**Report**

**on the results of the conference**

**“Raiding the Coffers, Violating Rights”:**

**Corruption and its Impact on Human Rights in the Post-Soviet World**

organized by The Centre for Civil and Political Rights in partnership with the Open Society Foundations, Bern, Switzerland, 26-27 November 2014

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# Introduction

The Centre for Civil and Political Rights, an EP grantee, hosted a two-day discussion on how curbing corruption may reduce the scale of human rights violations and vice versa, by examining the state of affairs in the region of Eurasia. The importance of linking these two issues-- human rights abuses and corruption-- has been highlighted by the UN Human Rights Council: “In recent years, a number of international documents signed under the auspices of both the United Nations and regional organizations have acknowledged the negative effects of corruption on the protection of human rights and on development.” The Council stressed two aspects of this connection: 1) “that States should promote supportive and enabling environments for the prevention of human rights violations, inter alia, by fighting corruption (resolution 18/13)”; and 2) “An engaged civil society and media that value and demand accountability and transparency are vital in addressing corruption” (<http://www.ohchr.org/EN/Issues/Development/GoodGovernance/Pages/AntiCorruption.aspx>).

The conference was attended by 39 experts, investigative journalists, and civil society activists from around the world, including three officials representing the Swiss federal government and representatives of two Swiss NGOs. It was expected that the findings of this conference would aid the NGOs’ contributions to the upcoming ICCPR review of Uzbekistan (July 2015), ensuring that the impact of corruption on human rights is thoroughly taken into consideration. The purpose of this conference was also to contribute to the agenda of assets recovery, in light of the ongoing investigation in Switzerland and Sweden into the alleged involvement of members of the presidential family in Uzbekistan in corruption and money laundering through Swiss banks. OSF’s intervention into these affairs is necessary because grand corruption and elite-driven money laundering has a serious negative impact on the rights and interests of ordinary citizens in Uzbekistan and elsewhere in the region of Eurasia.

The agenda, this report and some power point presentations are posted here: <https://karl.soros.org/communities/eurasia-anti-corruption/files/bern-conference-novermber-26-27/>

# Key takeaways

*(By Alisher Ilkhamov)*

My takeaways concern mainly conference outcomes related to the agenda of assets recovery, which was adopted by our program in late 2013 as part of its strategy of addressing grand corruption in the region of Eurasia. From this point of view, the conference has succeeded in putting direct and indirect pressure upon the Swiss authorities. Such pressure was needed because the Swiss authorities appear not to demonstrate enough political will to bring to an end the investigation into Gulnara’s ill-gotten assets frozen in Switzerland. It was revealed that upon the complaint lodged by the lawyers representing Gulnara Karimova, the Federal Court in Lugano has ruled that the documents seized in Gulnara’s villa and her deposit boxes at Lombard Odier, a Swiss private bank, are not admissible as evidence for the on-going investigation. The court decision was justified by the diplomatic immunity she had at the time when these documents were seized. Due to this withdrawal of important evidence from the case, the investigations both in Switzerland and Sweden have come to a standstill. I think if the Swiss authorities had a political will they would do their best to overrule that court decision. The Sweden prosecutor office is, in turn, complaining that the Swiss judicial authorities are not responding to their request for mutual assistance and not sharing investigation materials.

During the conference, Nadejda Atayeva, an Uzbek human rights defender, read out the letter on behalf of Uzbek civil society activists addressed to the Swiss authorities, calling for not letting the frozen assets to be repatriated to the government of Uzbekistan. The activists claim that the government of Uzbekistan has done nothing so far to reform the system that makes corruption widespread in the country and money laundering committed at a large scale. A number of conference speakers presented their analysis and critical views of the system of corruption and the status of judiciary in Uzbekistan. Thereby they supported the main arguments that were presented by the activists. Thus, both activists’ letter and the speakers’ presentations became a powerful source of evidence for the Swiss authorities and judiciary.

The Uzbek activists have already received an answer from the Swiss Ministry of Foreign Affairs, its Task Force dealing with assets recovery, acknowledging the receipt of the letter. A copy of the letter was also sent to Swiss political parties. One of them, the Social-Democratic Party, has also responded, stating it completely shares activists’ concern on the question of how these funds should be transferred back to Uzbekistan – not via the actual Government but directly to the people of Uzbekistan via social programs which are run and supervised by reputable international development agencies as activists have proposed.

What is needed now is to keep pressing upon the Swiss authorities for a more active position towards the Uzbek case of money laundering. This should be done professionally, possibly by taking a legal action that, among other outcomes, would generate much needed publicity around the fate of Gulnara’s assets. Already after the conference I had a conference call with Ken Hurwitz of OSJI, Scott Horton and James Maton, a legal expert on assets recovery from Edwards Wildman, a British law firm, all of whom had attended the conference. We have discussed options of initiating a legal action in 2015. This discussion will continue further. For now, we have agreed to convene for another conference call in mid-January.

Another takeaway is related to issues going beyond just one region of Eurasia. It was noted that not only are corrupt elites alone to blame, but also a huge market in the West that provides services for these elites to launder money. In this regard, the role of “plumbers” was noted, i.e. the services provided by an army of lawyers, law firms, banks etc. We began discussing with Ken Hurwitz the idea of launching a project that can be called provisionally “Plumber Watch” to raise public awareness around this issue. Scott noted to “Mind the gap”, i.e. the gap between jurisdictions, and between international mechanisms also deserves attention.

# Notes from the panels

## Session 1: Administration of Justice, Fighting Corruption and Protecting Rights: The Eurasian Context

Moderator: Andrea Meraz, Centre for Civil and Political Rights (Switzerland)

Panellists: Patrick Mutzenberg, Centre for Civil and Political Rights (Switzerland)

Gretta Fenner, International Centre for Asset Recovery, Basel Institute on Governance (Switzerland)

Ken Hurwitz, Open Society Justice Initiative (USA)

* Patrick Mutzenberg presented some precedents when the UN human rights mechanisms addressed issues related to corruption. Such cases included CRC’s (Committee of the Rights of the Child) concluding remarks on Azerbaijan in 2004 and 2006 and on Ukraine in 2011. CRC also made remarks on widespread corruption in Uzbekistan, Armenia, Tajikistan and other countries. The corruption was noted in the following spheres:
  + The practice of adoption in Armenia and Ukraine,
  + The system of education of Azerbaijan,
  + Treating migrant workers in Azerbaijan and Tajikistan,
  + The penitentiary system in Armenia, Bulgaria, Albania,

However, the number of cases considered by treaty bodies remains limited.

* Gretta Fenner spoke about the nascent project of strengthening the international legal framework to deal with corruption. The tradition of addressing this issue goes back to the French revolution of 1789 when the Declaration of the Rights of Man and the Citizen adopted by the National Assembly included a language on corruption of government (“The representatives of the French people, organized as a National Assembly, believing that the ignorance, neglect, or contempt of the rights of man are the sole cause of public calamities and of the corruption of governments…”).
* Because most of people depend on public service, corruption in public services makes most people exposed to abuses of their human rights, continued Gretta. Judiciary is particularly a sphere where human rights abuses and corruption are connected to each other. The current international legal framework that deals with corruption faces two problems: mechanisms to address the arbitrary power of states are lacking; the existing criminal law is too narrow and makes mainly individual perpetrators accountable for committing corruption.
* Unlike the law that deals with corruption, the human rights framework provides for collective responsibility, recognizes responsibility of state, but fails to address the issue of corruption. Unfortunately these two frameworks work in isolation from each other.
* Regarding the legal framework on corruption the UNODC doesn’t disclose records of its country reviews to the public. Only small summaries are available.
* Ken Hurwitz spoke on cases when the only available remedies are external. It is the case especially in authoritarian regimes when the state and judiciary are captured by corrupt elites. Due to the cross-national nature of corruption, several other actors should be mentioned apart from local corrupt elites, e.g. multinational corporations that pay bribes for resources in developing countries; “plumbers”(banks or lawyers who facilitate corrupt deals and money laundering). Money laundering from developing countries amounts to USD 20 billion.
* There is a certain illusion of impartiality of international legal norms. Article 13 of the Convention Against Corruption allows participation of non-state actors.
* In some cases CSOs can take legal action, but standing in many jurisdictions is often not granted to CSOs. Only in a few exceptions CSO can be civil party, but only under the provisions of the civil law. In such cases, one of the objectives that can be realistically achieved is publicity. This allows to demystify the corrupt dictators. In the case of Equatorial Guinea, OSJI succeeded in the repatriation of 30 mln. The strength of civil society is in its ability to cooperate globally and seek advantages of various jurisdictions.
* Scott noted that in some cases anti-corruption campaigns are used as a political tool.

## Session 2: Overcoming the Yanukovych Legacy: The Struggle for Reforms in Ukraine

Moderator: Gretta Fenner, International Centre for Asset Recovery, Basel Institute on Governance (Switzerland)

Panellists: Daria Kalenyuk, Anticorruption Action Centre (Ukraine) (by Skype)

Andrii Marusov, Transparency International – Ukraine

Vlad Lavrov, Kyiv Post (Ukraine)

* Daria pointed out two important things: impunity on the one hand and access to information on the other hand (“follow the money”). Ukraine has adopted a law on the transparency of information on public procurement, and the CSOs are going to use their monitoring and advocacy activities.
* Andrii Marusov said that a special commission in Ukraine will follow the lifestyle of officials. However, the law on Anti-Corruption Bureau was amended: its director can be dismissed by the Parliament which makes this agency lacking autonomy. Andrii also spoke on the recently discovered corruption in pharmacy and healthcare sectors: due to abuses some people have died. There are still faulty tenders.
* Vlad Lavrov screened a film showing how a group of Ukrainian activists rescued documents proving the corruption deals of Victor Yanukovych.

## Session 3: Tackling Corruption in “Transitional” and Closed Societies: Institutional Gaps

Moderator: Ken Hurwitz, Open Society Justice Initiative (USA)

Panellists: David Lewis, University of Exeter (UK)

Farhod Inogambayev, investments analyst (USA)

Lilia Carasciuc, Transparency International – Moldova

Scott Horton, Columbia University (USA)

* David said that corruption is a political problem. To some extent it provides stability and political control. It also represents an institutional challenge (David’s PowerPoint presentation is enclosed).
* Farhod said that some corrupt regimes in Eurasia, for instance in Belarus and Kazakhstan, manage to raise funds in western capital markets by selling their bonds. The JPMorgan Government Bond Index-Emerging Markets (GBI-EM) index was launched in June 2005 and is the first comprehensive global local Emerging Markets index. As Emerging Market governments look increasingly toward their domestic market for sources of finance, investors are looking more closely at local markets in search for higher yield and greater diversification. When assigning ranks to the states, JPMorgan and regulators are looking at pure economic indicators (GDP per capita, foreign reserves), but not at such indicators as corruption, democracy etc. As a result, even US taxpayers money are being exposed, since some bonds are purchased by US state funds. Uzbekistan’s credentials are so low that it is even not able to do what Kazakhstan and Belarus are getting from international capital markets.
* Lilia said that thanks to the Eastern Partnership agreement Moldova has the most advanced legal framework for tackling corruption among CIS countries, but the implementation remains problematic. The weakest institution is the prosecutor’s office.
* Scott highlighted the gaps in the international anti-corruption architecture. One should “Mind the gap!” i.e. the gap between national enforcement mechanisms. There are gaps in the corporate law, so it has become very easy for corrupt elites to register a company to launder money, and the lawyers play an instrumental role in this process, hiding the beneficial ownership. They create a company and then change the ownership. Change of ownership is a crucial institutional gap. Also, there are gaps between jurisdictions. As a result, corrupt elites benefit from “homelessness”, when it is difficult to determine which country this or that company belongs to. Western Africa is very akin to Central Asia in terms of patterns of syphoning money out from country. The problem is also that international agencies don’t sufficiently cooperate with each other.

## Session 4: Corruption Intermingled with Human Rights Abuses

Moderator: Patrick Mutzenberg, Centre for Civil and Political Rights (Switzerland)

Panellists: Allison Gill, freelance researcher (USA)

Umida Niyazova, Uzbek-German Forum for Human Rights (Germany)

Nadejda Atayeva, Association for Human Rights in Central Asia (France)

Farhodhon Muhtarov, Human Rights Alliance (Uzbekistan)

Sanjar Umarov, Sun Shine Coalition (Uzbekistan - USA) (by skype) (his presentations is enclosed)

* All spoke about the situation in Uzbekistan in terms of connection between corruption and human rights abuses and brought some live case studies to support their observations. Allison presented an overview of the whole situation, Umida talked about the situation in the cotton sector, Farhodhon accounted about his personal experience in prison where he spent more than 1.5 years. He described how corruption and bribery negatively affected the equality in exercising the prisoners’ rights. Nadejda read up the letter a group of Uzbek activists addressed to the Swiss authorities. The letter calls for the fair assets recovery of Gulnara Karimova’s assets frozen in Switzerland and returning these assets to the people of Uzbekistan.

## Session 5: Cross-National Money Laundering Schemes Investigated

Moderator: Olivier Longchamp, Déclaration de Berne (Switzerland)

Panellists: Miranda Patrucic, Organized Crime and Corruption Reporting Project (Bosnia and Herzegovina)

Roman Anin, Novaya Gazeta (Russia)

Joachim Dyfvermark, investigative reporter, SVT (Sweden)

Inga Springe, investigative journalist (Latvia)

* Miranda presented some results of journalist investigations into the money laundering crimes committed by the Uzbek corrupt elites.
* Roman spoke on the recently reported scheme of laundering bank assets, estimated at USD 25 billion, from Russia via Moldova. The masters of this deal used a new and very complex scheme of money laundering.
* Joachim shared his experience of shedding light upon TeliaSonera’s and other telecoms companies’ shadowy businesses in a number of countries, starting with Egypt (Erickson). The telecoms companies participated in the CIA rendition programs by eavesdropping phone conversations. Mubarak had an agreement with some Western companies (including Swedish) to track cell-phones of some dissidents. TeliaSonera moved into Central Asia in 2005-2006. Beforehand, it had been involved in intercepting phone conversations in Belarus, then in Azerbaijan and Uzbekistan. The local authorities installed SORM in the premises of local operators, an equipment and software that allows for tracking and intercepting mobile communications.
* Inga highlighted some cases when corrupt elites from CIS countries used Latvian banks to launder their assets. One case is Ablyazov’s money (around USD 1 billion) was laundered via KommercBank in Latvia. Another bank that was used for the same purpose is Parex bank. It was the largest bank in Latvia in 2005, but collapsed in 2010. Now the Baltic Trust Bank has taken its place. Usual scheme is proxy directors who hide real beneficiaries. These schemes are served by a range of professionals in corporate law. For instance, auditing firms in Russia are playing this role.
* Farhod Inogambayev noted that telecoms companies like Teliasonera accept their direct operational losses in such countries as Uzbekistan, because what is most important for them is the number of subscribers: their valuation system and fundraising are based on the number of subscribers, which improves the companies’ emerging markets penetration rates. A strange thing in Uzbekistan’s telecoms deals is that the foreign investors reported having purchased licenses that had been owned before by other companies, whereas there should be no secondary market for licences, i.e. licenses are not transferable.
* Corrupt elites use Switzerland mainly for opening managing accounts. There is a big market here for such accounts. Regarding the Gulnara’s assets, as said Olivier Longchamp of Declation de Berne, Switzerland’s courts did not identify any predicate offence yet.

## Session 6: Aspiring to Justice for Eurasia: International Legal Mechanisms Explored

Moderator: Scott Horton, Columbia University (USA)

Panellists: Sophie Lemaître, Sherpa Association (France) (by skype) (power point presentation is enclosed)

Oscar Solorzano, International Centre for Asset Recovery, Basel Institute on Governance (Switzerland) (power point presentation is enclosed)

James Maton, Edwards Wildman (UK) (by skype) (power point presentation is enclosed)

* Sophie shared information about Gulnara’s properties in France: a castle for EUR 20 million and a property in South France for EUR 2.5 million. France has now a national prosecutor on financial crimes, but there are no provisions for assets recovery. It makes the case of Gulnara very long to consider.
* Oscar Solorzano said that one of the most important questions for legal proceedings over assets recovery is “Who is the victim?”
* In Switzerland, USD 75 million Ukrainian stolen assets are frozen, but it is thanks to the current political will. Unfortunately, such a political will is lacking in the case of Uzbekistan. The Federal Court in Lugano declared that the documents seized in Gulnara’s villa and her bank deposit boxes are not admissible in evidence for the investigation. That decision was justified by the fact that she had diplomatic immunity at the time when these documents were seized.
* James Maton explained the different ways to proceed legally on assets recovery. Talking about the role of “plumbers”, he said that more education is needed to encourage lawyers to do more due diligence before they would take orders from PEPs. He also called for studying the patterns of money laundering and to share the results among the stakeholders to alert them. He also raised the issue of the transparency of arbitration process which is in hands of private entities. These entities not always disclose information about the dispute between parties.

## Brown Bag session: Implications for International Stakeholders – European Perspective

Moderator: David Lewis, University of Exeter (UK)

Panellists: Alain Deletroz, Fundación para las Relaciones Internacionales y el Diálogo Exterior (Belgium)

Olivier Longchamp, Déclaration de Berne (Switzerland)

* Alain said that tax evasion has become an acute problem in the EU. Many cases of money laundering and tax evasion remain undisclosed to the public, for instance, Dariga Nazarbayeva’s assets in Switzerland.
* Olivier presented a view from a Swiss perspective. Déclaration de Berne has been following 20 cases of alleged money laundering through Swiss banks. PEPs are more frequently exposed nowadays. Switzerland and Austria have recently adopted regulation on PEPs. However, often banks are not complying with the PEP regulation.
* There have been some cases of assets recovery (Abacha, Fujimory). However, according to opinion polls, 60% of the Swiss believe that the country is not doing enough.
* The problem is that the names of noticed PEPs and the banks involved are not made public. Switzerland has adopted a law on failed states and it is being applied to Duvalier case.
* For the civil society it is important to disclose how information was obtained. Law requires transparency on this matter.