

TAJKISTAN

Human Rights in Tajikistan on the Eve of Presidential Elections

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In its 19th session, held on July 20-21, 1994, the Supreme Soviet of the Republic of Tajikistan voted to hold presidential elections and a constitutional referendum on September 25, 1994. On September 7, 1994, however, less than three weeks prior to the scheduled election date, a new session of the Supreme Soviet was called, which voted to postpone both the elections and the constitutional referendum until November 6, 1994.

Human Rights Watch/Helsinki supports the transition to a democratic government in Tajikistan. However, we believe that current conditions in Tajikistan do not permit free and democratic elections. Accordingly, we urge the government to address the absence of basic civil and political rights in the country. Specifically, we call on the government to allow a free press to operate in Tajikistan, amend the new electoral law and lift the ban on opposition political parties. These measures would permit the participation of supporters of all political points of view, including the Tajik opposition, in the political process. Moreover, they would provide a means for the participation of the tens or possibly hundreds of thousands of Tajik refugees living in Afghanistan and the Commonwealth of Independent States (C.I.S.) in future elections.

BACKGROUND

The civil war in Tajikistan was triggered in March 1992 by mass demonstrations against the Communist government of President Rahman Nabiev. The opposition was composed of a diverse range of movements, including democratic, nationalist, cultural revivalist and Islamist parties, and consisted primarily of people whose origins were from the Gharm region (hereinafter "Gharmis") and Pamir region (hereinafter "Pamiris") of Tajikistan. The government, for its part, was supported by the old guard Communist elite from the Leninabad region and people from the Kulab region (hereinafter "Kulabis").

Tensions between the opposition and the government had been building since the forcible installation of Nabiev in September 1991 and the official dissolution of the Soviet Union two months later. The spring 1992 demonstrations led to armed clashes and violence. On May 7, President Nabiev and the opposition signed an agreement providing for the establishment of a coalition government. The violence between the two sides continued, however, escalating into full scale civil war by late summer. On September 7, President Nabiev was forced to resign at gunpoint. Soon thereafter, members of the old communist elite left the coalition government, and in November 1992 the opposition resigned from the coalition as well. The 16th session of the Supreme Soviet of Tajikistan, which closed on December 2, 1992, was intended to create a government of national reconciliation. Instead, the parliament elected a government dominated by Kulabis and the former Communist Party old guard, and elected Emomali Rahmonov as Chairman of the Supreme Soviet. This government still rules Tajikistan today.

On January 7, 1993, the Procuracy of Tajikistan opened a criminal case against the leaders of the various opposition parties and movements. On June 21, 1993, the Supreme Court banned the main opposition parties in Tajikistan. These actions, as well as the human rights violations committed by pro-government paramilitary forces during the period immediately following the civil war, prompted most of those active in the opposition, as well as hundreds of thousands who may not have been active but were associated with the opposition because they were Gharmi or Pamiri, to flee Tajikistan.

Pursuant to the Tajik-Russian Treaty of Friendship and Cooperation, signed on May 25, 1993, and ratified on July 15, 1993, Russia committed to maintain military forces in Tajikistan until Tajikistan had

formed its own army and border guards. The Russian forces consist of the 201st Motorized Rifle Division of the Russian Federation Ministry of Defense as well as border troops that are assigned to guard the Tajik-Afghan border. The 201st Division is part of a collective C.I.S. peacekeeping force; in fact, however, the overwhelming majority of these troops are Russian.

Since the end of the civil war, the estimated 25,000 Russian border troops have been involved in ongoing clashes with an armed opposition along the border. During the summer of 1994, the situation in Tajikistan grew increasingly tense. In addition to intensified skirmishes along the border, a more serious wave of hostilities broke out on July 22, when over 50 members of the Tajik army were captured in Tawildara, 200 kilometers southeast of the capital of Dushanbe, by members of the armed opposition. A large number of Tajik forces were sent to the region, and heavy casualties were reported in fighting that was considered to be the most serious to have taken place in Tajikistan since the civil war. On September 8, Tawildara was reportedly taken by the opposition, although the Tajik Ministry of Defense denied these reports.¹ The Russian military also stepped up its involvement in Tajikistan following the killing of seven Russian border troops and the wounding of thirteen during a clash on the Tajik-Afghan border on August 19.

Since March 1994, the Tajik government and the opposition have been engaged in intermittent peace negotiations under the auspices of the United Nations. The agenda for the third round of talks, scheduled for July or August 1994, included discussion of issues such as the integration of the opposition into the political process and resolution of the refugee problem — issues whose resolution had been considered a prerequisite to national reconciliation.

The Supreme Soviet's 19th Session, at which the initial decision to hold elections on September 25, 1994, was taken, failed to discuss, or even acknowledge the existence of, these issues. Moreover, no mention at all was made of the ongoing peace negotiations with the opposition. This prompted the Secretary General of the United Nations to suspend the activities of his Special Envoy to Tajikistan with respect to the third round of peace negotiations.²

¹ "Vesti" News Program, Russian Television, September 9, 1994.

² Report of the Secretary General of the United Nations on the Situation in Tajikistan, July 28, 1994.
Human Rights Watch/Helsinki

A combination of factors, including the intensification of fighting and growing international pressure, particularly from the Russian and Uzbek governments, persuaded the Tajik government to reevaluate the decision to hold elections in September.³ On September 7, a new session of the Supreme Soviet voted to postpone the elections and the constitutional referendum until November 6. Soon thereafter Abdumajid Dustiev, the Vice-President of the Supreme Soviet, met with the opposition in Tehran, in meetings mediated by the United Nations. On September 17, the parties met in Tehran and signed an agreement on a cease-fire and cessation of hostilities and agreed to a simultaneous release of political prisoners and prisoners of war by October 17 (hereinafter the "Tehran agreement"). Because it is opposed to the elections, the armed opposition has agreed to adhere to the cease-fire only if elections do not take place. If the elections proceed on November 6 as planned, the opposition has stated that it will continue fighting after that date; otherwise, the cease-fire is supposed to continue for another three months. The government, for its part, has stated that the elections will not be postponed again.⁴

CIVIL AND POLITICAL RIGHTS

Political Prisoners

On January 7, 1993, within weeks after the current government came to power, the Procuracy of Tajikistan opened a criminal case against leaders of the various opposition parties and movements. These included the leaders of the Democratic Party of Tajikistan, the Islamic Revival Party, Lali Badakhshan, Rastokhez, the Chairman of the Dushanbe City Executive Committee and the religious leader of Tajikistan, the Kozi Kolon Turojonzada. Many of these figures had fled the country and were, accordingly, charged in absentia.

According to the Procuracy, these members of the opposition constituted an "anti-government block" which had engaged in "particularly grave state crimes" including treason and terrorist acts.⁵ Despite repeated requests, however, the Procuracy failed to provide Human Rights Watch/Helsinki with any details regarding the charges or evidence against specific individuals in this criminal case. Human Rights Watch/Helsinki believes that members of the opposition who were involved in criminal or violent acts should be prosecuted for their deeds while being accorded the full protection of the law; we oppose, however, politically-motivated charges and the blanket inclusion of all leaders and prominent members of the opposition in this criminal case.

One example is the detention of Mirbobob Mirrahimov, the former chairman of the Tajikistan State Committee on Television and Radio, and Akhmadsho Komilov, Khairiddin Kasimov and Khurshed Nazarov, all three television journalists. The charges against the four, who have been detained without trial since January 1993, include treason, attempt at the violent overthrow of the government and crimes against the state. All four potentially face the death sentence. According to the Procuracy, the four men were detained because they "occupied positions of authority in the Tajikistan State Committee on Television and

³ Reuters, September 7, 1994.

⁴ Press conference held in Dushanbe on September 20, 1994, by Abdumajid Dustiev, Vice President of the Supreme Soviet of the Republic of Tajikistan.

⁵ "History Repeats itself," Press Center of the Procuracy of the Republic of Tajikistan, *Vyecherni Dushanbe*, March 19, 1994.

For the definition of "particularly grave state crimes" see Criminal Code of Tajikskii SSR, Articles 61-70.

Radio and used the media in the interests of the opposition."⁶ Human Rights Watch/Helsinki believes that the charges against the four journalists are not based on evidence of recognizable criminal activity but are politically-motivated and, as such, constitute a violation of the right of freedom of expression, as guaranteed by Article 19 of the International Covenant on Civil and Political Rights.

In addition to the four journalists, numerous other members or supporters of the losing side in the civil war who remained in Tajikistan were detained and are still awaiting trial. Others, such as Jumaboi Niyazev, a former regional chairman of the Democratic Party of Tajikistan, and Nuriddin Sadridinnov, a former regional chairman of Rastokhez, were sentenced to seven and ten years, respectively, for "possession of bullets." Numerous members of the Islamic Revival Party, such as Ajik Aliev, Mahmadyar Nazimov and Rajab Attalaev, have also received sentences ranging from three years to death on charges of conspiring or calling for the overthrow of the government. Once again, the Procuracy has failed to provide any details on the basis of the charges against these men. In the absence of compelling evidence, Human Rights Watch/Helsinki is seriously concerned that the charges against these individuals have a political basis and violate their rights to freedom of expression and association.

In addition to these high profile cases, it is believed that scores of others have been detained or imprisoned in Tajikistan for the legitimate exercise of their right to non-violent dissent. Exact figures are difficult to obtain. Human Rights Watch/Helsinki has made numerous requests to visit political prisoners but, to date, has not been accorded such permission. Even the International Committee of the Red Cross (ICRC) has been denied universal access to prisoners.

⁶ Human Rights Watch/Helsinki interview with the Procuracy of Tajikistan in May 1993.

The numerous amnesties issued by the government since November 1992 have had a limited scope and do not apply to people who called for the overthrow of the government, organized public disorder or other political acts. The most recent amnesty law, adopted on August 25, 1994, had been expected to apply to political prisoners and thus serve as a confidence-building measure paving the way for national reconciliation. However, as with past amnesties, the August 25 amnesty also contains exceptions for those sentenced for "particularly grave state crimes," which includes treason, "terrorist acts" and attempts to overthrow the government.⁷ While Human Rights Watch/Helsinki believes that amnesty should not be granted to those who have committed serious crimes such as torture or murder, we believe that amnesties have also been denied to those accused of non-violent acts against the state.

Human Rights Watch/Helsinki believes that many individuals have been detained on politically motivated charges, and denied the minimum due process guarantees provided under international law, including the right to legal counsel, the right to a fair and public hearing by an impartial tribunal and the right to be tried without undue delay.⁸ Unless they have been accorded a fair trial in conformity with international standards and been found guilty of a crime, we urge the government to release all political prisoners by October 17, pursuant to the terms of the September 17 Tehran agreement.

Two individuals have recently died while being detained by Tajik authorities. On August 24, Ismanbek Dashtov, who is of Pamiri origins, had his home searched without a warrant. He was subsequently beaten and detained, along with seven of his neighbors. Two days later, according to officials at the Ministry of Internal Affairs, Mr. Dashtov "threw himself" out of a third floor window while in the presence of authorities.⁹

⁷ Article 8 of the Decree of the Presidium of the Supreme Soviet of the Republic of Tajikistan "On Amnesty," dated August 25, 1994. Article I(e) of the August 25 decree does, however, extend an amnesty to those who fought "in defense of the constitutional system of the Republic" -- i.e. those who fought on the side of the current government, but were subsequently jailed for crimes committed during the conflict. Human Rights Watch/Helsinki opposes what amounts to the extension of a self-amnesty by the government, to those who fought on its behalf during the civil war. For the definition of "particularly grave state crimes" see Criminal Code of Tajikskii SSR, Articles 61-70.

⁸ International Covenant on Civil and Political Rights, Article 14.

⁹ Human Rights Watch/Helsinki interview with Amirghol Azimov, Deputy Minister of Internal Affairs of the Republic of

On September 21, Eshoni Said Ashraf Abdullohadov, a prominent religious figure, died during detention. Mr. Abdullohadov, who was the former Imam Khatib of Kurgan Teppe, had been in detention for over 16 months and was undergoing trial at the time of his death. Mr. Abdullohadov's family was never informed of the charges against him or that his trial had even begun, although they did visit him on several occasions. The last such meeting took place three days prior to his death, at which time he was reportedly in excellent health.¹⁰ Mr. Abdullohadov was one of the prisoners scheduled to be released pursuant to the September 17 Tehran agreement.

Acts of torture, and cruel, inhuman or degrading treatment or punishment against detained individuals are prohibited by both the International Covenant on Civil and Political Rights and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. These two recent deaths raise grave concerns about the treatment of detainees by Tajik authorities and the security of prisoners who are currently in detention.

Freedom of the Press

One of the greatest obstacles to free and democratic elections in Tajikistan is the absence of a free press. Following the civil war, many journalists fled Tajikistan under threats from armed supporters of the government. According to Reporters Sans Frontieres, a watchdog organization on freedom of the press, at least four journalists were killed in Tajikistan in 1993 "because of their opinions or in the carrying out of their work."¹¹

During the week of August 8, 1994, armed forces of the Ministry of Security entered and searched, without search warrants, the homes of Makhsoud Husseinov of the Supreme Soviet's newspaper *Sadayi Mardom (Voice of the People)* and Muhammad Rahim Saidar, a writer and journalist. Copies of *Charoghi Ruz*, an independent newspaper published in Moscow, were found in both journalists' homes.

No formal charges were brought against either journalist, but they were detained for six and four days, respectively. Human Rights Watch/Helsinki has received reports that both men were beaten and otherwise mistreated during detention. The sole basis for the detention of these journalists was the suspicion that they had served as local distributors of *Charoghi Ruz*. Both journalists were informed that distribution of the newspaper has been banned in Tajikistan,¹² and were threatened with imprisonment if they continued to serve as distributors.

Also, as discussed above, the former chairman of the Tajikistan State Committee on Television and Radio Mirbobo Mirrahimov, and three television journalists — Akhmadsho Komilov, Khairiddin Kasimov

¹⁰ Human Rights Watch/Helsinki interview with members of Mr. Abdollohadov's family in Dushanbe on September 23 and 24, 1994.

¹¹ International Freedom of Expression Exchange Clearing House Action Alert, June 2, 1994. Three other journalists were killed under uncertain circumstances in 1994. Olim Abdullov, a journalist at the Tajikistan state television, and Khoshvakht Haydarshho, a journalist at the pro-government daily *Jumhuriyat*, were both assassinated during the month of May. On August 18, Davlatali Rahmonov, the Director of Programming for Tajik Television and one of the most prominent commentators in the country, was killed as he was leaving his home. The next day, a hand grenade was thrown into the home of Irmatov Suleimon, editor of the Communist Party newspaper, injuring three family members.

¹² Although the founder and staff of *Charoghi Ruz* were driven out of the country due to threats and attacks following the civil war, no law or decree exists banning the newspaper or its distribution in Tajikistan, and such a ban, if it existed, would violate international standards protecting freedom of expression.

and Khurshed Nazarov — have been detained since January 1993, and it is unclear when their cases will go to trial.

These events have had a chilling effect on freedom of the press in Tajikistan. At present, there are six major functioning newspapers in the country; five are government newspapers, and the sixth receives almost all of its funding from the government.¹³ In addition there are various regional newspapers that are also government-run. No criticism of the government or its policies can be detected in these publications, which are either controlled by the government or engage in self-censorship.¹⁴

In August, the editors and staff of *Ettehad*, a relatively recent newspaper published by the Leninabad division of the "Kenjaev Fund,"¹⁵ alleged that the Leninabad Regional Executive Committee had forbidden its further publication in the Leninabad region. This occurred following the publication of articles critical of the leadership of the republic and the effectiveness of Supreme Soviet chairman Emomali Rahmonov.¹⁶ While *Ettehad* is being published at the moment, the government has cut off its paper supplies, making publication very difficult.

In addition, a February 21, 1994, decree suspended the activities of all independent electronic media, including radio and television, until the ratification of a new law by the Supreme Soviet. Such legislation was not discussed during either the 19th or 20th sessions of the Supreme Soviet, and the next session is unlikely to take place prior to 1995.

¹³ These are: the Supreme Soviet's *Sadayi Mardom*, the Council of Ministers' *Jumhuriyat, Narodnaya Gazeta* and *Khalgh Avazi*, and the Dushanbe Municipality's *Vyecherni Dushanbe*. *Biznes i Politika* receives most of its funding from the Ministry of Industry.

¹⁴ The press problem is exacerbated by a severe economic crisis, particularly a shortage of paper and ink, which has prevented most newspapers from publishing more than one weekly or bi-weekly edition.

¹⁵ Safarali Kenjaev, a prominent politician and President of the Council of Ministers during the Nabiev government, subsequently had a falling out with the current Rahmonov government.

¹⁶ August 30, 1994, communication addressed to the United Nations Mission of Observers to Tajikistan (UNMOT) by the staff and editor of *Ettehad*.

Thus, although Article 27 of the Law of the Republic of Tajikistan on Election of the President of Tajikistan, approved on July 21, 1994, during the 19th Session of the Supreme Soviet, (hereinafter "Electoral Law") provides all presidential candidates with equal access to the mass media, this is a relatively meaningless guarantee, as the control that is exercised over the press renders it virtually impossible for critical or dissenting voices to find their way into the mass media. Indeed, since the start of the electoral campaign, the overwhelming majority of television and radio airtime has been dedicated to Emomali Rahmonov. The only other presidential candidate, Abdumalik Abdelajanov, has received very little airtime and virtually no visual coverage. Moreover, while Rahmonov's program has been published in national government newspapers such as *Jumhuriyat*, Abdelajanov's program, while available, has not yet been printed in any national publication.

PARTICIPATION OF THE OPPOSITION AND REFUGEES IN THE POLITICAL PROCESS

Despite heavy criticism of the Electoral Law and the fact that international organizations such as the CSCE and International Federal Electoral Systems (IFES) provided advice on its amendment, the government did not make any changes in the law. Article 25 of the International Covenant on Civil and Political Rights guarantees every citizen the right and the opportunity "to vote and be elected at genuine periodic elections ... guaranteeing the free expression of the will of the electors." However, the new electoral law makes no provisions for the participation of the main opposition parties or of Tajik refugees in elections. Moreover, its nomination and eligibility requirements, which make it virtually impossible for anyone outside of current government circles to become a presidential candidate, as well as a supreme court ban on opposition parties, effectively preclude the candidacy of any member of the opposition. In order for presidential elections in Tajikistan to be meaningful, representatives of all political points of view must have the opportunity to present their candidacy. Accordingly, the government must lift the ban on opposition political parties and amend the Electoral Law. Moreover, it should seek to include as many refugees as possible in the political process. Otherwise, tens of thousands of Tajik citizens will potentially be denied their right, under international law, either to vote or to be elected in national elections.

Exclusion of the Opposition

Ban on Political Parties:

The International Covenant on Civil and Political Rights guarantees, in Article 22, the right to freedom of association. The government of Tajikistan has violated this right by failing to lift the June 21, 1993, Supreme Court ban against the main opposition parties: the Islamic Revival Party, the Democratic Party of Tajikistan, Rastokhez and Lali Badakhshan. In his speech before the 20th session, Emomali Rahmonov expressed the hope that the postponement of the elections would permit "representatives of other political organizations and forces in opposition to come back home and put forward their candidacy." As of this writing, however, the government has not taken concrete steps to lift the ban on non-violent opposition parties and movements and make this hope a reality.

Restrictive Nomination Procedures:

The procedures in the Electoral Law for nomination of presidential candidates are restrictive. Nomination may only take place by one of the following entities during the course of an official congress or conference: a registered political party, the Council of People's Deputies of the Autonomous Oblast of Gorno-Badakhshan, Regional Councils, the Dushanbe City Council or the Representative Assembly of Regional and City Councils.¹⁷

¹⁷ Electoral Law, Article 24.

At present, only two political parties are registered in Tajikistan: the Communist Party and the Party of Economic and Political Renewal, which is close to the official establishment. If someone who is not a member of or supported by one of these two parties wishes to run for president of Tajikistan, he or she would first have to form a new political party for the purpose of being nominated as a presidential candidate.

The following procedures would have to be followed: the founders of the political party would first have to convene a meeting and draft regulations, and then register their regulations with the appropriate governmental body (e.g. Ministry of Justice, Department of Justice of Regional Executive Committee, etc.) The application for registration would be considered within one month of receipt and, if approved, the party could start functioning as of that date.¹⁸ However, a political party may be required to resubmit or amend its registration for technical reasons.

In addition, registration may be refused under certain circumstances, for example if the party aims to overthrow the government. But the law is broad enough to include non-violent opposition parties as well. A decision to deny registration would have to be appealed to the Supreme Soviet of the Republic of Tajikistan, which is a lengthy process.¹⁹

Given the short period of time between the announcement of the plan to hold elections and the actual election date, it would have been logistically difficult for a new political party to form in time to nominate a candidate. Moreover, the registration process for political parties leaves a lot of discretion for denying registration to "undesirable" parties. It makes it unlikely that a candidate who lacks the support of an existing political party or regional or city council can be nominated. For the elections scheduled for November 6, 1994, for example, only two presidential candidates were nominated: Emomali Rahmonov, the Chairman of the Supreme Soviet of Tajikistan and current leader of the country, and Abdelmalik Abdelajanev, the Tajik Ambassador to Russia.

In addition to official nomination by one of the specified entities, each candidate must collect signatures from five per cent of the eligible voting population of the republic, or approximately 133,000 signatures.

Restrictive Eligibility Requirements:

Article 1 of the Electoral Law stipulates that a presidential candidate must have resided permanently in Tajikistan for the past ten years. This requirement renders ineligible members of the opposition who have lived in exile since the end of the civil war. According to the Deputy Minister of Justice, this provision does not, in fact, exclude the opposition, because there is an "unwritten understanding" by the government that an exception will be made for members of the opposition, if necessary.²⁰ However, the absence of such an understanding in written form, coupled with the ban on opposition parties and the outstanding criminal charges against prominent members of the opposition, make the candidacy of a member of the opposition highly improbable.

Exclusion of Refugees

¹⁸ Law of the Tajik Socialist Republic on Public Associations in the Tajik SSR, Article 12.

¹⁹ *id.*, Article 13.

²⁰ Human Rights Watch/Helsinki interview with Khalifbobo Hamidov, First Deputy Minister of Justice of the Republic of Tajikistan, on August 8, 1994.

Another major flaw in the Electoral Law is the absence of any provisions for the participation of refugees in elections. Following the civil war, hundreds of thousands of refugees poured into northern Afghanistan, Russia and other countries of the C.I.S. According to the United Nations High Commissioner for Refugees (UNHCR) and the Department of Refugee Affairs of the Ministry of Labor of Tajikistan, nearly one quarter of the estimated 60,000 refugees who fled to northern Afghanistan have yet to be repatriated.²¹ The opposition, for its part, estimates that more than 80,000 refugees remain in Afghanistan. In Russia, more than 140,000 Tajiks have registered with the Federal Migration Service since it opened in June 1992.²²

An exact figure for the number of Tajik refugees is difficult to obtain, as no accurate "census" or registration process has taken place for the refugee population as a whole. One of the agenda items for the peace talks had been for the "Joint Refugee Commission," agreed to by both the government and the opposition delegations, to determine more accurately the number of refugees.

The Electoral Law does not even mention the issue of refugee voting, although Article 2 states that any citizen of Tajikistan over the age of 18 has the right to vote in presidential elections. This article excludes those who are physically incapable of voting, which would presumably apply to persons located outside of the country during elections. Article 30 does provide alternative voting arrangements for eligible voters who are unable to attend the polling station on election day, but these arrangements require that the voter be physically present in Tajikistan prior to or on the day of the election.

Unless an effective means is provided for the participation of refugees in the elections, a significant percentage of the citizens of Tajikistan will be effectively barred from taking part in the election. According to officials, the government plans to provide for voting by those refugees currently living in UNHCR-administered camps in Afghanistan, but no further details have been made available.²³ By the end of August, only 5,000 - 6,000 refugees were registered in UNHCR-administered camps in Afghanistan, and the UNHCR estimates the actual number of refugees present there to be as low as 3,000 - 4,000.²⁴ Thus, even if carried out, this plan would address a limited portion of the refugee population, while failing to take into account the tens or possibly hundreds of thousands of Tajik refugees living in other regions of Afghanistan, Russia, and the rest of the C.I.S.

²¹ As of August 1, 1994, from the Department of Refugee Affairs, Ministry of Labor of the Republic of Tajikistan, based on figures provided by the UNHCR. This figure includes refugees repatriated from both Camp Sahi (administered by the UNHCR) and from Konduz, Afghanistan.

²² Human Rights Watch/Helsinki interview with Vadim Viyalkishyev, Federal Migration Service of the Russian Federation, July 28, 1994. This figure does not take into account refugees who may have left Russia subsequent to registration.

No figures are available for the number of refugees in other C.I.S. countries.

²³ Human Rights Watch/Helsinki interview with Khalifbobo Hamidov, First Deputy Minister of Justice of the Republic of Tajikistan, on August 8, 1994.

²⁴ Human Rights Watch/Helsinki interview with UNHCR officer in Dushanbe, September 5, 1994. The discrepancy between the number of registered refugees and the actual number of refugees present in the camps is due to an inflation in the number of family members reported by each refugee family.

While no clear international standards exist obligating a government to provide for voting by refugees living outside its territory, Human Rights Watch/Helsinki believes, as a matter of policy, that the circumstances of the conflict in Tajikistan and the high number of remaining refugees warrants the recommendation that the Tajik government provide for voting by the refugee population.

LEGAL DIFFICULTIES POSED BY ADOPTION OF THE CONSTITUTION AND ELECTORAL LAW

The 19th Session of the Supreme Soviet had announced that presidential elections and a constitutional referendum would be held simultaneously in Tajikistan on September 25, 1994. Article 65 of the new draft constitution, approved by the 19th Session, reinstates the office of the president which was eliminated on December 2, 1992 by the 16th Session of the Supreme Soviet. If the popular referendum on the constitution, which is supposed to be the ultimate determinant of whether or not Tajikistan shall be ruled by a president, takes place on the same day as presidential elections, it will present voters with the possibility of voting for a president at a time when it is not clear whether or not the office of the presidency has been reinstated.

The introduction to the Law on Constitutional Reform provides a weak justification for this sequence of events by noting that the reinstatement of the office of president was approved by the "majority" of those who participated in discussions of the draft constitution. However, such a procedure does not constitute a legal instrument providing a sufficient basis for the creation of the office of president. Other arguments cite the high cost and logistical difficulties of organizing separate voting days for the referendum and the presidential vote.

To its credit, the Commission for the Preparation of the Draft Constitution of the Republic of Tajikistan, which presented the first draft of the constitution on April 13, 1994, provided a two-month period during which anyone could comment on the draft. By the June 15 deadline, over 8,500 sets of comments had been submitted, although no comments were provided by the parties of the unrecognized political opposition.²⁵ Some significant and positive changes were made in the draft constitution on the basis of these comments, including the addition of a provision in Article 17 granting equal rights to men and women, and the prohibition against torture, cruel or inhuman treatment in Article 18.

CONCLUSION

Human Rights Watch/Helsinki urges the government of Tajikistan to take immediate steps to ensure that civil and political rights guaranteed under international law are restored in Tajikistan. Until there is greater freedom of the press, the ban on opposition parties is lifted permitting freedom of association, the Electoral Law is amended, and arrangements are made for voting by as many citizens — including refugees — as possible, conditions in Tajikistan will not be conducive to meaningful, democratic elections. Moreover, any individual being detained without charges, or in the absence of evidence of participation in a recognizable criminal act, or solely on the basis of the expression of his or her ideas, should be immediately released.

²⁵ Human Rights Watch/Helsinki interview with Khalifbobo Hamidov, First Deputy Minister of Justice of the Republic of Tajikistan, on August 8, 1994.

RECOMMENDATIONS

To the government of Tajikistan

- Lift the ban on opposition political parties;
- Amend the Electoral Law to eliminate restrictive eligibility and nomination procedures;
- Stop the harassment of journalists and censorship of the press;
- Drop criminal charges against opposition leaders who were detained solely for the non-violent exercise of their right to dissent. This would permit these individuals to return to Tajikistan and participate in the political process, if they so desire, without fear of prosecution;
- Work with the Joint Refugee Commission and the United Nations High Commissioner for Refugees for speedy completion of the refugee repatriation process prior to elections, and provide specific measures for the participation of as many refugees as possible in future elections;
- Take immediate steps to ensure that individuals detained by Tajik authorities are not harmed or mistreated in any way;
- Release all political prisoners detained solely for the non-violent exercise of their right to dissent, and implement the measures on behalf of political prisoners set out in the September 17 Tehran agreement.

To the governments of the United States and the member states of the European Union

- Condition future technical and economic assistance to the government of Tajikistan on the fulfillment of the above conditions.

To the government of Russia

- Condition future military, technical and economic assistance to the government of Tajikistan on the fulfillment of the above conditions.

To the United Nations, the Conference on Security and Cooperation in Europe (CSCE) and other international organizations and governments

- Do not accept the government of Tajikistan's invitation to monitor the presidential elections unless (a) the above conditions are met and (b) monitoring activities can begin at an early enough stage to permit an evaluation of the entire election process, including the nomination and registration of candidates, campaigning and voting. Otherwise, participation by international bodies would create the impression that potentially flawed elections are being endorsed or supported by the international community, and accord them legitimacy which they may not merit.

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Human Rights Watch/Helsinki (formerly Helsinki Watch)

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director; Juan E. Méndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Helsinki division was established in 1978 to monitor and promote domestic and international compliance with the human rights provisions of the 1975 Helsinki Accords. It is affiliated with the International Helsinki Federation for Human Rights, which is based in Vienna, Austria. Jeri Laber is the executive director; Holly Cartner, counsel; Erika Dailey, Rachel Denber, Ivana Nizich and Christopher Panico are research associates; Anne Kuper, Ivan Lupis, and Alexander Petrov are associates; Željka Markić and Vlatka Mihelić are consultants. Jonathan Fanton is the chair of the advisory committee and Alice Henkin is vice chair.