



Benchmarks, Consultations and Transparency Making the EU Central Asia Strategy an Effective Tool for Human Rights Improvements

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Human Rights Watch welcomes the European Union's adoption of a comprehensive Central Asia strategy in June 2007. The strategy advances a range of ambitious goals for deepening EU engagement in Central Asia and promoting stability and security, and articulates the EU's interest in sharing "experience and expertise" in a number of areas. These include "good governance, the rule of law, human rights, democratization, education and training." Human Rights Watch is convinced that the strategy carries significant potential to be an effective tool for the advancement of human rights in the countries of Central Asia.

Human Rights Watch believes that benchmarking, consultations, and transparency in implementation are of utmost importance in order for the strategy to realize its full potential impact on human rights. This paper explains why such elements are crucial, provides a brief summary of human rights concerns in each Central Asian country and suggests key actions and benchmarks we hope to see the EU advance as part of its engagement with these countries.

Benchmarking, Consultations and Transparency in Implementation

It is imperative that as the EU implements its Central Asia strategy, it must set out priority areas in human rights in the form of specific benchmarks articulated for each Central Asian country, and clearly link advancement in the relationship, including possible future benefits, to the achievement of these benchmarks. Goals and criteria in the human rights aspect of the strategy will give it a clear direction and enhance its potential to achieve concrete, positive results.

Formulating goals and criteria for human rights progress in the Central Asia strategy would be consistent with EU practices elsewhere and those of other European institutions.¹ For example, while recognizing that there are clear differences between the Central Asia strategy and the European Neighbourhood Policy, the latter's Action Plans, which incorporated among other things, specific human rights objectives, could be a useful model for implementation of the Central Asia strategy. Furthermore, the European Parliament resolution of 20 February 2008 on an EU Strategy for Central Asia calls "for the definition of clear objectives and priorities for the EU's relations with each of the five countries" and "for the differentiation in the EU's policy regarding its approach to the countries of the region to be based in particular on the human rights situation in each country, their government's respect for OSCE commitments, their development needs and their government's commitments to improving the welfare of citizens."

Raising human rights at the political level and establishing goals and benchmarks in human rights may not always be easy but it does not, as some in the EU have suggested, set back the EU's relationships with Central Asian governments, risking to turn them "unproductive." In the case of Uzbekistan, for example, the release and amnesty of a number of human rights defenders in early February 2008 proves that a principled stand by the EU can affect human rights positively and shows that sustained international pressure on Tashkent is effective. In the case of Turkmenistan, several of the reform promises made by President Gurbanguly Berdymukhamedov directly address the human rights benchmarks established by the European Parliament for entering into an interim trade agreement with Turkmenistan.

Some argue that setting criteria or benchmarks with Central Asian governments will isolate them or further drive them into partnerships with Russia and China. This is an overly simplistic view. Central Asian governments want and need EU engagement. They are wise enough to have a balanced foreign policy and to balance their

¹ For example, EU guidelines on human rights dialogues call for the establishment of benchmarks, and criteria for measuring the progress toward meeting such benchmarks. With regard to Turkmenistan and Uzbekistan the European Bank for Reconstruction and Development (EBRD) has set human rights (and other) benchmarks that these respective governments need to meet in order to qualify for public sector investment.

partnerships, which are predicated on a wide variety of interests. Some countries, such as Tajikistan and Kyrgyzstan are donor dependent and need EU financial support, directly and through international financial institutions. Others seek EU support for broader political aims, such as Kazakhstan during its bid to assume the chairmanship of the OSCE. It is particularly unfortunate that the EU did not fully capitalize on the significant opportunity provided by this bid to publicly articulate the specific steps it expected Astana to take in order to qualify as a deserving chair. More important, incorporating benchmarks and making clear that human rights principles feature prominently in the EU's strategy will demonstrate to governments and citizens in Central Asia that the EU is serious about promoting universal values as a core element of its foreign policy. It will help counter cynicism that EU interests in the region are solely about energy and counterterrorism. It will make clear that the EU has an interest in people's lives.

Human Rights Watch fully supports the EU's efforts to establish structured, results-oriented human rights dialogues with Central Asian governments. But the establishment of such a structured human rights dialogue must not result in human rights concerns being raised only in that forum. We believe that the best way to ensure that these dialogues achieve concrete results is for the EU to follow its own guidelines by mainstreaming human rights issues in all aspects of its relationships with Central Asian states, especially in interactions at the highest levels.² A regular dialogue at the working level with sustained follow-up and reinforcement, including at the top political level, will demonstrate the EU's and Central Asian states' genuine commitment to the improvement of human rights and the rule of law.

During the process of implementation of the Central Asia strategy, the EU should ensure continuous consultation with civil society, in particular with groups in the countries concerned, as well as with the European Parliament and national parliaments. It would be especially important to ensure that the views of civil society are well-reflected in the one-year review of the strategy in June 2008.

² The EU Council acknowledged this in its 2001 European Union guidelines on Human rights dialogues, which states in point 12: "The European Union will ensure that the issue of human rights, democracy and the rule of law is incorporated into all meetings and discussions it has with third countries, at every level, including political dialogue," http://www.consilium.europa.eu/uedocs/cmsUpload/14469EN_HR.pdf (accessed April 2, 2008).

As reflected in the Central Asia strategy “a developed and active civil society and independent media are vital for the development of a pluralistic society.” Similarly, support for civil society and NGOs is essential to promoting human rights and good governance. But that alone will not be sufficient in countries whose governments continue to hamper civil society, in some cases making it nearly impossible for NGOs to operate. This could have a subsequent negative effect on the EU focus on education and training in cases where NGOs involved in such activities are vulnerable to government attack.

Furthermore, the EU should provide timely and regular information on the achievements of its Central Asia strategy beyond the first year in a transparent way and clarify how such transparency is envisaged, be it through periodic roundtables that include civil society, public reporting, and the like. It should also be open about any challenges encountered in the course of the strategy implementation.

Concrete actions and benchmarks to promote human rights in Central Asia

The Central Asian governments’ human rights records vary. For each country, the EU strategy should set out clear actions to be taken, with benchmarks to measure progress that reflects each country’s unique situation. A set of possible actions and benchmarks, which is by no means comprehensive, is suggested below. The EU should consult with civil society actors of each country to solicit views about criteria and benchmarks, with a view to incorporating them into the strategy.

Kazakhstan

The Kazakh government benefits from comparisons to more repressive Central Asian governments but has shown a disappointing lack of commitment to human rights reform. It has undertaken a number of important steps such as the ratification of the International Covenant on Civil and Political Rights (ICCPR) in 2006, signing the Optional Protocol to ICCPR and the Optional Protocol to CAT in 2007 and some criminal justice reform. But, like several other governments in the region, the Kazakh government has yet to hold a national election that meets international standards. President Nazarbaev’s reelection in December 2005 was no exception and the OSCE’s Office for Democratic Institutions and Human Rights (ODIHR) stated that the August 2007 parliamentary elections “did not meet a number of OSCE

commitments, in particular with regard to elements of the legal framework and to the vote count and tabulation” and “interrupted an ongoing dialogue on election legislation.” In the course of the last years, the government has further tightened control over independent media, interfered with the political opposition (among other things, by refusing to register a major opposition party), and initiated politically motivated lawsuits against its critics.

Kazakhstan’s scheduled chairmanship of the OSCE in 2010 raises the stakes for human rights reform. In December 2007, at the annual OSCE Ministerial Council in Madrid, Marat Tazhin, Kazakhstan’s Minister of Foreign Affairs pledged that Kazakhstan would take several reform steps prior to taking the chairmanship. These included amending Kazakhstan’s media law, reforming the law on elections, and liberalizing the registration requirements for political parties by the end of 2008. Kazakhstan also agreed to incorporate recommendations by ODIHR in the election legislation.

Yet, four months after Minister Tazhin’s statement the situation looks rather troubling: while a working group was formed to reform the election legislation it was made clear they were not allowed to reverse the May 2007 amendments to the constitution that paved the way for President Nursultan Nazarbaev to run for an unlimited number of terms,³ nor was the group allowed to amend other laws related to the election law. The group was allowed to amend no more than 50 per cent of the existing laws and not allowed to draft new ones. In February 2008 the Ministry of Culture and Information declined for the second time the draft media law compiled by a working group including civil society representatives. A notable aspect of the draft was its proposal to liberalize the registration procedures for media outlets. In so far as liberalizing the registration requirements for political parties is a priority,

³ These amendments included problematic changes such as removing the two-term limit for the first President of Kazakhstan, the right of the president (as head of the political party which participates in the elections under a proportional representation system) to appoint the chairman and two members of the Central Election Commission; the right of the president to dissolve the Majilis (Lower Chamber of the Parliament) or the whole parliament on the grounds he defines himself; the right of the president to appoint 15 out of 47 members of the Senate (the Upper Chamber of the Parliament) and to fire them; increasing the number of Senate deputies appointed by the President from seven to fifteen, and introducing a requirement that deputies of Parliament must have been permanently resident in Kazakhstan for the last ten years.

the opposition party Alga has been awaiting approval of its registration since November 2006.

In addition, after Kazakhstan won the OSCE chairmanship last December, the work of local civil society groups that press for reform became more difficult. On the one hand, the government has established a number of human rights-related working groups, including one to draft a National Plan on Human Rights 2008-2011. But on the other, the government appears more prone to deflect or even ignore criticism. According to local human rights groups the government continues to push for amendments to national legislation that contradict international human rights principles, such as amendments to the Criminal Code penalizing self-mutilation or introducing lifetime imprisonment for drug crimes and parliament is adopting these amendments without any further discussion. Local NGOs believe that by giving the chairmanship to Kazakhstan the international community confirmed “that everything is right in the country.”

Regrettably, to date the EU has not used the lever of Kazakhstan’s chairmanship bid to push for concrete progress in human rights. It can still make up for lost time and hold Kazakhstan to its public pledges to institute reforms. In doing so the EU would be helping the pro-reform forces within Kazakhstan and protecting the integrity of the OSCE.

Actions required of the Kazakh government/ benchmarks to measure progress:

- Fulfillment of all promises made by Minister Tazhin in Madrid in December 2007;
- Review of legislation on freedom of expression and assembly, with a view to repealing criminal penalties for libel;
- Review of legislation on political parties with a view to liberalizing the registration regime;
- Efficient, transparent and fair registration of opposition parties and of political movements without undue delays or arbitrary or discriminatory restrictions or obstacles;
- Implementation of OSCE recommendations on elections;
- Implementation of OSCE recommendations on the conduct of trials, including investigation of all allegations of torture.

Kyrgyzstan

President Bakiev came to power on the promise of reform but the government under his leadership has failed to develop any meaningful human rights policy and largely abandoned any democratic reform agenda. Several events in the past two years illustrate this: the rise in politically motivated prosecutions of civil society and opposition activists, and the murder of an independent journalist.

In the past Kyrgyzstan distinguished itself from its neighbors in Central Asia for the vibrancy of its civil society and the openness of its political system, but today pluralism is increasingly at risk in Kyrgyzstan. The OSCE/ODIHR called the December 2007 parliamentary election a “missed opportunity” that “failed to meet a number of OSCE commitments.” As a result of the flawed election, the presidential party dominates the parliament (71 of 90 seats). To date, the Central Electoral Commission has not published the official election results.

In November 2007 the Bishkek City Council adopted an ordinance that restricts public gatherings in the capital which undermines the right to freedom of assembly enshrined in the Constitution of the Kyrgyz Republic and in international law. One month later, the ordinance led to the arbitrary arrest of about two dozen protesters in Bishkek who were holding small, peaceful demonstrations. The protesters were youth political activists and human rights defenders participating in the “la ne veryu” (I don’t believe) campaign, which protested the Central Election Commissions decision upholding the results of the December 16 parliamentary election.

Torture and ill-treatment of detainees remains widespread in Kyrgyzstan and a priority for many of Kyrgyzstan’s human rights organizations. The EU and OSCE have devoted significant resources to a police reform program; while the current phase of this program includes training on human rights, the pervasiveness of torture and ill-treatment and other rights violations in the Kyrgyz criminal justice system warrants expanding the emphasis on human rights in this program as well as more EU political engagement on this issue. The need to fully investigate torture was a key recommendation of a recent report by ODIHR, based on two years of trial monitoring in Kyrgyzstan. The report urged numerous reforms to improve due process, such as “strict adherence to legal procedures contained in Kyrgyzstan’s Criminal Procedure

Code,” and notably made recommendations that emphasized “judges’ and prosecutors’ responsibility to undertake a full and impartial investigation of any allegation of torture made by defendants in court; judges’ and prosecutors’ obligation to exclude all evidence obtained as a result of torture or other duress; and the duty of the state to provide proper legal defense by counsel either appointed or engaged.”⁴

Violence against women in the form of domestic violence and kidnapping of women and girls for forced marriage is on the rise, with no effective government response. This results in human rights violations that not only seriously harm women’s and often children’s, physical integrity and well being, but as a whole degrade the status of women in society and set back social and economic development.

Beginning in 2005, the government has hosted hundreds of Uzbek refugees and asylum seekers and allowed their resettlement to the third safe countries. However, it has also been complicit in the forced return to Uzbekistan of at least nine refugees and asylum seekers; it is unclear what role it played in the disappearance and possible forced return of four additional asylum seekers. In 2007 Kyrgyzstan returned at least one Uzbek citizen who had an established fear of being persecuted and tortured in Uzbekistan, and he was not allowed to file asylum claim while in detention. Kyrgyzstan continues to host asylum seekers from Uzbekistan, but does not provide them with the refugee status. Close cooperation between the Kyrgyz and Uzbek security services makes refugees fear for their safety in Kyrgyzstan and possible persecution of their relatives remaining in Uzbekistan.

Actions required of the Kyrgyz government/ benchmarks to measure progress:

- Ensure that the national laws and regulations on public gatherings are in conformity with the Kyrgyzstan’s international human rights obligations on freedom of assembly;
- Stop the harassment and arbitrary detention of civil society activists and journalists;

⁴ OSCE Office for Democratic Institutions and Human Rights/OSCE Centre in Bishkek: “Results of Trial Monitoring in the Kyrgyz Republic 2005-2006.”, p. 9, http://www.osce.org/documents/odihr/2007/12/28701_en.pdf (accessed April 2, 2008).

- Hold accountable those found guilty of ill-treating detainees, and invite the UN Special Rapporteur on torture to visit Kyrgyzstan with a view to developing a set of recommendations to end torture;
- Demonstrate that it is strengthening the judiciary by, for example, implementing OSCE recommendations on the judiciary; implement OSCE recommendations on the conduct of trials, including investigation of all allegations of torture;
- Provide demonstrable evidence that it is enforcing its laws on domestic violence and kidnapping of women and girls for forced marriage; as a first step in this direction, reinstate the position of the Special Representative of the President for Gender Issues and give it adequate authority and mandate to ensure the enforcement of these laws;
- Commit firmly to protecting remaining refugees and asylum seekers from forced return, including by holding accountable officials complicit in the forced return of refugees and asylum seekers and applying national refugee law equally to all asylum seekers.

Tajikistan

Tajikistan's human rights situation is characterized by lack of access to justice, due process violations, incommunicado detention, and ill-treatment in custody. The Tajik legal system does not have a developed legal definition of torture that complies fully with the UN Committee Against Torture's recommendations, issued in November 2006.

Pluralism is at risk in Tajikistan and violations of the right to freedom of opinion and expression and the right to freedom of thought, conscience and religion are a common problem. Last year, following recent trends in the Central Eurasia region, the Tajik parliament adopted a new law on public associations. The law grants the government excessive powers to interfere with and monitor the activities of public associations, including NGOs. Only groups that have representative offices or branches in all provinces are registered as national associations and allowed to carry out activities in the whole country. The activities of local associations are restricted to the district of their registration. The law also required all NGOs and media groups to re-register no later than January 1, 2008, which meant many NGOs had to curtail

actual projects and activities during that period to commit considerable time and resources to the administrative issues related to re-registration.

The government also interferes with opposition political parties. For example, last year the Ministry of Justice made an attempt to suspend the opposition Social Democratic Party (SDP) for six months for allegedly failing to report on its activities and funding sources. The SDP rejected the charges as groundless. The ministry later withdrew its lawsuit, stating that the SDP had “rectified the violations.”

Government harassment of non-traditional religious groups and Muslim groups that are independent of state-controlled religious bodies has intensified. A draft religion law is currently under consideration. If adopted, it would require all religious groups to re-register, subject to conditions that are nearly impossible to meet, for example providing official documentation about the place of residence for every member of the organization for the last ten years, and prohibiting foreigners to chair religious organizations.

Human Rights Watch recommends the following benchmarks for the EU to advance as part of its engagement with Tajikistan:

- Implementation of OSCE recommendations on the conduct of trials, including investigation of all allegations of torture and implementation of CAT recommendations;
- Allowing civil society groups and independent journalist to work without harassment or threats;
- Inclusion from the outset of the drafting process of civil society groups and non-governmental organizations in the drafting of new laws such as the law on religious associations or on the ombudsman.

Turkmenistan

The Turkmen government under President Gurbanguly Berdymukhamedov has begun to reverse some of the most ruinous social policies with regard to health and education, bans on the circus and opera, and the cult of personality that characterized Saparmurad Niazov’s era. There have also been some positive developments in freedom of movement: unofficial lists of people banned from

traveling abroad are reported to have been shortened, a handful of activists and dissidents previously banned from foreign travel were allowed to travel abroad. Several political prisoners have been released. The sheer number of international delegations visiting Turkmenistan in the past two years is one indicator of the strides being taken to bring Turkmenistan out of its self-imposed international isolation.

The import of these measures should not be minimized. But they are more a reflection of the government's utterly abysmal human rights record under Niazov than on the government's future direction in human rights. Altogether Turkmenistan remains one of the most repressive and authoritarian in the world. Its policies and practices are anathema to European values.

In fall 2006, the European Parliament's Trade Committee adopted a number of minimum criteria that would have to be fulfilled before the EU could proceed with an Interim Trade Agreement with Turkmenistan. The criteria include: 1) "allowing the International Committee of the Red Cross to work freely in Turkmenistan;" 2) "realigning the educational system with international standards;" 3) "releasing all political prisoners and prisoners of conscience," 4) "abolishing governmental impediments to travel abroad," and "allowing free access of independent NGOs and permitting the UN human rights bodies to operate freely in the country to monitor such progress." On February 18, 2008, the European Parliament as a whole endorsed these benchmarks.

To date, Turkmenistan remains far from meeting these requirements and no genuine human rights reform has taken place in Turkmenistan during the first year of Berdymukhamedov's presidency. In a report published in November, Human Rights Watch documented the draconian restrictions on freedom of expression, association, movement, religion and belief that remain in place in Turkmenistan. Independent media are not allowed to function inside the country. Journalists cooperating with international media outlets and independent nongovernmental organizations (NGOs) that deal with human rights cannot function properly due to government threats and harassment. Untold numbers of people purged from government and imprisoned on potentially political grounds during the Niazov remain in prison; the whereabouts of some remain unknown. However, Turkmenistan has retained its system of forbidding

travel to certain categories of individuals, and untold numbers of people still cannot travel abroad. Domestic and international organizations, including the International Committee of the Red Cross, still do not have access to the Turkmen prisons.

Local NGO activists continue to report harassment. NGOs are legally banned from carrying out any work unless they are registered, and no independent NGO obtained registration under Berdymukhamedov. From May 2007 through the present, at least six groups from different regions of Turkmenistan—working on such issues as business development, agriculture, and computer training—applied for but were denied registration. The authorities either did not accept the applications or returned them to the applicants citing technical errors. One official made clear to a local activist that while applications for registration might be accepted, NGOs and media outlets should not expect registration anytime soon.

The past year saw a number of international visits to the country, some of which included policy discussions with the government about human rights. But no independent organization has been able to do research on human rights abuses inside the country, and no agency—governmental or nongovernmental—has had access to detention facilities.

Actions required of the Turkmen government and benchmarks to measure progress:

- Fulfill the benchmarks adopted by the European Parliament International Trade Committee in 2006 and endorsed by the Parliament as a whole in February 2008;
- Release political prisoners (as called for by the Council of the European Union in its February 16, 2007 statement);⁵
- Initiate a nation-wide transparent review of political cases of people sentenced under Niazov;
- Grant access for UN special procedures and international human rights organizations;
- Allow people to travel freely outside the country;

⁵ Council of the European Union: “Declaration by the Presidency on behalf of the European Union on the Presidential Elections in Turkmenistan,” February 16, 2007, <http://register.consilium.europa.eu/pdf/en/07/st06/st06371.en07.pdf> (accessed April 2, 2008).

- Stop the harassment of civil society, including independent NGOs, media and religious organizations;
- Allow freedom of expression and information. This should include lifting of all restrictions on independent journalistic activity, including access for and free functioning of foreign journalists in the country;
- Establish a genuinely pluralistic political environment, including registration of alternative political parties, and conditions for future elections to be conducted in accordance with democratic standards as determined by OSCE Copenhagen commitments. Exiled opposition figures should be allowed to return to Turkmenistan and participate in the political life of the country.

Uzbekistan

In Uzbekistan, unprecedented levels of government repression and harassment since the 2005 Andijan massacre have made it almost impossible for local NGOs and human rights groups to function. At least twelve human rights defenders are still in prison on politically motivated charges, as are a number of political dissidents. Yet, as the release and effective amnesty of several human rights defenders in the beginning of February 2008 shows, sustained international pressure and the formulation of concrete benchmarks can trigger positive changes, even in countries such as Uzbekistan.

In December Uzbekistan held presidential elections. The OSCE/ODIHR concluded that the election was held in a “strictly controlled political environment, leaving no room for real opposition.” President Islam Karimov, the incumbent, won the elections notwithstanding different legal interpretations regarding his eligibility to run for a third term in office while the constitution allows for two terms only.

The introduction of habeas corpus and abolishing the death penalty as of January 1, 2008 are important reform steps but to make habeas corpus an effective tool to prevent torture it is necessary to implement a number of other reforms guaranteeing the independence of the judiciary. So far, there is no evidence that the Uzbek government has ended the culture of impunity for torture. It continues to refuse to acknowledge the main conclusion of the UN Special Rapporteur on torture, that “torture or similar ill-treatment is systematic.” The United Nations Committee Against

Torture (CAT), reviewing Uzbekistan in November 2007, found that torture and ill-treatment remain “routine.” The CAT called on the government to “apply a zero-tolerance approach to the continuing problem of torture and to the practice of impunity,” and detailed numerous urgent measures the Uzbek authorities should take to address the concerns identified.

The Uzbek government has adamantly rejected numerous and repeated calls for an independent international inquiry into the May 2005 Andijan massacre when hundreds of unarmed protestors were killed by government forces. The circumstances surrounding the massacre have not been clarified, and those responsible for the killings have not been held accountable.

The government continues to persecute anyone whom it deems to have any connection to or information about the Andijan events. Refugees who fled Uzbekistan in the immediate aftermath of the massacre but later returned to Uzbekistan, as well as their families, have been a particular target of government pressure. They have been subjected to interrogations, constant surveillance, ostracism, and in some cases overt threats to life, which has triggered a new wave of refugees.

The government also continues to hand lengthy prison sentences on religious “extremism” and related charges to individuals whose Islamic affiliations, practices and beliefs are at variance with government-sanctioned Islam.

EU foreign ministers have made clear that the EU expects the Uzbek government to undertake a number of specific steps to address its atrocious human rights record, including but not limited to:

- Releasing imprisoned defenders and ceasing their harassment;
- Allowing human rights groups to operate unfettered;
- Allowing access by relevant international bodies to prisoners, and;
- Engaging effectively with the UN Special Rapporteurs, including granting them access to the country.

Human Rights Watch endorses these benchmarks, and urges the EU to redouble efforts to ensure they are met. We also recommend the following additional benchmarks for Uzbekistan, to be pursued as part of the overall relationship between the EU and Uzbekistan:

- In addition to unconditionally releasing all remaining wrongfully imprisoned human rights defenders, create genuine space for human rights work and civil society operation more broadly—including by ending harassment of civil society and showing demonstrable evidence over a sustained period of time of such harassment having ceased, registering independent NGOs and allowing NGOs and independent media outlets, both national and international, that have had to close down due to government pressure to reopen, and issuing visas to staff of international NGOs—such space being essential if there is to be accountable government, but also necessary if the NGO assistance the EU proposes is to be meaningful;
- Take effective measures to end the use of torture, including by implementing fully the recommendations of the UN Special Rapporteur on torture and the UN Committee Against Torture;
- Decriminalize peaceful religious activity and release people convicted for what amounts to exercising their rights to freedom of conscience and expression.