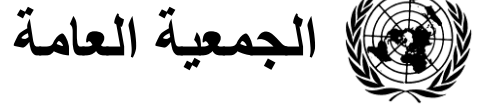


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## مجلس حقوق الإنسان

الدورة التاسعة والأربعون

28 شباط/فبراير - 1 نيسان/أبريل 2022

البند 3 من جدول الأعمال

تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

## زيارة إلى أوزبكستان

تقرير المقررة الخاصة المعنية بتعزيز وحماية حقوق الإنسان والحريات الأساسية في سياق مكافحة الإرهاب، السيدة فيونولا ني أولانين \*\*

موجز

أجرت المقررة الخاصة المعنية بتعزيز وحماية حقوق الإنسان والحريات الأساسية في سياق مكافحة الإرهاب، فيونولا ني أولانين، زيارة رسمية إلى أوزبكستان في الفترة من 29 تشرين الثاني/نوفمبر إلى 7 كانون الأول/ديسمبر 2021.

وخلال السنوات الخمس الماضية، شهدت أوزبكستان تغييراً سياسياً كبيراً. ولا تزال جهود الإصلاح جارية وهي تركز بشكل أساسي على المسائل الاقتصادية والاجتماعية، لكنها تركز أيضاً على سيادة القانون والتغييرات الهيكلية. وقد انتُخبت أوزبكستان عضواً في مجلس حقوق الإنسان، واضطلعت بدور هام في إظهار الالتزام الدائم بحماية حقوق الإنسان وممارسته.

وتنتهي المقررة الخاصة على حكومة أوزبكستان لإعادتها رعاياها إلى أوطانهم بطريقة مستدامة وفعالة من مناطق النزاع في الخارج. وتسلط الضوء على النهج المتكامل والمتعدد التخصصات والمشارك بين الوكالات الذي تتبعه الحكومة إزاء إعادة الإدماج بوصفه ممارسة جيدة، فضلاً عن التعاون المثمر مع منظمة الأمم المتحدة للطفولة ومفوضية الأمم المتحدة السامية لحقوق الإنسان في الحفاظ على نهج طويل الأجل لإعادة الإدماج بنجاح. وتعتقد المقررة الخاصة أن الدول الأخرى يمكن أن تستخلص دروساً قيّمة وعملية من العمل الذي تضطلع به حكومة أوزبكستان في هذا المجال. وتوصي بشدة بإنشاء آليات تتولى

\* يعمم موجز التقرير بجميع اللغات الرسمية. ويعمم التقرير نفسه، المرفق بالموجز، باللغة التي قدم بها وبالروسية فقط.

\*\* قدم هذا التقرير بعد الموعد النهائي لكي يتضمن أحدث المعلومات.



رصد وتقييم حقوق الإنسان فيما يتعلق بأنشطة العودة والإعادة إلى الوطن كوسيلة لتبادل أفضل الممارسات والتعلم من العمل المنجز حتى الآن.

وتحدد المقررة الخاصة تحديات كبيرة عدة في مجال حقوق الإنسان ناتجة عن الأطر الأمنية وأطر مكافحة الإرهاب والتطرف التي يجري تنفيذها في أوزبكستان. وترى أن القانون الجنائي المتعلق بالإرهاب والتطرف فضفاض وغامض التعريف، مما يؤثر بشكل مباشر في حقوق الإنسان الأساسية التي يحميها القانون الدولي. وتعرب عن بالغ قلقها إزاء استخدام مصطلح "التطرف" في القوانين والممارسات الوطنية. وتسلسل الضوء على ضرورة إجراء مراجعة أساسية لمجموعة من أحكام القانون الجنائي المتصلة بـ"التطرف" و"الإرهاب" والأمن القومي. وتعرب عن بالغ قلقها فيما يتعلق بضمانات المحاكمة العادلة، واستخدام شهادة "الخبراء" في قضايا مكافحة الإرهاب و"التطرف"، وتجزؤ إجراءات الملاحقة القضائية، وحصول المدعى عليهم على تمثيل قانوني مستقل، وتكافؤ وسائلهم في الإجراءات. وتوصي باستعراض وتنقيح الأطر القانونية الوطنية وتقديم مساعدتها التقنية تحقيقاً لهذه الغاية.

وتؤكد المقررة الخاصة التحديات التاريخية والمستوطنة التي يشكلها التعذيب وغيره من ضروب المعاملة اللاإنسانية والمهينة في مرافق الاحتجاز، وتتناول حالات الاختفاء القسري. وتعترف المقررة الخاصة بأن الإصلاحات جارية، لكن الممارسات والشواغل لا تزال مستمرة، وتشدّد على ضرورة بذل المزيد من الجهود لمعالجة تركّات هذه الممارسات.

وتتناول المقررة الخاصة التدابير القائمة الرامية إلى مكافحة تمويل الإرهاب وعملية التقييم المتبادل الجارية التي تشمل أوزبكستان. وتقدم عدة توصيات لاستعراض وإصلاح الاستراتيجية الوطنية لمكافحة غسل الأموال وتمويل الإرهاب على نحو يكفل الامتثال للاتفاقية الدولية لمنع تمويل الإرهاب، وقرار مجلس الأمن 2462(2019)، والمذكرة التفسيرية للتوصية 8 من التوصيات الخاصة التسع المتعلقة بتمويل الإرهاب الصادرة عن فرقة العمل المعنية بالإجراءات المالية.

وتثني على حكومة أوزبكستان للدور الإيجابي الذي اضطلعت به في التصدي للكارثة الإنسانية التي تتكشف في أفغانستان المجاورة. وتشجع المجتمع الدولي على دعم الحكومات في المنطقة، بما فيها أوزبكستان، في تقديم الدعم الإنساني العملي لشعب أفغانستان، بالشراكة مع الأمم المتحدة. وتتناول وضع الأفغان الموجودين حالياً في أوزبكستان، وتشدّد على ضرورة التمسك بمبدأ عدم الإعادة القسرية، وتؤيد وضع معايير وطنية تمثل لحقوق الإنسان لتنظيم وضع الأفغان في أوزبكستان.

## Annex

# Report of the Special Rapporteur on the promotion and protection of human rights while countering terrorism, Fionnuala Ní Aoláin, on her visit to Uzbekistan

## I. Introduction

1. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Fionnuala Ní Aoláin, conducted an official visit to Uzbekistan from 29 November to 7 December 2021 to assess that State's counter-terrorism laws, policies and practices, as well as its compliance with international human rights obligations.

2. The Special Rapporteur commends the Government of Uzbekistan for the constructive way in which it facilitated her visit, enabling a frank and open dialogue on multiple issues. She is particularly grateful to the Ministry of Foreign Affairs and the National Human Rights Centre for their well-organized engagement. The Special Rapporteur also commends the Government for the willingness it demonstrated and for the example it set by facilitating the visit despite the ongoing coronavirus disease (COVID-19) pandemic. Stressing the necessity of conducting human rights work globally, the Special Rapporteur acknowledges the leadership shown by the Government, as a member of the Human Rights Council, by demonstrating that such visits can be carried out effectively during the pandemic. She thanks the Office of the United Nations High Commissioner for Human Rights (OHCHR) Regional Office for Central Asia for the excellent support provided during the visit.

3. The Special Rapporteur met with the Ministers of Foreign Affairs, Justice, Internal Affairs, Finance and Defence, the Chair of the Supreme Court, the Chair of the Constitutional Court, the Director of the National Human Rights Centre, the Ombudsman of Uzbekistan, the Children's Ombudsman, the Business Ombudsman, the Chair of the Senate of the Oliy Majlis, the Speaker of Legislative Chamber, the Chair of the Committee on Combating Corruption and on Judicial and Legal Issues, the Chair of the Committee on Democratic Institutions, Non-Governmental Organizations and Citizens' Self-Government, the Chair of the Committee on Defence and Security, the Chair of the Committee on Women and Gender Equality, the Chair of the Jokargy Kenes of the Republic of Karakalpakstan, the Prosecutor General, the Heads of the Departments for Combating Economic Crimes, for Combating Organized Crime and Corruption and for the Protection of the Rights and Freedoms of Citizens of the Office of the Prosecutor General, the Deputy Minister and Head of the Investigation Department of the Ministry of Internal Affairs, the Head of the Legal Support Department of the Ministry of Internal Affairs, the Head of the Department of Corrections of the Ministry of Internal Affairs, the Head of the Probation Service of the Ministry of Internal Affairs, the Head of the Counter-Terrorism Department of the State Security Service, the Director of the Institute for the Study of Legislation and Parliamentary Research of the Oliy Majlis, the Director of the Centre for Advanced Studies of Lawyers and the acting Rector of Tashkent State University of Law.

4. During her visit, in addition to visiting Tashkent, the capital, the Special Rapporteur travelled to Nukus in the Republic of Karakalpakstan and to Namangan and Qashqadaryo Regions. She visited the women's prison in Zangiata, as well as prisons in Namangan, Shaikhali and Koson. She thanks the Government for providing access to the Umid Gulshani sanatorium, which had been converted into a rehabilitation centre for individuals repatriated from conflict zones. The visit to the centre provided a unique opportunity to meet with returnees from multiple conflict zones and with officials and staff managing the centre. She also met with a wide range of civil society representatives, activists, academics, lawyers, human rights experts, representatives of religious denominations and staff of the United Nations country team.

## A. General context

5. Despite gaining independence 30 years ago, only in the past five years has Uzbekistan experienced significant political changes, moving from a highly repressive political system to a period of political transition and stability. Since President Shavkat Mirziyoyev was elected in 2016, several decisive and ambitious reforms have been adopted by the Government to end 25 years of post-Soviet isolation, authoritarianism and serious human rights violations – markers of the previous era under President Islam Karimov – to “build a democratic State and a just society, where the priority is the implementation of a simple and clear principle: human interests come first”.<sup>1</sup> Thus far, many reforms have focused on the economy, through market and tax reforms, including through a new agreement for a scheme of generalized preferences signed with the European Union, and measures to reduce poverty with the aim of becoming a middle-income country. Legal and political reforms have also been initiated. The Special Rapporteur welcomes these ongoing positive developments, which indicate that Uzbekistan is open to engaging in global affairs.<sup>2</sup>

6. These outward-looking reforms must, however, be matched by sustained, non-cosmetic human rights and fundamental rule of law changes. The concern that human rights do not benefit from the same attention was widely echoed by many interlocutors prior to and during the visit of the Special Rapporteur, reflecting apprehension about possible reform stagnation. The Special Rapporteur acknowledges that human rights developments have taken place under the new administration, most notably through the release of thousands of prisoners previously detained in sustained violation of their right to freedom of conscience and religion, the modernization of the legal system, the reduction in child and forced labour in the cotton fields and the accession to the Convention on the Rights of Persons with Disabilities. However, she is concerned that in 2020 Uzbekistan still ranked 155th (out of 167) on the Economist Intelligence Unit’s Democracy Index and that in 2021 it was rated “not free” – with a score of 11 out of 100 – by Freedom House.<sup>3</sup> Following the 24 October 2021 presidential elections, the Organization for Security and Cooperation in Europe noted the absence of a genuinely pluralistic environment, highlighting that, while fundamental human rights and freedoms were constitutionally guaranteed, they were not implemented in practice.<sup>4</sup> Mindful that Uzbekistan was elected in October 2020 to membership of the Human Rights Council for the period 2021–2023, the Special Rapporteur notes that much progress needs to be made to ensure that its pledge to uphold the highest standards in the promotion and protection of human rights is adhered to. Only committed, serious and sustained reforms in the field of human rights and the rule of law will create the conditions for individuals and society as a whole to fully trust that the recent change of course towards openness and respect for human dignity is more than short-term and cosmetic. She highlights the continuing prominence and power of the security sector, including the intelligence and security agencies, as vestiges of the former repressive regime.

7. The risk of terrorism in Uzbekistan is generally assessed as low. The Global Terrorism Index ranks Uzbekistan 134th, thereby assessing internal terrorism threats as insignificant from a global terrorism threat perspective and as enjoying high levels of security and stability. Recent regional developments, specifically in Afghanistan, have elevated security concerns. The Special Rapporteur observes the pragmatic approach taken by security officials in addressing the regional security context and dealing with the de facto authorities in Afghanistan. Concerns about proscribed organizations operating in Afghanistan were noted, including those on United Nations terrorism lists such as Al-Qaida and Islamic State in Iraq and the Levant-Khorasan. The Special Rapporteur positively notes the efforts made by the Government of Uzbekistan to alleviate the severe humanitarian crisis in Afghanistan, including through the provision of electricity and humanitarian aid. She observes that Uzbekistan and other States in the region play a critical stabilizing role and must be

<sup>1</sup> Statement made by the President at the seventy-second session of the General Assembly (19 September 2017).

<sup>2</sup> Furthermore, on 17 December 2021, the World Bank approved a \$400 million development policy operation loan for the period 2022–2026 to support government reforms.

<sup>3</sup> See <https://freedomhouse.org/country/uzbekistan/freedom-world/2021>.

<sup>4</sup> See <https://www.osce.org/files/f/documents/4/9/502203.pdf>.

adequately supported by the international community to maintain and expand their capacity to prevent the impending humanitarian catastrophe in Afghanistan. Cooperation with United Nations humanitarian entities will be of vital importance. Without concentrated and cooperative global efforts aimed at supporting the whole region, the humanitarian crisis in Afghanistan will have devastating effects on the human rights of that country's population and undermine regional and global security efforts.

8. The Government of Uzbekistan estimates that 1,500–2,000 of its citizens have joined designated terrorist groups in Iraq and the Syrian Arab Republic. Citizens of Uzbekistan have also travelled to other conflict zones, including Afghanistan. Following the repatriation of its citizens from Afghanistan two decades ago, Uzbekistan has since 2019 repatriated women and children in five operations from those same conflict sites. The Special Rapporteur commends Uzbekistan for the leading role it has played in managing those repatriations. Several transnational groups categorized as associated with violent extremism have been banned.<sup>5</sup> As a founding State of the Shanghai Cooperation Organization, Uzbekistan continues to identify ongoing internal threats from extremism, notably those linked to religious extremism.<sup>6</sup> The Special Rapporteur views the use of legislation, policies and practices against “extremism” and violent extremism as being of broad national and regional concern and highlights their ongoing misuse and commodification in the current regional context, including by multiple States with political interests in the region.

## **B. International legal framework**

9. Uzbekistan is a party to several major international human rights instruments, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and the Convention on the Rights of Persons with Disabilities.

10. Uzbekistan is not a signatory to the 1951 Convention relating to the Status of Refugees or its 1967 Protocol, nor to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. During the visit of the Special Rapporteur, government interlocutors, including the Minister of Foreign Affairs, the Minister of Justice and the Director of the National Human Rights Centre, committed themselves to signing and ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Minister of Foreign Affairs said that the 1951 Convention too would be ratified. Such ratifications would be welcomed.

## **II. Key human rights challenges in countering terrorism and preventing violent extremism**

### **A. Repatriation and reintegration**

11. Through five operations since May 2019, Uzbekistan has brought back 531 individuals (24 men, 121 women, 379 children and 7 foreign nationals) from conflict zones in north-eastern Syrian Arab Republic, Iraq and Afghanistan. These operations are ongoing.

12. The Special Rapporteur held numerous high-level meetings with Ministers and other high-ranking government officials and found a positive and collective commitment to

<sup>5</sup> Including Hay'at Tahrir al-Sham, Katibat al-Tawhid wal-Jihad, Da'esh, Islamic State in Iraq and the Levant-Khorasan and Islamic Movement of Uzbekistan.

<sup>6</sup> [A/HRC/43/46](#), para.13.

repatriation and the positive reintegration of returnees from the highest levels of government. A whole-of-government approach was evident in the political response to the challenge, as was the practical willingness to provide the resources, expertise and political will to ensure the successful repatriation of citizens of Uzbekistan. The Special Rapporteur was particularly encouraged by the fact that the Government was creating an enabling positive political and social climate for repatriation and reintegration and that it was willing to prepare society, use discourse that was not stigmatizing and follow through from political rhetoric to delivery. The family- and community-based model of repatriation developed by Uzbekistan is a model for other countries to follow, especially States whose nationals remain arbitrarily detained in north-eastern Syrian Arab Republic and other conflict zones. Furthermore, the Special Rapporteur supports the ongoing and long-term cooperation between the Government of Uzbekistan and the United Nations, particularly the United Nations Children's Fund (UNICEF), in this endeavour. This positive child-rights focused partnership constitutes a best long-term practice for other Governments to follow in the context of the repatriation of children from north-eastern Syrian Arab Republic and other conflict zones.

13. The Special Rapporteur conducted a site visit to the Umid Gulshani centre, which functions as a preliminary reception and rehabilitation centre for women and children returning from conflict zones. She met with representatives of all the key national agencies and with individuals who had established and operated programmes in the context of return operations. She understands that future returns from north-eastern Syrian Arab Republic are planned, and she welcomes the sustained commitment of the Government of Uzbekistan to returning its nationals. She commends the Government for the planning, scale and quality of this work. Meticulous inter-agency planning and cooperation is also evident. Planning runs seamlessly from the identification and physical return of individuals; their immediate reception, during which health, nutrition and material needs are identified; the short-term provision of medical and psychological care for complex mental health and psychosocial needs, nutrition support, dedicated newborn and infant support, educational deficits, trauma, religious counselling and reconnection with family in Uzbekistan; medium-term health, education, family, economic and social integration; and long-term return to families and communities throughout the country. The Special Rapporteur particularly welcomes the one-stop-shop model put in place for the immediate reception of returnees, which is focused on bringing together a wide range of expertise and services in a unified way. Furthermore, the increase in social and welfare expertise resulting from the partnership between the Government and UNICEF has led to broader knowledge transfer.

14. The Special Rapporteur learned of and was exposed to the practicalities of medium-term repatriation. She notes the good practices in place in relation to the provision of legal documents and birth certificates for children; the developing practice in relation to educational and training opportunities through local government community structures and regional engagement; the good practice of seeking to support economic independence and entrepreneurship for women; the provision of adequate housing and welfare support; and the provision of ongoing mental health services and child welfare as priorities. She also notes the clear commitment to family unity and the recognition that children returning from conflict zones fare best if they are with their mothers and in supportive family settings.

15. Success will be measured by the long-term and sustained adaptation to the ongoing challenges of reintegration, human rights-based support of communities and engagement by the Government. Evidence suggests that family-based care for children has generally garnered positive outcomes, and that women and adolescents receiving childcare and economic and moral support are generally thriving. Experts have confirmed that children adopted by relatives appear to be gaining confidence and showing signs of recovery and of adapting to life at home. Challenges persist for unaccompanied and separated children, confirming the Special Rapporteur's broader view that having children remain in their family unit is the optimal outcome in repatriation contexts. The Special Rapporteur met directly with some women returnees and her conversations corroborated the positive results of a child-, family- and rights-based approach to reintegration. All who had experienced significant trauma and harm in conflict zones were profoundly grateful to be home and expressed their commitment to making better lives for themselves and their children with the support of families, communities and the Government. Nonetheless, returnees may also experience complex stigma upon return. The broader social stigma historically and currently associated

with “extremism” in Uzbekistan has made it extremely difficult for returnees to avoid stigma. This may also account for some of the insecurity and risk that families and communities feel when positively engaging with returnees. Only a broader legal and political engagement with the extremism legacy will enable long-term reintegration. The Special Rapporteur notes, in particular, the risks of complex harms to those who return, to their family members and to others who may associate with them, highlighting the need to preserve their privacy. She is conscious that supporting returnees’ reintegration in communities with multifaceted local needs can create complex dynamics and challenges. She encourages the provision of support to the Government in recognizing the complexities and in continuing this solutions-oriented approach, which benefits all in local settings. She affirms the right of returnees to privacy and anonymity, which will enable them to start their new lives.

16. The Special Rapporteur recommends that the ongoing partnership with UNICEF be sustained, placing protection at the core of the work, taking the lessons learned from repatriation and reintegration and mainstreaming them into practice for other vulnerable populations. In this regard, she sees an opportunity to extend social work expertise (including the training and appointment of more social workers), trauma specialists and psychological care provision for this population but with benefits for other vulnerable populations too. She highlights the need for long-term and sustained support to this population given the enduring effects of conflict-related trauma and the longstanding nature of reintegration needs. She recommends deepening human rights-based partnerships with the OHCHR Regional Office for Central Asia and the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) with respect to enhancing long-term human rights protection. She highlights the need for ongoing specialized support to orphaned children in care settings who are unable to be placed with families.

17. The Special Rapporteur encourages the Government to repatriate all remaining nationals from north-eastern Syrian Arab Republic, where large numbers of men and boys may be arbitrarily detained, in inhuman conditions and without judicial authorization. She recalls that all individuals under the age of 18 should be viewed primarily as victims of terrorism and that their detention and prosecution is tightly circumscribed under international law. She was pleased to learn that concrete attention was being paid to the situation of adult male citizens of Uzbekistan detained in de facto prisons and detention sites in north-eastern Syrian Arab Republic.

18. The Special Rapporteur is committed to ensuring accountability for serious violations of international law committed in Iraq and the Syrian Arab Republic. The Government has consciously not taken a punitive response against the women and children returning from those countries; criminal prosecution for terrorism-related crimes has occurred in only a small number of cases, for male returnees. She underscores to the international donor community that a protection-focused model premised on the promotion of rights is working successfully in Uzbekistan, and cautions against other models with a primarily retributive, punitive and limited prosecutorial focus being layered in without due assessment of negative downstream consequences. An international criminal justice approach is the most likely, in the appropriate cases, to provide redress in a human rights- and rule of law-compliant way that is consistent with the State’s international law obligations, and it will help close an impunity gap for international crimes. The Special Rapporteur believes there is an appropriate role for collaboration between the Office of the Prosecutor General and the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011,<sup>7</sup> in specific cases where the most serious crimes under international law, in particular the crime of genocide, crimes against humanity and war crimes, have been identified. The Special Rapporteur notes that the Mechanism does not support investigations and prosecutions that focus solely on terrorism-related charges and shares its information only with jurisdictions that respect international human rights law and standards, including the right to a fair trial, and where the death penalty would not apply for the offences under consideration.<sup>8</sup>

<sup>7</sup> See <https://iim.un.org/mandate/>.

<sup>8</sup> A/71/755, para. 14.

19. The Special Rapporteur recommends deepening engagement with civil society in ongoing repatriation efforts to strengthen the best practices evidenced in the Government's approach.

## **B. National legal frameworks on countering terrorism and violent extremism**

20. The Special Rapporteur has carefully studied provisions of the Criminal Code of Uzbekistan pertaining to a range of offences, including terrorism, religious extremism, separatism, storage and dissemination of extremist materials, and attempts to undermine the Constitutional order. She finds that, despite some recent constructive amendments, much of the domestic law regulating terrorism-related offences is vague and ambiguously worded.<sup>9</sup> This is reflected in the large number of individuals convicted solely for possession of extremist material. The Special Rapporteur is concerned that these provisions are used to discourage criticism of the State, the Government, its policies and institutions. She notes that individuals are being charged with multiple security-related offences and that there appears to be a pattern between these charges and subsequent human rights violations in the context of trials and sentencing practices. Security offences are accompanied by lengthy sentences, sustained allegations of torture, inhuman and other degrading treatment and a plethora of human rights concerns arise in connection with prosecutions for these offences.

### **1. Scope of "extremism" offences**

21. The Special Rapporteur remains seriously concerned about the use of the term "extremism" in national law and practice.<sup>10</sup> Conspicuously, international practice addresses the challenges of "violent extremism" and "violent extremism conducive to terrorism", as acknowledged in the Secretary-General's 2016 Plan of Action to Prevent Violent Extremism.<sup>11</sup> Human rights treaty bodies, as well as the current and former Special Rapporteurs on the promotion and protection of human rights while countering terrorism, have consistently expressed concern about the use of the term "extremist activity" in broad and general terms.<sup>12</sup> The Special Rapporteur finds that the term "extremism" has no purchase in binding international legal standards and that, when used to define a criminal legal category, it is irreconcilable with the principles of legal certainty, proportionality and necessity and is per se incompatible with the exercise of certain fundamental human rights. The elasticity of the notion and the ease with which it can be manipulated is best evidenced by the fact that the national change of approach over the past four years leading to the removal of some 20,000 individuals who had been considered adherents of radical religious movements and to the release from prison of more than 1,500 individuals. The Special Rapporteur and her predecessors have consistently expressed concern when the term "extremism" has been deployed, not as part of a strategy to counter violent extremism, but as an offence in itself.<sup>13</sup> It is imperative that criminal and administrative offences connected with extremism are strictly and legally defined in compliance with international human rights law and that they do not unduly restrict freedom of expression, freedom of religion and belief, and freedom of assembly.<sup>14</sup> She notes the establishment of a working group on improving the criminal procedure legislation of Uzbekistan and offers the mandate's technical assistance to this work.

22. The Special Rapporteur has specific concerns about the use of article 244 (1)–(2) of the Criminal Code, which criminalizes "storage with the purpose to dissemination of materials that contain ideas of religious extremism, separatism and fundamentalism". She argues that the purpose could easily be misconstrued in this context, and that article 244 criminalizes, de facto, the mere fact of keeping materials considered to be radical, thereby

<sup>9</sup> Criminal Code, arts. 158–159.

<sup>10</sup> [A/HRC/31/65](#), para. 21.

<sup>11</sup> See [A/70/674](#) and General Assembly resolution [70/291](#).

<sup>12</sup> Human Rights Committee, general comment No. 34 (2011), para. 46.

<sup>13</sup> [A/HRC/31/65](#), para. 21.

<sup>14</sup> [A/73/362](#), para. 25.



impinging on the fundamental rights to privacy and freedom of thought. That provision is particularly hazardous at the present time, given the speed with which massive amounts of information circulate through technological devices. The Special Rapporteur fully concurs with the Human Rights Committee's finding that a broad formulation of the concept of "extremism" could be used to unduly restrict freedom of religion, expression, assembly and association. The Special Rapporteur offers her technical advice and assistance in reforming the Criminal Code to ensure compliance with international law.

## 2. Scope of terrorism offences

23. The Special Rapporteur notes that there are two definitions of terrorism, one in article 155 of the Criminal Code and one in the 2000 law on combating terrorism. She finds that, despite the latter being limited to the purpose of the law, this duality raises concerns regarding the principle of legal certainty and could give undue leeway to those charging individuals for these offences, particularly given the fragmentation of prosecutorial authority and the role of the State security services in investigating these crimes and prosecuting those responsible. The Special Rapporteur considers that the definition of terrorism contained in article 155 of the Criminal Code is too broad and fails to comply with international standards. She is concerned, first, that the definition lacks mention of the intent to cause death or serious bodily injury, a requirement established by Security Council resolution 1566 (2004), which aims at preventing that any violent act, regardless of its degree of violence, be considered as a terrorist act. The lack of this specific element also constitutes an infringement on the principle of legal certainty. Second, the definitions contained in both the Criminal Code and the law on combating terrorism mention damage to property without distinguishing the type of property concerned, thereby allowing any damage to property to fall under the charge of terrorism. Such overly broad definitions can seriously undermine the right to freedom of expression and assembly, as, in the absence of other qualifications, they can be used against individuals engaging in social movements during which damage to property is unwittingly caused,<sup>15</sup> and fail to comply with the principles of necessity, proportionality and legal certainty.

24. Linked to terrorism offences through article 155 of the Criminal Code is article 158, which provides that insulting or slandering the President of Uzbekistan is punishable with up to five years of imprisonment. Similarly, article 159 of the Criminal Code, which punishes attempts to undermine the Constitutional order of Uzbekistan, is often applied in combination with terrorism offences. The linkages between these provisions and terrorism offences are of serious concern, as non-violent criticism of State policies and actors should never constitute a criminal offence. The peaceful exercise of freedom of expression and of thought is pivotal for a society that is governed by the rule of law and that abides by human rights principles and obligations.<sup>16</sup> Such speech-based offences, particularly when considered in combination with the overly broad definition of terrorism, unnecessarily and disproportionately limit freedom of expression, including the work of journalists and human rights defenders.

## 3. National strategy on countering extremism and terrorism

25. Uzbekistan has adopted a national strategy on countering extremism and terrorism for the period 2021–2026. The Special Rapporteur welcomes the references to human rights, in particular to the rights of conscience and religion, in the document. She nonetheless has three overarching concerns. First, the document aims to counter "extremism". The elasticity of the notion and the ease with which it can be abused have been outlined above.

26. Second, the strategy securitizes entire sectors of society and independent policy objectives to counter terrorism and extremism. The strategy refers to the ways in which minors, youth, women, civil society, civil servants, the media, the film industry, cultural and artistic figures, political parties and public and religious associations can participate in countering terrorism and "extremism", while at the same time focusing on "at-risk" individuals and segments of society. This top-down approach seriously and worryingly

<sup>15</sup> Front Line: International Foundation for the Protection of Human Rights Defenders, "Front line defenders global analysis 2018" (2019).

<sup>16</sup> [A/HRC/37/52](#), para. 47.

restricts the advantages to be gained by neutrally addressing the conditions conducive to violent extremism.

27. Third, the strategy identifies a range of social, economic, political and ideological factors of concern but does not suggest how society could be made more resilient to these challenges, focusing instead on the propagation of patriotism, traditional values, tolerance and the eradication of ideas of “extremism” and terrorism based on a stronger, reasoned and scientifically grounded ideology. Worryingly, these factors do not reflect recent global studies addressing the conditions conducive to violent extremism and terrorism;<sup>17</sup> the proposed solutions therefore seem to fail to address the issues identified.

#### **4. Legislative reforms**

28. The Special Rapporteur recognizes and values the commitment to legal reform voiced in all her meetings with national officials. The operationalization of such a commitment is the challenge at hand for the Government. The Minister of Justice was highly articulate on his future agenda, including for the revision of numerous key legislative enactments relevant to the Special Rapporteur’s mandate, including the Criminal Code, the Code of Criminal Procedure and the Penitentiary Code. It is unfortunate that advance drafts and revisions of these key texts have not been made publicly available for comments either by citizens and civil society or by international partners, including the Special Rapporteur. The apprehensions around the opaque nature of the process were widely echoed by interlocutors during the visit.

29. Given the serious concerns expressed by the Special Rapporteur regarding numerous provisions of the Criminal Code, she encourages the Government to review the provisions on terrorism and “extremism” and stands ready to assist in that process. She also encourages the Government to ensure that core international crimes are incorporated into national law in line with the Rome Statute of the International Criminal Court.<sup>18</sup>

#### **5. Human rights and countering the financing of terrorism**

30. The Special Rapporteur recognizes the danger posed by those financing terrorism. She and her predecessors have consistently underscored the need for effective, human rights- and rule of law-compliant responses to the financing of terrorism and has called upon Governments to ensure that measures aimed at countering the financing of terrorism do not justify or lead to human rights abuses. The Special Rapporteur pays particular attention to the manner in which regulations on countering the financing of terrorism negatively affects civil society and may shrink civic space.

31. The existing framework in Uzbekistan for countering money-laundering and the financing of terrorism follows from the criminalization of economic crimes and terrorism financing in the Criminal Code and Law No. 660-II of 2004.<sup>19</sup> In 2018, the President established an interdepartmental commission charged with countering, inter alia, the legalization of the proceeds of terrorism financing, which appears to have strengthened inter-agency efforts against money-laundering and the financing of terrorism. Relevant regulatory frameworks include resolution 854 (2018), establishing a system of inter-agency communications to monitor non-governmental organization-specific violations, including the receipt of funds from illegal sources, and resolution 402 (2021). The Special Rapporteur did not observe evidence of the concrete mainstreaming of human rights into the national strategy and framework for countering money-laundering and the financing of terrorism, and officials seemed unfamiliar with the relevant international standards.

32. Article 7 of the 2018 law on combating extremism also addresses the financing of terrorism. In this context, the Special Rapporteur observes with concern that “the financing of terrorism” is broadly defined and that asset seizures or the suspension of financial

<sup>17</sup> United Nations Development Programme, “Root causes of radicalization in Europe and the Commonwealth of Independent States” (2015).

<sup>18</sup> Uzbekistan is not a party to the Rome Statute of the International Criminal Court.

<sup>19</sup> Law No. 660-II entered into force in 2006 and is updated periodically.

transactions of legal entities could lead to a violation of significant rights, including privacy<sup>20</sup> and due process and procedural rights.

33. Positively, on 3 March 2021, the President issued an order on additional measures for State support to non-governmental, non-commercial organizations ensuring them freedom in the conduct of their activities and protection of their rights and legitimate interests, addressing foreign funding for non-governmental organizations and envisaging a new draft law. Also in March 2021, the President issued a decree approving a plan for the development of civil society during the period 2021–2025 and a road map for its implementation, envisioning improvements to the legal framework for civil society. These efforts are welcome. However, their impact on positively augmenting and enabling independent civil society are still to be demonstrated. An independent civil society remains underdeveloped and subject to considerable constraints in Uzbekistan.

34. Uzbekistan has been a member of the Eurasian Group on Combating Money Laundering and Financing of Terrorism since 2005. Mutual evaluation is in process and expected to take place in May 2022. Uzbekistan performed a national assessment of the extent to which it was at risk from terrorism financing in 2019 with expert cooperation from specialized international organizations. The Special Rapporteur was informed that non-governmental and religious organizations were found to be at “higher risk” of being affected by terrorism financing than other sectors and that the threat from the non-governmental organization sector was a government priority. Comparative global assessments have generally found the non-governmental organization sector to fall outside the high-risk category,<sup>21</sup> and the Special Rapporteur is troubled by this finding given the low terrorism and (violent) extremism threat assessment made for Uzbekistan. She underlines the importance of risk assessments being undertaken in a high-quality, evidence-based manner, including through direct consultation with a diverse range of non-governmental organizations, including independent civil society and community-based organizations, which are likely to have more salient information on and a more nuanced understanding of the actual risks faced by a complex and diverse sector. Moreover, the Special Rapporteur is concerned that the seemingly blanket assessment of all non-governmental and religious organizations as being at “higher risk” is inconsistent with recommendation 8 of the Nine Special Recommendations on Terrorist Financing of the Financial Action Task Force.<sup>22</sup> More broadly, this approach to non-profit and non-governmental organizations highlights broader concerns about the constriction of civic space, undue burdens on the regulation of such organizations and the negative impact of counter-terrorism measures on civil society. As clarified in the interpretative note to recommendation 8, countries must first identify which subset of non-governmental organizations falls within the definition of “non-profit organization” used by the Financial Action Task Force, and only then should they take measures against terrorism financing that are risk-based, targeted, proportionate and effective in the light of the empirically founded, differentiated sub-sectoral risks.<sup>23</sup>

35. The Special Rapporteur believes that the national strategy against money-laundering and the financing of terrorism must be adjusted to ensure a tailored approach consistent with the empirical realities of the sector and the obligations of Uzbekistan under international human rights law, particularly vis-à-vis the civic space and religious minorities. She is concerned that there appear to be few safeguards in place to protect the legitimate exercise

<sup>20</sup> See <https://www.osce.org/files/f/documents/7/d/441056.pdf>.

<sup>21</sup> The Financial Action Task Force has found that the abuse of the non-profit sector by terrorist entities is, in the context of the global non-profit sector, a low-probability risk. See the Task Force’s report *Risk of Terrorist Abuse in Non-Profit Organisations* (June 2014), para. 173.

<sup>22</sup> In the 2010 mutual evaluation report, Uzbekistan was found to be only partially compliant with recommendation 8. See [https://eurasiangroup.org/files/uploads/files/other\\_docs/ME/01.%20Mutual%20Evaluation%20Report%20on%20AMLCFT%20-%202010.pdf](https://eurasiangroup.org/files/uploads/files/other_docs/ME/01.%20Mutual%20Evaluation%20Report%20on%20AMLCFT%20-%202010.pdf).

<sup>23</sup> See the interpretative note to recommendation 8 of the Nine Special Recommendations on Terrorist Financing of the Financial Action Task Force (<https://www.fatf-gafi.org/media/fatf/documents/reports/FATF%20Standards%20-%20IX%20Special%20Recommendations%20and%20IN%20rc.pdf>). See also <https://www.fatf-gafi.org/media/fatf/documents/Unintended-Consequences.pdf>.

of non-profit organizations and to protect against the unfounded repression of freedom of expression or against discrimination targeting groups or individuals, including religious minorities, in the context of countering the financing of terrorism – all rights protected by the International Covenant on Civil and Political Rights (arts. 2, 18, 19, 21 and 22), among other instruments.

36. Regarding the above-mentioned national risk assessment, the Special Rapporteur notes that it endorses controlled access to departmental databases for government agencies and the private sector. She highlights the significant risks of violations of privacy rights protected by article 17 of the International Covenant on Civil and Political Rights. She recommends that comprehensive data protection regulations apply to public measures against terrorism financing and any exchanges of information with private entities.

37. The Special Rapporteur acknowledges that significant capacity-building efforts have been expended on countering the financing of terrorism. It is unclear, however, how substantially human rights obligations and practice have been fully mainstreamed in these efforts. She recommends that a great deal more human rights-based technical assistance be provided to the interdepartmental commission charged with countering, inter alia, the legalization of the proceeds of terrorism financing on human rights obligations and the non-profit sector in the context of countering the financing of terrorism, including through collaboration with the Eurasian Group on Combating Money Laundering and Financing of Terrorism, the Ministry of Justice, multilateral entities, local civil society actors and OHCHR. She emphasizes the critical need to develop concrete human rights benchmarking in the national strategy against money-laundering and the financing of terrorism, with explicit reference to the international human rights law and other international law obligations that apply.

## C. Law on freedom of conscience and religious associations

38. The Special Rapporteur recalls her position, expressed jointly with the Special Rapporteur on freedom of religion or belief and other special procedure mandate holders, on the law on freedom of conscience and religious associations, which entered into force on 5 July 2021.<sup>24</sup> She highlights, in particular, concerns relating to the wide-ranging powers given to the Committee on Religious Affairs to regulate, assess, monitor, sanction and declare illegal manifestations and expressions based on religion or belief, as well as the requirement to seek the Committee's approval prior to any manufacturing, importing or distributing of religious materials. She welcomes the commitment made by the Director of the National Human Rights Centre to revise the law and bring it into line with international human rights law. She recommends that the expertise of the Special Rapporteur on freedom of religion or belief be further sought in this process.

### 1. Justice system, courts and due process

39. The Special Rapporteur welcomes the broad judicial reform agenda presented by the Minister of Justice. The extensive focus on access to justice includes the creation of a legal aid organization that, if fully realized with adequate human and financial resources, would be valuable for the legal system. She welcomes the significant investments made in technology by the court system. Ensuring easy access to legal information, publishing all legal decisions digitally, normalizing the use of technologies – including videoconferencing – in legal processes and placing administrative information online would translate into meaningful access to justice for citizens. Maintaining legal processes and access to the courts during the global pandemic has been an achievement for the Uzbek legal system.

40. The Special Rapporteur is cognizant that proceedings involving issues of national security, terrorism and (violent) extremism have been and remain plagued by a lack of openness and transparency allied with abuses of power and rights. While the general

<sup>24</sup> See communication UZB 4/2021. All such communications are available from <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>. See also [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2020\)002-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2020)002-e).

constitutional rule provides for openness, extremism- and national security-related court proceedings carried out under articles 155, 158, 159, 161 and 244 (1)–(2) of the Criminal Code can be closed and inaccessible, in whole or in part, to the public and observers.<sup>25</sup> The Special Rapporteur is concerned that the exception is, in fact, the norm in such cases. This is very troubling to the Special Rapporteur. Even in cases defined as implicating national security, it is essential for trials to be open. This position has been affirmed consistently by the Human Rights Committee<sup>26</sup> and is reiterated by the Special Rapporteur. Furthermore, as judgments issued in closed proceedings are not, in practice, made public, her concerns are accentuated. She recommends a complete review of the practice of holding closed proceedings. Moreover, the appointment of military judges to national security cases in which civilians are being prosecuted for offences under the Criminal Code is entirely inconsistent with international human rights law.

41. The Special Rapporteur notes that the investigation of and prosecution for security, terrorism and extremism offences is segmented across different State entities, with the security services playing the principal role. This investigative and prosecutorial structure leads to clear violations of due process, transparency and meaningful oversight for the persons investigated, charged and convicted. She welcomed meeting with State security officials but notes that, in general, it is inconsistent with international human rights requirements concerning the deprivation of liberty and the right to a fair trial and incompatible with a transparent and rule of law-based legal system to have the intelligence and security services leading investigations and prosecutions in respect of crimes.<sup>27</sup> This concern is augmented by a lack of independent oversight of the State security services in Uzbekistan. The Special Rapporteur strongly recommends that investigation of such crimes be uniformly consolidated into the general purview of the Office of the Prosecutor General and pursued in compliance with Guidelines on the Role of Prosecutors.

42. Access to lawyers and the independence of lawyers is essential for a fair trial.<sup>28</sup> The Committee against Torture has stressed that access to lawyers is essential to prevent torture.<sup>29</sup> The Special Rapporteur finds that access to independent legal representation in national security cases remains limited, restricted or ineffective.<sup>30</sup> Notably, legal access can be delayed in State security proceedings. The Special Rapporteur remains concerned about the quality and robustness of legal defence in such proceedings, particularly when the defendants are indigent. Ensuring full access by lawyers to all relevant materials in proceedings involving national security offences is also essential.

43. The Special Rapporteur has found evidence of the sustained and endemic practice of torture and inhuman and degrading treatment prior to 2016, including during interrogations, pretrial detention and prolonged periods of incarceration.<sup>31</sup> She highlights sustained concerns about enforced disappearances, past and present,<sup>32</sup> including during transnational transfers. She is encouraged by the focus on torture prevention in current detention and interrogation practice, including the role of the Ombudsman and the group of experts on the prevention of torture established by her office, but believes that the current system requires substantial strengthening and independence. The Special Rapporteur was not able to identify a single case of full criminal conviction and accountability for the practice of torture or ill-treatment,

<sup>25</sup> Article 19 (3)–(4) of the Code of Criminal Procedure is of concern.

<sup>26</sup> General comment No. 32 (2007), paras. 25 and 28–29.

<sup>27</sup> See *Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August–7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. C, resolution 26.

<sup>28</sup> International Covenant on Civil and Political Rights, art. 14, and the Basic Principles on the Role of Lawyers.

<sup>29</sup> CAT/C/UZB/CO/5, para. 30 (a).

<sup>30</sup> See also Presidential Decree No. UP-5441 of 12 May 2018.

<sup>31</sup> Numerous cases have been brought directly to the Special Rapporteur's attention. See, e.g., A/HRC/WGAD/2021/3 and communications UZB 2/2019, UZB 1/2019, UZB 1/2016 and UZB 2/2017.

<sup>32</sup> See A/HRC/WGAD/2021/22, A/HRC/WGAD/2017/29, A/HRC/WGAD/2016/47, A/HRC/WGAD/2013/40, A/HRC/WGAD/2012/65, A/HRC/WGAD/2013/4 and A/HRC/WGAD/2012/34. See also communication UZB 1/2017.

nor could she find any objective and concrete measures towards systemic reforms of the security sector. The Special Rapporteur notes that ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment would be an important step in that direction and she commends the President of Uzbekistan for showing commitment in this regard. She highlights the importance of the upcoming visit to Uzbekistan of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

44. The Special Rapporteur believes that the strength and legitimacy of the legal system would be enhanced by fulsomely ensuring accountability for acts of torture committed prior to 2016. Doing so would demonstrate a meaningful commitment to future torture prevention and accountability. She is concerned that significant numbers of persons remain incarcerated for national security offences and that those persons systematically experienced torture or other inhuman and degrading treatment during their arrest, interrogation, detention or imprisonment.<sup>33</sup> She also notes the disturbing information she has received regarding the process through which thousands of wrongfully imprisoned individuals were released after 2016, including the use of forced confessions and non-disclosure agreements prior to amnesties, and the continuing threats experienced by those released, with the aim of avoiding accountability for these atrocious practices. She urges the establishment of an independent review body, including for the review of cases prosecuted under articles 155, 158, 159, 161 and 244 (1)–(3) of the Criminal Code before 2016, with a view to ensuring accountability, redress and reparation for victims. That body should have the power to compel witnesses to testify and request evidence. It should be fully resourced, including by staff who have been sufficiently trained regarding the legal, social, health, gendered and economic consequences of torture. The review body should be able to transfer cases for criminal consideration and she encourages establishing the means to engage in the lustration of prior officials when evident torture demands it. The identification and removal of individuals responsible for abuses in the police, the penitentiary system, the military, the intelligence service and the judiciary would strengthen the legal system and the current reform process. The Special Rapporteur observes that the Senate committee structures may be best placed to carry out an independent and impartial review, which would benefit from an international expert dimension, including through the assistance of United Nations human rights bodies and mechanisms.

45. The role of expert evidence in criminal cases involving religious extremism or the production, dissemination or storage of religious materials is of concern to the Special Rapporteur. The Committee on Religious Affairs under the Cabinet of Ministers plays a central role in determining the substance of such evidence. All experts providing expertise are, in practice, approved by the Government and cleared by the security services. The Special Rapporteur is concerned that the independence and neutrality of these experts, given their closeness to the executive power and the weight given to their opinion, is nearly impossible to challenge. She is concerned that the use of such expertise may not be consistent with the principle of the separation of powers in criminal procedures and that it may undercut fair trial requirements and undermine the equality of arms in “extremism”-related cases. She finds that it is difficult in practice for defendants, particularly those with few financial resources, to challenge a determination that a document, statement or group includes an “extremist” element or is of an “extremist” character.

46. The Special Rapporteur also calls out the noticeable trend of cumulative charging and sentencing, particularly in extremism cases. She questions the relevance of these overlapping convictions, often based on a single evidentiary element, namely expert opinion, whose broad aim appears to be the possibility of long, aggregated sentences. Although the President has embarked on a process of widely lauded pardons since 2016, the cumulative nature of the

<sup>33</sup> The following cases are of concern: Murod Khasanboev (located in prison 42, Zangiota), who was convicted under article 159 of the Criminal Code and who continues, in the Special Rapporteur’s view, to suffer medical consequences from ill-treatment in custody (19 years); Shamsuddin Giyazov (located in colony settlement 46, Zangiota), who was detained when a minor and who was sentenced to 20 years, then to 6 years and then received an additional sentence of 17 years (2001); and Bobur Obidjanovich Khatamov (located in Koson prison), who was convicted under article 244 of the Criminal Code in 2010.

convictions and sentences allow these pardons to be granted only for a specific offence or charge, shortening the sentence but not consistently ensuring release. Very few of those convicted on terrorism and extremism charges are ever absolutely acquitted.

## 2. Accounting for human rights violations in the context of countering terrorism and violent extremism

47. The Special Rapporteur has unfailingly stressed the need for consistent, transparent and diligent accountability for human rights violations occurring in the context of countering terrorism or (violent) extremism, irrespective of when the violations occurred.

48. During her visit, she had the opportunity to meet with officials, judges, investigators, prosecutors, lawyers and representatives of civil society organizations from the Namangan, Andijan and Fergana Regions. The events that took place in Andijan between 12 and 14 May 2005 and their aftermath were discussed. Government officials cited the counter-terrorism and “extremism” nature of the events, as well as the related criminal and parliamentary proceedings undertaken since then. Civil society representatives emphasized ongoing human rights and accountability lacunae. The Special Rapporteur is encouraged by statements from the Deputy Prosecutor General concerning justice, transparency and reckoning with difficult past events when serious human rights violations are implicated. She recalls the concluding observations made by the Human Rights Committee and the Committee against Torture, in which both Committees stressed the need for full, independent and effective investigations into the mass killings and injuries carried out by members of the military and security services during those events.<sup>34</sup>

49. The Special Rapporteur believes that emblematic cases involving allegation of serious human rights violations have long-term implications for the integrity of and confidence in national justice systems. Counter-terrorism-related emblematic cases are particularly important to resolve precisely because of the pre-eminent role played by security, military and policing bodies. The obligation to prevent the recurrence of human rights violations is only met when justice is not only done but is also seen to be done by particularly affected communities. The Special Rapporteur endorses the recommendation of the Human Rights Committee to carry out an independent, impartial, thorough and effective investigation of the circumstances surrounding the Andijan events in 2005 that is both accountability- and victim-focused. In a spirit of greater openness and engagement with the past, an independent investigation would strengthen the national legal system and be consistent with the international law requirements concerning guarantees of non-recurrence.

## 3. Prisons and places of pretrial detention

50. The Special Rapporteur visited four places of detention and one pretrial detention centre. A proposed visit to Bukhara (Koroul Bazar) was deferred due to an outbreak of COVID-19. A requested visit to Jaslyk prison did not occur, so the Special Rapporteur can neither confirm nor deny whether that prison remains open in practice. She chose not to visit KIN-7 Tavaksay (Tashkent Region), as suggested by the Government. She is heartened by the cooperation that ultimately enabled the visits that did take place. Prisons in Uzbekistan have historically been defined by profound abuse by the penitentiary service; poor infrastructure and sanitation; allegations of widespread torture and other inhuman and degrading treatment; the spread of preventable diseases such as tuberculosis; concerns about food and water quality; and sustained mental and physical suffering by prisoners.

51. The Special Rapporteur was able to assess that the overall quality of the four detention facilities she visited was adequate. She heard government commitments to improve the general condition of prisons, thereby ensuring consistency with international standards. There was evidence of good practice in the four prisons regarding family access (including family and conjugal visits), medical, dental and psychological services, work opportunities for prisoners and knowledge by the authorities of the rights of prisoners to complain about

<sup>34</sup> See [CCPR/C/UZB/CO/4](#), para. 10; [CCPR/C/UZB/CO/5](#), paras. 16–17; [CAT/C/UZB/CO/4](#), para. 11; and [CAT/C/UZB/CO/5](#), paras. 19–20. See also <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21607&LangID=E>.

harm or ill-treatment, as evidenced by the fact that complaint boxes under the power of the Ombudsman had been installed. Conditions in the prisons visited by the Special Rapporteur appeared to be improving. The upcoming country visit by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment will be critical in assessing developments.

52. Nonetheless, there is room for improvement in the prison system to ensure its full compliance with international human rights standards.<sup>35</sup> The Special Rapporteur has received credible information about human rights violations related to prison conditions overall across the country and to ill-treatment, including inadequate facilities, poor sanitation and food quality and endemic health issues. In one prison the Special Rapporteur visited, there were 80 beds in each dormitory; the bunk beds were narrow and closely aligned. In the newer structures, she saw efforts to meet international standards, but the older facilities were structurally and design-wise non-compliant, particularly with health and space requirements.<sup>36</sup>

53. Sustained expenditures enabling the modernization of aging facilities would assist in prison improvements, particularly by preventing overcrowding and allowing individual prisoners adequate space in their sleeping areas, including to pray. Ongoing training on human rights and the prevention of torture for all prison officers is recommended. Adequate sanitary facilities, particularly appropriate toilets,<sup>37</sup> which in some prisons were quite inadequate, should be provided in all prisons; family visiting rooms should be expanded to accommodate larger families; and all prisoners should in general be able to serve their sentences close to their families. The Special Rapporteur notes that prisons she visited were not equipped to accommodate the needs of prisoners with disabilities, with toilets in particular being egregiously inadequate.<sup>38</sup>

54. The Special Rapporteur recalls that, according to international law, there should be no discrimination in detention settings and that the religious beliefs and moral precepts of prisoners must be respected.<sup>39</sup> She recommends loosening restrictions on keeping personal prayer books and religious materials for prisoners of faith, demonstrating acceptance for greater religious expression in prisons and processing administrative tasks more efficiently to enable families to visit prisoners. To strengthen prevention of torture in prisons, medical personnel<sup>40</sup> should receive human rights training and uphold their own ethical medical standards. Prison files should include information on any visible injuries and complaints about prior ill-treatment made by an individual upon admission.<sup>41</sup> Medical staff based in detention facilities should report solely to the Ministry of Health to ensure their independence. Pretrial detention was highlighted by various interlocutors as a context of concern, especially in terms of access by lawyers and family members, specifically for closed cases.

55. The Special Rapporteur expresses deep concern about the length of sentences for certain criminal offences and the practice of extending such sentences<sup>42</sup> for infractions of prison rules, some involving the exercise of religious belief by persons convicted for security or “extremism” offences. She finds that such additional punishments, which can more than

<sup>35</sup> The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules), the Basic Principles for the Treatment of Prisoners, the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the basic principles on the use of restorative justice programmes in criminal matters.

<sup>36</sup> The Nelson Mandela Rules, rule 13.

<sup>37</sup> *Ibid.*, rule 15.

<sup>38</sup> *Ibid.*, rule 5 (2), and the Convention on the Rights of Persons with Disabilities.

<sup>39</sup> The Nelson Mandela Rules, rule 2.

<sup>40</sup> *Ibid.*, rules 24–35, and the Principles of Medical Ethics.

<sup>41</sup> The Nelson Mandela Rules, rule 7 (d).

<sup>42</sup> The following case is of concern: Muminjon Umarov (located in Koson prison), who was convicted under 23 articles of the Criminal Code and was previously held in pretrial incommunicado detention between 2005–2007 (Koroul Bazar).



double initial sentences, are inconsistent with international law, in particular the principles of legality, non-retroactivity, *ne bis in idem* and proportionality.

#### 4. Non-refoulement and refugee, asylum-seeking or other status

56. During her visit, the Special Rapporteur was confronted with the question of the risks faced by nationals of Afghanistan who had fled to or found themselves in Uzbekistan. She understands that approximately 13,000 Afghans have arrived in Uzbekistan since January 2021 with valid short-term visas. She concurs with the Office of the United Nations High Commissioner for Refugees that this group needs international protection and that valid concerns of non-refoulement are raised vis-à-vis the situation in Afghanistan. The Government has stated that these individuals will not be returned to Afghanistan.<sup>43</sup> The Special Rapporteur underscores the need to consistently respect the principle of non-refoulement and grant meaningful temporary stay arrangements to Afghans who cannot return to Afghanistan until the situation in their country changes to the extent that they can voluntarily return in safety or transfer, with appropriate international protection, to third countries. Precise national standards need to be developed and implemented to regularize the situation of this vulnerable group.

57. Uzbekistan remains the only country in the Commonwealth of Independent States that is not a signatory to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. It has not acceded to the 1954 Convention relating to the Status of Stateless Persons either, or to the 1961 Convention on the Reduction of Statelessness.<sup>44</sup> The Special Rapporteur recommends that the Government accede to these four treaties and that it bring national legislation and practices in line with them.

58. The Special Rapporteur is very concerned about the mechanisms regulating cooperation in the fields of national security and terrorism, specifically those providing for the transfer across borders of individuals, such as in the context of extradition.<sup>45</sup> Her concerns follow from the uncertain legal basis for transfers, the lack of adequate judicial guarantees and evidential practices and the lack of adequate human rights protections in legal transfer proceedings. She notes that Uzbekistan has recently acceded to the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (Chisinau Convention) and is a party to the Shanghai Convention on Combating Terrorism, Separatism and Extremism of 2001. She notes that pursuant to the Shanghai Convention the terms “terrorism”, “separatism” and “extremism” are to be interpreted broadly, in direct contradiction with the principle of legality, and States are expected to enact legislation to avoid justification for these offences, a requirement at odds with the requirement that extradition must not be carried out when it violates international law.

59. The Special Rapporteur warns against using international national security cooperation and the use of counter-terrorism to bypass fundamental human rights principles. Given the weaknesses in the definitions of terrorism and “extremism” in Uzbekistan and elsewhere in the region,<sup>46</sup> as well as in the Shanghai Convention, strengthening cross-border cooperation in these areas internationalizes the possibility of individual human rights violations. The Security Council has affirmed that efforts to counter terrorism, including in its cross-border dimensions, must comply with human rights, refugee and international humanitarian law.<sup>47</sup> The Special Rapporteur highlights the very serious implications that such international cooperation could have on the rights to freedom of expression and freedom of religion or belief. She is furthermore gravely concerned that, given the weakness of the judicial system, particularly as regards addressing terrorism and extremism offences, transfers can have serious rule of law consequences, including violations of the prohibition of enforced disappearance, arbitrary detention, torture and ill-treatment, as well as profound fair trial implications. This issue has been concretely addressed by the Working Group on

<sup>43</sup> See <https://www.gazeta.uz/ru/2021/12/19/afghanistan>.

<sup>44</sup> According to UNHCR, Uzbekistan hosts 13 mandate refugees, whose status should be regularized.

<sup>45</sup> [A/HRC/WGEID/123/1](#), para. 164. See also communications UZB 1/2020 and UKR 3/2020.

<sup>46</sup> [A/HRC/43/46/Add.1](#).

<sup>47</sup> See resolutions 1535 (2004), 1456 (2003), 1624 (2005), 2129 (2013), 2170 (2014), 2178 (2014), 2395 (2017) and 2396 (2017).

Enforced or Involuntary Disappearances, which she commends for its recommendations.<sup>48</sup> Any transfer, expulsion, extradition or removal of individuals across borders must include clear procedural safeguards and be carried out under the strict control and authorization of a fully independent and impartial judiciary.<sup>49</sup> To ensure respect for the absolute prohibition of refoulement, prior to any transfer, judges should make a full assessment of the risk of violations of human rights of the suspect following transfer, and transfers should never be authorized where there is a real risk of torture or ill-treatment, of the denial of the right to life, of enforced disappearance, of the denial of the right to a fair trial or of any other serious human rights violations.

## 5. Technology and counter-terrorism and extremism

60. The Special Rapporteur acknowledges the usefulness of technology in countering terrorism and extremism, including through databases and the collection of advance passenger information, passenger name records and biometric data. She emphasizes that, consistent with international human rights law, high-risk technologies must be used in such a way as to protect human rights, including the right to privacy.<sup>50</sup> Data must be protected and independent oversight and monitoring of the agencies engaged in the collection of data for countering terrorism and (violent) extremism, including the State security services, is recommended. United Nations entities and States engaged in capacity-building or technical support, as well as in the transfer of high-risk technologies, must ensure that data and privacy are protected at the national level.

## 6. Reprisals and cooperation

61. During her visit, the Special Rapporteur was made aware of restrictions and challenges faced by independent civil society, including organizations and individuals working on human rights violations, including violations of the right to freedom of religion and belief. She stresses that a healthy, open, critical and engaged civil society is indispensable for preventing and countering violence, violent extremism and terrorism.<sup>51</sup>

62. She reiterates that reprisals or negative consequences for lawyers, civil society members or persons in detention for meeting, speaking or providing relevant information to the Special Rapporteur will not be accepted and constitute acts of intimidation and reprisal for cooperating with the United Nations.<sup>52</sup>

# III. Conclusions and recommendations

63. **The Special Rapporteur had a positive dialogue with the Government of Uzbekistan on all the issues addressed in the present report. She commends the Government for its work on repatriation and reintegration. Since 2016, significant rule of law, economic and social reforms have been initiated by the Government under the leadership of the President.<sup>53</sup> Furthermore, the President and his government have supported the Secretary-General's call to action for human rights.<sup>54</sup> That commitment to human rights and the rule of law now needs to be translated into concrete national reforms aimed at upholding human rights and fundamental freedoms and the dignity of all persons.**

<sup>48</sup> [A/HRC/48/57](#), para. 40.

<sup>49</sup> See <https://www.osce.org/files/f/documents/9/8/24392.pdf>.

<sup>50</sup> See, e.g., [A/HRC/27/37](#).

<sup>51</sup> [A/HRC/40/52](#).

<sup>52</sup> See communication UZB 5/2019.

<sup>53</sup> Statement made by the President at the forty-sixth session of the Human Rights Council.

<sup>54</sup> See

[https://www.un.org/sg/sites/www.un.org.sg/files/atoms/files/The\\_Highest\\_Aspiration\\_A\\_Call\\_To\\_Action\\_For\\_Human\\_Right\\_English.pdf](https://www.un.org/sg/sites/www.un.org.sg/files/atoms/files/The_Highest_Aspiration_A_Call_To_Action_For_Human_Right_English.pdf).

## IV. Recommendations

64. The Special Rapporteur recommends that the Government of Uzbekistan:

(a) Establish a systematic and independent review procedure for cases prosecuted under articles 155, 158, 159, 161 and 244 (1)–(3) of the Criminal Code before 2016 to ensure accountability, redress and reparation to victims of torture, abuse of due process and unfair trials;

(b) Revise and reconsider the legal and statutory basis for offences linked to extremism, terrorism and national security (articles 155, 158, 159, 161 and 244 (1) and (3) of the Criminal Code) to ensure full compliance with international law;

(c) Ensure that investigations of and prosecutions for extremism, terrorism and national security offences are undertaken by the Office of the Prosecutor General and in compliance with the Guidelines on the Role of Prosecutors;

(d) Develop and implement concrete human rights benchmarking and practice in the national strategy against money-laundering and the financing of terrorism. Review its frameworks for countering the financing of terrorism to ensure compliance with the International Convention for the Suppression of the Financing of Terrorism, Security Council resolution 2462 (2019) and the interpretative note to recommendation 8 of the of the Nine Special Recommendations on Terrorist Financing of the Financial Action Task Force, which confirm that any measures regulating terrorism financing must be implemented in a manner consistent with international law, including human rights and humanitarian law;

(e) Accede to the 1951 Refugee Convention and its 1967 Protocol, the 1954 Convention on the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, and bring national legislation and practices into line with these international standards;

(f) Establish and implement clear and precise national standards to regularize the situation of vulnerable nationals of Afghanistan currently in Uzbekistan who cannot be returned on the basis of non-refoulement;

(g) Establish an independent oversight and monitoring mechanism for the agencies engaged in counter-terrorism and (violent) extremism, including to oversee data collection;

(h) Ensure that any transfers, expulsions, extraditions or removals of individuals across its borders are carried out in compliance with clear procedural safeguards, in line with international law and under the strict control and authorization of a fully independent and impartial judiciary;

(i) Ratify the International Convention for the Protection of All Persons from Enforced Disappearance without delay;

(j) Make sustained expenditures enabling the modernization of aging prison facilities so that they are fully compliant with human rights norms and, in particular, to prevent overcrowding, to allow prisoners adequate space in their sleeping areas, including to pray, and to provide adequate sanitation facilities, including for prisoners with disabilities;

(k) Ensure that medical personnel in prisons report solely and directly to the Ministry of Health;

(l) Ensure that prison staff receive regular human rights and torture prevention training;

(m) Ensure an independent, impartial, thorough and effective investigation of the circumstances surrounding the Andijan events in 2005;

(n) Ensure ongoing cooperation with UNICEF and OHCHR to ensure the long-term success of repatriation efforts, and establish without delay a human rights monitoring and evaluation mechanism to assess past and ongoing repatriation efforts.