

***Assets acquired by the ruling elite of Uzbekistan as a result of the corruption scheme in its telecommunications sector should be confiscated and returned to the victims of corruption***

OPEN LETTER OF UZBEK ACTIVISTS TO THE GOVERNMENTS OF BELGIUM, IRELAND, LUXEMBOURG, THE NETHERLANDS, SWEDEN, SWITZERLAND AND THE UNITED STATES OF AMERICA

*We, the undersigned citizens of Uzbekistan, are writing to express our hope that the **cases filed by the U.S. Department of Justice** (No 1:15-cv-05063 of June 29, 2015 and No 1:16-cv-01257-UA of February 19, 2016), to **forfeit the assets** in the total amount of \$850 million resulting from **corrupt dealings in the telecommunications sector in Uzbekistan** will succeed and the European states in whose banks these assets are frozen -- Belgium, Ireland, Luxembourg, Sweden and Switzerland -- will support these cases and take decision in the interests of the victims of corruption. While we have been forced to flee our homeland because of the risk of repression by the Karimov regime, we continue to participate in the public life of our country from exile.*

*We call on you **not to return these assets to the government of Uzbekistan** at this time because the government of Uzbekistan fails to address the issues of systemic corruption that is endemic to this government and fatally undermines the independence and integrity of the executive, legislature and judiciary. After the death of Karimov, government authorities promised to reform the judicial system and adopt anti-corruption legislation, yet there is no reason to believe that the government will end the corruption that keeps it in power. Even during the reign of Karimov, the government adopted many good laws and signed and ratified a number of international conventions on human rights and against corruption. But in practice, the government has not implemented any of its laws or fulfilled its international obligations.*

*We believe that the proceeds from corruption should be used as **redress for the people of Uzbekistan**, truly the victims of state organized corruption. Given the unlikelihood that the Uzbek government would agree to allow really independent disbursement of these funds in the near future, we call for the freezing of these assets into a **transparent trust fund** under international auspices accountable to key stakeholders, including civil society.*

**1. We are against the return of the assets to the government of Uzbekistan**, which is among the most corrupt and repressive in the world. In the annex you'll find the summary describing the governance system and the human rights situation in Uzbekistan in support of this point.

**2.** We also call on you to create a mechanism whereby the aforementioned assets can be used for the benefit of the people from whom they were stolen— **the citizens of the Republic of Uzbekistan**. The loss they have suffered as a result of corruption should be compensated.

The amount subject to confiscation is significant, and would comprise a minimum 7% of the annual budget of the country. We propose to use the assets in question for the following purposes:

- 1) **Fund for Compensation for Victims of Torture.** We can and must consider those who have suffered torture as victims of political and state corruption, since torture serves the authoritarian rulers as a means to shield their shady dealings from public scrutiny and control. Torture is often used against those who criticize government corruption. Torture is also the most odious manifestation of the lawlessness and corruption in the judicial system of the country. We ask that a fund be created to assist torture victims, both those who remain in Uzbekistan as well as those forced to flee the country. Criteria for identifying torture victims can be taken from the published materials of human rights organizations, the UN Human Rights Committee and Committee Against Torture, the UN special procedures, as well as the materials used by the UN High Commission for Refugees and immigration authorities for evaluating asylum claims.
- 2) **Educational and Health Care Programs** for the most vulnerable social groups.
- 3) **Economic Assistance Programs** for impoverished groups such as micro-lending, infrastructure development, and small business services.
- 4) The creation of **Corruption Prevention Mechanisms in Uzbekistan**, that would promote transparency in government finance; reform the judicial system and law enforcement authorities; strengthen the independent legal profession; and establish effective anti-corruption bodies.

The main condition for implementing the charitable programs described above should be the **non-interference** by the Uzbek government in their administration.

A precedent for this already exists—the **Bota Fund**, established by a three-party agreement between the governments of the United States, Switzerland, and Kazakhstan, signed in 2007, and funded by assets from “Kazakhgate” (\$84 million paid to the president of Kazakhstan by a foreign company and seized from Swiss bank accounts). As you know, the fund supported programs to benefit impoverished children and its activities were accountable to its founders, as well as representatives of civil society and the World Bank.

The Bota Fund, in our view, serves as a successful example of the return of ill-gotten gains to benefit the victims of corruption without returning them to the government implicated in bribe taking. The fact that the fund was established with the participation of the government of Kazakhstan but without that government interfering or pressurising the Fund’s operations played a key role in its ultimate success. We hope very much that the government of Uzbekistan will agree to similar conditions for asset repatriation.

The charitable programs we proposed above should be accountable to the governments to which this letter is addressed, namely the governments of Belgium, Ireland, Luxembourg, the Netherlands, Sweden, Switzerland and the United States of America, as well as to the representatives of civil society.

At the same time, we understand that even by comparison with Kazakhstan, Uzbekistan presents an extremely unfavorable and difficult partner for implementing charitable projects like those carried out by the Bota Fund.

There are four main reasons for this:

- 1) If the Bota Fund implemented programs through allocating grants to local nongovernmental organizations (NGOs) that could provide assistance to the population, in Uzbekistan a functioning civil society as such does not exist. The majority of independent NGOs were destroyed between 2004-2007. For the most part, the organizations that are left are completely under the control of the government and their participation in a compensation and assistance project would violate the key principle of noninterference by the government.
- 2) The lack of freedom of expression, press, and association render effective independent monitoring of the activities of charitable projects impossible. The intolerance of, and harsh measures against independent observers would undermine the principles of transparency and accountability of a charitable fund, should one be established in Uzbekistan.
- 3) As noted above, during the period from 2004 to 2007, the government of Uzbekistan forced a range of international organizations out of the country, including Freedom House, The Eurasia Foundation, The Open Society Institute, and others. Human Rights Watch was also forced to close its office in 2011. The presence of these organizations in the country is vital for independent monitoring as well as for their support of domestic civil society. In other words, the successful implementation of the programs outlined above requires a favorable institutional and social operating environment.
- 4) Uzbekistan prohibits free currency exchange. Four different exchange rates exist. There is a significant difference between the official rate and the black market rate, which allows the government to manipulate this difference. Even if the government allows a charitable foundation to operate, it would first have to convert its funds into local currency at the low official rate, meaning the foundation would lose up to 50% of the value in the exchange.

While we acknowledge that a compromise with the Uzbek government regarding the creation of a charitable fund in Uzbekistan is necessary, we support such a compromise only in so far as it would include terms that would:

- Remove or significantly reduce the barriers for freedom of speech, press, assembly, and association.
- Liberalize currency conversion policy in order to preserve the whole value of the assets for charitable programs.
- Allow international nongovernmental organizations, especially those specializing in human rights and the fight against corruption to operate and receive accreditation in Uzbekistan.

**3.** Considering that the government of Uzbekistan is unlikely to agree to these conditions in the near future, the full amount of the assets or the majority should be held in a **trust** that is transparent

and accountable to key stakeholders, including the governments of Belgium, Ireland, Luxembourg, the Netherlands, Sweden, Switzerland and the USA, as well as the Uzbek civil society. Such a trust could be established under the auspices of an international organization with the appropriate mandate, experience, expertise, and impeccable reputation. The trust's assets could be fully unfrozen when Uzbekistan develops the appropriate conditions for using these funds to benefit all citizens and it'll demonstrate political will to accept the Bota Fund like solution.

The governments of Belgium, Ireland, Luxembourg, the Netherlands, Sweden, Switzerland and the United States of America should act in interests of Uzbek victims of corruption. Doing so will also protect western businesses from falling into a trap of shadowy deals with corrupt Uzbek officials – and subsequently facing multi-million penalties for bribery and misleading their shareholders.

Sincerely,

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#### **ANNEX: SUMMARY OF THE GOVERNANCE SYSTEM OF UZBEKISTAN AND THE STATUS OF ITS HUMAN RIGHTS**

**Corruption is systemic and systematic in Uzbekistan.** In recent years, Uzbekistan's ranking in Transparency International's Corruption Perception Index has not risen above 153 of 168 countries. Corruption starts at the very top, as evidenced by the scheme to extract at least \$850 million from telecommunications companies organized by Gulnara Karimova, the elder daughter of the former president.

This corrupt scheme has revealed the depressing reality in the Uzbekistan's communications sector, including the complete lack of an open and transparent tendering process, which leads to the practice of issuing licenses in backroom deals. The state agency responsible for regulating the sector thus issued licenses to offshore companies with no experience running a business, with no reputation or even a staff, and allowed them to resell the licenses to international mobile operators in violation of Uzbek law. Since the corruption scandal of 2012-2014, the situation has not changed. Only Gulnara Karimova's associates, who played rather a technical role in her corrupt schemes and under whose names the offshore companies were held, have faced prosecution, thus being held as scapegoats, while state officials who made decisions that lead to corrupt practices have walked away with impunity.

The situation has not changed under the new authorities. Until now, licenses and frequencies allocation are still being allocated behind the scenes, beyond the law.

Furthermore, after the death of Karimov, the former chairperson of the National Agency for Telecommunications (now the Ministry of Development of Information Technologies and Communications) Abdulla Aripov, who personally authorized the allocation of licenses under the corrupt scheme and was discharged afterwards from his office, has evaded justice, and has now been restored to government posts.

Grand corruption in Uzbekistan is not limited to the telecommunications sector. It permeates other sectors of the economy too, especially the cotton sector, construction, trade and the sphere of currency exchange. Among the most corrupt government institutions are tax authorities, customs, judiciary, prosecutors' offices, police and National Security Service.

The sphere of public finance as whole is completely non-transparent. Even parliament does not know the amount of revenue from major state-controlled exports including cotton, non-ferrous and precious metals, gas, and chemical products. Even more importantly, citizens do not know how these revenues are allocated. Insiders report that these revenues go not to the state budget but to extra budgetary accounts in the Central Bank that are controlled by President and a small circle surrounding him.

The systematic nature of corruption is also apparent in the country's nascent private sector. Without an impartial judiciary and a transparent legal system, the business people can only operate either through clannish connections to government officials or by providing bribes to these officials.

**The human rights situation is appalling, which is an integral part of the political and economic corruption in the country.** According to all evidence, including the State Department's human rights reports and information reviewed by the European Unions' External Action Service, police routinely arrest people on false charges such as drug possession, tax evasion, and other serious offenses. In some instances these fabricated cases are politically motivated; in others, corruption motivated, when criminal prosecution is used as a means of extortion. Law enforcement authorities use intimidation, torture, humiliating and degrading treatment, to extract from detainees false confessions and statements incriminating others.

Based on personal experience and information from our colleagues, we can testify that torture has long been a routine practice by authorities in law enforcement structures and the prison system in Uzbekistan. The only representative of the UN Human Rights Council ever to have been able to visit Uzbekistan is UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment Theo van Boven who, after his visit to the country in 2002, concluded that torture and

other forms of cruel treatment in Uzbekistan are systematic. Since van Boven's visit, no other UN special procedures on human rights have received an invitation to visit the country. In 2008, the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, "stressed that he continued to receive serious allegations of torture by Uzbek law enforcement officials".

Uzbekistan has perhaps the largest state-sponsored forced labor system in the world. It systematically violates national law and conventions of the International Labour Organization that Uzbekistan has signed and ratified and which prohibit forced labor. Every year more than a million citizens are forced against their will and under menace of penalty to harvest cotton every year. This year, the US Department of State lowered Uzbekistan's ranking in the annual Trafficking in Persons report to Tier 3, the lowest ranking for its persistent use of mass forced labor of adults in the cotton harvest.<sup>1</sup> The situation hasn't changed after the death of Karimov. As under the previous regime, Uzbekistan continues to be the country of labor slavery and complete disregard of its own and international laws on human rights.

The government systematically violates civil rights and freedoms, including the rights to freedom of speech, press, assembly, and association. As under Islam Karimov, the real separation of powers is still non-existent, with all the power concentrated in the hands of an authoritarian ruler and his inner circle. The parliament acts as window dressing, rubber stamping legislation and decisions that are prepared by the presidential administration or the Cabinet of Ministers. Although judges are *de jure* independent, *de facto* they are subordinate to the executive branch, especially the heads of local administrations, the police, security services, and prosecutorial authorities, unconditionally carrying out whatever is dictated by the heads of these structures.

The defense bar is under the complete control of the government as represented by the Ministry of Justice and is not able to act on an equal footing with the prosecutor's office in the judicial process in order to protect the rights of defendants.

Intimidation of lawyers is frequent, particularly if they take up sensitive cases or cases that implicate the executive branch. As a result, lawyers refuse such cases or face the threat of losing their licenses. A number of lawyers are denied the right to leave the country, they are forbidden to speak at conferences without the Justice Ministry's permission.

The judicial process is completely non-transparent. Neither law nor practice allows the open publication of indictments, verdicts, or other court material. Therefore society, as a rule, does not know why someone is sentenced, what are the arguments of prosecutor and defense. Judges ignore allegations of torture made by defendants and don't proceed with respective medical examination. The court hearings on criminal cases are often held behind closed doors, with no access provided for the public and the press, especially if these are politically motivated cases.

Violations of human rights are closely linked with corrupt practices by government bodies. The police often arrest people and judges sentence them to prison to extort bribes. Just one recent example is the case of the arrest and fabricated case against the Ibodov brothers, entrepreneurs from the Bukhara region. The real reason for their arrest was the refusal by the brothers to pay bribes to law enforcement officials. One of the brothers, Rahim Ibodov, received a sentence of eight years in prison. The other, Ilhom Ibodov, died as a result of torture. The court ignored Rahim

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<sup>1</sup> <http://www.state.gov/j/tip/rls/tiprpt/countries/2016/258890.htm>

Ibodov's allegations that he and his brother were severely tortured. The authorities refused to investigate the allegations and, in doing so, became accomplices in this crime.<sup>2</sup>

The authorities also imprison and torture those who attempt to expose the government's abuse of power. The journalist and human rights defender Dimurod Said, who exposed corruption in the Jambai district of the Samarkand region, was sentenced in 2009 to 12.5 years in prison, where he has contracted tuberculosis as a result of terrible conditions of detention.<sup>3</sup>

More than 30 civil society activists and journalists and thousands of practicing Muslims are behind bars on politically-motivated charges. Some of them will not be released alive or will be released with their health destroyed from torture and ill-treatment in prison.

Given this state of affairs, returning the proceeds of corrupt dealings by senior Uzbek officials to the government of Uzbekistan would be tantamount to returning it to the same people who stole it or are implicated in its theft.

It is guaranteed that any amount returned to the government of Uzbekistan would disappear into extra-budgetary and non-transparent accounts at the disposal of the ruling elite with no accountability to the public. It is also extremely likely that some of the funds would be used to strengthen the repressive apparatus, for covert operations against dissidents and critics of the abuse of power, including by paying criminals to carry out political assassinations of dissidents located outside the country.

One example of this practice of hiring criminals by the Uzbek security services was the attempted assassination in Sweden of the Uzbek refugee, and well-known imam Obidkhon Nazarov in 2012;<sup>4</sup> another such case is the murder of the journalist Alisher Saipov in 2007.<sup>5</sup>

Though President Karimov recently died, there is no reason to believe that his corruptly cultivated network of government officials responsible for keeping him in power for so long plan to operate any differently.

Despite the rhetoric heard from the new authorities that target the abuse of public office, we see all the same practice of violating the rights of citizens, that include the continuing practice of forced labor, arrests and beatings in custody of human rights defenders and journalists.

The return of the assets to the government of Uzbekistan would act against the interests of victims of corruption and encourage new criminal practice. Such a turn of events would be greatly demoralizing to Uzbek society and also negatively affect the reputation of the governments in the US and Europe, who are declaring support to human rights and the fight against corruption. The entire world, including the people of Uzbekistan, closely watches the actions of these governments in these matters.

**There are no adequate conditions for independent monitoring.** There are a number of cases when Uzbek activists tried to carry out monitoring on various issues, for example of forced labor.

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<sup>2</sup> <http://iphronline.org/take-action-click-gently-against-torture-in-central-asia.html>

<sup>3</sup> <https://www.frontlinedefenders.org/en/profile/dilmurod-sayid>

<sup>4</sup> <https://www.theguardian.com/world/2015/nov/25/swedish-prosecutor-accuses-uzbek-regime-of-trying-to-kill-dissident>

<sup>5</sup> <http://www.nytimes.com/2007/12/03/world/asia/03kyrgyzstan.html>

These activists suffered serious reprisals from the government in retaliation for their activities, for example, human rights activist Uktam Pardaev was convicted on spurious criminal charges,<sup>6</sup> while Dmitrii Tikhonov, another activist, was beaten by police and had his home destroyed by arson,<sup>7</sup> which was evidently a response from the Uzbek authorities to their activity on monitoring the practice of forced labor.

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<sup>6</sup> <https://www.hrw.org/news/2015/11/25/uzbekistan-rights-defender-arrested>

<sup>7</sup> <https://www.frontlinedefenders.org/pt/node/1062>