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Myths and Reality

An Analysis of the Uzbek Government’s June 30, 2006 Aide-Memoire, “Situation of human rights in Uzbekistan,” responding to UN General Assembly Resolution 60/174 of December 16, 2005

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Introduction

In June 2006, the Uzbek government issued an aide-memoire,¹ prepared in response to a December 2005 UN General Assembly resolution that was critical of Uzbekistan's human rights record. The aide-memoire distorts Uzbek government policies and practices, denies the existence of any human rights problems in the country, and rejects as "unfounded" any concerns expressed by the international community. It illustrates the government's lack of good faith in its dialogue with the international community on human rights issues. Below, Human Rights Watch contrasts a number of the assertions made in the aide-memoire with the findings from our on-the-ground research and monitoring of the human rights situation in the country.

Accountability for the Andijan massacre

Assertion: *"Following the tragic events in Andijan, investigative actions were carried out to identify those involved in the criminal acts and to shed light on the circumstances surrounding the events."*

Sixteen months after the Andijan massacre of May 2005, no one has been held accountable for the killing of hundreds of unarmed people. To this day the circumstances surrounding the massacre have not been clarified. The Uzbek government has adamantly rejected the numerous and repeated calls for an independent international inquiry into the Andijan events and has persisted in its refusal to cooperate with the international community in establishing such a mechanism. As a result, the government has denied justice to the victims of the Andijan killings.

The June 30 aide-memoire confirms the Uzbek government's continued refusal to cooperate with an international inquiry, arguing that it is an "independent and sovereign State and in possession of all the necessary resources to conduct a full-

¹ "Aide-memoire concerning United Nations General Assembly resolution 60/174 of 16 December 2005, entitled 'Situation of human rights in Uzbekistan,'" presented in the form of an annex to a letter dated 26 June 2006 from the Permanent Representative of Uzbekistan to the United Nations addressed to the Secretary-General (A/60/914, June 30, 2006).

scale investigation of the circumstances surrounding the tragic events in Andijan.” In the document the government also criticizes the July 2005 report on Andijan by the UN high commissioner for human rights as failing to “correspond to the real situation” and as being compiled “in violation of the principles of the mandate of the High Commissioner.”

In the fall of 2005, the Uzbek authorities began a series of trials related to the Andijan events. These trials were portrayed by the government as a means of clarifying what had happened in Andijan on May 12-13, 2005, and focused on establishing accountability for the armed uprising and other actions that the government characterizes as crimes against the state or public order. But they did nothing to answer outstanding questions about the scale of and responsibility for the massacre. According to the scarce information that is publicly available, the trials did not seek to clarify which government forces actually shot at unarmed protesters in Bobur Square, Cholpon Prospect, and other nearby locations, and did not attempt to identify who gave the orders for the shootings. Instead, the trials appear largely to have been staged to support the government’s version of events and to provide justification for the crackdown that followed the massacre.

Assertion: “All these legal proceedings respected procedural safeguards and were in strict compliance with international standards and norms of domestic law.”

A comprehensive trial monitoring report on the one trial that the Organization for Security and Co-operation in Europe (OSCE) was able to monitor, published in March 2006, highlighted numerous fair trial rights violations, expressed concern about lack of cooperation by the Uzbek authorities with the OSCE monitors, and recommended that the trial verdicts be set aside and a re-trial be conducted after an independent, international investigation into the Andijan events has been carried out.² The UN high commissioner for human rights likewise issued a statement expressing concern that the trial had been “marred by allegations of irregularities and serious questions remained about its fairness.”

² “Report from the OSCE/ODIHR trial monitoring in Uzbekistan – September/October 2005,” March 3, 2006.

Assertion: “Those involved in the trial included not only numerous victims, civil plaintiffs and witnesses, but also over 100 representatives of foreign and local media, diplomatic missions and international organizations, including ... the Office of the United Nations High Commissioner for Human Rights...”

This statement is partially inaccurate. The Office of the High Commissioner made clear in several public statements that it was unable to monitor the trial due to the Uzbek government’s failure to meet the very basic conditions for monitoring that the office had set.³

Assertion: “Some of the trials of participants in the terrorist acts were closed to the public by decision of the court and pursuant to article 19 of the Criminal Procedure Code of Uzbekistan, which stipulates that the safety of victims, witnesses and other individuals involved in a case must be ensured...”

With the exception of the Supreme Court trial, held from September 20 to November 14, 2005, *all* trials were closed to the public. At no point, to our knowledge, did the government provide specific grounds justifying the necessity of closing these trials. Between November 2005 and July 2006 at least another 287 people were convicted and sentenced to lengthy prison terms in 21 trials—including one trial of Andijan Interior Ministry employees and another involving Andijan prison staff and soldiers. The international community was not informed about the place or the starting date of the trials (neither, at least in some cases, were the relatives), and those international observers who sought access were denied it. In a January 2006 statement to the OSCE Permanent Council, the European Union expressed “grave concern” about the closed nature of the trials and stressed that protection of “state secrets or relatives of victims or witnesses should not exclude international monitoring.”⁴

Assertion: “The actions of the Uzbek law enforcement agencies were not directed against the civilians who had been assembled by the gunmen near a local

³ See for example “UN Human Rights Chief Voices Concern over Convictions in Uzbek Unrest Trial,” UN press release, November 15, 2005, and “Statement of Ms. Louise Arbour, United Nations High Commissioner for Human Rights to the Human Rights Council,” June 23, 2006.

⁴ EU Statement on Uzbekistan to the OSCE Permanent Council No. 588, January 19, 2006.

administration building for use as a human shield, but rather were carried out responsibly and within the bounds of extreme necessity and necessary defence as universally accepted and understood under criminal law.”

Reports by the UN Office of the High Commissioner for Human Rights, by Human Rights Watch, and other organizations, based on dozens of in-depth interviews with eyewitnesses, indicate that Uzbek government forces used excessive force on May 13, 2005, particularly on Cholpon Prospect, resulting in the deaths of hundreds of people.⁵ But the Uzbek government has not, to public knowledge, opened an investigation into the actions of law enforcement agencies to determine whether they used excessive force. In the one trial involving staff of the Andijan department of the Ministry of Interior, the 12 defendants were charged only with crimes related to their alleged failure to prevent acts of terrorism during the night of May 12-13. They were also charged with failing to “conduct radical and necessary measures” to control the situation during the trial of the 23 businessmen that had triggered the Andijan protests. The verdict did not make any mention of the massacre on May 13.

Although the Uzbek parliament has created an independent commission to investigate the Andijan events, to the best of our knowledge it has not made the results of any investigation publicly available in Uzbekistan. To this day the local human rights organization Ezgulik is demanding the publication of the report from the Uzbek parliament.

Silencing critical voices on Andijan

Assertion: “Allegations of arbitrary arrests and detention, including of eyewitnesses to the tragic events in Andijan in May 2005, are unfounded.... Allegations of prevention of the functioning of independent media and the intolerance of any form of dissent expressed therein, and increasing restrictions on freedom of expression,

⁵ See Human Rights Watch, *Bullets Were Falling Like Rain: The Andijan Massacre*, May 13, 2005, vol. 17, no. 5(D), June 2005, <http://hrw.org/reports/2005/uzbekistan0605/>; UN Office of the High Commissioner for Human Rights, *Report of the Mission to Kyrgyzstan by the Office of the High Commissioner for Human Rights (OHCHR) Concerning the Killings in Andijan, Uzbekistan, of 13-14 May 2005*, July 12, 2005, <http://www.ohchr.org/english/press/docs/andijan12072005.pdf> (accessed August 9, 2005); and Organization for Security and Co-operation in Europe, *Preliminary Findings on the Events in Andijan, Uzbekistan, 13 May 2005*, released by the Office for Democratic Institutions and Human Rights, June 20, 2005, http://www1.osce.org/documents/odhr/2005/06/15233_en.pdf (accessed August 9, 2005).

and of harassment, beatings, arrests and threats made against journalists and civil society activists attempting to document and publicize information on the events in Andijan, are unfounded. During the entire period, cases of such treatment have never come before the courts.”

Since the Andijan massacre, the Uzbek government has engaged in a fierce crackdown on human rights defenders, independent journalists and civil society institutions, which has been extensively documented by Human Rights Watch and other organizations. Such individuals who seek to speak out about the Andijan events and highlight the lack of accountability for the crimes committed are the targets of harassment and other forms of retaliation, with many having had to stop their work or flee the country altogether. The fact that these incidents of harassment and persecution have not been brought before the courts is unsurprising, since the government denies that these incidents occur or that they constitute human rights violations, and only further underscores the utter lack of accountability for violations.

Numerous human rights defenders have been detained and have had criminal charges brought against them. Among those imprisoned is Saidjahon Zainabitdinov, the Andijan human rights defender whose bulletins alerted the world to what was happening on May 13 and who is now serving a seven-year prison term. Zainabitdinov's son, Ilhom, was arrested in May 2006 on what appear to be politically motivated charges of theft and forgery. In addition, Mutabar Tojibaeva, a defender serving an eight-year prison sentence for her outspoken criticism of Andijan, was transferred groundlessly to a prison psychiatric ward in June 2006 for 10 days. Dilmurod Mukhiddinov, of the human rights group Ezgulik in Andijan province, was sentenced to five years in prison for distributing a statement by the chairman of the banned political movement Birlik that was critical of the Andijan events.

In 2006, the Uzbek authorities and the Uzbek media greeted the first anniversary of the Andijan events with complete silence. When a group of local human rights defenders gathered to commemorate the victims of the massacre at Tashkent's Monument of Courage,⁶ men in plainclothes attacked them and pulled their posters

⁶ A monument marking the 1966 earthquake that devastated Tashkent.

away. One day later, plainclothes men followed a group of human rights defenders protesting at the Russian embassy in Tashkent and detained one person.

The recent trial of Dadakhon Khasanov, a well known Uzbek songwriter who wrote a song sharply criticizing the government's role in the Andijan massacre, shows that the government has not relented in its efforts to chill dissent. In September 2006 he was convicted on charges of anti-state activities and received a suspended sentence. Five months earlier, in April, Jamal Kutliev, a physician from Bukhara, was sentenced to seven years in prison for possessing two cassettes with Khasanov's songs.

Refugee crisis

Assertion: "The Government of Uzbekistan has not applied pressure to prevent citizens of Uzbekistan with mandated refugee status granted by the Office of the United Nations High Commissioner for Refugees (UNHCR) from travelling to a third country."

The government has claimed it is seeking only the return of wanted criminals to Uzbekistan so that they can face trial. But in fact the Uzbek government has engaged in a campaign to pursue the return of individuals who, fearing persecution, fled Uzbekistan after the violence in Andijan. This campaign has triggered a serious spillover human rights crisis, with a number of individuals already forcibly returned to Uzbekistan and scores of others living in constant fear of being returned to risk of torture and other severe abuses. Several dozen people who fled persecution in Uzbekistan to Ukraine, Kazakhstan, and Kyrgyzstan have been deported to Uzbekistan or kidnapped and brought to Uzbekistan. The government has requested and in some cases secured the extradition of refugees and asylum seekers on grounds that in some cases appear to be politically motivated.

Dozens of Uzbek asylum seekers in Kyrgyzstan appear particularly vulnerable. The Kyrgyz government's decision in August 2006 to return four refugees and one asylum seeker whose extradition Uzbekistan had sought for a year sent a broad signal that the Kyrgyz government could not be relied upon to adhere to its obligations under refugee law. Since June 2006 at least five Uzbek asylum seekers have disappeared from Kyrgyzstan; at least two of them are alleged to have been kidnapped. At least

two of those who disappeared were reportedly held in Uzbek National Security Service custody after their return to Uzbekistan, and it is feared that the other three have also been returned to Uzbekistan.

In addition, Kyrgyz law enforcement agencies have detained a number of asylum seekers as part of what the government calls counterterrorism sweeps, which are believed to be carried out in close consultation with Uzbek security forces. One detained asylum seeker told Human Rights Watch that police threatened to send him back to Uzbekistan, but released him after UNHCR intervened. Other detainees were also released.

Separately, the government has promised numerous refugees who were evacuated in the summer of 2005 from Kyrgyzstan following the Andijan events and resettled in Europe and the United States that they can return home with no fear of persecution. The government's long history of repression, however, leaves ample room to doubt these promises. Some of these refugees have recently returned to Uzbekistan. Human Rights Watch cannot question the desire of these individuals to return to their homeland, their children, and other close family members, many of whom are in prison and have no one else to care for them. Yet we remain concerned that Uzbek authorities may be using a combination of threats and promises to lure resettled refugees to return. For example, an ethnic Uzbek resident in Osh, Kyrgyzstan, told Human Rights Watch that he believed his brother back in Uzbekistan had been forced to call relatives resettled in the United States to tell them that "very big people" would guarantee their safety if they returned home. Prior to that incident, the brother had been summoned by the Uzbek National Security Service. Similar promises are believed to have been made to resettled refugees.

Details about the whereabouts and fate of those returned to Uzbekistan are scarce, but there is every reason to be concerned about their safety and well-being. The Uzbek government has steadfastly denied access by independent monitors to those who have been extradited or kidnapped and subsequently imprisoned. The state-controlled media has published statements by refugees who had resettled in the U.S. and then returned to Uzbekistan that they are happy to be home and are under no

pressure. But in the current repressive climate it is extremely difficult to determine how the government is in fact treating these individuals.

Broader repression

Assertion: “The human rights situation in Uzbekistan has always been in keeping with generally recognized regulations and standards.”

The Uzbek government has a longstanding and well documented record of widespread human rights abuse, of which the May 2005 massacre and its aftermath were acute examples. Even a cursory look at the government’s disastrous and worsening human rights record should suffice to conclude that it lacks any commitment to complying with its basic human rights obligations.

Assertion: “Uzbekistan is pursuing a policy of social partnership to promote the gradual development of civic institutions. As a result, NGOs are rapidly developing, participating in the decision making process and playing an increasing role in the democratization of society.... Since the early days of independence, in Uzbekistan great significance has been attached to the formation of civil society, of which NGOs are a most important component. In Uzbekistan, the activity of NGOs is supported and guaranteed by the State.... Interference by state bodies and officials in the activities of public associations is prohibited.”

In fact the government has made every attempt to close or disrupt the work of numerous local and international nongovernmental organizations and some have had to cease operations as a result. The growing list of international groups that were closed by the authorities in 2006 alone includes Freedom House, the Eurasia Foundation, Counterpart International, ABA/CEELI, Winrock International, and Crosslink Development International.

Also this year, at least 13 human rights defenders have been convicted and imprisoned on politically motivated charges: Saidjahon Zainabitdinov (seven years—see above), Dilmurod Mukhiddinov (five years—see above), four members of Ezgulik (convicted and released on parole), Rasul Khudainazarov (ten years), Mutabar Tojibaeva (eight years), Jamol Kutliev (seven years), Azam Farmonov (nine years),

Alisher Karamatov (nine years), Utkir Pardaev (four years), and Mamarajab Nazarov (three-and-a-half years). In addition, the government closed the Andijan branch of Ezgulik.

In the past 16 months dozens of human rights defenders have fled the country after being subjected to ongoing harassment, threats of arrest, beatings and fear for their personal security. Some examples from 2006 include Tolib Yakubov, chairman of the Human Rights Society of Uzbekistan, who fled after a series of threats, and Rakhmatulla Alibaev, who fled after he was badly beaten by an unknown person. In August, Bakhtior Khamroev, a defender living in Jizzakh, was beaten up in his home by a group of vigilantes—likely to be government proxies—while being visited by a Western diplomat. Most of the human rights defenders who continue to work in Uzbekistan are routinely followed by plainclothes men, videotaped by the authorities, prevented from leaving their flats on certain days (for example to stop them from monitoring a trial), and they and their families are subjected to other forms of harassment. Furthermore, the authorities often deny exit visas to human rights defenders and civil society activists to prevent them from participating in international conferences or other similar events.

Assertion: “In accordance with article 34 of the Constitution of the Republic of Uzbekistan, Uzbek citizens have the right to form political parties. No one may infringe on the rights, freedom, and dignity of persons constituting an opposition minority in political parties, public associations, and mass movements.... In Uzbekistan, there are no artificial obstacles to the registration of political parties.”

Opposition political parties cannot operate freely in Uzbekistan, and there has not been a single election there that the OSCE has found to be free or fair. Opposition parties and movements such as Birlik (Unity), Erk (Liberty), Ozod Dekhkon (Free Peasant Party) and the Sunshine Coalition are denied registration or prevented from holding meetings. In March 2006, Sanjar Umarov and Nodira Khidoiatova, who are Sunshine Coalition leaders, were sentenced to 14 and 10 years in prison, respectively; Umarov’s sentence was later reduced to seven years, while Khidoiatova was conditionally released. Umarov’s lawyer, Vitaly Krasilovsky, was forced to flee the

country after articles in the state-controlled media accused him of supporting terrorists.

Freedom of expression and the right to information

Assertion: “The Government’s information policy aims to ensure proper and full observance of the principles of freedom of speech and the right of citizens to information.”

The government severely restricts free expression and persecutes independent journalists whose work is critical of the authorities. Following the Andijan events, several journalists were harassed and accused by the government of “spreading false information.” The indictment of those tried in the Supreme Court leveled accusations against 13 local and foreign journalists. At least one journalist, Nosir Zokirov, who worked for Radio Free Europe/Radio Liberty, was convicted of insulting a security officer and sentenced to six months’ imprisonment. Other journalists, including Galima Bukharbaeva and Tulkin Karaev, fled the country fearing persecution.

On June 9, 2005, Uzbek authorities pressured BBC Uzbekistan correspondent Monica Whitlock to leave Uzbekistan in retaliation for her work. In October 2005, the BBC suspended its operations in Uzbekistan due to security concerns. On December 13, Radio Free Europe/Radio Liberty closed its office after its staff members were denied re-accreditation.

Many websites providing critical information on Uzbekistan are blocked by the authorities and are not accessible for people in the country, including www.ferghana.ru, www.muslimuzbekistan.org, our own website, www.hrw.org, and others. At the beginning of July 2006 the independent website Tribune informed its readers that it will cease operation.

In late February 2006, the Cabinet of Ministers issued a new law further restricting the work of independent journalists. On May 3, the Committee to Protect Journalists concluded that Uzbekistan is one of the 10 “most censored” countries in the world.

The latest victims of the government's assault on independent journalists are Jamshid Karimov, who went missing on September 12, and Ulugbeg Khaidarov, who was arrested on politically-motivated charges on September 14, 2006. Both are from Jizzakh province. There are serious concerns about their safety and well-being.

Religious persecution

Assertion: "Assertions to the effect that there is a continuing pattern of discrimination, harassment and prosecution in Uzbekistan with regard to the exercise of freedom of thought and religion are unfounded."

Uzbek authorities have continued their unrelenting, multi-year campaign of unlawful arrest, torture, and imprisonment of Muslims who practice their faith outside state controls or who belong to unregistered religious organizations, branding peaceful religious believers as "religious extremists." Dozens have been arrested or convicted in 2006 on charges related to religious "extremism." Human Rights Watch has documented abuses in many of these cases.

Torture

Assertion "Uzbekistan has fully implemented the recommendations contained in the report of the Special Rapporteur on torture..."

This assertion is an outright untruth. Few areas of the Uzbek government's noncompliance with recommendations by international expert bodies are as well documented as that relating to its torture record. As accounted for in detail in the UN special rapporteur on torture's March 2006 report "Follow-up to the recommendations made by the Special Rapporteur,"⁷ there has been no fundamental change in the widespread use of torture or in policies and practices that could effectively combat it. Authorities have persisted in their refusal to acknowledge the main conclusion of the special rapporteur, that "torture or similar ill-treatment is systematic," and have not taken any meaningful steps on most of the special rapporteur's recommendations, including that a clear public statement at the

⁷ "Follow-up to the recommendations made by the Special Rapporteur," presented as an addendum to the special rapporteur's annual report to the UN Commission on Human Rights, March 21, 2006, E/CN.4/2006/6/Add.2.

highest levels be made to condemn torture and declare an end to the culture of impunity, and that legislation providing for and implementing habeas corpus (judicial review of detention) be enacted. The government's 2004 National Action Plan on torture remains a general plan to implement the Convention against Torture rather than one directly linked to the special rapporteur's recommendations. Overall, the actions contained in the plan are vague and linked to unnecessarily attenuated timelines, focusing on roundtables and conferences rather than on implementation of concrete reforms.

The government's failure to engage in meaningful reform in the area of combating torture is, however, perhaps most compellingly evidenced by the continuing serious, credible allegations of torture being perpetrated during investigation and pre-trial custody, as well as in prisons. As recently as June this year UN Special Rapporteur on Torture Manfred Nowak, stated that "the mandate... continues to receive serious allegations of torture by Uzbek law enforcement officials, which are regularly transmitted to the Government for clarifications and urgent action."⁸

Human Rights Watch also continues to receive serious allegations of torture. For example, in two separate trials monitored by Human Rights Watch in the first half of 2006, defendants testified about having been tortured in pre-trial detention. In one, the presiding judge stated in his ruling that he had found no evidence of torture and concluded that the defendants had alleged ill-treatment only to avoid responsibility for their crimes. The judge presiding over the other trial did not mention the torture allegations at all. In both trials, all defendants were found guilty of having established an illegal religious group with the aim of overthrowing the government and establishing an Islamic state.

⁸ Letter from Manfred Nowak, UN special rapporteur on torture, to Human Rights Watch, June 14, 2006.

Cooperation with the international community

Assertion: *“There are no restrictions of any kind in Uzbekistan on visits to the country by diplomats and representatives of the United Nations, OSCE, and other international bodies.”*

The government omits mentioning that no UN special procedures that have requested access to the country have been able to visit, due to the government’s failure to issue the required invitations. Michele Picard, the UN independent expert on Uzbekistan appointed by the Commission on Human Rights under the 1503 procedure, has not been able to carry out a single visit to Uzbekistan. Special procedures that have sought but not received such access include the special rapporteurs on torture, on extrajudicial, summary or arbitrary executions, and on the independence of judges and lawyers, as well as the special representative of the secretary-general on human rights defenders.

The government also omits any mention of its decision of March 17, 2006, to order the closure of the UNHCR office in Tashkent,⁹ presumably in retaliation for the agency’s intensive and laudable efforts to protect Uzbek refugees in a number of countries from forced return to persecution in Uzbekistan.

On June 30, 2006, the OSCE Centre in Tashkent was downgraded to an OSCE Project Coordinator in Uzbekistan after several international staff members were denied accreditation.

Conclusion

In its Andijan trial monitoring report, the OSCE concluded that “[o]nly by being fully open to... scrutiny will Uzbekistan also demonstrate its respect for its partners in the OSCE and the legitimacy of their interest in human rights matters within Uzbekistan.” The Uzbekistan government’s aide-memoire provides a useful tool for assessing the government’s willingness to being open to scrutiny and to engaging in a genuine

⁹ “UNHCR regrets order to leave Uzbekistan,” UNHCR press release, March 20, 2006.

effort to improve its human rights record, but unfortunately the assessment leads only to a conclusion that such willingness is absent. The document is filled with blanket denials at best and untruths at worst. It is hard to imagine how an even vaguely informed reader of the aide-memoire could fail to get the impression that the Uzbek authorities have contempt for the obligations that its international partners stand for.