

Open letter in view of the 6th EU-Uzbekistan co-operation council 1st of February 2005

On the occasion of the EU-Uzbekistan Co-operation council meeting to be held on the 1st of February 2005, the OMCT (World Organisation against Torture) and the FIDH (International Federation for Human Rights) would like to share their concerns about the situation of human rights in Uzbekistan.

Recalling that the EU-Uzbekistan Partnership and Co-operation Agreement (PCA) is based on the respect for democracy and human rights that "constitute essential elements of partnership and of this Agreement" ¹, and in particular Art. 68 stating that "The Parties shall co-operate on all questions relevant to the establishment or reinforcement of democratic institutions, [...] and the protection of human rights and fundamental freedoms according to international law and OSCE principles. [...]",

Recalling art.1 of the PCA that lists among the objectives of this Agreement "to assist in the construction of a civil society in Uzbekistan based upon the rule of law",

Recalling that the previous meeting of the EU-Uzbekistan Co-operation Council "agreed to take stock of progress of implementation of the PCA by the time of the next meeting" ²,

Recalling the EU declaration on the recent Uzbek elections in which it "regrets that these fell significantly short of OSCE commitments and other international standards for democratic elections, notwithstanding some minor improvement since the 1999 elections" ³,

Recalling that the fight against torture and the protection of human rights defenders are fully part of the EU external policy and in particular of the political dialogue between the EU and third countries, as restated in the EU Guidelines on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and those on Human Rights Defenders

Recalling that death penalty is still a reality in Uzbekistan, performed by shooting, and that according to Legal Aid Society (LAS), the application of death penalty is contrary to the Uzbek Constitution ⁴.

¹ Article 2 of the 1996 Partnership and Co-operation Agreement between the EU and Uzbekistan

² see Press Release 557/04 dated 27 January 2004

³ see Press Release 5204/1/05 REV1 dated 11 January 2005

⁴ LAS is member and the main partner of OMCT and FIDH in Uzbekistan. Its lawyers consider that the Constitution *de jure* prohibits death penalty while the Criminal Code *de facto* authorises death punishment for the following two criminal offences: murder with aggravated circumstances (Art. 97(2) of Criminal Code), terrorism (Art. 155(3) of Criminal Code)

Despite some minor progress such as the invitation to the Special Rapporteur on torture to visit the country (November 2002), and the registering of two independent human rights organisations, in March 2002 and March 2003 respectively⁵, OMCT and FIDH consider that Uzbekistan's human rights record continues to fall well below acceptable standards: opposition parties are denied registration and their members face harassment and sometimes arrest, there is increasing pressure on NGOs and civil society generally; freedom of expression remains extremely limited and the practice of torture is widespread.

Restrictive legislation undermining freedom of association and expression as well as human rights defenders' freedom of action

Despite the removal of formal censorship, newspapers and broadcasting remain almost exclusively under state control. In February 2004 the definition of crime of treason stated in article 157 of the Criminal Code was extended to the dissemination of secret information to organisations, thus opening the door for repressive measures and criminalisation of HR NGOs and defenders in contact with international NGOs or bodies.

As already highlighted by the Observatory for the Protection of Human Rights Defenders (an FIDH-OMCT joint programme), the legal requirements for registration operate as a restriction on the activities of NGOs, and new restrictive measures were taken by the Uzbek government in the year 2004 in order to keep a tight control over activities of foreign and local NGOs operating in Uzbekistan and of human rights defenders (HRDs) acting through NGOs:

- a December 2003 decree requested international NGOs operating in Uzbekistan to re-register with the Ministry of Justice and the Ministry of Foreign Affairs; as a consequence the Open Society Institute section based in Tashkent was shut down on April 14, 2004 and the accreditation for 2004 for the independent media Institute for War and Peace Reporting (IWPR) was refused⁶
- by decree No 56 (February 2004) all funds that NGOs receive from international donors are to be transferred to the National Bank or to Asaka bank, and NGOs' access to these funds is depending on permission by the government⁷
- a decree, effective since May 27, 2004, imposes re-registration of all Women NGOs with the Women's Committee, a governmental body, but without stipulating the criteria determining a "Women NGO"⁸
- a resolution of the Cabinet of Ministers N°275, adopted on June 11, 2004, requires all NGOs to obtain licenses from the authorities for the printing of any publications and brochures

Many of these restrictive measures were justified on the basis of the "global war on terror". In practice, this increases the regular persecution against HRDs and ordinary people who speak out against local or central authorities.

Indeed, regular cases of intimidation and harassment, including violent dispersal of peaceful demonstrations as well as false charges against defenders are reported, such as against the peaceful demonstration organised in November 2004 by the Human Rights Society of Uzbekistan (HRSU), and during which members of the association were threatened and beaten⁹, in particular its President Mr. Tolib Yakubov¹⁰. A peaceful demonstration of farmers in Djizak was similarly repressed in October 2004¹¹.

⁵ These are 'Ezgulik' and the *Independent Human Rights Organisation of Uzbekistan*

⁶ see Observatory Open Letter to the Uzbek authorities, 26.05.04

⁷ see Observatory Open Letter to the Uzbek authorities, 13.08.04

⁸ Idem

⁹ see Observatory Open letter to the Uzbek authorities, 28.10.2004

¹⁰ see Observatory Urgent appeal UZB 001/1204/OBS 092

¹¹ see Observatory Open letter to the Uzbek authorities, 28/10/2004

Widespread practice of torture

Systematic torture practices in Uzbekistan are probably one of the most serious human rights violations in Uzbekistan. Despite severe international criticisms to the Uzbek government on this issue, the situation has not improved at all, on the contrary.

In November 2002, the U.N. Special Rapporteur on Torture, Mr. Theo Van Boven, visited the country and concluded in his report that "torture or similar ill-treatment is systematic". The Government initially informed Mr. Theo Van Boven that it had investigated all cases in his report and could not confirm any of the allegations. At this date, barely any of the 22 recommendations of the UN Special Rapporteur on Torture has been fully implemented¹². Despite political promises and programs for the resolution of this problem, the government has done almost nothing but jailed few low ranked police officers. The National program against torture has had little impact on the reality of the criminal justice system and was limited to seminars and official meeting scheduled for the year 2004. No visible progress or public censure in the mass media can be registered as well.

A recently introduced Art. 235¹³ of the Uzbek Criminal Code contains a definition of torture and other cruel, inhuman or degrading treatment and provides for criminal sanctions against perpetrators from three up to eight years of imprisonment. Nevertheless, this article refers to "illegal psychological or physical pressure", and the clarification made by the Supreme Court of Uzbekistan to interpret this article in accordance with the spirit and meaning of Art.1 of the Convention Against Torture (CAT) is not satisfactory enough, as in practice neither law enforcement agencies nor other state agencies follow this requirement.

According to the information of Legal Aid Society (LAS), torture is reported to be used at all stages of criminal procedure starting from first moments of detention, police interrogations, prisons, etc. but in particular during the 72 hours pre-trial detention period, during which prisoners are usually kept incommunicado. The vast majority of cases are "ordinary people" from economically disadvantaged or marginalised/targeted groups (such as alleged members of Muslim movements)¹⁴.

Important structural factors that favour the practice of torture are the fact that the Ministry of Internal Affairs (MVD) is responsible for both investigations and detentions, as MVD officials are responsible for carrying out investigations of most of the cases as well as of detaining suspects and convicted. This gives them the opportunity to prevent any investigations on allegations of torture, thus creating a climate of impunity. The second factor is the lack of an adequate control of the legality of detentions by a legal authority within a short period after detention.

Despite a legislation that provides for a framework for detention conditions, in practice they still fall far from minimum standards¹⁵, and deaths in custody continue to be reported¹⁶, the exact number being difficult to evaluate due to the lack of recording by the Uzbek authorities, intimidation against victims' families, as well as lack of independent forensic medical examination.

Last but not least, the Uzbek legislation does not provide with any protection against refoulement of asylum-seekers or refugees toward countries where they risk to be submitted to torture or ill-treatment. Indeed, "The Republic of Uzbekistan remains the only country in the CIS which has not ratified any international refugee instrument, adopted any national legislation or established any administrative asylum procedure."¹⁷

¹² in a press release dated 13.04.2004, the UN Special Rapporteur on Torture "deplore[d] Uzbekistan's lack of co-operation", see Press Release HR/CN/1103

¹³ Law on Amendments into Certain Legislative Acts of the Republic of Uzbekistan dated 30 August 2003 and approved by the Parliament on 1st of November 2003.

¹⁴ see in annex the compilation of OMCT urgent appeals on Uzbekistan

¹⁵ see for example OMCT Urgent appeal UZB 310703.VAW (VIOLENCE AGAINST WOMEN)

¹⁶ See for example OMCT Urgent appeal UZB 020603

¹⁷ COUNTRY OPERATIONS PLAN, Executive Committee Summary, Country: Uzbekistan, Planning Year: 2005.
<http://www.unhcr.org/>, consulted on December 10th 2004.

Lack of independence of the judiciary and access to fair trial

The executive power visibly dominates the judiciary. Indeed the Uzbek President appoints and dismisses judges from the regional, district and city courts of law, and also selects and dismisses the provincial governors. Moreover, corruption is also widespread among lawyers, judges and prosecutors, linked to the lack of political independence and low salaries.

The existing non-judiciary mechanisms for the protection of human rights, such as the Ombudsman and the National Centre on Human Rights are neither independent at all: the Ombudsman is under control of the executive power and the National Centre is a purely governmental agency, whose main activities are the drafting of reports to international organisations on behalf of the government and other declarative issues in the area of human rights¹⁸.

Access to legal counsel/lawyer is guaranteed by the Uzbek legislation. However, in practice these provisions are not respected, and law enforcement personnel employ all means at their disposal to deny persons in detention access to a lawyer while trying to gather evidence for prosecution through various unlawful methods, including torture¹⁹.

Last but not least, the Uzbek legislation and case law provide that judges should rule out any evidence obtained by means of torture²⁰. In practice, judges regularly ignore complaints of torture and continue to use evidences obtained under torture as a basis for convictions²¹. Obtaining redress and reparation in cases of torture is almost impossible. Courts decline the absolute majority of petitions for initiating a criminal case submitted by the defence against state officials who use such methods. Only in exceptional circumstances criminal cases are filed and, as a rule, those responsible get very light, purely symbolical, punishment²².

In light of art.68 of the EU-Uzbekistan Agreement as well as the EU Guidelines on Torture, on Death Penalty and on Human Rights Defenders, OMCT and FIDH ask the EU to raise in details during this meeting the above-mentioned issues and to urge the Uzbek authorities to:

- seriously consider to amend their Criminal Code in order to abolish death penalty, and as a first step immediately adopt a moratorium on its application
- ensure protection of HRDs against any violence, threats or other forms of harassment by public or private actors, and withdraw all measures that restrict HRDs and NGOs' freedom of action, ensuring the existence and effective operation of civil society groups
- amend the recently adopted regulations that are restricting freedom of association in Uzbekistan, in a way that complies with the 1998 UN Declaration on Human Rights Defenders
- take all necessary measures to ensure the independence of the judiciary both in law and in practice, in conformity with the international standards (in particular the Basic Principles on the Independence of the Judiciary), among others by transferring the power to nominate judges to the Parliament, introducing life-time term for judges, providing reasonable wages and the necessary logistic support to judges and ensuring access to independent and qualified free legal assistance whenever needed

¹⁸ US department, Country Report on Human Rights Practices 2003

¹⁹ see most of the OMCT and Observatory communications in annex

²⁰ article 95 of Criminal Procedural Code prohibits to use evidences obtained by illegal means, and a resolution of the Supreme Court states that evidences obtained through human rights violations, including torture, does not have legal value and must not be considered

²¹ See for example recent OMCT Urgent appeal UZB 100904-1 dated 13.01.2005

²² see for example the case of Agzam Sharipov, a minor who lost his leg as a result of torture. Law enforcement officer responsible for torture was subjected to 10 years sentence. However, the police officer is on search and has not been arrested up to date

- ensure the right to a fair trial and public hearing by competent, independent and impartial tribunals and guarantee the respect of procedural rights immediately after arrest and during all stages of detention, in accordance with international standards
- establish a fully independent complaints mechanism outside the procuracy for the persons held in custody
- establish a specific criminal procedure law to deal with minors in accordance with international standards as well as separate juvenile courts
- amend article 235 of the Criminal Code in order to include a definition of the crime of torture that is fully consistent with article 1 of the CAT
- ensure prompt, thorough and impartial investigations in all cases of allegations of torture and the prosecution and punishment, as appropriate, of the persons responsible by independent bodies, and guarantee in practice that no evidence obtained under torture be used in court cases
- implement the UN recommendations related to torture and ill-treatments, and in particular the 2001 CAT recommendations and those of the Special Rapporteur on Torture in 2002, and in particular:
 - ensure in legislation and in practice that conditions of detention are appropriate according to international standards, consider independent monitoring of detention places and ensure to detainees access to medical examination and family visits
 - consider the transfer of the prison system from the Ministry of Internal Affairs to the Ministry of Justice
 - ensure in the legislation and in practice that no one will be expelled, returned or extradited to a State where there are substantial grounds for believing that he/she would be in danger of being subject to torture, ill-treatment or death penalty
 - provide adequate redress for victims of torture
- sign and ratify the Optional Protocol to the CAT and make the relevant declarations under art.21 & 22 of the CAT
- invite the Special Representative of the Secretary General of the United Nations on Human Rights Defenders and the UN Independent Expert on the independence of judges and lawyers to visit Uzbekistan, as requested

OMCT and FIDH consider that the 6th EU-Uzbekistan Co-operation Council, when evaluating progress in implementation of the PCA, should conclude that there was no substantial improvement of the human rights situation in Uzbekistan and that further steps should be taken as a consequence. In particular, OMCT and FIDH suggest that the 2 parties seriously consider the creation of a human rights subcommittee or Experts meetings that will advice the Co-operation Council on this issue, as foreseen in art. 6 & 81 of the PCA. Such formal or informal group should work in close co-operation with international and Uzbek human rights NGOs.

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