

EUROPEAN CENTER FOR CONSTITUTIONAL AND HUMAN RIGHTS



—
EUROPEAN CENTER FOR
CONSTITUTIONAL AND
HUMAN RIGHTS e.V.
—

ZOSSENER STR. 55-58
AUFGANG D
10961 BERLIN, GERMANY
—

PHONE +49.(030).40 04 85 90
FAX +49.(030).40 04 85 92
MAIL INFO@ECCHR.EU
WEB WWW.ECCHR.EU

Forced Labor of Children and Adults in Uzbekistan

How Effective is the OECD Complaint Mechanism?

Berlin, Mai 2013

Introduction

In Uzbekistan, one of the world's biggest cotton exporters, cotton is harvested through a system of state-organized forced labor of children and adults.¹ Between October and December 2010, ECCHR and its cooperation partners, Sherpa (France) and Guido Ehrler (Switzerland), filed seven complaints with National Contact Points (NCPs) of the Organization for Economic Co-operation and Development (OECD) in Germany, the United Kingdom, France and Switzerland against cotton wholesalers who directly or indirectly purchased Uzbek cotton.² The complaints alleged that companies who buy cotton harvested through forced labor are in violation of the OECD Guidelines for Multinational Enterprises.

Two and a half years after ECCHR filed the first of seven OECD complaints, all procedures, including their implementation phase are closed. This provides an opportunity for a comprehensive evaluation of the impact of the complaints both on the situation in Uzbekistan and, more generally, on NCP practice.

In six cases, ECCHR and traders agreed, within the mediation procedure moderated by the respective NCPs, that the companies should take specific action to positively influence the situation on the ground.³ These measures should be treated confidentially. In almost all procedures it was decided that ECCHR would monitor the implementation of the measures agreed and that the parties would stay in contact during the coming year.⁴ In individual Joint Statements it was agreed that after a certain period of time parties would meet to evaluate the measures carried out.⁵ ECCHR clarified that it maintains its request to companies to stop trade relations with Uzbekistan if the measures undertaken should not prove effective and, in such circumstances, reserved the right to file a new OECD complaint.

Unfortunately, due to disagreements between ECCHR and the traders over the commitment required to address the situation in Uzbekistan, ECCHR was forced to cease cooperation with cotton traders after the one-year implementation phase.

In the French procedure, the NCP issued a Final Statement in which it took a position on whether the OECD Guidelines had been violated. It held that "*child labor and forced labor on Uzbek cotton fields, under all circumstances, constitute a flagrant and characterized violation*

¹ <http://www.ecchr.de/index.php/uzbekistan.html>

² In Germany: Complaint of October 22nd 2010 against Otto Stadtlander GmbH

In Switzerland: Complaint of October 22nd 2010 against Paul Reinhart AG and Ecom Agroindustrial Corp. Ltd. and

Complaint of December 23rd 2010 against Louis Dreyfus Commodities Suisse. S.A.

In UK: Complaint of December 1st 2010 against Cargill Cotton Limited and of December 7th 2010 against ICT Cotton Limited;

In France: Complaint of October 22nd 2010 against Devcot S.A.; Devcot declared credibly to not source Uzbek cotton for some years..

³UK: <http://webarchive.nationalarchives.gov.uk/20121205150610/http://www.bis.gov.uk/policies/business-sectors/green-economy/sustainable-development/corporate-responsibility/uk-ncp-oecd-guidelines/cases/final-statements>

Switzerland: <http://www.seco.admin.ch/themen/00513/00527/02584/02586/index.html?lang=de>

Germany: <http://www.bmwi.de/DE/Themen/Aussenwirtschaft/nationale-kontaktstelle-oecd-leitsaetze.did=429912.html>

⁴ This was agreed upon with Cargill, ICT, Ecom Agroindustrial and Paul Reinhart.

⁵ This was agreed upon with Cargill and ICT.

of the OECD Guidelines". In general, the NCP recalled "*that the trade of products resulting from forced child labor, where ever it may occur, amounts to a flagrant and characterized violation of the OECD Guidelines*".⁶

For its part, the company committed to the NCP to refrain from purchasing Uzbek cotton until forced child labor is ended in Uzbekistan.

The Situation in Uzbekistan's Cotton Harvest 2012

The 2012 cotton harvest was marked by continued state-sponsored forced labor of children and adults, increased extortion of financial resources by government authorities from citizens, and a shift of the cotton picking burden to older children and more adults.⁷

At the beginning of the 2012 harvest, as in previous years, Uzbekistan's Prime Minister, Shavkat Mirziyayev, reiterated the ban on child labor in the cotton fields. Previously this statement has had no effect; however the 2012 harvest was unique in so far as public authorities, for the first time, seemed to take notice of the ban.⁸

Likely due to international pressure, Uzbek authorities did not send children from all primary schools to pick cotton, as they had done in previous harvests. Yet the government of Uzbekistan continued the state order cotton production system underpinned by forced labor. Nationwide, authorities enforced cotton production quotas on farmers and forced children over age 15, government employees – including teachers, nurses and doctors – and private-sector employees to contribute to the cotton harvest, under threat of punishment.

With this policy change the Uzbek government merely intended to counter international criticism without fixing the root of the problem. Nevertheless, it has been demonstrated once again that the Uzbek regime reacts to criticism and international pressure.

European traders reluctant, finance institutions display interest

The parallel submission of the complaints, aided by lively media coverage of the situation in Uzbekistan, moved the European traders targeted by OECD complaints to commit to take concrete steps and collective action to pressure the Uzbek government to end forced labor.

However, after the mediation procedures were closed and the media coverage had slowed down, the commitment of the cotton traders gradually decreased and ECCHR's suggestions

⁶ <http://www.tresor.economie.gouv.fr/File/375194>

⁷ Uzbek-German Forum for Human Rights, Review of the 2012 Cotton Harvest in Uzbekistan, December 20 2012 available at <http://www.uzbekgermanforum.org>, page 3.

Human Rights Watch, Uzbekistan: Forced Labor Widespread in Cotton Harvest: <http://www.hrw.org/news/2013/01/25/uzbekistan-forced-labor-widespread-cotton-harvest>

⁸ UZ News, Uzbek Prime Minister Bans Child Labour, 14 August 2012, http://www.uznews.net/news_single.php?lng=en&cid=30&nid=20557

for an effective engagement by the traders were widely ignored. Responsibilities were shifted back and forth and the commitment was reduced to the lowest common denominator.

Ultimately, it is doubtful that the measures undertaken by the traders significantly contributed to the aforementioned change in policy in Uzbekistan. In comparison to the wide range of activities of the international Cotton Campaign, that on multiple levels organizes diplomatic and economic pressure on the government of Uzbekistan to end forced labor,⁹ the steps carried out by the traders appear to be very weak. A public position of the traders would have put significant pressure on the regime, but failed to appear.

Such pressure could have proved very influential, particularly because these European cotton traders are important to the Uzbek economy and, in many cases, entertain direct business relationships with the state-controlled cotton industry in Uzbekistan.

As stated by the French NCP, trading products obtained by means of forced and child labor constitutes a fragrant violation of the OECD Guidelines. Such violations cannot be met with hesitant efforts to improve the situation on the ground. Rather, the situation demands concrete and sustained efforts to demonstrate to both the Uzbek establishment and the public that human rights abuses like forced labor of children and adults are not tolerated by the cotton industry.

The cessation of business relationships with the Uzbek cotton industry therefore remains the only adequate measure. It would apply further pressure on the Uzbek government and ensure that European companies do not contribute to human rights violations in Uzbekistan. This position is supported by the UN Guiding Principles on Business and Human Rights¹⁰ and the revised version of the OECD Guidelines for Multinational Corporations.¹¹ Enterprises must exercise due diligence regarding human rights violations in the supply chain and must not encourage or support practices that violate human rights.

The cotton trading enterprises have not shown serious willingness to engage in a critical and constructive dialogue with the complainants or accept their suggestions over the course of the agreed time period for cooperation. ECCHR therefore abandoned the cooperation with the cotton traders in December 2012.

Importantly, the OECD complaints have also triggered a very positive response from a number of financial institutions. Leading investment banks have shown interest in the human rights violations as described by ECCHR in the complaints and their adequate handling. The banks monitor the Uzbek forced labor situation with continuous updates from ECCHR.

⁹ <http://www.cottoncampaign.org/>

¹⁰ UN Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, Principle 19.

¹¹ OECD Guidelines for Multinational Enterprises, Chapter IV. Commentary on Human Rights para 43 indicates that terminating a business relationship might be considered where a company has caused or contributed to a violation of the Guidelines through a third part.

ECCHR asks cotton traders

- to abandon direct contractual relationships with the Uzbek state-owned trade organizations until forced labor of children and adults in the cotton harvest is abolished and to point out this matter to the Uzbek government;
- not to accept cotton from Uzbekistan within their supply chain;
- to call upon the Uzbek government at every opportunity to end the forced labor of children and adults in the cotton harvest and to allow independent monitoring by the International Labour Organization (ILO);
- to take a public and uncompromising stand against forced labor of children and adults in Uzbekistan;
- to call upon their home governments to take a stand against forced labor of children and adults in Uzbekistan and to form a policy towards the country that prioritizes democracy and human rights.

The subject of forced labor of children and adults in Uzbekistan is on the political agenda in Germany

The simultaneously submitted OECD complaints have put the subject of forced labor of children and adults in Uzbekistan on the agenda of leading German politicians. Just a few days after submitting the first complaints, the Federal Government's Commissioner for Human Rights Policy and Humanitarian Aid, Markus Löning, expressed deep concern regarding the continuing reports of child labor in the cotton harvest and called on the Uzbek government to allow monitoring by the International Labour Organization (ILO).¹² This was the first time the German government had publicly approached the Uzbek regime on this matter. The magazine Spiegel Online reported in October 2012 that Löning demanded a boycott of Uzbek cotton as long as state-sponsored forced and child labor continue to exist in the country.¹³

During the broadcast "Hart aber fair" on January 23rd 2012, the Federal Minister of Economic Cooperation and Development, Dirk Niebel, equally condemned forced child labor in Uzbekistan's cotton harvest.

The German NCP strongly opposed the use of forced child labor in Uzbekistan in its Final Statement on the case.¹⁴ The NCP communicated that the German government had called upon the Uzbek authorities "in international committees and bilateral talks to take effective

¹² http://www.pressrelations.de/new/standard/result_main.cfm?aktion=jour_pm&r=431412

¹³ <http://www.spiegel.de/politik/ausland/kinderarbeit-boykott-von-baumwolle-aus-usbekistan-gefordert-a-862904.html>

¹⁴ <http://www.bmwi.de/DE/Themen/Aussenwirtschaft/nationale-kontaktstelle-oecd-leitsaetze.did=429912.html>

steps to abolish this practice and that it would continue to speak up for the abolition of child labor in the cotton industry”.

However, after two years of political consideration, the German government’s commitment has failed to go beyond public comments. Although Chancellor Angela Merkel persistently refuses to talk to Uzbek president Islam Karimov in person, the government is not willing to advocate for the abolition of trade preferences for Uzbek cotton on EU level or to engage explicitly for concrete measures against Uzbekistan within the ILO.

ECCHR calls upon the German Federal government:

- to encourage Uzbekistan to invite the ILO to conduct monitoring of the cotton harvest and to support the ILO actively in all its initiatives;
- to advocate for the withdrawal of trade preferences for Uzbek imports to Germany;
- to use every opportunity, on bilateral and international level, to conduct active human rights-related open diplomacy regarding Uzbekistan.

OECD complaint procedure needs to be refined

The OECD complaints contributed to putting forced labor of children and adults in Uzbekistan on the political agenda thanks to the considerable interest of the media and parts of civil society. However, the actual aim to induce enterprises to accept responsibility and to stop violating the OECD Guidelines could not be reached.

This was due the non-binding nature of the OECD procedure, but also to the way the procedures were conducted by the NCPs.

As mentioned above, the commitment of the cotton traders decreased after the mediation procedures were closed and the media coverage had slowed down. This is due to the fact that the OECD procedure neither foresees a mandatory evaluation process with a Follow-up Statement which is to be published by the NCP nor provides any sanctions for the case that companies do not comply. Therefore media pressure and the influence of the NCP during the mediation period remain the only incentives for enterprises to engage in negotiations and to accept responsibility for their actions. Once these factors subside, it depends on the goodwill of the company whether negotiated measures are seriously implemented. Violations of the OECD Guidelines and the refusal to cease abusive behavior should however incur consequences for companies. Possible sanctions could include the loss of state subsidies and guarantees, but also other legal, administrative or financial sanctions.

A mandatory evaluation procedure with a Follow-up Statement of the NCP on the outcome of the implementation phase that has to be published by the NCP would contribute to bind companies to their commitment beyond the Joint Agreement and would create an incentive for them to uphold their engagement, because both, the presence of NCP representatives as

such and the attention generated by the publication are likely to exert significant influence on the behavior of companies.

The individually agreed follow-up meetings in some of the procedures could not replace a mandatory evaluation by the NCP: they were denied by some of the companies concerned and not actively demanded by the NCPs either. Furthermore no publication by the NCP would have taken place.

A further weakness of the OECD mechanism was the lack of unambiguous procedural rules; this is particularly true of the procedure before the German NCP, which revealed various procedural deficits that were detrimental to a constructive outcome of the mediation.

In the German case, the lack of unambiguous procedural rules regarding crucial principles like transparency, predictability and impartiality was obvious; ECCHR was not informed about the NCP's communication with the company and was notified at short notice of upcoming procedural steps. The NCP tried repeatedly to depart from the – few – existing procedural rules in favor of the enterprise's interests (for more details: ECCHR Position Paper – "A Comparison of OECD National Contact Points").¹⁵ The obvious bias towards the interests of the company suggests that the incorporation of the NCP in the Ministry of Economics' Department for Foreign Trade and Investment Promotion is prejudicial to a fair procedure which can only be provided by an independent institution. To ensure a fair procedure, it is also necessary to establish an oversight body with representatives of all social groups, which critically accompanies the work of the NCP. A peer review mechanism, which aims at regular assessment of the procedure by other NCPs, is also likely to contribute to a fairer and more effective procedure.

.ECCHR calls upon the German government to advocate for

- the implementation of mechanisms that sanction enterprises violating the OECD Guidelines and refusing to stop their abusive conduct or not complying with promises made during negotiations;
- NCPs to conduct evaluation processes regarding the outcomes of mediations and the NCP's recommendations;
- implementation of an institutional structure and financial support for NCPs in order to ensure impartial, predictable and transparent handling of complaints.

Strengthening of the OECD Guidelines

Even though the OECD Guidelines do not currently provide for effective judicial protection of victims of corporate abuses, ECCHR regards the use of its complaints mechanism as an avenue to highlight situations in which companies violate human rights and fail to fulfill their

¹⁵ <http://www.ecchr.de/index.php/uzbekistan.html>

responsibilities under international standards. Moreover, the increased use of this mechanism offers an opportunity to highlight weaknesses and to compare the differences in NCP practice and interpretations of the OECD Guidelines. NCPs can thus be encouraged to coordinate their interpretations of the OECD Guidelines and their procedural rules and so contribute to a coherent and effective procedure.

In this way, the parallel complaint procedures have caused the NCPs in four countries to coordinate their decisions, e.g. regarding the acceptance of complaints based on mere trade relationships. In such cases, the (possible) violation of the OECD Guidelines is not caused by an investment of the company, but results only from trade relations. Up to this point, trade cases had only been accepted by the UK NCP; in Germany and Switzerland, complaints against trading companies were constantly dismissed on the grounds that there was no relation to an investment (“investment nexus”). This argument could not be maintained after the British NCP had accepted the case¹⁶ and thus the German, Swiss and French NCP followed the British example.

The parallel submission of the complaints in four European countries enabled the complainants to compare the functioning of the NCPs regarding the aforementioned principles, to point out procedural deficits¹⁷ making them a matter of national and international discussion.¹⁸

You can find background information regarding the situation in Uzbekistan and the international campaign against forced child labour here:

<http://www.ecchr.eu/index.php/usbekistan.html>

<http://www.cottoncampaign.org/>

You can take action against forced labor of children and adults in Uzbekistan and watch the spot „Cotton Dreams“ here:

<http://www.ecchr.de/index.php/take-action-de.html>

¹⁶ <http://webarchive.nationalarchives.gov.uk/20121205150610/http://www.bis.gov.uk/assets/biscore/business-sectors/docs/i/11-764-initial-assessment-ncp-cargil-cotton.pdf>

In the underlying decision, the British NCP stated that the existence of an investment nexus does not constitute a precondition for the acceptance of a complaint under the Guidelines, because none of the major OECD instruments in the context of the Guidelines relies on this concept.

¹⁷ <http://www.ecchr.de/index.php/usbekistan.html>

¹⁸ The results were brought to the attention of the NCPs. Furthermore they were handed in by OECD Watch as member submission at the Annual Meeting of the National Contact Points 2012 and were intensively discussed.