spreading propaganda and inciting people against the government of Uzbekistan. When the Author denied the accusations, a police officer entered the office and took her to another office where three men were waiting for her. The Author screamed to be released, yet the men pushed her around, hit her on the face and pulled her hair, causing the Author to scream for help. She was then punched on the nose and started bleeding, when someone from outside the office knocked on the office's blacked out window and ordered the men not to leave any bruises on exposed parts of her body, while giving permission to do everything else they wanted to do to the parts of her body that would be covered.<sup>23</sup>
20. The Author was subsequently forcefully undressed and one of the men forced her to take his penis in her mouth. When she pushed the man away and started screaming, her mouth and hands were taped. The men then took turns raping the Author, ejaculating in her face, eyes and hair. One of the men tried to rape her anally, at which point the Author fell unconscious. After regaining consciousness, the Author was threatened by the official who had taken her to the detention facility. He told her to obey their orders, and that "Now you are going to service these five guys and then a long trip awaits you." Five men were waiting in the office, and the Author feared that they would kill her. The Author convinced the official that she had left information with the British Embassy in Tashkent which would help to identify those responsible for her death. The official threatened her, saying that she must not tell anyone about what had happened, or they would do the same thing to her only daughter. She was then released and taken to Ferghana by an official who handed her over to Hashim Azizov, Head of Criminal Investigations and Anti-Terrorism at the Ferghana Oblast Police Department. He drove her to her home in Margilan where she arrived at around 8pm. As she could not stop crying, her daughter called an ambulance. Prior to the arrival of the ambulance, Hashim Azizov called her at home, threatening her that if she told doctors about what had happened in Tashkent, she would only make things worse for herself and her daughter. The Author did not tell the doctors what had happened, and after subsequent threats in the following days that she had to think of the well-being of her daughter, she refrained from filing a complaint against the perpetrators.<sup>24</sup>

### **3.3. Arbitrary arrest and detention at Ferghana Oblast Police Department**

21. On the morning of 13 May 2005, the first day of the Andijan massacre,<sup>25</sup> the Author received a number of phone calls from human rights defenders and journalists who wanted to know what was happening in Andijan. Following these phone calls, the Author

---

<sup>23</sup> Annex A2, paras.18-19.

<sup>24</sup>Ibid, paras. 20-21.

<sup>25</sup> On the Andijan massacre, where Uzbek government forces are reported to have killed hundreds of unarmed protestors, see Annex B1; Human Rights Watch, "Burying the Truth", 19 September 2005, at <http://www.hrw.org/node/11616/section/2>.

was first placed under house arrest, before being taken by Hashim Azizov to the Oblast police department in Ferghana city in the afternoon. She was detained there until 16 May 2005 without being charged. During her detention at the Oblast police department in Ferghana city, she did not have a bed to sleep on, had to ask for permission to go to the toilet and was not allowed to see her lawyer or family.

### **3.4. Unlawful arrest on 7 October 2005 and subsequent arbitrary detention**

22. On 8 October 2005, the Author was scheduled to travel to Ireland, following a conference invitation by the human rights organisation Frontline.<sup>26</sup> The Author was asked to speak on the human rights situation in Uzbekistan and the killing of hundreds of people during the protest in Andijan. In the evening of 7 October 2005, more than 30 heavily armed officers arrested the Author at her home, Flat 32, 31 Zukhro Street, Margilan. Before being taken to the police station, she was charged with extortion. Her request to inform her lawyer was denied and she could not make a phone call.<sup>27</sup> Following the Author's arrest, police raided her flat and the office located therein and seized personal as well as work related items, including her computer, mobile phone and eighteen boxes of documents containing incriminating information about the conduct of certain government officials.<sup>28</sup> The searches were conducted in the Author's absence, and she was only shown the search warrants in December 2005, when she had the opportunity to examine the prosecution's case against her. None of the items taken from the Author's flat and her office have been returned to her to date.<sup>29</sup>
23. The officers handcuffed the Author and took her to the Fergana Regional Police Headquarters where she was again informed that she was charged with the crime of extortion.<sup>30</sup> The Author's repeated requests to see her lawyer were denied. A staff member of the Prosecutor's office, Bahtior Mamatov, the head of the economic crime and corruption unit, questioned the Author for approximately 6 hours until 6am the following morning, 8 October 2005. The interrogation focused on the Author's organisation and its funding. Throughout the entire questioning, the Author did not receive any water or food. At approximately 2am, an ambulance arrived with a team of two doctors and two nurses from Ferghana's emergency medical centre. The team was led by Dr Otabek Ortikovich Yulchiyev who wanted to inject the Author with medication,

---

<sup>26</sup> Invitation by Frontline for Ms Mutabar Tadjibaeva, 12 April 2005, **Annex C1**.

<sup>27</sup> See Report of the Special representative of the Secretary-General, Hina Jilani, on 'Promotion and Protection of Human Rights: Human Rights Defenders', Addendum, Summary of cases transmitted to Government and replies received, E/CN.4/2006/95/Add.1, 22 March 2006, paras. 574, 586, **Annex C2**.

<sup>28</sup> Search warrant issued by O.Akhmadjonov, deputy prosecutor of Ferghana Region, 7 October 2005 (unofficial translation into English), **Annex C3**; see also Summary of the Search of 7 October 2005 (unofficial translation into English): the summary lists 18 boxes of documents being confiscated, various video cassettes and documents having been confiscated, **Annex C4**.

<sup>29</sup> Contrary to the judgment of the court on 6 March 2006, see further below.

<sup>30</sup> See Order to initiate a criminal investigation, signed by Akhmadjonov Orif, Deputy prosecutor of Ferghana Region, 7 October 2005 (unofficial translation into English), **Annex C5**; The Author submits that she never committed any crime and she did not try to extort any money from anyone. She had lent some money to Madaminov Tohir Isokovich around August 2004 so that he could invest it in a fish farm. She concluded an agreement with him that he would return the money to the Author when he was making profits, and that the Author would receive 20% of his profits in return. Even though he was very successful with his business, he never repaid the Author, nor did the Author benefit from his profits contrary to the agreement. It was only in October 2005 that the Author heard from Tohir again, when he tried to repay his debt. However, the money he gave the Author on 7 October 2005 was marked with a powder, and the Author only later realized that he had gone to the police to claim that the Author tried to extort that money from him. The police, marking the money with powder, saw this as a possibility to fabricate a case of extortion against the Author, and to find a reason to arrest the Author. Two days after her arrest, the Author was also charged with fraud, and on 24 December 2005, 16 other charges were added, which also pertained to the Author's human rights work (see further below).

allegedly to reduce her high blood pressure. The Author had not requested medical assistance, nor did she have any problem with her blood pressure and consequently refused the injection, believing that the team was called to inject her with psychotropic drops.<sup>31</sup> Dr Yulchiyev only accepted not to give her the injection when the Author threatened to jump out of the window.<sup>32</sup>

24. At around 3.30am, a lawyer, Bahtior Abdullaev, arrived at the police station, stating that the Prosecutor's office had called him to represent the Author. The Author knew that Bahtior Abdullaev worked closely with the Prosecutor's Office, and rejected his offer to represent her. Her request to see her own lawyer was again denied. At approximately 5am, Bahtior Mamatov asked the Author to sign a statement addressed to the President asking for his forgiveness and confessing that her organisation was an extremist religious organisation funded by Western countries that planned to overthrow the Uzbek government. The Author refused to sign the statement.<sup>33</sup>
25. On 8 October 2005 at around 6am, the Author was transferred to a temporary holding cell in the basement of the police station. The first time she saw her lawyer, Mukaharramkhon Ibragimovna Tadjibayeva, was at around 5pm the same day. Mamatov continued to question the Author for about three hours, this time in the presence of her lawyer.<sup>34</sup> The transcript of the interrogation which the Author was asked to sign did not reflect her testimony, and she refused to sign it. Her request for the removal of Mamatov from her case, whom she accused of acting against the law, was denied. The Author was not presented to a judge for a review of the legality of her arrest. Contrary to Uzbek law, she was not brought before a prosecutor for the first ten days of her detention, even though it was a requirement under Uzbek law at the time for a prosecutor to approve arrest and detention.<sup>35</sup>
26. The Author was exposed to the cold throughout the ten days she was detained in the temporary holding cell. She had only one set of clothes and the authorities did not provide her with the clothes brought for her by her parents. The cell was very dirty and had a constant unpleasant smell. It was about 3x4 meters, without windows and a dim light that was switched on 24 hours a day. She shared the cell with two other women. The Author was later told by other inmates that one of them, by the name of Guila, was an informer for the police. The Author had to ask for permission to use the toilet, which was situated outside the cell and at times, this request was only granted 2-3 hours later. She could not receive any visits from her family or friends. Wardens were always present when she met with her lawyers, contrary to Uzbek law.<sup>36</sup> When she complained about her detention, the inspector of the criminal department, Saiyod Karimow, told the

---

<sup>31</sup>See *Indira Umarova v Uzbekistan*, Human Rights Committee, Communication No. 1449/2006, 19 October 2010, para. 2.6., on police practice in Uzbekistan of administering psychotropic drugs to detainees and prisoners.

<sup>32</sup> Annex A2, para.30-31.

<sup>33</sup> Annex A2, para.32; on the practice of replacing privately hired lawyers by State-appointed defence lawyers against the wishes of their clients, so-called "pocket lawyers", see Annex A8 para.43.

<sup>34</sup>The Author's sister was one of the Author's lawyers; the Author was allowed to also see her two other lawyers, Husan Mahubov and Dilfruz Nurmatov on 9 October 2005.

<sup>35</sup> Annex A2, paras.33-35; Annex A8 para.11. quotes Article 18 of the Criminal Procedural Code at the time: "[n]o one can be arrested or detained in custody if not on the ground of a court decision or with the sanction of a procurator. The judge and the procurator have the duty to immediately release anyone illegally deprived of liberty..."

<sup>36</sup> Annex A8 para.23 quotes Article 53 of the Criminal Procedural Code at the time: "...when the accused or defendant is kept in custody the defender has the right to meet with him one to one without limitation of the frequency and the length of the meetings".

Author that she should think about her relatives and that their lives depended on her, and that she should stop complaining.<sup>37</sup>

### **3.5. Arbitrary detention and ill-treatment at Ferghana Remand Centre No 10**

27. On or around 18 October 2005, the Author was transferred to Remand Centre No 10 in Ferghana, where she was held until 24 January 2006. She shared her cell with two women who had already been convicted and who were brought in from the women's prison ('women's colony'). The two women pressured the Author to sign a confession.<sup>38</sup> During her detention at Remand Centre No 10, officers prevented the Author from seeing her lawyers on at least two separate occasions. When she was able to meet with her lawyers, detention officers were present and searched her lawyers.<sup>39</sup> She was questioned on an almost daily basis, with the questioning focussing on her organisation, its funding and her friends and colleagues. The detention administration encouraged her cell inmates to denounce her so as to justify disciplinary measures, such as frequent searches of her cell and refusing visits from her family and friends.<sup>40</sup> At one point, one inmate, called Bandarinka Marina, threatened her with a knife to stop her from complaining about incidents of harassment by detention officials. The Author's requests to be moved to a different cell were ignored and she remained in the same cell for another month. During regular searches of her cell, medicine brought to her by her family went missing and she was obliged to take medicine provided by the detention centre officials, which the Author did not trust, as she had once been provided with aspirin that smelled of acid or vinegar.<sup>41</sup> When the Author once felt heart pain, her request for medical assistance was denied, and she was instead taken for interrogation.<sup>42</sup>
28. The detention and the detention conditions in remand centre No 10 had a deeply demoralising effect on the Author. Aside from one occasion in October 2005 where she saw her daughter for approximately one hour, she was not allowed to see her family or friends for more than three months. She was not given food or clothes brought to the remand centre by her parents. The Author did not know what was happening outside the detention centre and felt like living in a vacuum.<sup>43</sup>
29. The Author felt powerless as her lawyers told her that the authorities prevented them from carrying out their work properly. Their requests to have the Author released on bail

---

<sup>37</sup>Annex A2, para.36.

<sup>38</sup>Ibid, para.37.

<sup>39</sup>See undated complaint sent by Dilafruz Nurmatova, one of the Author's lawyers, to Ferghana Region Prosecutor, complaining about her lack of access to the Author on 29 October 2005, **Annex D1**; complaint dated 31 December 2005 about denied access to the Author on 31 December 2005, **Annex D2**; Response by the Prosecutor- General' Office, Ferghana Region Prosecutor's Office to Dilafruz Nurmatova, on 12 January 2006, **Annex D3**; see further The Prosecutor General's office, Ferghana Region's Prosecutor's office to the head of Ferghana's remand centre No 10, A.E. Uzaqov, No. 18-05, 8 November 2005, **Annex D4** (all documents are unofficial translations into English; for modalities of translation from Uzbek to English see note of the translator, **Annex D**).

<sup>40</sup> See Statement by Dekhqonova Gullola, inmate of Ferghana's remand centre No 10, to The United Nations Representative Office in Uzbekistan, undated (unofficial translation into English), **Annex D5**; see Decrees No 13-15 by the head of Ferghana's remand centre No 10: Lieutenant- Colonel A.E. Uzaqov, entitled 'On Disciplining a Convict', dated 17 November 2005, 18 November 2005 and 1 December 2005 (unofficial translation into English), **Annex D6**.

<sup>41</sup>See 'Explanatory Statement' by inmates of cell No 6 of remand centre No 10, Nafisa Egasheva and of Alekseyevna Zhavoronkova, **Annex D7**; the Author's lawyer managed to have the medicine tested by a laboratory which confirmed that the pills were not aspirin and poisonous, but no report was prepared by the laboratory out of fear of reprisals.

<sup>42</sup> Annex A2, para.41.

<sup>43</sup>Annex A2, paras.42-44.

were rejected by the first deputy prosecutor of Fergana Region's Prosecutor, Mr O. M. Ahmadzhonov, who argued that he could not release the Author as she had tried to extort money and had "illegally established and run the Fiery Hearts Club without any registration".<sup>44</sup> The authorities also turned down her lawyers' request to replace the prosecutor in charge of the Author's case, Mr O. Ahmadzhonov, even though the Author had previously called for his removal several times and had written to the President of Uzbekistan about the unlawful activities of the prosecutor, who therefore had a personal interest in keeping the Author detained.<sup>45</sup>

30. The Author's sister was called by the head of the anti-terrorist unit, Hashim Hazizov, who warned her not to speak to journalists if she wanted the Author to be safe. In addition, a short while after the Author's arrest, the driver of the "Fiery Hearts Club", Mr Mamirdzhon Misiraliyev, was detained and beaten by law enforcement officers of the regional law enforcement department, Khsoimdzhon Azizov and Sobirdzhon Mamadaliyev, in order to force him to sign a statement against the Author.<sup>46</sup> On 24 December 2005, the Author was informed that the charges against her were extended from the initial charge of extortion, and that she was now charged with offences under a total of eighteen Articles of the Criminal Code. On 27 December, she was notified that the investigation had ended and was given fifteen days to review thirteen volumes of the case against her. The authorities refused her lawyers' requests for an extension to study the case against their client. After 2.5 months at remand centre No 10, the Author was certain that her efforts to prove her innocence would fail, and that she would never be released so as to be reunited with her family. It was in these circumstances that the Author tried to commit suicide by cutting her veins. When she started doing so, a cell mate saw her and called the guards, who took away the shard that the Author had used.<sup>47</sup>

### **3.6. Arbitrary detention and torture at Kuyi Chirchik district police station**

31. On 29 January 2006, the Author was transferred to a cell in the basement of Kuyi Chirchik [also spelt 'Quyi Chirchik'] district police station, where she was held until the end of her trial on 6 March 2006. Her cell was dark and very cold as the electrical heating was not switched on. There was no sink or toilet in the cell. The Author had to ask for permission to go to the toilet which was frequently granted only 2-3 hours later, and did not receive medical care when requested.<sup>48</sup>
32. The day before her trial was scheduled to start, the Author could hear a man crying and screaming for one day. While she could not see him being tortured, she heard how he was screaming that he was ready to admit to anything the investigator wanted. As it was only one day prior to her trial, the Author believed he was tortured specifically to make

---

<sup>44</sup> The prosecutor's office of the Republic of Uzbekistan, Fergana Region's prosecutor's office, Decree on "Turning Down Appeal", 5 November 2011 (unofficial translation into English), **Annex D8**.

<sup>45</sup> The Prosecutor-General's Office of the Republic of Uzbekistan, Reply to Request of 18 December 2005, No. 15/1699-2005; confirmed on 23 December 2005, **Annex D9**; similar request to have B.M. Mamatov replaced as investigator was turned down by the prosecutor, O. Akhmadzhonov, 11 October 2005, **Annex D10**; on the Author's complaints about prosecutor Akhmadzhonov to the President of Uzbekistan, see Court Ruling of 21 April 2006, pp.1-4 (unofficial translation into English), **Annex D11**.

<sup>46</sup> See medical report prepared by Nizomiddinov and Goiubnazarov in 2005 (unofficial translation into English), **Annex D12**.

<sup>47</sup> Annex A2, para. 44.

<sup>48</sup> Ibid, para.47.

her feel uncomfortable. Guards at the police station did not allow her lawyers to visit the Author, despite an order by the court to the administration of the police station to allow her lawyers to see their client.<sup>49</sup>

### **3.7. Trial before Tashkent Oblast Criminal Court**

33. The Author's first instance trial lasted from 30 January to 6 March 2006. The Court rejected her lawyer's requests to extend the 15 days period to study the 13 volumes of the prosecution's case materials.<sup>50</sup> The preparation for her defence was further hampered by her lawyer's inability to see her throughout the trial while in detention at Kuyi Chirchik district police station.<sup>51</sup>
34. The Author was accused of 18 crimes, including distributing propaganda material, threatening the public order and using financial or other assistance from foreign governments and organisations, libel, defamation, extortion, tax fraud, forgery and the establishment of an unregistered public organisation.<sup>52</sup> The prosecution relied upon information used as evidence in previous trials which had resulted in the acquittal of the Author.<sup>53</sup> The prosecution failed to provide the Author's lawyers with 3 volumes of relevant evidence that would have exonerated the Author, in particular in regards to the charge of organising unlawful rallies in front of public administration buildings in Tashkent city and Ferghana region.<sup>54</sup> The Court denied the Author's lawyers' requests for recovery of the three case volumes. The case against the Author was described by national and international observers as baseless, dubious and politically motivated.<sup>55</sup> While the trial was opened to the public after one week, access to the trial hearings was difficult for outside observers as checkpoints had been established which at times prevented observers from attending hearings.<sup>56</sup>
35. The Author was represented by three lawyers, yet was not allowed to speak to her lawyers immediately before or during the trial. Her lawyers were not allowed to call key witnesses, and were prevented from cross-examining key prosecution witnesses, who were excused from cross-examination due to illness. No medical records were presented by the Prosecution to prove that prosecution witnesses could not attend the cross

---

<sup>49</sup>Ibid, para.48.

<sup>50</sup>Uzbekistan Prosecutor's Office, Regional Prosecutor's Office of Ferghana region, N 18-05, 27 December 2005, signed by Head of interrogation and investigation department of Regional Prosecutor's office of Ferghana Region, Sulaymanov N. M, Annex E1; Decision on rejecting the application for extension, 13 January 2006, signed by Sulaymonov, **Annex E2**.

<sup>51</sup> **Annex A2**, para.48.

<sup>52</sup>See Trial Judgment of 6 March 2006, p.1 (unofficial translation), **Annex E3**; See <http://uz.cafspeech.kz/site.php?lan=english&id=4&newsid=43>; the Author has substantial documentation on the establishment and proper registration of her organisation, which was not taken into account by the Court. The documentation (in Uzbek) can be made available.

<sup>53</sup> Annex A2, para.52.

<sup>54</sup> Annex E3, pp 4-6 (unofficial translation into English); Annex A2, paras.49, 52.

<sup>55</sup>See Hansard, House of Commons, Written Answers for 20 March 2006 Debate in the House of Commons: "the process and outcome do little to dispel the widely held belief that this and other recent cases were politically motivated..." "I am deeply concerned by the sentences passed recently on ....Mutabar Tojibayeva..", at <http://www.publications.parliament.uk/pa/cm200506/cmhansrd/vo060320/text/60320w26.htm>; see Annex A3 with US embassy trial observer describing the case against the Author as "based on a dubious complaint from a man who bought and sold fish from Tajibayeva's fishing farm. It has since been transformed into a mass of allegations accusing her of spreading lies in attempts to subvert the government", published by Wikileaks, available at <http://wikileaks.org/cable/2006/02/06TASHKENT261.html>.

<sup>56</sup>US embassy cable- 06Tashkent326-' Tajibayeva- Not a run of the mill Show Trial', 14 February 2006, published by Wikileaks, available at <http://wikileaks.org/cable/2006/02/06TASHKENT326.html> **Annex E4**

examination, nor were the witnesses recalled, despite the defence's request.<sup>57</sup> The trial judgment does not refer to the testimony of any defence witnesses.<sup>58</sup>

36. On 6 March 2006, the Author was found guilty of 13 crimes, including extortion, fraud, 'unlawful organization of voluntary associations', vigilantism and production/distribution of material containing threats to public order and security.<sup>59</sup> She was sentenced to a combined sentence of eight years imprisonment. The Court also ordered the destruction of some of the Author's confiscated property, including protest posters, CDs and other drivers with computer programs, and the surrender of certain items to the government, including the Author's computer drive, her dictaphone, record player and micro cassettes. Only the Author's personal documents were to be returned to her.<sup>60</sup> The application of an amnesty as provided for in the Criminal Code was expressly excluded as the judge specifically mentioned that the Author had been convicted of participating in activities of an unlawful organisation and committing offences that had endangered the security of society, crimes which do not allow for amnesty.<sup>61</sup>
37. The Author's lawyers sought a review of the trial protocol which was rejected by the Tashkent Regional Criminal Court on 21 April 2006.<sup>62</sup> The Author based her request for review on the fact that the trial protocol did not accurately summarise her and her lawyers' submissions, nor the testimony of witnesses during the proceedings.<sup>63</sup> The Court rejected her submissions, holding in particular that the trial protocol had been prepared separately by three different secretaries, and that any inconsistency would have therefore been discovered. The alleged absence of such inconsistencies led the Court to conclude that the Author's and her lawyers' version of the trial proceedings was "not right and far from the truth".<sup>64</sup>
38. The Author's lawyers filed a complaint to the 'Judicial Board for Appeals of the Tashkent Regional Court for Criminal Cases' ('Judicial Board').<sup>65</sup> In their complaint, the Author's lawyers outlined that the prosecution had presented evidence that was relied upon in previous trials against the Author for her political activities and which led to her acquittal, that evidence relied upon was inadmissible as the investigation against the Author violated her rights under Uzbek criminal procedural and under international law (pp.8-11), and that the first instance trial was unfair as the Author was not allowed to present key witnesses (p14). The Judicial Board dismissed the complaint on 30 May 2006, holding that even though the Author "did not admit her fault in the given verdict, neither during the investigation nor during the court, her guilt was found and confirmed

---

<sup>57</sup> Annex A2, para. 51.

<sup>58</sup> Annex E3.

<sup>59</sup> Ibid; see also Committee against Torture, 'Written replies by the Government of Uzbekistan to the list of issues (CAT/C/UZB/Q/3) to be taken up in connection with the consideration of the third periodic report of Uzbekistan (CAT/C/UZB/3), CAT/C/UZB/Q/3/Add.1, 17 September 2007, para.238, Annex E5; Amnesty International declared the Author to a prisoner of conscience following her conviction on 6 March 2006, Amnesty International, 'Uzbekistan: Appeal Case Update: Mutabar Tazhibbaeva - Human Rights Defender' <http://www.amnesty.org/en/library/info/EUR62/004/2006/en> Annex E6.

<sup>60</sup> Annex E3, pp.38-39.

<sup>61</sup> Ibid, p. 37.

<sup>62</sup> Annex D11.

<sup>63</sup> Ibid, pp. 7-10 (unofficial translation into English).

<sup>64</sup> Ibid, p.38.

<sup>65</sup> 'Complaint on Appeal to 'Judicial board for appeals of Tashkent regional court for criminal cases', May 2006, Annex E 7 (unofficial translation).



in the proof collected for this criminal case". No reference is made to any exculpatory evidence.<sup>66</sup>

### **3.8. Tashkent Remand Center No 1, women's ward**

39. After her (first instance) trial, the Author was taken to Remand Centre No 1 in Tashkent, where she was imprisoned until 7 July 2006. She shared her cell with another woman, Gulya Shaipova, who, together with her girlfriend, Elena Maksimova, abused other inmates in other cells. The Author could hear how other inmates called for the abuse and rapes against them to stop. She was later told that a religious prisoner was raped with a bottle. The Author was exposed to continuous threats by her cellmate and her cellmate's friend, who tried to force the Author to sign statements and letters confessing that she had founded an extremist organisation and that she asked for forgiveness from the President. If she did not, the Author would be put in the women's colony where "anything could happen" and where she would be treated like an animal. The Author did not sign these statements.<sup>67</sup>

### **3.9. Imprisonment at women's colony**

40. On 7 July 2006, the Author was taken to the women's colony UA 64/7, where she was detained until her release on 2 June 2008. The colony is the only women's prison in Uzbekistan. Upon her arrival, the Author was placed in the psychiatric ward, together with drug addicts and dangerous criminals, such as murderers, serial killers and traffickers. The administration of the women's colony argued that as the Author had been in need of medical assistance during trial, it was therefore best to put her in the psychiatric unit for her to "adapt to the women's colony".<sup>68</sup> No psychiatric assessment of the Author was carried out; and she had neither requested nor needed psychiatric treatment before or during her trial.

41. In the psychiatric ward, the Author was threatened by another inmate that she would experience "the real hell" of the colony if she did not share her cigarettes. The Author was injured when she was hit during a fight between other inmates and medical personnel, yet did not receive medical treatment.<sup>69</sup> Medical staff of the ward tried to give her injections for her 'condition', yet refused to inform her what kind of medicine it was.<sup>70</sup>

42. The Author's lawyers succeeded in having the Author moved to a different part of the colony after approximately ten days in the psychiatric ward.<sup>71</sup> The Author's detention at the psychiatric unit had a severe effect on the Author's health. She was nervous and in fear of the other inmates. Upon meeting her lawyer on 13 July 2006, she mentioned that

---

<sup>66</sup> Judicial Board of Appeal Instance of Tashkent Regional Court for Criminal Cases, Decision N 23/43-06, 30 May 2006, Annex E8 (unofficial translation).

<sup>67</sup> Annex A2, paras. 55-57; the practice of using torture and ill-treatment to force inmates to write "repentance letters" to the Republic is also referred to in Annex A8, para. 40.

<sup>68</sup> Response to letter sent by lawyer D Normatova on 24 July 2006, **Annex F1**; see also Annex E5, para.239.

<sup>69</sup> Ibid.

<sup>70</sup> Annex A2, para.60.

<sup>71</sup> Annex A2, paras.49-53.

“her health was under threat and that urgent actions should be taken to assist her”.<sup>72</sup> The day she was moved from the psychiatric ward was the last time the Author was allowed to see her lawyer until after her release on 2 June 2008.<sup>73</sup>

43. During the nearly two years the Author was imprisoned at the women’s colony, the Author was forced to work for up to 9 hours per day, followed at times by 7 hours of forced standing.<sup>74</sup> The Author was humiliated and assaulted by Svetlana Karnaoukhova, a prison guard, who early on told the Author that she should not expect any help from her ‘international friends or the United Nations’, and who on one occasion threw a bottle filled with water at the Author, aiming for her head but just hitting her very hard on the chest. Karnaoukhova was also leading a group of prison guards who used certain inmates to extort money from other inmates. One of these inmates once strangled the Author after she refused to send a letter to her family requesting them to give \$2000 USD to one of the inmate’s friends.<sup>75</sup>
44. The Author was continuously denied access to the prison administration and the prosecutor to report the incidents, as her letters to the authorities were either not passed on by the guards, or were ignored by the administration and the prosecutor.<sup>76</sup> From July 2006 to April 2008, the administration continuously accused the Author of violating prison regulations, yet she was denied the possibility to review the documentation that served as a basis for the accusations. The authorities further prevented her from seeing her lawyers throughout her detention. When the Author went on a hunger strike in November 2006 to protest against her treatment, three prison guards, including Karnaoukhova, took the Author to a punishment cell, where they handcuffed her and hung her onto a hook on the wall. Karnaoukhova placed one end of a dirty hose in a toilet and threatened the Author that this was how she was to be force fed. She was left hanging from the wall and displayed to a group of law students from Tashkent University who were brought in her cell by Karnaoukhova, who mocked her saying that “her lawyers had arrived”. One of the law students wrote on the Authors forehead “I am the enemy of the people”.<sup>77</sup>
45. Following a visit from her brother in January 2007, in which the Author informed him about the detention conditions, guards at the women’s colony forced the Author to stand outside in the rain in freezing conditions for approximately one to two hours.<sup>78</sup>

### **3.10. Prolonged solitary confinement**

46. The Author was placed in solitary confinement in a punishment cell on ten different occasions, spending a total of 112 days in isolation in different punishment cells, from August 2006 to June 2007. Due to the conditions in the punishment cells, Uzbek law

---

<sup>72</sup>E-mail sent by lawyer D Nurmatova to Human Rights Watch, on 21 July 2006, **Annex F2**.

<sup>73</sup>US embassy cable – 07 Tashkent 1822, ‘Mutabar Tojiboyeva’s Health Worsens in Prison’, recalling a meeting with Mutabar Tadjibaeva’s lawyer and embassy staff, 22 October 2007, published by Wikileaks, available at <http://wikileaks.org/cable/2007/10/07TASHKENT1822.html>. **Annex F3**

<sup>74</sup>Annex A2, para.63.

<sup>75</sup>Ezgulik “Human Rights Society of Uzbekistan”, Letter sent by the Author to the human rights organisation Ezgulik, describing the conditions of detention in the colony from August to December 2006. **Annex F4**

<sup>76</sup>See further below, para.77

<sup>77</sup>Annex A2, paras.65-66.

<sup>78</sup>Ibid, para.67.

prohibits detention in these cells for more than 15 days in a row. On several occasions, the Author was released from punishment cells after 15 days, only to be put back again hours after the release, thereby spending up to forty consecutive days in isolation.<sup>79</sup> The Author was deliberately placed in solitary confinement when she was expecting a visit from her family, as internal prison rules did not allow those in solitary confinement to see any visitors. Aside from a two hours visit in January 2007, the Author did not see her family or any other visitor from January 2007 to August 2007.<sup>80</sup> Guards mocked her about wishing to see her family. Contrary to prison regulations, the Author was not medically examined prior to the transfer to the punishment cells, with two exceptions.<sup>81</sup>

47. The Author was put in punishment cells mostly during the cold period and in freezing conditions as there was no protection against the cold in the punishment cells. Some had windows, but these were kept open despite the Author asking the guards to close them. Other cells had holes in the wall without any protection against the cold. The isolation cells were not connected to the central heating system, and the Author had no warm clothes to protect herself against the cold. The authorities did not allow her to receive anything from her family from August 2006 to April 2007 and she was not provided with a blanket by the guards, who confiscated and destroyed clothing provided to her by fellow inmates. There was no protection against water entering from the ground or through the walls, and all cells were constantly wet and damp. Throughout the day, the Author could only sit on the cold and wet ground of the cell or lean against the equally cold wall, as there were no stools, and beds were folded up at 5am in the morning. Standing up in full height in some punishment cells was difficult due to the low height of the ceiling.<sup>82</sup>
48. On one occasion, as a result of having spent several days in the punishment cell in freezing conditions over a repeated period of time, the Author's body started to swell and her kidneys started to hurt, yet her requests for the window to be closed and for medical assistance were ignored. On another occasion, the guards forced the Author to take off her warm tights that had been given to her by other inmates, forcing her to spend 10 days barefoot in a punishment cell in November. After having been detained 38 days almost continuously in punishment cells throughout November and December 2006, the Author fell unconscious and had to be taken to the medical unit.<sup>83</sup>
49. At some point in February 2007, one of the guards, Major Olga Pshenichnikova, forced the Author to take off all her clothes and forced her to stand naked in the corridor of the barrack where isolation cells were located. The doors to both ends of the corridor were left open to expose the Author to the draft. The female guards responded to the Author's requests for clothes by mocking her and threatening her that she will suffer much more. The Author eventually collapsed and only regained consciousness by the pain caused from pulling her over the concrete floor to the isolation cell, where she was

---

<sup>79</sup>Letter sent by Author around October 2007, entitled 'For Publication in the International Press- SOS', **Annex G1**; see also Annex A2, para.70.

<sup>80</sup>Frontline: 'Uzbekistan: Open Statement of Human Rights Defender Rasul Tadjibaev', 14 August 2007, at <http://www.frontlinedefenders.org/node/1128>, **Annex G2**; also Uzbek Embassy to Malaysia, "Information regarding Mutabar Tajibayeva", 18 August 2007, **Annex G3**; see also Annex E5, para.138.

<sup>81</sup>Annex A2, para.68.

<sup>82</sup>Annex A2, para.69.

<sup>83</sup>Ibid, para.70.

left overnight, naked and bleeding. The next day, she was seen by a nurse. She was too weak to speak, feverish and vomiting. She was not taken to the medical ward but returned to the barracks.<sup>84</sup>

50. On another occasion, after having refused to write a statement that she does not have any complaints against prison officials, she was again placed in a punishment cell, where guards had left a rope and installed a hook so as to encourage the Author to hang herself.<sup>85</sup>
51. After having spent 112 days in punishment cells, the Author was certain that she would not be able to survive the women's colony and would never be able to see again her family, meet with her lawyers or ever be released from prison.<sup>86</sup>

### **3.11. Lack of access to medical treatment in the women's colony**

52. The Author's prolonged detention in punishment cells, deliberately exposing her to the cold in combination with hard labour and periods of forced standing had a significant impact on her medical condition, as did the lack of adequate medical treatment.<sup>87</sup> In December 2006, the Author fell unconscious after having been continuously exposed to the cold in the punishment cells and after her requests for medical treatment for her cough, chest pain and kidney had all been denied. It was only then that the Author received some medical treatment. The Author however did not fully recover and continued to be in constant pain.<sup>88</sup>
53. After approximately one year at the colony, in September 2007, the Author felt so weak that she could not move anymore. When she requested medical assistance, her request was denied. Her fellow inmates had to feed the Author and carry her to the toilet. After having spent approximately 15 days in that state without medical assistance, the Author decided to commit suicide. It was only after she had requested a fellow inmate to get her a razor blade, that a doctor examined the Author and placed her in a medical ward for approximately ten days.<sup>89</sup> The Author's health did not improve and she was not informed about the outcome of the examination.<sup>90</sup>
54. The continued exposure to the cold and lack of adequate treatment worsened the Author's medical condition,<sup>91</sup> yet the administration authorities informed her family that

---

<sup>84</sup> Ibid, para.71-72.

<sup>85</sup> Annex G1.

<sup>86</sup> Annex F4.

<sup>87</sup> Annex A2, para.74.

<sup>88</sup> Annex A2, para. 75.

<sup>89</sup> Annex A2, para.75; see also Ferghana News, 'Mutabar Tajibayeva: I m not going to abandon human rights activities', 24 June 2008,

#### **Annex D13**

<sup>90</sup> Annex A2 paras.75-76; UN Human Rights Council, 7<sup>th</sup> Session, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Addendum, Summary of information, including individual cases, transmitted to Governments and replies received, 19 February 2008, para.260 refers to "Ms Tadjibaeva's health is deteriorating as a result of the conditions in which she is being held and is in need of urgent medical attention. It is reported that she has lost approximately 20 kilograms in weight and is suffering from a kidney related illness caused by cold and low blood pressure." **Annex H 1**

<sup>91</sup> Annex F3; Frontline, "Uzbekistan: Further ill-treatment of human rights defender Mutabar Tadjibaeva", 15 October 2007, at <http://www.frontlinedefenders.org/node/1187>; Abdujalil Boymatow in Süddeutsche Zeitung, 'Stuhl, Bett, Schlinge', 29 April 2008 (in German).

she was “in good condition” and that she had never complained about heart or kidney problems.<sup>92</sup>

### **3.12. Forced Surgery**

55. By mid-January 2008, transparent fluid began to come out of the Author’s uterus. It would not stop and despite her frequent requests for medical treatment, she received only aspirin and painkillers. During February-March 2008, the Author heard from fellow inmates about rumours spread by prison guards that she was suffering from cancer, and that she had not long to live. When the Author’s family enquired with prison officials about her health, however, the authorities responded in writing saying that she was in good health.<sup>93</sup> On 8 March 2008, doctors of the medical ward of the colony carried out an ultrasound treatment, yet did not inform the Author about the results. She was then taken to a clinic in Tashkent on 9 March, where she was examined. The doctors at the clinic did not tell the Author what she was suffering from, and she only found out at the clinic that it was a clinic specialized in cancer treatment, yet she did not know why she had been taken there. The chief doctor of the colony informed her deputy in front of the Author that she will need to have an operation, yet no reasons were given for the operation.<sup>94</sup>
56. The Author wrote to the head of the women’s colony refusing to have an operation, as she was not informed about the outcome of the ultrasound treatment, the examination at the cancer clinic and the reasons for the operation. The Author believed that the authorities were planning to have her killed. Despite her objections, the Author was taken to the clinic on 17 March to be prepared for the operation the following day. On 18 March, the Author was operated on. She was certain that the operation was a pretext to kill her. She woke up in the intensive care unit, feeling a lot of pain all over her body. She was not informed about the outcome of the operation. It was only when she asked a doctor in the clinic about red traces in her underwear that she was informed that doctors had removed her uterus during the operation. She was shocked and confused, as no one could tell her the reasons why her uterus had been removed.<sup>95</sup>
57. On 2 April, she was taken back to the women’s colony, where she did not receive any medication, causing her difficulties to defecate and her stomach to swell, resulting in severe pain. As she did not know what she was suffering from, and did not know whether she was actually suffering from cancer, she thought the operation was not successful and she would die.
58. Throughout April and May 2008, countries with a diplomatic representation in Uzbekistan as well as international human rights organisation intensified their efforts to have the Author released.<sup>96</sup> On 2 June 2008, the Author was released on medical

---

<sup>92</sup> Letter sent by State Prosecution Office to the attention of Mr R Tadzhibaev on 18 January 2008. **Annex H 2**

<sup>93</sup> Annex H 2

<sup>94</sup> Annex A2, paras. 78-80.

<sup>95</sup> Annex A2, paras. 81-84.

<sup>96</sup> US embassy cable – 08Tashkent 627, ‘Tojiboyeva released from prison; vows to continue with human rights activism’, 5 June 2008, published by Wikileaks, available at <http://wikileaks.org/cable/2008/06/08TASHKENT627.html>; Human Rights Watch, ‘Uzbekistan: Rights Activist Mutabar Tojibaeva Released’, 2 June 2008, at <http://www.hrw.org/news/2008/06/01/uzbekistan-rights-activist-mutabar->

grounds.<sup>97</sup> Subsequent to her release, the Supreme Court changed her sentence from 8 years to a 3 years suspended sentence.

### **3.13. Following Release**

59. Following the Author's release, she was examined and treated in a private- pathological hospital in Ferghana.<sup>98</sup> It was difficult to treat the Author, as the doctors did not have access to the Author's complete medical file from the women's colony. The Author and her lawyers had tried to obtain her medical file, yet these requests were denied by the administration of the women's colony, as well as by the oncology clinic. Only a one page medical report in regards to the Author's operation on 18 March 2008 was made available.<sup>99</sup>
60. Doctors in Germany and Switzerland in October and November 2008 respectively encountered similar problems when seeking to establish why the Author had been operated on.<sup>100</sup> In Germany, the Author underwent a two week diagnostic procedure, yet the doctor could not establish why the Author's uterus had been removed.<sup>101</sup> In Switzerland, the Author had to undergo another surgery due to a hernia which developed as the incision from the surgery on 18 March 2008 had not closed properly.<sup>102</sup>
61. On 20 November 2008, the Author received the Martin Ennals Award for Human Rights Defenders in Geneva, Switzerland. In December 2008, her organisation was awarded the 'Medaille de la République Française de la Liberté, Egalité, Fraternité', which the Author received in person in Paris, France. The Author returned to Uzbekistan on 24 December 2008. She believed that the international attention on her case, further confirmed by the award of these two human rights awards in Switzerland and France respectively, would protect her from further harassment from Uzbek authorities.
62. However, at the end of January 2009, she was called at home by a friend working with the police to "be very careful" and that her life was in danger as a new campaign was started against her. Her friend advised her not to leave the house alone. One week after the phone call, on 6 February 2009, the government controlled newspaper "Uzbekistan News" started to publish a series of articles entitled "Chercher la femme for Islamists", in which it was alleged that the Author was linked to the movement Akramia, blamed by

---

[tojibaeva-released](#), **Annex J 1**; Annex D13; Galima Bukharbaeva, 'A Constant Torture', 16 July 2008, in the 'Süddeutsche Zeitung'. **Annex J 2.**

<sup>97</sup> Presidency of the European Union, "Déclaration de la présidence au nom de l'Union européenne concernant la libération de Mme Moutabar Tojiboeva, défenseur des droits de l'homme, par les autorités ouzbèkes, Brussels, 10 June 2008, at <http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CFkQFjAB&url=http%3A%2F%2Fwww.consilium.europa.eu%2Fuedocs%2FNewsWord%2Ffr%2Fcfsp%2F101053.doc&ei=5YTXt9V458PRBZzakfoD&usq=AFQjCNHQDtsewBsAEV-CxpVctbb6Dh8Wgg>.

#### **Annex J 3**

<sup>98</sup> Annex A2, para.87; UzNews.net, 'German embassy says rights activist Mutabar Tajibayeva 'has no cancer', 18 July 2008, **Annex J 4**; US embassy cable- 08Tashkent1036, 'Update on status of human rights activist Mutabar Tojiboyeva and Akzam Turgunov, 5 September 2008, at <http://wikileaks.org/cable/2008/09/08TASHKENT1036.html>. **Annex J 5**

<sup>99</sup> Letter from R. Komilov, Association of Lawyers of the Republic of Uzbekistan, to the attention of lieutenant colonel Akhmedjoeve, head of 64/7 Colony, **Annex J 6**; response from City oncological hospital, department of oncological gynaecology, entitled 'discharge report 1046/110' (unofficial translation into English). **Annex J 7**

<sup>100</sup> Medical Report prepared by Dr.med. Natan Del, Facharzt für Innere Medizin, 17 November 2008. **Annex J 8**; Medical Report prepared by Robert Sorge, Facharzt für Urologie, 31 October 2008, **Annex J 14.**

<sup>101</sup> Ibid.

<sup>102</sup> Ibid; also 'Resume de l'observation', Hôpitaux Universitaires de Genève, Département de Chirurgie, Dr L. Memmo and Dr M. Chilcott, 18 December 2008. **Annex J 9**

the Uzbek Government for the Andijan uprising.<sup>103</sup> Due to fear for her own as well as her family's safety, the Author left Uzbekistan for France in March 2009 together with her daughter and granddaughter. Their request for asylum was registered at French Prefecture on 3 June 2009. All three obtained refugee status on 2 December 2009 due to risk of persecution in Uzbekistan.<sup>104</sup>

63. The Author has been living in France since 15 March 2009. Her health has deteriorated considerably as a result of her prior detention. She has difficulties walking and going up stairs and is now also suffering from severe diabetes which causes significant problems to her eyesight. She is suffering from depression, memory loss and has a feeling of anxiety because of the uncertainty and lack of understanding of the reasons for the surgery. The Author was examined by Dr Juan Boggino of TRACES, and by Dr Pierre Duterte, Chief Doctor of the Medical Center '*Parcours d'Exil*', who both recorded and referred to the physical and emotional abuse of the Author.<sup>105</sup> In particular, the reports of both experts find that the Author is suffering from a post-traumatic stress disorder, and that the Author's allegations correspond to the experts' findings.<sup>106</sup>

#### **4. Pursuit of domestic remedies**

##### **4.1. Arrest, harassment, ill-treatment and torture by authorities: July 2002- April 2005**

64. Following the Author's arrest and ill-treatment on 1 July 2002, she filed a criminal complaint against the police officers responsible for her arrest and ill-treatment with the prosecution authorities around 2 or 3 July 2005. A medical examination authorised by the prosecution authorities documented bruises consistent with the Author's ill-treatment by Mr Tillaev. On 5 September 2002, the court ordered the opening of a criminal investigation into the Author's arrest and ill-treatment, yet the investigation was eventually closed without leading to any charges. No reasons were provided to the Author.<sup>107</sup>
65. The Author filed a criminal complaint against the women responsible for her injuries inflicted during the picket on 20 August 2003, as well as the police authorities who she alleged had ordered the attack. Both complaints were dismissed. Instead, an administrative case against some of the women was opened for 'hooliganism', leading to a fine imposed upon some of them. An administrative case was also opened against the Author for holding an illegal demonstration, leading to the Author's conviction by the first instance court on 11 November 2003. The Author was not notified about the proceedings, and was not present during the proceedings. The Author only became aware of the decision against her when a bailiff came to her property to confiscate her belongings. The decision was overturned on appeal by the criminal court of Ferghana

---

<sup>103</sup>See unofficial translation from Russian into English, entitled "Chercher la femme for the Islamists." **Annex J 10**

<sup>104</sup>Ministere de l'Immigration, de l'Integration, de l'Identite Nationale et du Developpement Solidaire, "Decision d'Admission au Statut de Refugie", 2 December 2009. **Annex J 11**

<sup>105</sup>Report prepared by Dr Juan Boggino, TRACES- Réseau Clinique International, 5 June 2011, **Annex J 12**; Dr Pierre Duterte, medical doctor, psychotherapist specialized in psycho traumatism, 'Psychological & Medical report on Mrs Mutabar Tadjibaeva', 3 November 2011, **Annex J 13**.

<sup>106</sup> Annex J 12; Annex J 13, pp.7-8.

<sup>107</sup> Annex A8, paras.56-57; see also Annex A9 (in Uzbek).

Oblast on 2 February 2004, which found that the picket was lawful and did not constitute a demonstration.<sup>108</sup> The Court also ordered the opening of an investigation against the police authorities, yet the Author was never informed about any investigation.

66. Similarly, the police dismissed the Author's complaint in regards to the 'staged' traffic accident in December 2003, mocking the Author that she should not take herself so seriously.<sup>109</sup>
67. The authorities at Bektemir District Department of Internal Affairs, as well as Hashim Azizov threatened the Author not to inform anyone about the rape committed against her on 15 May 2005, and that her daughter would be raped, too, should she try to tell anyone about the rape. Due to her fear for the safety of her daughter in these circumstances, the Author refrained from filing a complaint against the perpetrators immediately after the rape.<sup>110</sup> It was only during the appeal trial, in May 2006, that the Author felt she had no choice but mention what had happened to her. The Judicial Board however turned down her request to open an investigation into her rape, and similarly denied her lawyers' request for the protocol of the appellate hearing.
68. However, the Author did file a complaint against the officials involved in her unlawful arrest and detention from 13 May to 16 May 2005. An investigation was initially opened but it was later closed, with the authorities arguing that the Author had been detained for fear for her life in the event she travelled to Andijan.<sup>111</sup>

#### **4.2. Arrest on 7 October 2005 and subsequent detention up to 30 January 2006**

69. The Author and her lawyers also undertook multiple steps to challenge her arrest on 7 October 2005 and her subsequent detention as well as conditions of detention up to her trial on 30 January 2006.
70. Her request for the removal of the officer in charge of interrogating her, Bahtiyar Mamatov, on the grounds that he had falsified her testimony, was denied.<sup>112</sup> Her request to have her detention reviewed by a prosecutor was only complied with ten days after her detention.<sup>113</sup>
71. During her detention at Remand Centre No 10, detention officers prevented the Author from seeing her lawyers on at least two separate occasions. When she was able to meet with her lawyers, detention officers were present and searched her lawyers.<sup>114</sup> The

---

<sup>108</sup>Annex A2, para.13; Centrasia.ru, 'By order of the Uzbek police, prostitutes and pimps beat defenders', 25 August 2003, at <http://www.centrasia.ru/newsA.php?st=1061763000> (in Uzbek); see also decision of the Criminal Court of Ferghana region of 2 February 2004, No. 3-20. **Annex L1**; on 25 July 2005 the Rashtan Civil Court ordered the authorities to pay moral damages to the Author for her wrongful conviction of 11 November 2003.

<sup>109</sup>Annex A2, para.14.

<sup>110</sup>Ibid, paras.20-21.

<sup>111</sup>Ibid, paras.22- 26.

<sup>112</sup>Ibid, para.35.

<sup>113</sup> Ibid.

<sup>114</sup> See Annex D1; Annex D2; Annex D3; see further Annex D4; see also Report of the UN Special Rapporteur on Torture, 21 March 2006, on Uzbekistan, E/CN.4/2006/6/Add.2, para: 348: "According to a survey conducted by the Association of Advocates, 353 persons, 85% of those surveyed, stated that meetings of defence lawyers with their clients can only be carried out after numerous complaints to various bodies (as legislation does not provide for the issuance of the permission for lawyers to meet with their clients)" .



Author filed more than 100 complaints about these and other incidents.<sup>115</sup> All of these complaints were routinely rejected by the head of the remand centre, Lieutenant-Colonel A.E. Uzakov as well as the head of the criminal investigation department of Ferghana Region's Prosecutor Office, N.M. Sulaymonov.<sup>116</sup> Her requests to see and complain to the head of the remand centre were not granted without any further explanation.<sup>117</sup>

72. As outlined above, the Author's lawyers' requests to have the Author released on bail were denied by the first deputy prosecutor of Fergana Region's Prosecutor, Mr O. M. Ahmadzhonov, who argued that he could not release the Author as she had tried to extort money and had "illegally established and run the Fiery Hearts Club without any registration".<sup>118</sup> The authorities also rejected her lawyers' request to replace Mr O. M. Ahmadzhonov as the prosecutor in charge of the investigation of the Author's case, even though the Author had previously called for his removal several times and had written to the President of Uzbekistan about the unlawful activities of the prosecutor, who therefore had a personal interest in keeping the Author detained.<sup>119</sup> When one of the Author's lawyers filed a complaint about the conduct of investigations by police authorities, she was threatened that "she would not see her son be circumcised" if she did not withdraw her complaint.<sup>120</sup>

### **4.3. Trial**

73. Despite injunctions from the Tashkent Criminal Court ordering detention authorities to grant the Author's lawyers access to meet with their client before and during trial, such access was denied. Similarly, their requests for a time extension to study 13 volumes of the prosecution's case material were denied, which additionally hampered their ability to adequately prepare the Author's defence.<sup>121</sup> During trial, the Author's lawyers' requests to cross examine important prosecution witnesses were denied as the Court excused witnesses from attending relevant hearings due to illness. The lawyers' request to receive medical certificates confirming the witnesses' illness, and to have these witnesses recalled, were denied by the Court. The judgment of 6 March 2006 does not refer to the testimony of any defence witness being taken into account when ruling on the Author's guilt or innocence.

74. The Author's request for a review of the trial protocol on the basis that it did not reflect the trial proceedings was rejected by the Tashkent Criminal Court on 21 April 2006, which failed to fully and adequately consider the arguments put forward by the Author's lawyers.<sup>122</sup>

---

<sup>115</sup>See above, para.18.

<sup>116</sup>See for instance Decree No. 18-05, 'To: The head of Fergana's remand centre No. 10, A.E. Uzaqov, 20 December 2005 (unofficial translation into English). **Annex M1**

<sup>117</sup>See for instance Request No, 14, Request No 15, Request No 16, by the Author to the head of remand centre No 10, A. Uzaqov, dated 01/01/2006, 02/01/2006 and 03/01 2006 respectively (unofficial translations into English). Annex M2

<sup>118</sup> Annex D8

<sup>119</sup> Annex D9; Annex D10; on the Author's complaints about prosecutor Akhmadzhonov to the President of Uzbekistan, see **Annex 11**, pp.1-4 (unofficial translation into English).

<sup>120</sup> Annex A2, para.92.

<sup>121</sup> Ibid.

<sup>122</sup> Annex D11.

75. Similarly, the Author's "Complaint on Appeal" was dismissed by the Judicial Board of the same Tashkent Criminal Court and attempts to appeal the judgment to the Supreme Court were denied by the Supreme Court on two occasions.<sup>123</sup> The Author filed up to 30 complaints for a review of the judgment, all of which were rejected.<sup>124</sup>

#### **4.4. Imprisonment in Women's colony**

76. The Author's personal documents were confiscated upon arrival at the women's colony, and she therefore did not have the means to make any written complaint to the prison administration.<sup>125</sup> Aside from one meeting with her lawyer in the first week of her imprisonment on 13 July 2006, the Author could not meet with her lawyers until after her release on 2 June 2008.<sup>126</sup>

77. Throughout her detention, the Author was continuously denied access to the prison administration and the prosecutor to complain about the various violations committed against her throughout her imprisonment in the colony. When she was able to see the prosecutor in charge of prison supervision, Mr. Romanov, around March/April 2007, she reported about her ill-treatment in the women's colony. This included a detailed description of the different types and methods of torture and an 80 page memorandum detailing the violations of relevant Articles in the Code of Punishment (article 10 and 117). However, the prosecutor failed to respond to her complaint.<sup>127</sup> Instead, prison officials and deputy prosecutor Yahyo ordered her to sign a testimony that she had no complaints against prison officials.<sup>128</sup>

78. Her requests for medical assistance, becoming more urgent over time due to the conditions of detention and her constant exposure to severe cold, were denied. In the absence of any official response to her complaints, the Author appealed to the international community through writing letters brought out of the women's colony by inmates who were released.<sup>129</sup>

79. Following the ultrasound treatment on 8 March 2008, her requests for the results of that treatment were dismissed. The results of the examination at the cancer clinic of 9 March were also not shared with the Author, despite her requests. The outcome of the surgery on 18 March 2008 was also not communicated to the Author. Her requests for her medical file were dismissed by the administration of the women's colony. The Author has not obtained her medical file to date.

---

<sup>123</sup> Annex A2, para. 54.

<sup>124</sup> Committee against Torture, 39<sup>th</sup> Session, Summary Record of the 792<sup>nd</sup> Meeting, Consideration of Reports by States Parties under Article 19 of the Convention (continued), Third Periodic Report of Uzbekistan (continued), CAT/C/Sr.792, 10 March 2008, para.22. **Annex N1**

<sup>125</sup> Annex F2.

<sup>126</sup> Annex A2, para.61;

<sup>127</sup> Annex F4.

<sup>128</sup> Annex G1

<sup>129</sup> Annex F4; Annex G1

#### **4.5. Following release from Women's colony**

80. Following the Author's release on 2 June 2008, the Author had to travel abroad for urgent medical treatment that was not available to the Author in Uzbekistan. The Author continued to speak out about human rights abuses committed by Uzbek authorities, and about their abuses committed against her. When she returned to Uzbekistan in December 2008, a friend within the police force warned her that she was not safe, and newspaper articles alleged that she was linked to the Andijan massacre. The Author no longer felt safe in Uzbekistan, and therefore left Uzbekistan in March 2009. She applied for asylum in France in June 2009, and the French authorities granted her refugee status on 2 December 2009 due to risk of persecution in Uzbekistan.
81. Her experiences of unsuccessfully seeking a remedy within the Uzbek legal system prior to her arrest on 7 October 2005, and her treatment during detention and imprisonment further convinced the Author that she would not be able to pursue legal remedies successfully in Uzbekistan against the officials and others persons responsible for her arrest, imprisonment, various forms of ill-treatment and torture, and other violations.

### **5. Admissibility of the Communication**

82. It is submitted that this Communication meets the admissibility criteria established under the First Optional Protocol to the Covenant (the "First Protocol").
83. Uzbekistan ratified the ICCPR and the First Protocol on 28 September 1995, thereby recognizing the competence of this Committee to receive and consider communications from individuals subject to its jurisdiction in respect of any violation set forth in the Covenant. The facts alleged clearly took place after 28 September 1995 and within the jurisdiction of Uzbekistan. The facts alleged furthermore relate to violations of rights enshrined in the ICCPR.
84. This complaint is not being examined (and has never been examined) by another procedure of international investigation and settlement, and thus complies with the requirements of Article 5 (2) (a) of the First Protocol.

#### **5.1 Exhaustion of domestic remedies**

85. The obligation to exhaust domestic remedies pursuant to Article 5 (2) (b) of the First Protocol requires the Author to exhaust remedies that are effective, available and not unduly prolonged,<sup>130</sup> and to raise the substance of the complaint before the local authorities.<sup>131</sup>
86. The Author repeatedly sought to exhaust domestic remedies, yet these remedies proved ineffective as (a) domestic authorities failed to investigate the allegations with a view to prosecuting those responsible for the violations and (b) no further avenues were

---

<sup>130</sup> *Giri v Nepal*, Human Rights Committee, CCPR/C/101/D/1761/2008, 24 March 2011, para.6.3.

<sup>131</sup> *Grant v Jamaica*, Human Rights Committee, U.N.Doc. CCPR/C/50/D/353/1988 (1994), 4 April 1994, para. 5.2.

available to her to remedy unfair trial proceedings. The Author refrained from complaining about specific violations in situations where she received credible threats that, if carried out, would have resulted in harm to her or her daughter. The conduct of the authorities over a period of almost six years demonstrates that the Author was subjected to a deliberate campaign aimed at preventing her from, and punishing her for carrying out her human rights work. The failure to effectively respond to any of the many complaints raised by the Author combined with a patently unfair trial were an integral part of this campaign, rendering any prospect of a remedy futile.

87. While the issue of domestic remedies must be considered in each case, the findings of several human rights treaty and charter bodies attest to the lack of effective remedies in Uzbekistan during the relevant period. The Human Rights Committee in its Concluding Observations on the State report submitted by Uzbekistan in 2002, 2005 and in 2010 expressed its concern about

“allegations relating to widespread use of torture and ill-treatment of detainees and the low number of officials who have been charged, prosecuted and convicted for such acts. It is a matter of further concern that no independent inquiries are conducted in police stations and other places of detention to guarantee that not torture or ill-treatment takes place, apart from a small number of inquiries with external participation quoted by the delegation (Covenant, arts. 7 and 10).”<sup>132</sup>

88. The Special Rapporteur on Torture expressed his ‘severe concern’ over allegations with respect to the trial process in Uzbekistan and concluded that

“the combination of a lack of respect for the principle of presumption of innocence despite being guaranteed by the Constitution (art.25) and the CPC (art.23), the discretionary powers of the investigators and procurators with respect to access to detainees by legal counsel and relatives, as well as the lack of independence of the judiciary and allegedly rampant corruption in the judiciary and law enforcement agencies, are believed to be conducive to the use of illegal methods of investigation. The excessive powers in the overall criminal proceedings of procurators, who are supposed at the same time to conduct and supervise preliminary criminal investigations, to bring charges and to monitor respect for existing legal safeguards against torture during criminal investigations and in places of detention, make investigations into complaints overly dependent on their goodwill.”<sup>133</sup>

#### **5.1.1 Arrest, harassment, ill-treatment and torture by authorities: July 2002- April 2005**

89. The Author alleged serious violations, including ill-treatment and torture, and made multiple attempts to prompt investigations into the abovementioned violations committed against her, through petitions and complaints submitted by herself as well as by her lawyers to the relevant authorities, including the police and prosecution authorities in Margilan and in Tashkent, as well as appeals to the President of

---

<sup>132</sup>See Human Rights Committee, CCPR/A/56/40 (2001), **Annex O1**; See also Human Rights Committee, Considerations of reports submitted by States parties under Article 40 of the Covenant, CCPR/CO/83/UZB, 26 April 2005, **Annex O2**; See also Human Rights Committee, 98<sup>th</sup> Session, Considerations of Reports submitted by States parties under Article 40 of the Covenant, CCPR/C/UZB/CO/3, 7 April 2010, **Annex O3**

<sup>133</sup> Annex A8, para.66.

Uzbekistan.<sup>134</sup> The majority of her complaints were dismissed or simply ignored. Where an investigation was opened, it was later closed without leading to the prosecution of those responsible for the violation, and without any reasons provided to the Author for the closure of the investigation. No further recourse is possible to the court once an investigation into complaints by alleged victims has been closed by the General-Prosecutor's Office, as the "court monitoring of a criminal case starts solely when the procurator transfers the criminal file to the court system."<sup>135</sup> No other effective remedy was available to the Author.

90. The Committee has held that there is no requirement to exhaust domestic remedies where there are 'fears' of repercussions.<sup>136</sup> The Author was subjected to threats that her life was in danger if she continued with her human rights activities. When she tried to formally complain about this threat to the Ministry of Interior, the Author suffered injuries in a 'staged' traffic accident. Furthermore, as outlined above, police officials threatened the Author not to report the rape at the Bektemir District Department of Internal Affairs to anyone, as otherwise the same would be done to her daughter. Given that the Author and her daughter continued to be at risk while in Uzbekistan, the Author could not file a complaint to the competent authorities in Uzbekistan for the rape and abduction on 15 April 2005.

#### **5.1.2. Arrest on 7 October 2005 and subsequent detention up to 30 January 2006**

91. The Author submits that she was not able to avail herself of effective remedies concerning the numerous violations committed after 7 October 2005 as evidenced by her attempts to complain to prosecution authorities and detention administration of Fergana Remand Centre No 10 as outlined above.<sup>137</sup> The Author's lawyers could not meet with their client confidentially. Their request to have the Author released on bail was rejected by prosecutor O. Ahmadzhonov, who was not independent and who had a personal interest in keeping the Author detained as the Author had previously requested his resignation for unlawful activities.<sup>138</sup> Her lawyers' request to have him removed from the Author's case was rejected by the Head of the Department for the Supervision of Investigations by Prosecution Authorities.<sup>139</sup> No further remedies were available to the Author in this regard.

92. The Committee against Torture, expressing its concerns in regards to the prevalence of torture and ill-treatment in Uzbekistan, considering that there was

"an insufficient level of independence and effectiveness of the procuracy, in particular as the Procurator has the competence to exercise oversight on the appropriateness of the duration of pre-trial detention, which can be extended up to 12 months."<sup>140</sup>

---

<sup>134</sup> See above, paras.50-54.

<sup>135</sup> Annex A8, para.29.

<sup>136</sup> *Irving Philip v Trinidad and Toabgo*, U.N.Doc CCPR/C/64/D/594/1992, 3 December 1998, para.6.4.

<sup>137</sup> See above paragraphs 55-58.

<sup>138</sup> Annex D9; Annex D10; on the Author's complaints about prosecutor Akhmadzhonov to the President of Uzbekistan, see Annex D11, pp.1-4 (unofficial translation into English).

<sup>139</sup> *Ibid.*

<sup>140</sup> Committee Against Torture, Consideration of reports submitted by states parties under Article 19 of the Convention, Conclusions and recommendations of the Committee Against Torture- Uzbekistan, CAT/C/CR/28/7, 6 June 2002, para.5(c). **Annex O4**

### 5.1.3. Trial

93. While the Committee held that it is generally for the courts of States parties to the Covenant to review facts and evidence in a particular case, it established that that does not apply to proceedings where it can be shown that

“the evaluation of the evidence was clearly arbitrary or amounted to a denial of justice, or that the court otherwise violated its obligation of independence and impartiality.”<sup>141</sup>

Where such a denial of justice can be substantiated, alleged violations of Article 14 of the Covenant are considered admissible.

94. Specifically in regards to the judicial process in Uzbekistan, the Committee against Torture noted a number of serious concerns, including “the insufficient independence of the judiciary,”<sup>142</sup> while the Special Rapporteur on Torture noted that “with respect to the trial process, the lack of statutory powers and lack of independence of judges are alleged to make any defence and any torture complaint meaningless.”<sup>143</sup>

95. The Committee against Torture specifically referred to the Author’s trial, expressing its concern at

“the reports of ill-treatment and denial of fundamental safeguards regarding her trial and those of other civil society advocates and detainees.”<sup>144</sup>

96. As outlined above<sup>145</sup>, the authorities prevented the Author’s lawyers to adequately prepare the defence of their client, in advance as well as during the trial proceedings, thereby putting the defence at a significant disadvantage in disrespect of the principle of equality of arms. The Author’s complaints, her lawyers’ requests to the authorities, as well as the Court’s judgment are testimony to the resulting inequality of arms between prosecution and defence, as are the observations of third parties to the proceedings.<sup>146</sup> The Author’s request for review of the trial protocol, and her Complaint on Appeal was dismissed by the same court – Tashkent Regional Criminal Court- that issued the (trial) judgment, and the Author was denied an independent and impartial appeal process by a higher tribunal. Her numerous requests for an appeal and a review of the verdict were dismissed without full considerations of the arguments put forward by the Author’s lawyers.<sup>147</sup>

97. The Committee further held that only judicial remedies are expected to be exhausted, and that complainants are not required to exhaust ‘extraordinary remedies’ which are outside the mainstream of a State’s judicial system. In regards to Uzbekistan and the possibility to have judgments by lower courts appealed to the Supreme Court, the Committee observed that

---

<sup>141</sup> *Lyashkevich v Belarus*, UN Doc. CCPR/C/77/D/887/1999, 3 April 2003, para.8.3.

<sup>142</sup> Annex O4.

<sup>143</sup> Annex A8, para.46

<sup>144</sup> Committee against Torture, Consideration of Reports submitted by State Parties under Article 19 of the convention, Conclusions and recommendations of the Committee against Torture, Uzbekistan’, CAT/C/UZB/CO/3, 26 February 2008, para. 16.

<sup>145</sup> See Above, paras.33-37.

<sup>146</sup> See above, paras.32-36; 68-70.

<sup>147</sup> See above, para.37.

“even if such remedies may be effective in certain situations, such reviews were possible only with the express consent of the President or Vice- Presidents of the Supreme Court, who therefore have discretionary power to refer or not to refer a case to the Court, whereas a convicted person claiming his or her rights have been violated could not initiate such a review directly.”

98. The Committee went on to find that this

“showed that the remedies concerned are not generally applicable, but remain discretionary and exceptional.”<sup>148</sup>

#### **5.1.4. Imprisonment in Women’s colony**

99. The failure of the authorities to provide the Author with a remedy is further evidenced by the lack of action taken when, on 13 April 2007, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent a Communication to the Government of Uzbekistan concerning the Author’s alleged ill-treatment.<sup>149</sup> Instead of investigating the allegations and prosecuting those responsible, and thereby remedying the violations, the Government, in its reply to the Communication on 26 April 2007, stated that

“the Special Procedures mechanisms are advised to inform their sources of allegations on violations, and consequently Ms Tadjibayeva, to appeal to competent bodies of Uzbekistan to restore her rights, provided that alleged violations indeed have taken place.”<sup>150</sup>

100. The Author’s attempts to appeal to the competent authorities and report violations committed by prison officials as well as by other inmates in the women’s colony were futile as both the administration of the prison and prosecutors systematically refused to see her. On the one occasion that the prosecutor Mr. Romanov, in charge of supervision of prisons, did see her, the Author’s complaint was left unanswered and the Author was placed in a punishment cell instead.<sup>151</sup> Furthermore, the Author was not allowed to see her lawyers from 13 July 2006 to 2 June 2008, the day of her release. It was therefore never realistic for the Author to take legal steps while she was detained in the women’s colony. As detailed above, even if she had been allowed proper access, any such steps would also have been futile.

101. The Author’s family as well as lawyers sought to challenge the Author’s imprisonment in the women’s colony and were subsequently subjected to harassment and intimidation.<sup>152</sup> The Author’s brother was evicted from his apartment, and was put under surveillance by the authorities. He was warned that if he continued to object to his sister’s detention, he would have difficulties in finding work, and would be forced to leave Tashkent.<sup>153</sup>

---

<sup>148</sup> *Sanobar Gapirjanova v Uzbekistan*, UN Doc. CCPR/C/98/D/1589/2007, 11 May 2010, paras. 5.1.and 5.2.

<sup>149</sup> Annex H 1, para.260.

<sup>150</sup> *Ibid.*

<sup>151</sup> See above, para.73.

<sup>152</sup> See above, para.30.

<sup>153</sup> Annex H1 para.260.

102. Despite the authorities' knowledge of the allegations of torture and ill-treatment of the Author in the women's colony, no investigation and prosecution of those responsible has taken place to date.
103. As mentioned above, the Committee has held that there is no requirement to exhaust domestic remedies where it is dangerous to do so.<sup>154</sup> Following her release, it would have been too dangerous for the Author to stay in Uzbekistan and to seek a domestic remedy in regards to the various serious violations committed against her by Uzbek authorities. The Author's risk of being detained and tortured in Uzbekistan was also recognised by French authorities, who granted the Author's request for asylum, and provided her with refugee status on 15 March 2009.
104. It therefore follows that the Author could not have further exhausted domestic remedies in Uzbekistan following her release on 2 June 2008.

## **5.2. The Communication does not constitute an abuse of the right of submission**

105. Modified Rule 96 (c) provides that "a communication may constitute an abuse of the right of submission, when it is submitted after 5 years from the exhaustion of domestic remedies by the author of the communication...unless there are reasons justifying the delay taking into account all the circumstances of the communication."<sup>155</sup>
106. The wording of Rule 96 (c) clearly suggests a discretion on behalf of the Committee in finding whether a delay in bringing a Communication constitutes an abuse of the right of submission. The Committee has previously found that a lapse of time must be "sufficiently egregious or otherwise defined by extraordinary circumstances to amount to an abuse of process."<sup>156</sup>
107. The present communication has been brought before the Committee as soon as reasonably possible. The Author was unable to meet her lawyers while imprisoned in the women's colony, and could clearly not consider filing her communication to the Committee while still in detention. She was only released on 2 June 2008, in need of urgent medical treatment. Her medical condition further deteriorated after her release, and necessitated further surgery in November 2008 in Geneva, Switzerland. As the Author was determined to continue with her human rights work, she and her daughter's family were no longer safe in Uzbekistan, and therefore had to seek asylum in France, where they obtained refugee status in 2009. The Author was therefore in no position to bring the present communication before March 2009, after knowing that she and her daughter would be safe outside Uzbekistan. Furthermore, as a result of the torture and ill-treatment in the women's colony, the Author needed psychological assistance for over two years, making it difficult for her to dedicate much time to putting the present

---

<sup>154</sup> *Irving Philip v Trinidad and Tobago*, U.N.Doc CCPR/C/64/D/594/1992, 3 December 1998, para.6.4.

<sup>155</sup> Rule 96 (c) (formerly Rule 90) of the Committee's Rules of Procedure providing that "a communication may constitute an abuse of the right of submission, when it is submitted after 5 years from the exhaustion of domestic remedies by the author of the communication, or, where applicable, after 3 years from the conclusion of another procedure of international investigation or settlement, unless there are reasons justifying the delay taking into account all the circumstances of the communication."

<sup>156</sup> *Mohammed Alzery v Sweden*, UN Doc. CCPR/C/88/D/1416/2005, 10 November 2006, para.8.2.



communication together.<sup>157</sup> Lastly, the translation of a vast number of documents from Uzbek into English further prolonged process of bringing a communication.

108. In light of the above, the Author therefore submits that the present Communication is well within the required five years limit referred to in Rule 96 (c) (formerly Rule 90) and therefore does not constitute an abuse of the right of submission.

### **5.3. Conclusion**

109. The Author therefore asserts that the present communication is admissible within the meaning of Rule 96 of the Rules of Procedure of the Committee.

## **6. Violations of the Covenant**

110. The acts of the respondent State Party constituted a violation of the following articles of the Covenant:
- a. The treatment inflicted upon the Author by State officials amounted to ill treatment and punishment and torture, contrary to Article 7;
  - b. Right to be treated with humanity and with respect for her dignity while detained and imprisoned, contrary to Article 10 (1) and failure to segregate the Author from convicted persons while in detention at Ferghana Remand Centre No 10, contrary to Article 10 (2) (a);
  - c. Failure to provide an effective remedy to the Author contrary to Article 2 (3);
  - d. Arbitrary arrest and detention of the Author contrary to Article 9 (1), and failure to: adequately protect the Author contrary to Article 9 (1), to promptly inform the Author about the charges against her contrary to Article 9 (2); to ensure her right to be brought promptly before a judge contrary to Article 9 (3); and to challenge the lawfulness of her detention contrary to Article 9 (4);
  - e. Failure to ensure the Author's right to a fair trial by an independent and impartial court contrary to Article 14 (1) and to provide the Author with adequate time and facilities for the preparation of her defence and to communicate with her lawyers contrary to Article 14 (3) (b), and to allow for the procedural guarantees enshrined in Article 14 (3) (e) and to have the trial judgment reviewed by a higher tribunal contrary to Article 14 (5);
  - f. Unlawful interference with the Author's right to privacy contrary to Article 17;
  - g. Preventing the Author from exercising her right to freedom of expression in violation of Article 19 (2);
  - h. Violating the Author's right to peaceful assembly contrary to Article 21 and to freedom of association contrary to Article 22;
  - i. Discriminating the Author on grounds of sex and political opinion in violation of article 26.

---

<sup>157</sup>See Annex J 12, 5 June 2011, p.2.

## **6.1. Violation of Article 7**

111. The treatment of the Author throughout the period from July 2002 to June 2008 provides ample evidence of an officially sanctioned campaign of harassment, ill-treatment and torture in response to the Author's human rights activities (demonstrations, picketing, letter writing and exposure of human rights violations committed by local and regional law enforcement and judicial officers). The State Party relied on police officers, prosecutors, judges, doctors, other medical personnel and private individuals acting on the orders of the authorities who subjected the Author to a wide range of severe abuses over a period of almost eight years, until her departure from Uzbekistan. The ostensible aim of the methods used was to target the Author's dignity and to break her commitment to undertaking human rights work through a combination of severe ill-treatment, humiliation, threats and an arbitrary detention regime rendering the Author vulnerable and deprived of any rights.
112. These abuses intensified the more the Author resisted and the more she continued to challenge the State Party through an exercise of her democratic rights as enshrined in the Covenant, in particular Articles 19, 21 and 22. Her refusal to desist in the face of an increasingly vicious campaign against her ultimately resulted in her arrest on politically motivated charges, her subsequent conviction after an unfair trial, and almost two years imprisonment under torturous conditions in the women's colony.
113. A series of acts, both singly and in combination with other acts, resulted in the infliction of severe pain and suffering on the Author who has incurred serious, lasting physical and mental injuries as a result.

### **6.1.1. Torture in custody**

114. The head of Kirgulin Regional Police Department, Mr Mr Akram Botirov, verbally abused, degraded and humiliated the Author on 1 July 2002. He called her a 'dirty whore' and then threatened to rape the Author. The deputy head of the police department, Mr Saifuddin Tillaev, inflicted severe physical and mental pain and suffering by kicking and beating the Author with a truncheon, hitting her head on the door of her cell and by tearing apart the Author's clothes and threatening to rape her.<sup>158</sup>
115. In another incident, three officials insulted and humiliated the Author during an interrogation at the Bektemir District Department of Internal Affairs on 15 April 2005. A police officer then took the Author to a room where three unidentified men in civilian clothes beat and raped the Author several times.<sup>159</sup>
116. The author had entered custody in good health. As confirmed in a medical report forming part of the investigation later opened (and closed) following the Author's complaint, the Author suffered multiple injuries as a result of the treatment.<sup>160</sup>
117. It is well established that rape constitutes a particularly aggravated form of torture.<sup>161</sup> Kicking and beating with a truncheon in particular in the context of interrogation, as well

---

<sup>158</sup> Annex A2, para.6

<sup>159</sup> Ibid, para.16-21.

<sup>160</sup> Annex A9

<sup>161</sup> *Aydin v Turkey*, European Court of Human Rights, application no. 23178/94, 25 September 1997, para.83.

as humiliating and degrading of a person in custody constitutes a violation of Article 7.<sup>162</sup> Similarly, the credible threat of subjecting a person in custody to severe ill-treatment such as rape can amount to torture, taking into account the powerlessness of the individual in such situations, as it is “the infliction of mental suffering by creating a state of anguish and stress by means other than bodily assault.”<sup>163</sup> The applicant was gang raped causing such pain and suffering that she went unconscious.

### **6.1.2. Ill-treatment and torture at Ferghana Remand Centre No 10**

118. The Author’s detention at Ferghana Remand Centre No 10 amounted to torture and ill-treatment. Detention authorities of Ferghana Remand Centre No 10 deliberately subjected the Author to a detention regime characterised by a hostile environment aimed at obtaining a confession from the Author that she was running an illegal organisation funded by the ‘West’, rendering her vulnerable to abuse and suffering.

119. The conditions of detention and her treatment by detention authorities and inmates during detention at Ferghana Remand Centre No 10 caused the Author severe mental distress and anguish, suffering and hardship that clearly exceeded the unavoidable level of suffering inherent in detention.<sup>164</sup>

#### **a. Conditions of Detention**

120. The Author had to share her cell with convicted prisoners who were sent to the detention facility from the women’s colony, contrary to *the Standard Minimum Rules for the treatment of Prisoners* which stipulate that “[U]ntried prisoners shall be kept separate from convicted prisoners.”<sup>165</sup> Inmates were encouraged to spy on her and to denounce her to the detention authorities, so as to impose disciplinary measures against the Author.<sup>166</sup> Inmates were also encouraged to threaten her, leading to one inmate attacking and threatening the Author with a knife.<sup>167</sup> The authorities failed to take any measures to protect the Author.<sup>168</sup> Instead, disciplinary measures were taken against her without providing the Author with the opportunity of presenting her defence.<sup>169</sup> Her complaints about these measures were dismissed or ignored.

#### **b. Lack of access to family**

121. The *UN Rules for the Treatment of Women Prisoners and Non custodial Measures for Women Offenders* expressly provide in Rule 23 that “disciplinary sanctions for women prisoners shall not include a prohibition of family contact, especially with children.”<sup>170</sup> In contrast, aside from one visit from her daughter in December 2005, the detention administration denied the Author to see any visitors until April 2006. The authorities

---

<sup>162</sup> *Chikunov v Uzbekistan*, Human Rights Committee, UN Doc. CCPR/C/89/D/1043/2002, 3 May 2007, para.7.2.

<sup>163</sup> *Migel Angel Estrella v Uruguay*, Human Rights Committee, UN Doc. Supp. No. 40 (A/38/40) at 150 (1983), paras.8.3 and 10; The Greek Case, European Commission for Human Rights, 5 November 1969, para.461.

<sup>164</sup> European Court of Human Rights, *Kudla v Poland* (30210/96) [2000] ECHR 510 (26 October 2000), para.94; *Gelfmann v France*, application no. 25875/03, 14 December 2004, para.50.

<sup>165</sup> Standard Minimum Rules for the Treatment of Prisoners, Resolution 663 C (XXIV) 31 July 1957 and 2076 (LXII) 13 May 1977, Rule 8 (b).Annex P1

<sup>166</sup> Annex A2, para.37.

<sup>167</sup> *Ibid.*

<sup>168</sup> *Wilson v Philippines*, Human Rights Committee, 868/1999, para.7.3.

<sup>169</sup> Annex P1

<sup>170</sup> UN Rules for the Treatment of Women Prisoners and Non custodial Measures for Women Offenders (the Bangkok Rules), Resolution 2010/16

also prevented the Author from communicating with anyone outside the detention centre aside from her lawyers. The administration of Ferghana Remand Centre No 10 deliberately failed to pass on letters and food parcels sent to the Author by her family.

122. The lack of information from her family was particularly difficult for the Author as her daughter was pregnant and the Author did not know whether her case would negatively impact on her daughter's condition.<sup>171</sup> She could not see her daughter from December 2005 to January 2007.
123. The intentional isolation of the Author from the outside world led the Author to describe her detention at Ferghana Remand Centre as "living in a vacuum."

**c. Lack of medical care**

124. The Standard Minimum Rules for the Treatment of Prisoners expressly provide that detainees have a right to promptly receive independent medical assistance.<sup>172</sup> Detainees further have a right to access their medical file following treatment in detention.<sup>173</sup>
125. The administration of Ferghana Remand Centre No 10 deliberately denied the Author such medical assistance, causing the Author severe pain and suffering. During searches of her cell, medicine brought to her by her family such as antibiotics and medicine for her heart disappeared. The medicine provided to her by wardens as an alternative smelled of vinegar or acid, and the Author believed it to be poisoned.<sup>174</sup> The Author did not take the medicine, and was not offered an alternative, despite requests. On 1 December 2005, the Author felt very unwell with a pain in her heart. Her request for medical assistance was rejected. Instead, the Author was taken for interrogation, and medical help was only provided later at night.<sup>175</sup>

**d. Lack of access to lawyers**

126. Contrary to Standard Minimum Rules for the Treatment of Prisoners, the authorities of Fergana detention centre made it deliberately difficult for the Author's lawyers to meet their client and on occasion denied a meeting entirely.<sup>176</sup> The lack of confidential meetings with her lawyers, and denial of meetings with her lawyers on at least two occasions convinced the Author that the authorities deliberately prevented her from proving her innocence and from adequately preparing for her trial, causing further distress and suffering. Authorities only informed her on 24 December 2005 that the charges against her had increased from 2 to 18 counts. Her subsequent meeting with her lawyer was denied, and on 27 December 2005 the Author was informed that the investigation against her had been concluded.
127. After three months in such conditions, the Author no longer believed that she would be able to prove her innocence at trial and that she would see her family again and come out of prison alive. The cumulative effects of the above described conditions and denial

---

<sup>171</sup> See also Rule 26 in regards to contact with the outside world, encouraging to facilitate women prisoner's contact with their families.

<sup>172</sup> UN Committee against Torture, General Comment No 2, para.13 **Annex P 2**

<sup>173</sup> *Zhedludkov v Ukraine*, Human Rights Committee, UN Doc. CCPR/C/76/D/726/1996, 6 December 2006, para.8.4.

<sup>174</sup> Testimony from fellow inmate, 'Statement of confirmation', 7 December 2005, **Annex P3**.

<sup>175</sup> Annex A2, para.41.

<sup>176</sup> Annex P 1.

of justice made the Author feel hopeless and desperate, leading her to attempt suicide in late December 2005.<sup>177</sup>

### **6.1.3. Torture, ill-treatment and conditions of imprisonment at women's colony**

128. Over a period of one year and eight months, the Author was subjected to a wide range of severe abuses by the prison wardens and the prison administration aimed at breaking her moral and physical resistance so as to force her to confessing to the running of an illegal organisation and requesting a pardon from the President. The continued resistance by the Author led authorities to increase the level of ill-treatment and torture, ultimately leading to the Author's forced surgery on 18 March 2008.

#### **a. Subjecting the Author to multiple forms of torture, inhuman and degrading treatment and punishment**

129. The administration placed the Author in the psychiatric ward of the colony without any prior medical and psychological examination.<sup>178</sup> Prison guards and inmates acting on their behalf frequently humiliated and exposed the Author to cruel and degrading treatment. This included handcuffing the Author and hanging her from a hook in the wall, displaying, mocking and humiliating her in front of law students, forcing the Author to stand under the rain in the freezing cold for at least an hour, forcing her to undress and stand naked in the cold until she fell unconscious, as well as physically assaulting the Author.<sup>179</sup> The prison authorities actively encouraged the Author to commit suicide.<sup>180</sup>

#### **b. Conditions of detention**

130. The 'cumulative effect' of conditions of detention is to be taken into consideration when assessing whether they violate the prohibition of torture.<sup>181</sup> The Human Rights Committee held that prison conditions violate Article 7 in cases where the victim was subjected to incommunicado detention, threats of torture, intimidation, and being locked up in a cell for days without any possibility of recreation.<sup>182</sup> The Human Rights Committee also considered that the length of time for which a detainee is held in sub-standard conditions may be a factor in determining whether a violation of Article 7 has occurred.<sup>183</sup>

131. The punishment cells at the women's colony were small and without adequate protection against the cold and water coming in from everywhere. As a result, the cells are constantly damp, and in most cells, there is nowhere to sit as beds are folded up at 5am until 9pm. The Author therefore had to sit on the cold and wet ground or lean against the moist wall.<sup>184</sup>

132. The Author spent 112 days in such punishment cells, mostly during the cold period. The prison guards deliberately denied the Author warm clothing sent to her by her family, and refused to close open windows despite the Author's requests, thereby intentionally

---

<sup>177</sup> See above, para. 30.

<sup>178</sup> See above, paras.39-41.

<sup>179</sup> See above, para.48.

<sup>180</sup> See above, para.49.

<sup>181</sup> *Dougoz v Greece*, European Court of Human Rights, application no. 40907/98, para.46, ECHR 2001-II

<sup>182</sup> *Mukong v Cameroon*, Human Rights Committee, U.N. Doc. CCPR/C/51/D/458/1991, 14 August 1994, para.8.4.

<sup>183</sup> *Edwards v Jamaica*, Human Rights Committee, CCPR/C/60/D/529/1993, 28 July 1997, para.8.3.

<sup>184</sup> Annex A2, para.68.

causing the Author severe pain and suffering. As a result, her medical condition started to deteriorate to such an extent that the Author was certain that she would die in the women's colony. Contrary to Uzbek law, aside from two occasions, the Author was not medically examined before being placed in a punishment cell.<sup>185</sup>

**c. Lack of access to lawyers and family / incommunicado detention**

133. The Inter-American Court of Human Rights considered that prolonged isolation and deprivation of communication can in themselves be considered cruel and inhuman treatment and as harmful to the psychological and moral integrity of the person, and as such amount to a "violation of the right of any detainee to respect for his inherent dignity as a human being."<sup>186</sup> The Human Rights Committee found that eight months incommunicado detention in sub-standard conditions (damp and overcrowded cells) for eight months constituted inhuman or degrading treatment contrary to Article 7.<sup>187</sup>
134. The Author was denied access to her lawyers throughout her imprisonment. For more than seven months, prison administration cut her off from the outside world and did not allow her to send or receive communications, and deliberately placed her in punishment cells when she was expecting visits from her family.<sup>188</sup> The Uzbek government admitted that aside from a two hour visit in January 2007, the Author did not receive any visits from January 2007 to August 2007, in violation of international and Uzbek law.<sup>189</sup>

**d. Lack of medical care**

135. The right to promptly receive independent medical assistance is one of the basic guarantees applicable to all persons deprived of their liberty.<sup>190</sup>

"A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge."<sup>191</sup>

136. The Author's requests for medical assistance following long exposures to the cold were denied or only complied with when her condition became too serious for the authorities to ignore.<sup>192</sup> The prison guards denied her requests for treatment in December 2006, when the Author developed a cough and pain in her chest after 40 days in the punishment cells. It was only after she fell unconscious that some medical help was provided and that the Author received some painkillers and vitamins. However, the treatment was insufficient and did not alleviate the Author's pain. By September 2007, her medical condition had deteriorated to such an extent, that the Author could no longer move. Her repeated requests for medical assistance were rejected. Only when the Author threatened to commit suicide was some medical assistance provided and the

---

<sup>185</sup> Ibid.

<sup>186</sup> *Velasquez Rodriguez v Honduras*, Inter-American Court of Human Rights, 29 July 1988, Series C No.4, paras.156 and 187.

<sup>187</sup> *Shaw v Jamaica*, Human Rights Committee, U.N. Doc. CCPR/C/62/D/704/1996, 4 June 1998, para.7.1.

<sup>188</sup> See above, para.45.

<sup>189</sup> Annex G3.

<sup>190</sup> Annex P2.

<sup>191</sup> UN GA, A/Res/43/173, 'Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 9 December 1988, Principle 24. **Annex P4.**

<sup>192</sup> See above, paras. 51-57.

Author sent to the medical ward of the colony for ten days. However, the Author was not informed about what she was suffering from and did not obtain access to her medical records.<sup>193</sup>

137. These acts separately and cumulatively caused the Author severe physical pain and mental distress, as documented in psychological reports prepared after the Author's release from the women's colony. The conditions of the Author's imprisonment and her treatment by prison personnel, the prison's administration as well as by some inmates acting on behalf of the prison guards therefore amount to torture in violation of Article 7.

#### 6.1.4. Forced surgery and sterilisation

138. The Author's forced surgery in Tashkent oncology clinic on 18 March 2008 violated Article 7 in at least two ways:

1. Conducting a surgery on the Author without her consent
2. Sterilizing the Author without her consent

139. Article 7 of the Covenant expressly prohibits subjecting an individual to medical or scientific experimentation without his or her free consent. The Human Rights Committee observed that "special protection in regards to such experiments is necessary in the case of persons not capable of giving valid consent and in particular those under any form of detention or imprisonment."<sup>194</sup>

140. While the surgery performed on the Author on 18 March 2008 does not fall within the category of "medical or scientific experimentation", the Author submits that the underlying rationale is applicable, namely that a person in custody should not be subjected to any medical interventions without informed consent, in particular medical interventions that reach a certain level of severity.<sup>195</sup>

141. The World Health Organisation (WHO) clearly states that the "informed consent of the patient is a prerequisite for any medical intervention".<sup>196</sup> Informed consent includes giving the patient objective and comprehensive information about his or her contemplated treatment, including its purpose, nature, consequences and risks, in order to enable the patient to make an informed decision.<sup>197</sup> Such information "must be communicated to the patient in a way appropriate to the latter's capacity for understanding, minimizing the use of unfamiliar technical terminology."<sup>198</sup>

142. No such information was provided to the Author, who was simply informed that a surgery was planned for 18 March 2008. She was not provided with any information concerning the purpose or objectives of the surgery, nor about any consequences and risks of such treatment. Indeed, the Author, not knowing the reason for the surgery, believed that it was only a pretext to have her killed. The Author never gave her consent

---

<sup>193</sup> *Zhedludkov v Ukraine*, Human Rights Committee, UN Doc. CCPR/C/76/D/726/1996, 6 December 2006, para.8.4.

<sup>194</sup> General Comment 20, para.7. **Annex R 1**

<sup>195</sup> See also S. Joseph, J. Schultz, M. Castan, 'The International Covenant on Civil and Political Rights, 2<sup>nd</sup> edn, Oxford University Press, 2004, para.9.101.

<sup>196</sup> WHO, Declaration on Patients' Rights, para.3.1. **Annex R2**

<sup>197</sup> European Convention on Human Rights and Biomedicine, Article 5. **Annex R3**

<sup>198</sup> *Ibid.*

to the surgery, and even wrote to the administration of the women's colony explicitly refusing to have the surgery.

143. The surgery on 18 March 2008 was carried out against the will of the Author. As a result of the surgery, the Author was in severe physical pain. She had to be treated in the intensive care unit of the Tashkent oncology clinic, and was advised not to eat for five days and to remain in a horizontal position for 45 days. In addition, the surgery caused severe distress and mental suffering to the Author, as she was not informed about the outcome of the surgery, and did not know why she was operated on. The lack of information provided made it impossible for the Author to understand the continued pain she was in following her transfer from the hospital to the women's colony. As she continued to be in pain, she believed that the surgery had not been successful, and that she would die.
144. The forced surgery included the Author's forced sterilisation, which amounted to an additional violation of Article 7.
145. The Human Rights Committee has underlined the importance of reproductive rights of women as part of their psychological and physical dignity, considering that a violation of that right as enshrined also in Article 3 may violate Article 7.<sup>199</sup>
146. The Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) decided in a case brought against Hungary by a Roma woman who had been subjected to coerced sterilisation, that the coerced sterilisation had permanently "deprived the victim of her natural reproductive capacity", and ordered the state to pay compensation to the victim.<sup>200</sup> In its decision, the Committee explicitly referred to its general recommendation No 24 stating that "States parties should not permit forms of coercion, such as non-consensual sterilization.... that violate women's rights to informed consent and dignity."<sup>201</sup>
147. Further guidelines as to the interpretation of States' obligations concerning the rights of women are found in the *UN Convention on the Elimination of All Forms of Discrimination against Women*, which provides that States have an obligation to take "all appropriate measures" for the purpose of ensuring "the health and well-being of families, including information and advice on family planning."<sup>202</sup> In its General Recommendation 21, the CEDAW stressed the importance of access to information, specifically in the context of sterilisation, in stating that "in order to make an informed decision about safe and reliable contraceptive measures, women must have information about contraceptive measures and their use, and guaranteed access to sex education, family planning services as provided in Article 10 (h) of the Convention."<sup>203</sup>

---

<sup>199</sup> Committee on Civil and Political Rights, General Comment No.28 on Article 3 ICCPR, UN Doc. CCPR/C/21/Rev.1/Add.10, para.20. **Annex R4**

<sup>200</sup> Committee on the Elimination of Discrimination against Women, *A.S. v Hungary*, Communication No 4/2004, CEDAW/C/36/D/4/2004, 29 August 2006, p.17.

<sup>201</sup> *Idem*.

<sup>202</sup> Convention on the Elimination of All Forms of Discrimination against Women, Article 10 (h) **Annex R5**

<sup>203</sup> Committee on the Elimination of Discrimination against Women, General Recommendation 21, 13<sup>th</sup> session, 1994, para.22. **Annex R6**



148. Importantly, the WHO emphasized that “the decision about female sterilisation belongs to the woman herself.”<sup>204</sup> There is no exception to this requirement, not even in cases where sterilisation might be necessary for medical reasons. According to the International Federation of Gynaecologists and Obstetricians, it is never appropriate for a doctor to make this decision on behalf of the patient, irrespective of any medical reasons that may weigh in favour of sterilisation.<sup>205</sup>
149. The Human Rights Committee in its Concluding Observations to Slovakia, expressed concern at reports of forced or coerced sterilisation and the lack of adequately investigating these allegations, which may amount to a violation of Article 7:
- “The reference made... to “the fact that not all administrative acts were fulfilled in every case appears to amount to an implicit admission of breaches of the requirement of informed consent (art.7, 26).”
150. The Committee urged Slovakia to
- “adopt all necessary measures to investigate all alleged cases of coerced or forced sterilisation, publicise the findings, provide effective remedies to victims and prevent any instances of sterilisation without full and informed consent.”<sup>206</sup>
151. Forced or coerced sterilisation meets the threshold of severity required for a violation to amount to torture contrary to Article 7. It leaves the victim permanently damaged and severely traumatized, both physically and mentally. The UN Special Rapporteur on Violence Against Women considered that forced sterilisation constitutes a “severe violation of women’s reproductive rights” and went on to say that the fundamental right to be free from torture is directly “applicable to the issue of violence against women and women’s reproductive health.”<sup>207</sup> The nature of the violation is such that it has “devastating physical and psychological health consequences”.<sup>208</sup>
152. In the present case, the authorities failed to provide the Author with information or advice concerning sterilisation, and its effects and risks. As was outlined above, the surgery leading to the sterilisation was conducted without the Author’s consent. The hospital staff performing the surgery also failed to inform the Author that her operation could result in a sterilisation.<sup>209</sup> The authorities and hospital staff subsequently failed to inform the Author about the outcomes of the surgery and refused to provide the Author with access to her medical files. The Author had to find out herself that she was in fact sterilized during the surgery on 18 March 2008. However, to this day, the Author does not know the reasons for the surgery on 18 March 2008.<sup>210</sup> A one page medical report

<sup>204</sup> WHO, ‘The Essentials of Contraceptive Technology- A Handbook for Clinic Staff, July 1997, paras.9-12. **Annex R7**

<sup>205</sup> See letter from International Federation of Gynaecologists and Obstetricians to Christina Zampas, Legal Adviser for Europe, Center for Reproductive Rights, 15 March 2003, **Annex R8**, quoted in Centre for Reproductive Rights, ‘Supplemental Information RE: A.S.v Hungary, Communication NO:4/2004, 10 November 2005, p.5. **Annex R9**

<sup>206</sup> Human Rights Committee, Concluding Observations to Slovakia, 78<sup>th</sup> Session, UN Doc. CCPR/CO/SK/78/SVK, 2003, para.12. **Annex R10**

<sup>207</sup> Commission on Human Rights, ‘Integration of the Human Rights of Women and the Gender Perspective, Violence against Women’, Report of the Special Rapporteur on violence against women, its causes and consequences, Ms Radhika Coomaraswamy, E/CN.4/1999/68/Add.4, 21 January 1999, paras. 8, 51, **Annex R11**; see also Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mr. Manfred Nowak, [focusing on protection of women from torture], UN Doc. A/HRC/7/3, 15 January 2008. **Annex R12**

<sup>208</sup> *Ibid*, para.15.

<sup>209</sup> See above, paras. 54-55.

<sup>210</sup> US Embassy cable, “Uzbekistan: Health Condition of released human rights activist unclear, 2 July 2008, at <http://cables.mrkva.eu/cable.php?id=160402> **Annex R13**

provided by the oncology clinic only confirms the sterilisation, yet does not provide further context or explanation of the surgery.<sup>211</sup> A psychological report prepared after the Author's release from the women's colony describes the impact of the surgery on the Author as "they [the authorities] have transformed my life in a nightmare, they only didn't succeed to make me shut up, this is the only flaw in their process. I am not anymore a woman now, a woman like before."<sup>212</sup>

153. The Author's forced sterilisation appears to be no exception in Uzbekistan. A recent report by the British Broadcasting Corporation (BBC) indicates that forced sterilisations in Uzbekistan are frequent and suggests that "Uzbek authorities have run a programme over the last two years to sterilise women across the country, often without their knowledge."<sup>213</sup>
154. The Author's forced sterilisation constituted a serious interference with the Author's reproductive rights and caused her permanent physical and severe mental injuries, as documented by medical reports.

## **6.2. Violation of Article 2 (3) separately and in conjunction with Article 7**

155. The Human Rights Committee established that Article 7 should be read in conjunction with Article 2 (3) of the Covenant, emphasizing that "the right to lodge complaints against maltreatment prohibited by Article 7 must be recognised in domestic law and that such complaints must be investigated promptly and impartially by competent authorities so as to make the remedy effective."<sup>214</sup>
156. In its General Comment No 31 on 'The Nature of the General Legal Obligation Imposed on States Parties to the Covenant', the Committee underlined that "a failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant..." and that Article 2 (3) requires States Parties to make reparation to individuals whose rights have been violated: "without reparation to individuals whose Covenant rights have been violated, the obligation to provide an effective remedy, which is central to the efficacy of article 2 (3), is not discharged."<sup>215</sup>
157. For an investigation to be prompt, it must be carried out without delay, and investigative measures need to be taken expeditiously throughout the investigation. In regards to torture, it was held that complaints should be dealt with immediately.<sup>216</sup> The duty to investigate is triggered where there are reasonable grounds to suggest that torture or ill treatment occurred.
158. Investigations must also be impartial, meaning free from bias and carried out by bodies institutionally independent from those allegedly involved in committing torture or ill

---

<sup>211</sup> See Annex D12

<sup>212</sup> Annex J 13, p.4.

<sup>213</sup> BBC News, 'Uzbekistan's policy of secretly sterilising women', 12 April 2012, at <http://www.bbc.co.uk/news/magazine-17612550>.

### **Annex R14**

<sup>214</sup> Annex R1, para.14; *Eshonov v Uzbekistan*, Human Rights Committee, UN Doc. CPR/C/99D/1225/2003, 22 July 2010, para.9.2.

<sup>215</sup> General Comment No 31 on 'The Nature of the General Legal Obligation Imposed on States Parties to the Covenant', adopted on 29 March 2004 (2187<sup>th</sup> meeting), paras.15 and 16. **Annex S1**

<sup>216</sup> Special Rapporteur on Torture, Report submitted pursuant to Commission on Human Rights Resolution 1992/32, UN Doc. E/CN.4/1995/34, 12 January 1995, para.926.

treatment.<sup>217</sup> This suggests that at a minimum, alleged perpetrators especially if they are law enforcement officials, should be suspended or assigned to a different department so as to ensure that they are not involved in the investigation.

159. Investigations must also be thorough so as to lead to the prosecution of the perpetrator(s). This requires States to establish the facts, including through a medical examination, securing and obtaining physical evidence, and questioning of the victim, witnesses and alleged perpetrators.<sup>218</sup>
160. In the present case, the State Party failed to adequately investigate the violations alleged by the Author. The authorities were clearly aware of the allegations of maltreatment of the Author by prison guards, administration officials, fellow inmates acting on their behalf, and others. Reasonable grounds to suggest that torture and / or ill treatment was committed also existed. The Author had submitted complaints directly to the administration in Ferghana and to the Prosecution about the various violations outlined above.<sup>219</sup> As outlined above, in the women's colony, the Author submitted an eighty pages memorandum to the prosecutor in the only meeting she was granted with him, detailing a variety of violations committed by identified guards against her as well as other inmates.<sup>220</sup> Civil society alerted the authorities about allegations of violations.
161. Despite their awareness of the allegations, the authorities failed to meet the standards of an adequate investigation. On the few occasions where an investigation into the Author's complaints was opened, as for instance in regards to the abuse at Kirgulin regional police department on 1 July 2002, the investigation was almost 2 months after the Author had filed the criminal complaint. The investigation was not thorough, as it did not lead to the prosecution of those responsible for the Author's abuse, despite the existence of concrete evidence such as a medical report.
162. The State Party failed entirely to carry out an investigation into the manifold abuses suffered by the Author in Ferghana Remand Centre No 10 and the women's colony, reported by the Author herself, her lawyers, her family or civil society or indeed the UN Special Rapporteur on Torture in a communication sent to the Government of Uzbekistan on 13 April 2007.<sup>221</sup>

### **6.3. The violations are consistent with widely reported torture and ill-treatment in Uzbekistan**

163. The Author's description of her torture and ill-treatment, as well as lack of access to an effective remedy in Uzbekistan is consistent with widely reported incidents of torture and ill-treatment in Uzbekistan.
164. Following his visit to Uzbekistan in November/ December 2002, the Special Rapporteur on Torture stated that he believed

---

<sup>217</sup> Human Rights Committee, Concluding Observations on the Second Periodic Report of Kenya, UN Doc. CCPR/CO/83/KEN, 29 April 2005, para.18.

<sup>218</sup> Istanbul Protocol, paras. 100-106.

<sup>219</sup> See above, paras. 92; 101.

<sup>220</sup> Annex F4.

<sup>221</sup> Annex H 1, para.260.

“torture or similar ill-treatment [to be] systematic as defined by the Committee against Torture...” and that “even though only a small number of torture cases can actually be proved with absolute certainty, the copious testimonies gathered...are so consistent in their description of torture techniques and the places and circumstances in which torture is perpetrated that the pervasive and persistent nature of torture throughout the investigative period cannot be denied.”<sup>222</sup>

165. The Special Rapporteur on Torture further concluded that

“[V]ery few torture complaints seem to be investigated, whether they are made during the pre-trial investigation period or at trial”<sup>223</sup> and that at “the pre-trial detention phase, there is no independent body capable of investigating torture complaints as the General Procurator’s Office would ultimately be in charge of investigations.”<sup>224</sup>

166. Similarly, the Human Rights Committee noted with concern in its concluding observations of Uzbekistan’s State report submitted under Article 40 of the Covenant

“the continued reported occurrence of torture and ill-treatment, the limited number of convictions of those responsible, and the low sanctions generally imposed, including simple disciplinary measures, as well as indications that individuals responsible for such acts were amnestied and, in general, the inadequate or insufficient nature of investigations on torture / ill-treatment allegations.”<sup>225</sup>

#### **6.4. Violation of Article 10**

167. Article 7 is supplemented by Article 10, which details the rights of detainees to receive human treatment in detention. The Human Rights Committee has repeatedly emphasized that the Standard Minimum Rules for the Treatment of Prisoners are effectively incorporated within Article 10.<sup>226</sup> The different detention centres where the Author was held as well as the women’s colony breach numerous provisions of the Standard Minimum Rules. As outlined above, adequate medical care was not provided, contrary to Rules 22-26, while in detention, the Author was not separated from convicted prisoners contrary to Article 10 (2) and Rule 8 (b), nor were her rights to present a defense in regards to disciplinary measures respected contrary to Rule 30 (2).

168. The Human Rights Committee previously found a violation of Article 10 (1) where the authorities failed to provide the detained person with adequate hygiene items, delayed his lawyer’s requests for medical assistance and systematically denied visits from his

---

<sup>222</sup> Annex A8, para.68.

<sup>223</sup> Para.55

<sup>224</sup> Para.56.

<sup>225</sup> Human Rights Committee, ‘Concluding Observations of the Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant – Uzbekistan, para.11. **Annex S2**

<sup>226</sup> Office of the High Commissioner for Human Rights, General Comment No. 21: Replaces general comment 9 concerning humane treatment of persons deprived of liberty (Art.10): 10/04/1992, CCPR General Comment No.21, **Annex U1**; Mukong v Cameroon, Human Rights Committee, UN Doc. CCPR/C/51/D/458/1991, 21 July 1994, para.9.3; Concluding Observations on the USA, CCPR/C/79/Add.50, para.34.

family.<sup>227</sup> In another case against Uzbekistan, the Human Rights Committee found that two weeks in ‘*incommunicado detention*’ constituted a breach of Article 10.<sup>228</sup>

169. In the present case, the Author was systematically denied contact with the outside world for prolonged periods of time while in detention in Ferghana Remand Centre No10 as well as during her imprisonment in the Women’s Colony, where she was placed in solitary confinement for a total of 112 days, and her requests for medical assistance were rejected or only insufficiently granted. The authorities furthermore repeatedly rejected her requests for access to her medical file.<sup>229</sup>

## **6.5. Violation of Article 9**

170. The Author’s arrest on 7 October 2005 and her subsequent detention was part of a systematic effort of the Government of Uzbekistan to crack down on civil society in the aftermath of the Andijan massacre of 13 May 2005, leading to the arrest and imprisonment of “dozens of human rights defenders and causing many others to flee the country altogether.”<sup>230</sup> Specifically in regards to the arrest and detention of the Author, the Presidency of the European Union expressed its concerns and requested the Government of Uzbekistan for further clarification of the charges against them and of their well-being.<sup>231</sup>

171. The State Party is responsible for the arbitrary arrest and detention of the Author contrary to Article 9 (1), the failure to protect the Author’s right to security contrary to Article 9 (1), and to promptly inform her of the reasons for her arrest and detention, contrary to Article 9 (2) and for not bringing her before a judge or enabling her to challenge the legality of detention, contrary to Article 9 (3) and Article 9 (4) respectively.

### **6.5.1. Violation of Article 9 (1): Arbitrary and unlawful arrest and detention**

172. When assessing whether an arrest or detention was arbitrary, the Human Rights Committee takes into account the lawfulness of the arrest, as well as additional factors, such as whether the detention is reasonable and necessary.<sup>232</sup>

173. The Criminal Procedural Code of Uzbekistan requires the transfer of a detainee from a temporary holding cell within 72 hours.<sup>233</sup> Following the Author’s arrest on 7 October 2005, she was placed in a temporary holding cell at the police department of Oblast of Ferghana on 8 October 2005, where she was held for ten days before being transferred to Ferghana Remand Centre No 10 on 18 October 2005.

174. The Human Rights Committee has already found a violation in a similar case. In *Indira Umarova v Uzbekistan*, the Committee held that Uzbek authorities violated Article 9 (1)

---

<sup>227</sup> *Indira Umarova v Uzbekistan*, Human Rights Committee, UN Doc CCPR/C/100/D/1449/2006, 19 October 2000, para.8.7.

<sup>228</sup> *Arutyunyan v Uzbekistan*, UN Doc. CCPR/C/80/D/917/2000, 13 May 2004, para.6.2.

<sup>229</sup> *Zhedludkov v Ukraine*, Human Rights Committee, UN Doc. CCPR/C/76/D/726/1996, 6 December 2006, para.8.4.

<sup>230</sup> Human Rights Watch, “Nowhere to Turn”, 6 April 2007, p.12.

<sup>231</sup> Council of the European Union, ‘Declaration by the Presidency on behalf of the European Union on the human rights situation in Uzbekistan’, 8 November 2005, **Annex S3**

<sup>232</sup> *Mukong v Cameroon*, Human Rights Committee, UN Doc. CCPR/C/51/D/458/1991, 21 July 1994, para.9.8; *Hugo van Alphen v. The Netherlands*, Human Rights Committee, UN Doc. CCPR/C/39/D/305/1988 (1990), 23 July 1990, paras.5.6; 5.8.

<sup>233</sup> *Indira Umarova v Uzbekistan*, Human Rights Committee, UN Doc CCPR/C/100/D/1449/2006, 19 October 2000, para.8.6.

of the Covenant by detaining the author's husband for 15 days in a temporary holding cell, contrary to domestic Criminal Rules of Procedure.<sup>234</sup>

175. The circumstances of the Author's arrest and detention strongly suggest that her arrest and detention were politically motivated, taking into account official responses to human rights activities in Uzbekistan generally, and in the aftermath of the Andijan massacre in particular.<sup>235</sup> The Author frequently and publicly denounced unlawful activities of domestic law enforcement and judicial authorities. At the time of her arrest, she was about to travel to Ireland to speak about human rights violations committed in Uzbekistan and the government's responsibility for the Andijan massacre. The circumstances and timing of the Author's arrest just one day prior to her departure to Ireland strongly suggest that it was an attempt by the government authorities to silence the Author.

176. This impression is further supported by the Committee against Torture which expressed its concern at the crackdown of civil society in the aftermath of the Andijan massacre, specifically referring to the Author's case:

"The Committee is concerned at the information received about the intimidation, restrictions and imprisonment of members of human rights monitoring organisations, human rights defenders and other civil society groups, and the closing down of numerous national and international organisations, particularly since May 2005. The Committee appreciates the information that Mutabar Tojibayava is eligible for amnesty, but remains concerned at the reports of ill-treatment and denial of fundamental safeguards regarding her trial, and those of other civil society advocates and detainees."<sup>236</sup>

177. In its Country Report on Human Rights Practices in Uzbekistan, the United States Department of State referred to a series of arbitrary arrests and detentions of prominent human rights defenders and journalists, commenting on the Author's arrest:

"In 2005 those arrested on similar grounds included human rights activist Mutabar Tojiboyeva and political opposition figures Nodira Khidoyatova and Sanjar Umarov. In many such cases, authorities resorted to false charges of economic crimes such as extortion or tax evasion."<sup>237</sup>

### 6.5.2 Violation of Article 9 (2)

178. The Human Rights Committee considered that Article 9 (2) requires that at the time of arrest, a person must be informed "sufficiently of the reasons for his arrest to enable him to take immediate steps to secure his release if he believes that the reasons given are invalid or unfounded." It is not enough to only indicate the legal basis for the arrest, without "any indication of the substance of the complaint against him."<sup>238</sup>

---

<sup>234</sup> Ibid.

<sup>235</sup> The US Department of State's 2007 Country Report on Human Rights Practices in Uzbekistan refers to the cases of 9 prominent human rights defenders and journalists being arrested in the aftermath of the Andijan massacre with the authorities resorting "to false charges of economic crimes such as extortion or tax evasion." <http://www.state.gov/j/drl/rls/hrrpt/2006/78848.htm> Annex T1.

<sup>236</sup> Committee against Torture, Consideration of Reports submitted by State Parties under Article 19 of the convention, Conclusions and recommendations of the Committee against Torture, Uzbekistan', CAT/C/UZB/CO/3, 26 February 2008, para. 16. Annex T2.

<sup>237</sup> Annex T1

<sup>238</sup> *Adolfo Drescher Caldas v. Uruguay*, Human Rights Committee, U.N. Doc. CCPR/C/OP/2 at 80 (1990), 1 July 1983, para.13.2.

179. The Author was arrested on 1 July 2002 at 9pm by two police officers working at the Kirgulin Region Department of Internal Affairs. The police officers arresting the Author failed to inform her about the reasons for her arrest. The Author was furthermore only informed about the charges against her the next day in court, thereby preventing her from taking immediate steps to secure her release. She was charged with offending a police officer and resisting the orders of a police officer, however, she was not informed about further details of the alleged incidents. Her questioning at the police station about her human rights activities furthermore were clearly unrelated to the charges levelled against her later in court.

### 6.5.3. Violation of Article 9 (3)

180. In deciding whether a detainee was brought promptly before a judge (or other officer authorized by law to exercise judicial power) in accordance with Article 9 (3), the Human Rights Committee held that the

“State Party should take action to ensure that detention in police custody never lasts longer than 48 hours and that detainees have access to lawyers from the moment of their detention.”<sup>239</sup>

181. The Human Rights Committee also held that the lawfulness of an arrest must be assessed by a judge (or other judicial officer), and that such an assessment by a prosecutor does not meet this standard.<sup>240</sup> In addition, Article 9 (3) includes the right of a detainee to meet and consult with a lawyer of his choice with a view to preparing his legal defence.<sup>241</sup>

182. The prosecutor confirmed the Author’s arrest as lawful ten days after her arrest on 7 October 2005. This does not meet the threshold set by the Human Rights Committee in regards to what constitutes promptly under Article 9 (3). The State Party therefore clearly failed to provide the Author with her right as enshrined in Article 9 (3). Furthermore, the lawfulness of the Author’s arrest was never confirmed by a judge, and the Author did not see a judge before the start of her trial on 31 January 2006. The Author had no opportunity to meet with her lawyers confidentially, and was prevented from meeting with her lawyer on at least two occasions.<sup>242</sup>

### 6.5.4. Violation of Article 9 (4)

183. Article 9 (4) stipulates that anyone who is deprived of his or her liberty by arrest or detention shall be entitled to take habeas corpus proceedings, i.e. proceedings before a court in order that that court may decide without delay on the lawfulness of his or her detention.

184. A decision on the lawfulness of the arrest and detention needs to be taken by a judge or a judicial officer.<sup>243</sup> A prosecutor does not meet the threshold requirement of Article 9

---

<sup>239</sup> HRC, Concluding Observations on Gabon, UN Doc CCPR/CO/70/GAB (2000); the Human Rights Committee has held that for instance a period of five days is not promptly and contrary to Article 9 (3): *Abdumalik Nazarov v Uzbekistan*, Human Rights Committee, UN Doc. CCPR/C/81/D/911/2000, 6 July 2004, para. 6.2.

<sup>240</sup> *Indira Umarova v Uzbekistan*, Human Rights Committee, UN Doc CCPR/C/100/D/1449/2006, 19 October 2000, para.8.6.

<sup>241</sup> *Indira Umarova v Uzbekistan*, Human Rights Committee, UN Doc CCPR/C/100/D/1449/2006, 19 October 2000, para.8.5.

<sup>242</sup> See above, para. 92.

<sup>243</sup> *Indira Umarova v Uzbekistan*, Human Rights Committee, UN Doc CCPR/C/100/D/1449/2006, 19 October 2000, para.8.6.

(4) as it may raise concerns as to the independence and neutrality necessary for assessing the lawfulness of arrest and detention.<sup>244</sup>

185. As outlined above, the Author's arrest was approved by a prosecutor and she did not see a judge before the first day of her trial on 31 January 2006.

186. Indeed, there was no provision within Uzbek law at the time that would have allowed detainees to challenge the lawfulness of their arrest and detention before a judge. The Human Rights Committee has extensively covered the failure of Uzbekistan to afford detainees the right to challenge the lawfulness of their detention. In particular, the Committee observed that

“[T]he State party's criminal procedure law provides that decisions regarding arrest/ pre-trial detention have to be approved by a prosecutor, are subject to appeal only before a higher prosecutor and cannot be challenged in court. In the Committee's view, this does not satisfy the requirement of Article 9 of the Covenant.”<sup>245</sup>

187. This situation had remained unchanged by the time the Author was arbitrarily arrested and detained in October 2005.

188. Similarly, the Special Rapporteur on Torture noted that the right to habeas corpus is not a part of Uzbek criminal proceedings, concluding “that in practice, all decisions regarding pre-trial detention are the sole purview of a procurator. Courts are said not to be involved at all at this preliminary stage of criminal proceedings.”<sup>246</sup>

189. The State Party confirmed that legislation introducing the right to habeas corpus into Uzbek criminal procedural law would only come into force by 1 January 2008.<sup>247</sup> The Author therefore could not benefit from the change of legislation and was not able to challenge the lawfulness of her detention before a court.

#### **6.5.5. Violation of Article 9 (1): Failure to protect the Author's right to security of person**

190. The authorities also failed to protect the Author's right to security of person as enshrined in Article 9 (1). The Human Rights Committee held that “on its proper interpretation, [Article 9], does not allow the State Party to ignore threats to the personal security of non-detained persons, subject to its jurisdiction.”<sup>248</sup>

191. On 20 August 2003, a group of women, probably prostitutes following orders of the police, attacked the Author and her colleagues. The attack happened in front of the police authorities, who failed to intervene and assist the Author and her colleagues. Instead, they filmed the attack. In early December 2003, the Author was threatened by the director of the public order department of the Ferghana Oblast Police. When the

---

<sup>244</sup> Ibid.

<sup>245</sup> *Indira Umarova v Uzbekistan*, Human Rights Committee, UN Doc CCPR/C/100/D/1449/2006, 19 October 2000, para.8.6; *Saimijon and Malokhat Bazarov v Uzbekistan*, U.N. Doc. CCPR/C/87/D/959/2000 (2006), 8 August, para.8.2.

<sup>246</sup> Annex A8, para.11.

<sup>247</sup> Commission on Human Rights, Civil and Political Rights, including the questions of Torture and Detention- Torture and other cruel, inhuman or degrading treatment or punishment, Report of the Special Rapporteur, Manfred Nowak, Addendum, Follow-up to the recommendations made by the Special Rapporteur, E/CN.4/2006/6/Add.2, 21 March 2006, para.349. **Annex T3**

<sup>248</sup> *Mr Dalkadura Arachchige Nimal Silva Gunaratna v Sri Lanka*, Human Rights Committee, A/64/40, Vol. II (2009), Annex VII, sect. W, 17 March 2009, para.8.4.



Author tried to complain about the threat, on 13 December 2003, she was involved in what is believed was a staged traffic accident. As a result, the Author had to be treated in hospital for 12 days. The police ignored her subsequent complaint, and failed to investigate the traffic accident.

192. The threats against the Author continued even after her release from the women's colony, with the publication of a series of newspaper articles in February 2009 linking the Author to the Andijan massacre. The failure of the authorities to adequately respond to these threats ultimately led to the Author leaving Uzbekistan with her family as she no longer felt it safe to remain in Uzbekistan. At no point did the authorities provide adequate protection, despite numerous complaints raised by the Author, which constituted a clear abdication of their responsibility under Article 9 of the Covenant.

## **6.6. Violation of Article 14**

193. The State Party failed to ensure the Author's right to a fair trial by an independent and impartial court contrary to Article 14 (1) and to provide the Author with adequate time and facilities for the preparation of her defence and to communicate with her lawyers contrary to Article 14 (3) (b), and to allow for the procedural guarantees enshrined in Article 14 (3) (e). The State Party failed to provide the Author with her right to review her conviction and sentence by a higher tribunal contrary to Article 14 (5).

### **6.6.1. Violation of Article 14 (1)**

194. Article 14 (1) of the Covenant provides that everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.
195. The right to a fair trial is an absolute right that may not suffer any exceptions. Paragraph 3 of the article elaborates on the requirements of a 'fair hearing', yet the Office of the High Commissioner for Human Rights stressed that these requirements are "minimum guarantees, the observance of which is not always sufficient to ensure the fairness of a hearing as required by paragraph 1."<sup>249</sup> Conversely, as they are minimum guarantees, if there is a breach of the conditions listed in Article 14 (3), a trial will amount to a denial of justice and therefore be unfair in violation of Article 14 (1).<sup>250</sup>
196. The Human Rights Committee noted that the concept of fair trial "must be interpreted as requiring a number of conditions, such as equality of arms..." and that "these requirements are not respected where... the accused is...unable to properly instruct his legal representative."<sup>251</sup> Other elements of fair trial the Committee has referred to in the context of Article 14 (1) include the ability of the defendant to call witnesses<sup>252</sup> and equality between the prosecution and defence in producing evidence.<sup>253</sup> Where these conditions are not met, a trial may amount to a denial of justice.

---

<sup>249</sup> Office of the High Commissioner for Human Rights, General Comment No. 13: 'Equality before the courts and the right to a fair and public hearing by an independent court established by law (Art.14)', 13 April 1984. **Annex U2.**

<sup>250</sup> *Naizra Sirageva v Uzbekistan* (907/2000), 18 November 2005, para. 5.3.

<sup>251</sup> *D. Wolf v. Panama*, Human Rights Committee, UN Doc. GAOR, A/47/40, 26 March 1992, pp. 289-290, para. 6.6.

<sup>252</sup> *Darmon Sultanova v Uzbekistan*, Human Rights Committee, UN Doc. CCPR/C/86/D/15/2000, 30 March 2006, para.7.5.

<sup>253</sup> *Abdumalik Nazarov v Uzbekistan*, Human Rights Committee, UN Doc. CCPR/C/81/D/911/2000, 6 July 2004, para.6.3.

197. None of these conditions were met in the Author's trial. The Author's right to equality of arms was not respected and she was not able to properly instruct and consult with her lawyers. During trial, her lawyers were not allowed to call important defence witnesses, and the Court prevented her lawyers from cross-examining key prosecution witnesses. The Court rejected her lawyers' request to recall these witnesses.
198. The Tashkent Criminal Court also lacked the necessary independence to provide the Author with a fair hearing. According to the *UN Basic Principles on the Independence of the Judiciary*, the "independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country".
199. In Uzbekistan, while the independence of the judiciary is enshrined in the Constitution, serious concerns exist about the prominent role of the executive throughout all judicial stages, from the investigation throughout to the court's judgment. The UN Special Rapporteur on Torture provides the context in which the Author's trial took place. Following his mission to Uzbekistan in November/ December 2002, the Special Rapporteur expressed his concerns about the lack of independence of the judiciary in the performance of their duties and the disrespect for the principle of equality of arms between prosecution and defence in criminal proceedings.<sup>254</sup> In the follow up report of March 2006, NGO reported that "no such measures were taken."<sup>255</sup>
200. These concerns are borne out by comments made by observers of the Author's trial. The United States embassy in Tashkent, attending the Author's trial, underlined the lack of independence of the judiciary and observed that
- "while it may be possible that Tajibaeva may be granted amnesty through her appeal, the final decision will be based on politics rather than interpretation of Uzbek law. If the government has decided that it want Tajibaeva to serve prison time, she will, regardless of what is written in law."<sup>256</sup>
201. The Foreign and Commonwealth Office of the United Kingdom also expressed their doubts as to the independence of the Court in the Author's trial:
- "Since May 2005 we have witnessed a programme of detention and harassment of those, including human rights defenders, journalists and others, who have questioned the authorities' version of events in Andijan. I am deeply concerned by the sentences passed recently on Mutabar Tojibayeva"<sup>257</sup>
202. The lack of independence of the Tashkent Criminal Court and the denial of a right to a fair trial in these circumstances constituted a violation of Article 14 (1).

---

<sup>254</sup> Annex A8, para. 70 (d).

<sup>255</sup> Annex T3, para.351.

<sup>256</sup> US embassy cable-06Tashkent466, 'Human Rights Activist Tajibayeva sentenced to eight years', 9 March 2006, at <http://cables.mrkva.eu/cable.php?id=55925> **Annex U3**

<sup>257</sup> Hansard, House of Commons, Written Answers for 20 March 2006 Debate in the House of Commons, 'Uzbekistan', at <http://www.publications.parliament.uk/pa/cm200506/cmhansrd/vo060320/text/60320w26.htm>.

### 6.6.2. Violation of Article 14 (3) (b)

203. Article 14 (3) (b) of the Covenant provides that everyone shall be entitled to have adequate time and facilities for the preparation of his defence to communicate with counsel of his own choosing.
204. The Author was not given the opportunity and time to adequately prepare for her trial. Contrary to Uzbek law, she was unable to confidentially meet with her lawyers to properly instruct and consult with them.<sup>258</sup> Detention officers prevented her lawyers to meet with the Author on at least two occasions. She was informed five weeks prior to trial, on 24 December 2005, that the charges against her had been extended from previously two charges of extortion and fraud, to 18 violations of Uzbek criminal law. She was then denied a meeting with her lawyer on 31 December 2005. Her requests for an extension to study the 13 volumes of the prosecution's case file were denied, and her lawyers only had 15 days to study the prosecution's case. In further disregard of the principle of equality of arms, she could not meet with her lawyers throughout her trial as the guards prevented them from visiting her at Kuyi Chirchic district police station.
205. The denial of access to a lawyer formed part of a broader pattern in which Uzbek authorities frequently prevent lawyers from meeting with their clients. The UN Special Rapporteur on Torture in a 2006 report on Uzbekistan refers to a survey by the Association of Advocates, according to which
- “353 persons, 85% of those surveyed, stated that meetings of defence lawyers with their clients can only be carried out after numerous complaints to various bodies (as legislation does not provide for the issuance of the permission for lawyers to meet with their clients).”<sup>259</sup>
206. The State party failed to provide the Author with adequate time and facilities to prepare her defence in violation of Article 14 (3) (b).

### 6.6.3. Violation of Article 14 (3) (e)

207. Article 14 (3) (e) of the Covenant provides that every accused or defendant shall be entitled to examine, or have examined, the witnesses against him and obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.
208. Article 14 (3) (e) aims at guaranteeing that the accused has the same legal powers of “compelling the attendance of witnesses and of examining or cross-examining any witnesses as are available to the prosecution.”<sup>260</sup>
209. The Author's lawyers' requests to cross examine important prosecution witnesses were denied as the Court excused witnesses from attending relevant hearings due to illness. The lawyers' request to receive medical certificates confirming the witnesses' illness, and to have these witnesses recalled, were denied by the Court. This put the Author at a significant disadvantage in countering the allegations against her. The judgment of 6

---

<sup>258</sup> Annex A8, para.23 quotes Article 53 of the Criminal Procedural Code in Uzbekistan, providing that an accused or defendant is entitled to meet with the lawyer one to one without limitation of the frequency and the length of the meetings.

<sup>259</sup> Annex T3, para. 348.

<sup>260</sup> Annex U/V 2, para.12.

March 2006 is further testimony to the violation of Article 14 (3) (e) as it does not refer to the testimony of any defence witness as being taken into account when deciding on the Author's guilt or innocence, nor to any cross-examination.

210. The State Party therefore failed to guarantee the Author the right to equality of arms contrary to Article 14 (3) (e).

#### **6.6.4. Violation of Article 14 (5)**

211. Article 14 (5) of the Covenant provides that 'everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.' According to the Committee, this imposes a duty on the State Party to 'review substantively, both on the basis of sufficiency of the evidence and of the law, the conviction and sentence, such that the procedure allows for due consideration of the nature of the case.'<sup>261</sup>

212. The review of the trial protocol, and consideration by the Judicial Board of the Author's Complaint on Appeal were carried out – and dismissed- by the Tashkent Regional Court, the same Court, even if not the same judges, that rendered the judgment against the Author. This does not constitute a higher tribunal as stipulated by Article 14 (5). Furthermore, the Author's requests for review and appeal to the Supreme Court were all denied.

213. The State Party therefore failed to provide the Author with her right to review of her conviction and sentence by a higher tribunal.

#### **6.6.4. Conclusion**

214. The State Party failed to provide the Author with the minimum guarantees enshrined in Article 14 (3) (b) and (e). The Author's trial was therefore unfair, contrary to Article 14 (1) of the Covenant. The State Party also failed to provide the Author with a right to appeal her conviction and sentence contrary to Article 14 (5).

#### **6.7. Violation of Article 17**

215. Article 17 (1) provides that

“[n]o one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.”

216. The Human Rights Committee considered that:

“under article 17 of the Covenant, it is necessary for any interference not only to be lawful, but also not to be arbitrary. The Committee considers that the concept of arbitrariness in article 17 is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the

---

<sup>261</sup> General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007), para. 48.

Covenant and should be, in any event, reasonable in the particular circumstances.”<sup>262</sup>

217. The Author submits that the State Party violated Article 17 (1) in at least two ways by arbitrarily and/ or unlawfully interfering with her (1) home and (2) correspondence.

#### **6.7.1 Arbitrary interference with the Author’s home**

218. According to the Human Rights Committee, “searches of a person's home should be restricted to a search for necessary evidence and should not be allowed to amount to harassment.”<sup>263</sup> The Committee also emphasised that any interference with one’s home must not only be lawful, but also not arbitrary.

219. In the present case, the Author was arrested on 7 October 2005 by over thirty heavily armed law enforcement officers. Masked policemen surrounded the Author’s apartment block and guarded every single apartment of the entire block. Approximately thirty officials entered the Author’s apartment, and raided her apartment, as well as her daughter’s and the office of the Fiery Hearts Club (the Author’s organisation) which was located in the neighbouring flat. The searches were conducted in the Author’s absence, and she was only shown the search warrants in December 2005, when she had the opportunity to examine the prosecution’s case against her.

220. The Author was charged with extortion. The Author has never been accused of any violence. She did not pose any risk. There was no conceivable need for thirty (or even more) heavily armed and partly masked police officers to arrest the Author and search her apartment. The authorities furthermore did not have a search warrant for the Author’s office, nor for her daughter’s apartment. The charge of extortion did also not require confiscating material related to the Author’s human rights work.

#### **6.7.2. Arbitrary interference with the Author’s correspondence**

221. The Human Rights Committee considered that the right against arbitrary or unlawful interference with correspondence in the case of detainees or prisoners requires that

“any ...measures of control or censorship shall be subject to satisfactory legal safeguards against arbitrary application. Furthermore, the degree of restriction must be consistent with the standard of humane treatment of detained persons required by article 10 (1) of the Covenant. In particular, prisoners should be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, by correspondence as well as by receiving visits.”<sup>264</sup>

222. The administration of Ferghana Remand Centre No 10 severely restricted the Author from communicating with the outside world. During her detention in Ferghana Remand Centre No 10, the authorities only allowed one visit from the Author’s daughter but entirely denied further family visits for three months and prevented the Author from receiving or sending any correspondence. The entire process was outside the law, as it was based on an arbitrary system of encouraging other detainees to denounce the

<sup>262</sup> Rojas García v. Colombia (687/1996), ICCPR, A/56/40 vol. II (3 April 2001) 48 at paras.10.3.

<sup>263</sup> General Comment No. 16: The right to respect of privacy, family, home and correspondence, and protection of honour and reputation (Art. 17) : 08/04/1988, para.8. **Annex W1**

<sup>264</sup> *Estrella v. Uruguay* (74/1980) (R.18/74), ICCPR, A/38/40, 29 March 1983, para.9.2.

Author for violating internal rules of the Remand Centre, and to then impose disciplinary sanctions on the Author, such as preventing the Author from receiving correspondence or other information from the outside world.<sup>265</sup> As was outlined above, the authorities continuously refused to provide the Author with an opportunity to challenge these sanctions. The Author described the lack of information from the outside world like living in a vacuum.

223. The administration of the women's colony entirely denied the Author any correspondence with her lawyers and others throughout the Author's imprisonment at the colony, and prevented her from receiving family visits for a period of almost 7 months. The authorities denied all requests for visits during that period. These measures were entirely arbitrary and outside the law.

## **6.8. Violation of Article 19 (2), 21, 22**

### **6.8.1. Article 19**

224. The Human Rights Committee confirmed that "[T]he right for an individual to express his political opinions, including obviously his opinions on the question of human rights, forms part of the freedom of expression guaranteed by article 19 of the Covenant."<sup>266</sup> The Committee underlined that the "right to freedom of expression is of paramount importance in any democratic society, and that any restrictions to the exercise of this right must meet a strict test of justification."<sup>267</sup> The State Party would need to demonstrate how these restrictions applied in the specific case were necessary "to safeguard the rights and national imperatives set forth in Article 19 (3) (a) and (b)."<sup>268</sup>
225. In the present case, the Author gave interviews to international media about human rights violations committed in Durmen village, and organised a picket in May 2003 in front of government institutions, protesting about the human rights violations committed by local authorities, and about the judiciary which was protecting the authorities. The Author also organised a picket in August 2003, holding posters and calling for the resignation of officials from the prosecutor's office and of the governor of the district. On both occasions, the Author was attacked by a group of women who the Author believes were acting on the orders of the authorities. On both occasions, the authorities failed to adequately investigate the women attacking the Author, and on both occasions, the Author was charged for holding an unlawful demonstration. Even though these charges were eventually dropped, the attacks, the failure to hold the perpetrators responsible, as well as charging the Author were carried out on account of the Author's human rights activities, and as such constituted an interference with the Author's right to freedom of expression and opinion that were not justified by any of the exceptions provided for in Articles 19 (3) (a) and (b).
226. The Author was also charged, detained, indicted and later convicted and imprisoned for distributing propaganda material, threatening the public order and the establishment of

---

<sup>265</sup> Annex A2, paras.37-44.

<sup>266</sup> *Kivenmaa v. Finland*, Human Rights Committee, Human Rights Committee, UN Doc. CCPR/C/50/D/412/1990, para. 9(3).

<sup>267</sup> *Park v. Republic of Korea*, Human Rights Committee, (CCPR/C/64/D/628/1995, 20 October 1998, paras.10.3 and 12.

<sup>268</sup> *Kivenmaa v. Finland*, Human Rights Committee, Human Rights Committee, UN Doc. CCPR/C/50/D/412/1990, para. 9(3).

an unregistered public organisation.<sup>269</sup> This too was evidently on account of her human rights activities. These severe restrictions on the Author's freedom of opinion and expression in this case cannot be justified as they were not necessary "for the respect of the rights or reputation of others", nor for "the protection of national security or of public order, or of public health or morals." The measures were also clearly disproportionate.

### 6.8.2. Article 21

227. The Human Rights Committee noted that any interference with the right to assemble must be clearly justified and fall within the limitation provisions of Article 21. According to the Committee, justifiable limitations must be "necessary in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others."<sup>270</sup> In regards to a gathering of 25 people holding up banners protesting against human rights violations, the Committee noted that this could not be regarded as a demonstration, irrespective of the display of the banners.<sup>271</sup>
228. As outlined above, the law enforcement authorities in Ferghana and Olitiariq district charged the Author for organizing an unlawful demonstration in regards to the pickets held by the Author in May with one colleague and August 2003 with three colleagues respectively. These restrictions on the Author's freedom to assemble in this case cannot be justified as they were neither in the interest of national security or public safety, nor necessary for the protection of public health, morals or rights and freedoms of others. The measures were also clearly disproportionate.
229. On 30 May 2003, the Mayor of Ferghana City refused to grant permission to the Author to organise a demonstration against human rights violations in the region, and the judiciary protecting the authorities committing these violations. A demonstration against human rights violations committed by local authorities does not fall within any of the restrictions provided for in Article 19, and a complete ban of such a demonstration is not justified by reference to national security, nor is it proportionate.

### 6.8.3. Article 22 (1) and (2)

230. As the right to freedom of expression and the right of peaceful assembly, the right to freedom of association is of paramount importance to a democratic society. Any restriction to the right to freedom of association as enshrined in Article 22 (1) must meet the same criteria as those listed in Article 21, i.e. it must be justifiable and proportionate.
231. The Author was charged, detained, indicted and later convicted and imprisoned for the establishment of an 'unregistered public organisation'.<sup>272</sup> This was evidently a direct reaction to her human rights activities. The severe restriction on the Author's freedom of association in this case did not meet any of the criteria listed in Article 22 (2).

---

<sup>269</sup> Annex E3, p.1 (unofficial translation); See <http://uz.cafspeech.kz/site.php?lan=english&id=4&newsid=43>

<sup>270</sup> *Kivenmaa v. Finland*, Human Rights Committee, UN Doc.CCPR/C/50/D/412/1990,9 June 1994,para. 9.2.

<sup>271</sup> *Ibid.*

<sup>272</sup> Annex E3, p.1 (unofficial translation); See <http://uz.cafspeech.kz/site.php?lan=english&id=4&newsid=43>

232. The measures taken against the Author in response to establishing an ‘unregistered public organisation’ reflect a general practice in Uzbekistan where human rights activists experience extensive difficulties in registering their organisation, and where the Government forced more than 300 NGOs to close down in the aftermath of the Andijan massacre.<sup>273</sup> The Human Rights Committee expressed its concerns about the lack of democratic rights and the severely limited democratic space in Uzbekistan, emphasizing in particular

“the number of representatives of independent non-governmental organizations (NGO), journalists, and human rights defenders imprisoned, assaulted, harassed or intimidated, because of the exercise of their profession. Furthermore, it is also concerned about the absence of sufficient investigations on all alleged assaults, threats, or acts of harassment of journalists and human rights defenders.”<sup>274</sup>

### **6.9. Violation of Article 26**

233. The Human Rights Committee noted that the term "discrimination" as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any grounds such as those enumerated in Article 26 and “which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.”<sup>275</sup> It held further that a differentiation based on reasonable and objective criteria does not amount to prohibited discrimination within the meaning of article 26.<sup>276</sup>

234. The Author submits that the gang rape committed against her on 15 April 2005 at Bektemir District Department of Internal Affairs, as well as the sterilisation without her consent was a violation of Article 26, as it constituted discrimination on the basis of the Author’s sex. It was gender specific violence which is inherently discriminatory.<sup>277</sup> The failure of the State Party to adequately respond to such violence and to ensure the Author’s protection amounted to discrimination contrary to Article 26.<sup>278</sup>

235. The Author submits that by arbitrarily and unlawfully arresting and detaining, and later prosecuting and convicting her on account of her human rights activities, the State Party additionally violated her rights under Article 26 of the Covenant, which protects against discrimination on grounds of political or other opinion.

236. As outlined above, the State Party systematically and deliberately prevented the Author from exercising her democratic rights enshrined in Articles 19, 21 and 22 of the Covenant. Upon arrest on 7 October 2005, she was charged with extortion, yet her entire office was raided, and 18 boxes of documents belonging to her organisation were

---

<sup>273</sup>RefWorld, “Freedom of Association under Threat- Uzbekistan, 21 November 2008, at <http://www.unhcr.org/refworld/topic.4565c2252c.4565c25f35f.492a751a28.0,,UZB.html>; see also FIDH, Annual Report 2005, , <http://www.fidh.org/IMG/pdf/Europa.pdf>.

<sup>274</sup> Concluding Observations, para.24

<sup>275</sup> ICCPR General Comment 18 (Thirty-seventh session, 1989): Non-Discrimination, A/45/40 vol. I (1990) 173 at para.7. **Annex W2**

<sup>276</sup> *Neefs v. The Netherlands* (425/1990), ICCPR, A/49/40 vol. II (15 July 1994) 120 (CCPR/C/51/D/425/1990) at paras. 7.2-7.4.

<sup>277</sup> Annex R12, para.68.

<sup>278</sup> *Opuz v Turkey*, European Court of Human Rights, application no. 3340/02, 9 September 2009, para.91.



taken that documented human rights violations committed throughout Ferghana region. Following her arrest, the authorities questioned the Author about her human rights activities and pressured her to provide details about names and activities of her fellow human rights defenders in Uzbekistan. She was convicted and sentenced to imprisonment on account of her human rights activities, thereby effectively preventing from expressing her democratic rights, solely on the basis of her previous activities.

237. The Human Rights Committee in a previous case against Uzbekistan considered that the conviction and imprisonment of a leader of a political opposition group in Uzbekistan constituted a violation of Article 26 as the authorities' acted with a view to preventing him from expressing his political views.<sup>279</sup>
238. It is submitted that the democratic and human rights activities of a human rights defender seeking to promote democracy and human rights should enjoy equal protection against discrimination. Any other conclusion would be contrary to the aim, objectives and spirit of the Covenant. Indeed, the Author's activities as a human rights activist in an oppressive regime such as the one of the State Party exposes her to great risks of discrimination on account of her human rights work.<sup>280</sup> It is therefore submitted that discrimination on grounds such as promotion of democracy and human rights fall within the scope of Article 26, and that the State Party in the present case violated the Author's rights under Article 26.

## 7. Remedies sought

239. The Author respectfully requests the Committee to declare the present communication admissible and to find that the State Party has breached Articles 2 (3) in conjunction with Article 7, Article 9 (1), 9(2), 9(3) and 9(4), Article 10 (1), 10(2) (a), Article 14 (1), (3) (b) and (e), 14 (5) and Articles 17, 19, 21, 22 and 26.
240. The Author requests the Committee to declare that the State Party is under an obligation to take all necessary measures to ensure that remedies are provided in respect of the above-mentioned violations as required by article 2 (3)(a) of the Covenant. This includes restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition,<sup>281</sup> in particular:
- Declaring the conviction of the Author pronounced on 6 March 2006 by the Tashkent Criminal Court null and void.
  - Payment of full and adequate compensation in respect of the violations of the Covenant committed against the Author. This includes compensation for torture and ill-treatment, days spent in detention as a result of arbitrary arrest and detention and unfair trial. The amount of the compensation should be proportionate to the seriousness of the violations of the Covenant

---

<sup>279</sup> Indira Umarova Uzbekistan, Communication No 1449/2006, UN Doc CCPR/C/100/D/1449/2006, para.8.8.

<sup>280</sup> Council of the European Union, 'Declaration by the Presidency on behalf of the European Union on the release of human rights defenders in Uzbekistan', 14 February 2008. **Annex W3**

<sup>281</sup> UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted and proclaimed by the General Assembly resolution 60/147 of 16 December 2005. **Annex X1**

in the present case and the grave damage and sufferings caused by them, taking into consideration the serious and lasting physical and mental consequences, as well as the forced exile, that the Author suffered as a result of the violations.

- The State Party should provide the Author with her full medical file during her time of detention, particularly in respect of her forced surgery.
- By way of satisfaction, the State Party should issue a public apology containing an unequivocal acknowledgement of responsibility for the numerous violations of the Covenant in the present case.
- The State Party should carry out a full and independent investigation into the arrest, detention, torture and other forms of ill-treatment of the Author capable of establishing the facts and identifying those responsible (officials, doctors, others) and take appropriate measures to hold those responsible to account.
- As guarantees of non-repetition, the State Party should amend its legislation so as to ensure that its criminal legislation fully complies with internationally recognized standards referred to by the Human Rights Committee, including Article 1 of the Convention against Torture and Article 7 of the Covenant.
- Further, the State Party should establish an independent body or institution tasked with investigating complaints into serious human rights violations committed by officials. This body or institution should be capable of documenting and investigating torture and cruel, inhuman and degrading treatment pursuant to the pertinent international standards including those contained in the Istanbul Protocol.

## **8. List of Annexes for the Communication: Mutabar Tadjibayeva v Uzbekistan**

### **A) Statement of Facts: Arrest, harassment, ill-treatment and torture by authorities: July 2002- April 2005**

**A.1** Power of Attorney signed by the Author

**A.2** Affidavit signed by the Author

**A.3** US Embassy Cable- 06Tashkent261, 'Tajibayeva Trial Opens with Charges of U.S. and French Support', 1 February 2006

**A.4** Nobel Peace Prize Proposal

**A.5** UN Special Rapporteur on Violence against Women, E/CN.4/2006/61/Add.1, 27 March 2006

**A.6** Martin Ennals Award for Human Rights Defenders, Narrative Report 2008

**A.7** U.S. Department of State, 'The Secretary of State's 2009 International Women of Courage Awards, 5 March 2009

**A.8** Commission on Human Rights, 59<sup>th</sup> Session, Mission Report by Special Rapporteur on Torture, Mission to Uzbekistan, E/CN.4/2003/68/Add.2, 3 February 2003

**A.9** Court Order of 5 September 2002 (in Uzbek).

**A.10** Photo of the Author and colleagues picketing outside the Oltiariq district prosecutor's office.

**A.11** Photos of the Author's neck injuries, and examination at hospital.

### **B) Statement of Facts: Rape – 15 April 2005**

**B.1** Report of the UN High Commissioner for Human Rights and Follow-Up to the World Conference on Human Rights, Report of the Mission to Kyrgyzstan by the Office of the United High Commissioner for Human Rights (OHCHR) Concerning the Events in Andijan, Uzbekistan, 13-14 May 2005, E/CN.4/2006/119, 1 February 2006.

**B.2** Telegram sent by the Author on 4 April 2005.

### **C) Statement of Facts: Unlawful arrest on 7 October 2005 and subsequent arbitrary detention**

**C.1** Invitation by Frontline for Ms Mutabar Tadjibayeva, 12 April 2005

**C.2** Report of the Special representative of the Secretary-General, Hina Jilani, on 'Promotion and Protection of Human Rights: Human Rights Defenders', Addendum, Summary of cases transmitted to Government and replies received, E/CN.4/2006/95/Add.1, 22 March 2006

**C.3** Warrant issued by O.Akhmadjonov, deputy prosecutor of Ferghana Region, 7 October 2005

**C.4** Summary of the Search of 7 October 2005 (unofficial translation into English)

**C.5** Order to initiate a criminal investigation, signed by Akhmadjonov Orif, Deputy prosecutor of Ferghana Region, 7 October 2005 (unofficial translation into English)

**D) Statement of Facts: Arbitrary detention and ill-treatment at Ferghana Remand Centre No 10**

**D.1** See undated complaint sent by Dilafruz Nurmatova, one of the Author's lawyers, to Ferghana Region Prosecutor

**D.2** complaint dated 31 December 2005 sent by Dilafruz Nurmatova, one of the Author's lawyers, to Fergana Regions' Prosecutor

**D.3** Response by the Prosecutor- General' Office, Ferghana Region Prosecutor's Office to Dilafruz Nurmatova, on 12 January 2006

**D.4** The Prosecutor General's office, Ferghana Region's Prosecutor's office to the head of Fergana's remand centre No 10, A.E. Uzaqov, No. 18-05, 8 November 2005

**D.5** See Statement by Dekhqonova Gullola, inmate of Ferghana's remand centre No 10, to The United Nations Representative Office in Uzbekistan, undated (unofficial translation into English)

**D.6** Decrees No 13-15 by the head of Ferghana's remand centre No 10: Lieutenant- Colonel A.E. Uzaqov, entitled 'On Disciplining a Convict', dated 17 November 2005, 18 November 2005 and 1 December 2005 (unofficial translation into English)

**D.7** 'Explanatory Statement' by inmates of cell No 6 of remand centre No 10, Nafisa Egasheva and of Alekseyevna Zhavoronkova

**D.8** The prosecutor's office of the Republic of Uzbekistan, Fergana Region's prosecutor's office, Decree on "Turning Down Appeal", 5 November 2011 (unofficial translation into English)

**D.9** The Prosecutor- General's Office of the Republic of Uzbekistan, Reply to Request of 18 December 2005, No. 15/1699- 2005; confirmed on 23 December 2005

**D.10** Request to have B.M. Mamatov replaced as investigator was turned down by the prosecutor, O. Akhmadzhonov, 11 October 2005

**D.11** Court Ruling of 21 April 2006 (unofficial translation into English)

**D.12** Medical report prepared by Nizomiddinov and Goiubnazarov in 2005 (unofficial translation into English)

**D.13** Ferghana information agency, Mutabar Tajibayeva: "I'm not going to abandon human rights activities"

**E) Statement of Facts: Trial before Tashkent Oblast Criminal Court**

**E.1** Uzbekistan Prosecutor's Office, Regional Prosecutor's Office of Ferghana region, N 18-05, 27 December 2005, signed by Head of interrogation and investigation department of Regional Prosecutor's office of Ferghana Region, Sulaymanov N. M

**E.2** Decision on rejecting the application for extension, 13 January 2006, signed by Sulaymonov.

**E.3** Trial Judgment of 6 March 2006

**E.4** US embassy cable- 06Tashkent326-'Tajibayeva- Not a run of the mill Show Trial', 14 February 2006, published by Wikileaks

**E.5** Committee against Torture, 'Written replies by the Government of Uzbekistan to the list of issues (CAT/C/UZB/Q/3) to be taken up in connection with the consideration of the third periodic report of Uzbekistan (CAT/C/UZB/3), CAT/C/UZB/Q/3/Add.1, 17 September 2007

**E.6** Amnesty International, 'Uzbekistan: Appeal Case Update: Mutabar Tadzhibaeva - Human Rights Defender'

**E.7** Complaint on Appeal to 'Judicial board for appeals of Tashkent regional court for criminal cases', May 2006

**E.8** Judicial Board of Appeal Instance of Tashkent Regional Court for Criminal Cases, Decision N 23/43-06, 30 May 2006

**F) Statement of Facts: Imprisonment at Women's colony.**

**F.1** Response to letter sent by lawyer D Normatova on 24 July 2006

**F.2** Committee against Torture, 'Written replies by the Government of Uzbekistan to the list of issues (CAT/C/UZB/Q/3) to be taken up in connection with the consideration of the third periodic report of Uzbekistan (CAT/C/UZB/3), CAT/C/UZB/Q/3/Add.1, 17 September 2007

**F.3** E-mail sent by lawyer D Nurmatova to Human Rights Watch, on 21 July 2006

**F.4** US embassy cable – 07 Tashkent 1822, ‘Mutabar Tojiboyeva’s Health Worsens in Prison’, recalling a meeting with Mutabar Tadjibayeva’s lawyer and embassy staff, 22 October 2007, published by Wikileaks

**F.5** Ezgulik “Human Rights Society of Uzbekistan”, Letter sent by the Author to the human rights organisation Ezgulik, describing the conditions of detention in the colony from August to December 2006

## **G) Statement of Facts: Prolonged Solitary Confinement**

**G.1** Letter sent by Author around October 2007, entitled ‘For Publication in the International Press- SOS’

**G.2** Frontline: ‘Uzbekistan: Open Statement of Human Rights Defender Rasul Tadjibaev’, 14 August 2007

**G.3** Uzbek Embassy to Malaysia, “Information regarding Mutabar Tajibayeva”, 18 August 2007

## **H) Statement of Facts: Lack of access to medical treatment in the women’s colony**

**H.1** Committee against Torture, ‘Written replies by the Government of Uzbekistan to the list of issues (CAT/C/UZB/Q/3) to be taken up in connection with the consideration of the third periodic report of Uzbekistan (CAT/C/UZB/3), CAT/C/UZB/Q/3/Add.1, 17 September 2007

**H.2** Letter sent by Author to Ezgulik Human Rights Society of Uzbekistan, received by Ezgulik on 3 August 2007, in Human Rights Society of Uzbekistan “Ezgulik”,

**H.3** UN Human Rights Council, 7<sup>th</sup> Session, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Addendum, Summary of information, including individual cases, transmitted to Governments and replies received, A/HRC/7/3/Add.1, 19 February 2008.

**H.4** Letter sent by State Prosecution Office to the attention of Mr R Tadzhibaev on 18 January 2008.

## **J) Statement of Facts: Following Release**

**J.1** Human Rights Watch, “Uzbekistan: Rights Activist Mutabar Tojibaeva Released”, 1 June 2008

**J.2** Galima Bukharbaeva, “A Constant Torture” (unofficial translation)

**J.3** Conseil de l’Union Europeenne, ‘Declaration de la presidence au nom de l’Union europeenne concernant la liberation de Mme Moutabar Tojiboeva, defenseur des droits de l’homme, par les autorites ouzbekes’, 10 June 2008

**J.4** UzNews, “German embassy says rights activist Mutabar Tajibayeva ‘has no cancer’”, 18 July 2008

**J.5** US embassy cable – 08 Tashkent 1036, ‘Update on Status of Human Rights Activists Mutabar Tojiboyeva and Akzam Turgunov’

**J.6** Letter from R. Komilov, Association of Lawyers of the Republic of Uzbekistan, to the attention of lieutenant colonel Akhmedjoeve, head of 64/7 Colony;

**J.7** Response from City oncological hospital, department of oncological gynaecology, entitled ‘discharge report 1046/110’ (unofficial translation into English).

**J.8** Medical Report prepared by Dr.med. Natan Del, Facharzt für Innere Medizin, 17 November 2008.

**J.9** ‘Résumé de l’observation’, Hôpitaux Universitaires de Genève, Département de Chirurgie, Dr L. Memmo and Dr M. Chilcott, 18 December 2008.

**J.10**Uzbekistan News, “Chercher la femme for the Islamists”, 6 February 2009.

**J.11**Ministere de l’Immigration, de l’Intégration, de l’Identité Nationale et du Développement Solidaire, “Decision d’Admission au Statut de Réfugié”, 2 December 2009.

**J.12**Report prepared by Dr Juan Boggino, TRACES- Réseau Clinique International, 5 June 2011.

**J.13**Dr Pierre Duterte, medical doctor, psychotherapist specialized in psycho traumatism, ‘Psychological & Medical report on Mrs Mutabar Tadjibaeva’, 3 November 2011

**J.14**Medical Report prepared by Robert Sorge, Facharzt für Urologie, 31 October 2008

**L) Pursuit of Domestic Remedies: Arrest, harassment, ill-treatment and torture by authorities: July 2002- April 2005**

**L.1** Decision of the Criminal Court of Ferghana region of 2 February 2004, No. 3-20

**M) Pursuit of Domestic Remedies: Arrest on 7 October 2005 and subsequent detention up to 30 January 2006**

**M.1** Decree No. 18-05, ‘To: The head of Fergana’s remand centre No. 10, A.E. Uzaqov, 20 December 2005 (unofficial translation into English)

**M.2** Request No, 14, Request No 15, Request No 16, by the Author to the head of remand centre No 10, A. Uzaqov, dated 01/01/2006, 02/01/2006 and 03/01 2006 respectively (unofficial translations into English)

**N) Pursuit of Domestic Remedies: Trial**

**N.1** Committee against Torture, 39<sup>th</sup> Session, Summary Record of the 792<sup>nd</sup> Meeting, Consideration of Reports by States Parties under Article 19 of the Convention (continued), Third Periodic Report of Uzbekistan (continued), CAT/C/Sr.792, 10 March 2008

**O) Admissibility of the Communication**

**O.1** Human Rights Committee, Considerations of Initial Report, Uzbekistan, CCPR/A/56/40 (2001)

**O.2** Human Rights Committee, Considerations of reports submitted by States parties under Article 40 of the Covenant, CCPR/CO/83/UZB, 26 April 2005

**O.3** Human Rights Committee, 98<sup>th</sup> Session, Considerations of Reports submitted by States parties under Article 40 of the Covenant, CCPR/C/UZB/CO/3, 7 April 2010

**O.4** Committee Against Torture, Consideration of reports submitted by states parties under Article 19 of the Convention, Conclusions and recommendations of the Committee Against Torture- Uzbekistan, CAT/C/CR/28/7, 6 June 2002

**P) Violations of the Covenant**

**P.1** Standard Minimum Rules for the Treatment of Prisoners, Resolution 663 C (XXIV) 31 July 1957 and 2076 (LXII) 13 May 1977

**P.2** UN Committee against Torture, General Comment No 2

**P.3** Testimony from fellow inmate

**P.4** 'Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 9 December 1988, UN GA, A/Res/43/173.

**R) Violations of the Covenant: Eighth breach of Article 7 - forced surgery**

**R.1** General Comment 20

**R.2** WHO, Declaration on Patients' Rights

**R.3** European Convention on Human Rights and Biomedicine



**R.4** Committee on Civil and Political Rights, General Comment No.28 on Article 3 ICCPR, UN Doc. CCPR/C/21/Rev.1/Add.10

**R.5** Convention on the Elimination of All Forms of Discrimination against Women, Article 10 (h)

**R.6** Committee on the Elimination of Discrimination against Women, General Recommendation 21, 13<sup>th</sup> session, 1994

**R.7** WHO, 'The Essentials of contraceptive technology: a handbook for clinic staff, Robert A. Hatcher, 1997, Population Information Program - Johns Hopkins University, School of Public Health

**R.8** Letter from International Federation of Gynaecologists and Obstetricians to Christina Zampas, Legal Adviser for Europe, Center for Reproductive Rights, 15 March 2003,

**R.9** Centre for Reproductive Rights, 'Supplemental Information RE: A.S.v Hungary, Communication NO:4/2004, 10 November 2005.

**R.10** Human Rights Committee, Concluding Observations to Slovakia, 78<sup>th</sup> Session, UN Doc. CCPR/CO/SK/78/SVK, 2003

**R.11** Commission on Human Rights, 'Integration of the Human Rights of Women and the Gender Perspective, Violence against Women', Report of the Special Rapporteur on violence against women, its causes and consequences, Ms Radhika Coomaraswamy, E/CN.4/1999/68/Add.4, 21 January 1999

**R.12** Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mr. Manfred Nowak, [focusing on protection of women from torture], UN Doc. A/HRC/7/3, 15 January 2008

**R.13** US embassy cable – 08 Tashkent 627 – "Tojiboyeva released from prison; vows to continue Human Rights Activism" 5 June 2008

**R.14** BBC News, 'Uzbekistan's policy of secretly sterilising women', 12 April 2012

**S) Violations of the Covenant: Violation of Article 2 (3) separately and in conjunction with Article 7**

**S.1** General Comment No 31 on 'The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, adopted on 29 March 2004 (2187<sup>th</sup> meeting)

**S.2** Human Rights Committee, 83<sup>rd</sup> Session 'Concluding Observations of the Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant – Uzbekistan, para.11., CCPR/CO/83/UZB, 26 April 2005

**S.3** Council of the European Union, 'Declaration by the Presidency on behalf of the European Union on the human rights situation in Uzbekistan', 8 November 2005

#### **T) Violations of the Covenant: Violation of Article 9**

**T.1** The US Department of State's 2007 Country Report on Human Rights Practices in Uzbekistan

**T.2** Committee against Torture, Consideration of Reports submitted by State Parties under Article 19 of the convention, Conclusions and recommendations of the Committee against Torture, Uzbekistan', CAT/C/UZB/CO/3, 26 February 2008

**T.3** Commission on Human Rights, Civil and Political Rights, including the questions of Torture and Detention- Torture and other cruel, inhuman or degrading treatment or punishment, Report of the Special Rapporteur, Manfred Nowak, Addendum, Follow-up to the recommendations made by the Special Rapporteur, E/CN.4/2006/6/Add.2, 21 March 2006.

#### **U) Violations of the Covenant: Violation of Article 10 and 14.**

**U.1** Office of the High Commissioner for Human Rights, General Comment No. 2110/04/1992, CCPR General Comment No.21

**U.2** US embassy cable-06Tashkent466, 'Human Rights Activist Tajibayeva sentenced to eight years', 9 March 2006

#### **W) Violations of the Covenant: Violation of Article 17 and 26**

**W.1** General Comment No. 16: The right to respect of privacy, family, home and correspondence, and protection of honour and reputation (Art. 17): 08/04/1988

**W.2** CCPR General Comment 18 (Thirty-seventh session, 1989): Non-Discrimination, A/45/40 vol. I(1990) 173

**W.3** Council of the European Union, 'Declaration by the Presidency on behalf of the European Union on the release of human rights defenders in Uzbekistan', 14 February 2008

#### **X) Remedies Sought**

**X.1.** UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law adopted and proclaimed by the General Assembly resolution 60/147 of 16 December 2005

## 9. Jurisprudence for the Communication: **Mutabar Tadijabaeva v Uzbekistan**

1. *Giri v Nepal*, Human Rights Committee, U.N.Doc. CCPR/C/101/D/1761/2008, 24 March 2011
2. *Grant v Jamaica*, Human Rights Committee, U.N.Doc. CCPR/C/50/D/353/1988, 4 April 1994
3. *Irving Philip v Trinidad and Tobago*, Human Rights Committee, U.N.Doc. CCPR/C/64/D/594/1992, 3 December 1998
4. *Sanobar Gapirjanova v Uzbekistan*, Human Rights Committee, UN Doc. CCPR/C/98/D/1589/2007, 11 May 2010
5. *Lyashkevich v Belarus*, Human Rights Committee, UN Doc. CCPR/C/77/D/887/1999, 3 April 2003
6. *Mohammed Alzery v Sweden*, Human Rights Committee, UN Doc. CCPR/C/88/D/1416/2005, 10 November 2006
7. *Chikunov v Uzbekistan*, Human Rights Committee, UN Doc. CCPR/C/89/D/1043/2002, 3 May 2007
8. *Migel Angel Estrella v Uruguay*, Human Rights Committee, U.N. Doc. Supp. No. 40 (A/38/40) at 150 (1983)
9. *Wilson v Philippines*, Human Rights Committee, U.N.Doc. CCPR/C/79/D/868/1999, 11 November 2003
10. *Zhedludkov v Ukraine*, Human Rights Committee, U.N. Doc. CCPR/C/76/D/726/1996, 6 December 2002
11. *Mukong v Cameroon*, Human Rights Committee, U.N. Doc. CCPR/C/51/D/458/1991, 10 August 1994
12. *Edwards v Jamaica*, Human Rights Committee, U.N.Doc. CCPR/C/60/D/529/1993, 28 July 1997
13. *Shaw v Jamaica*, Human Rights Committee, U.N. Doc. CCPR/C/62/D/704/1996, 4 June 1998
14. *A.S. v Hungary*, Committee on the Elimination of discrimination against Women, Communication No 4/2004, CEDAW/C/36/D/4/2004, 29 August 2006
15. *Eshonov v Uzbekistan*, Human Rights Committee, UN Doc. CPR/C/99/D/1225/2003, 22 July 2010
16. *Indira Umarova v Uzbekistan*, Human Rights Committee, U.N. Doc. CCPR/C/100/D/1449/2006, 19 October 2010
17. *Mr Dalkadura Arachchige Nimal Silva Gunaratna v Sri Lanka*, Human Rights Committee, A/64/40, Vol. II (2009), Annex VII, sect. W, 17 March 2009

18. *Adolfo Drescher Caldas v. Uruguay*, Human Rights Committee, Communication N.43/1979, U.N. Doc. CCPR/C/OP/2 at 80, 21 July 1983
19. *Abdumalik Nazarov v Uzbekistan*, Human Rights Committee, UN Doc. CCPR/C/81/D/911/2000, 6 July 2004
20. *Saimijon and Malokhat Bazarov v Uzbekistan*, Human Rights Committee, U.N. Doc. CCPR/C/87/D/959/2000, 8 August 2006
21. *Arutyunyan v Uzbekistan*, Human Rights Committee, U.N. Doc. CCPR/C/80/D/917/2000, 13 May 2004
22. *Nazira Sirageva v Uzbekista*, Human Rights Committee, U.N. Doc. CCPR/C/85/D/907/2000 18 November 2005
23. *D. Wolf v. Panama*, Human Rights Committee, UN Doc. GAOR, A/47/40,26 March 1992
24. *Darmon Sultanova v Uzbekistan*, Human Rights Committee, UN Doc. CCPR/C/86/D/915/2000, 30 March 2006
25. *Rojas García v. Colombia*, Human Rights Committee, CCPR/C/71/D/687/1996, 3 April 2001
26. *Kivenmaa v. Finland* , Human Rights Committee, U.N. Doc. CCPR/C/50/D/412/1990, 10 June 1994
27. *Park v. Republic of Korea*, Human Rights Committee, U.N.Doc. CCPR/C/64/D/628/1995, 20 October 1998
28. *Neefs v. The Netherlands*, Human Rights Committee, U.N.Doc. CCPR/C/51/D/425/1990, 15 July 1994