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## **NEW CITIZENSHIP LAWS IN THE REPUBLICS OF THE FORMER USSR**

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### **I. Overview of Citizenship Issues and Proposals**

The dissolution of the Soviet Union into fifteen independent states created a unique situation for millions of individuals who live outside their titular republics<sup>1</sup>. Their USSR citizenship lost its meaning, and the future of their citizenship entitlements was left to the governments of the new states that emerged from the former USSR republics. Because citizenship determines certain fundamental civil and political rights, Helsinki Watch has been monitoring the development of citizenship laws in the former Soviet Union. And because international human rights law does not explicitly address the unique situation of these millions of individuals, Helsinki Watch discussed and adopted a policy position identifying principles that we believe should be embodied in new citizenship laws and proposals. (See II.)

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<sup>1</sup> None of the former republics is ethnically homogeneous. The following percentages describe the concentration of each "titular" ethno-national group on its territory (i.e., the concentration of Tajiks in Tajikistan): Armenia, 93.3 per cent; Azerbaijan, 82.6 per cent; Russia, 82.6 per cent; Belarus, 77.8 percent; Moldova, 64.4 per cent; Estonia, 61.5 per cent; Georgia, 70.2 per cent; Kazakhstan, 39.7 per cent; Kirgizia, 52.3 per cent; Latvia, 52 per cent; Lithuania, 79.6 per cent; Tajikistan, 62.2 per cent; Turkmenistan, 71.9 per cent, Ukraine, 72.64 per cent; Uzbekistan, 71.3 per cent.

**Helsinki Watch believes that the new governments in the Commonwealth of Independent States, in the Baltic States, and in Georgia have an obligation to adopt citizenship laws that treat in a fair and non-discriminatory manner individuals who moved to or otherwise lived in these respective territories while the Soviet Union was a unified state. No matter how one judges the Soviet presence in the former republics -- as a legitimate unitary state, an illegal occupation, imperial rule, or even a true federation -- most people who lived there are entitled to citizenship untainted by discrimination.**

### **Criteria for Fairness**

**The fairness of citizenship laws can be evaluated by two dependent sets of criteria: first, whether they refrain from treating as immigrants most individuals<sup>2</sup> who lived on the state's territory before the declaration or reestablishment of independence;<sup>3</sup> and second, if the law does treat such individuals as immigrants, by the qualifications according to which the former may accede to or be denied citizenship. Such qualifications typically include minimum residence requirements, language proficiency examinations, and proof of legal source of income. They also sometimes include medical, political, and financial grounds upon which this group of individuals could be excluded from citizenship.**

### **The Zero Option**

**According to these sets of criteria, citizenship laws and proposals range from liberal to exclusionary. The most liberal is the "zero option," which grants citizenship to all people living in the republic either at time when independence was declared or when the law was adopted. The Russian, Ukrainian, Moldovan, Kazakh, Lithuanian, Belorussian, and Tajik laws, and the Georgian and Armenian draft laws adopt this approach, unconditionally granting citizenship to individuals who have been "permanent residents" on their respective territories.<sup>4</sup> They generally set out a certain period during which individuals either may apply for citizenship, or automatically become citizens provided they do not officially reject the given state's citizenship. "Permanent residence" here denotes not a certain time period, but the fact that the individual had an official residence permit, or "propiska," to live in that republic.<sup>5</sup>**

**All of the citizenship laws of the former republics forbid dual citizenship unless a treaty between the republic in question and the relevant foreign state specifically provides for dual citizenship.**

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<sup>2</sup> **This does not include people who lived in the republic only to fulfill a tour of duty in the Soviet Army.**

<sup>3</sup> **That is, whether it sets out for these people citizenship regulations that are separate from those that apply to individuals currently seeking to move to the new state.**

<sup>4</sup> **As of this writing, Uzbekistan, Georgia, Azerbaijan, Armenia, Turkmenistan, Latvia, and Kirgizia have not adopted citizenship laws.**

<sup>5</sup> **All citizens of the former Soviet Union were required to obtain such residence permits to live in a particular city and to secure legal employment. The propiska system, a clear infringement on freedom of movement, continues to operate in all of the former republics.**

## **Estonia and Latvia Reject the Zero Option**

Citizenship proposals have stirred heated debate in Estonia and Latvia, where lawmakers seek both to deal with what they perceive as the Soviet Union's colonial legacy and to preserve the ethnic identity of their respective states.<sup>6</sup> Intense social pressure on each government to adopt exclusionary citizenship laws came principally from the Congresses Estonia and Latvia. Representing pre-war citizens of their respective countries, these organizations consider persons who moved to Estonia and Latvia during the Soviet period as at worst colonial occupiers, and at best immigrants. They staged vociferous demonstrations in the fall protesting zero-option proposals that emerged during parliamentary committee debates.

**Estonian Citizenship Law:** On February 26, 1992, the Estonian Supreme Council issued a decree re-establishing the Estonian Citizenship Law of 1938, with retroactive force as of November 6, 1991. The decree amended the 1938 law, and specified who would not automatically be considered Estonian citizens. This category includes all individuals who were not Estonian citizens as of June 16, 1940 (the date when Soviet control over Estonia began), or their descendants. In other words, all individuals who moved to Estonia after June 16, 1940, or who were born in Estonia to non-Estonian parents must apply for citizenship. The decree, along with the 1938 law, also establishes requirements these individuals must fulfill to obtain citizenship. These include two years of permanent residence in Estonia (beginning March 30, 1990) and a one-year "waiting period." Although at first blush this "two-plus-one" option seems liberal, it basically excludes these people from the forthcoming parliamentary elections and most likely from privatization (depending on when privatization begins in Estonia), in which only citizens may participate. It is discriminatory because it allows in principle a certain group of people to become citizens, but qualifies their citizenship entitlements by putting them on "second-class" footing with "real" Estonian citizens with respect to the most important political and economic events in the near future.

The law also requires some level of proficiency in the Estonian language, but leaves the definition of proficiency to forthcoming legislation. It categorically denies citizenship to, among others, military personnel who served in foreign armies, former Soviet intelligence and security officers, individuals convicted of serious crimes, recidivist criminals, and persons who do not have a legal source of income.

**The Latvian Draft Law:** The Latvian draft law on citizenship, adopted on October 15, 1991, states at the outset that "a large number of USSR citizens settled [in the Republic of Latvia] whose entry and residency is not confirmed by any agreement between the Republic of Latvia and the USSR," implying that such individuals have no inherent rights to citizenship in Latvia. The draft law requires of all individuals who were not citizens of Latvia as of June 17, 1940 (or their descendants) sixteen years of permanent residence (specifying no starting date) and proficiency in Latvian. Moreover, it would deny citizenship to such individuals if they: have been convicted of criminal acts or are under criminal investigation while their citizenship applications are being considered; have been convicted of "spreading chauvinism, fascism, communism, or other totalitarian as well as social class dictatorial ideas, or inflaming

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<sup>6</sup> Indeed, the preamble to the Latvian draft law on citizenship states as one of the law's purposes "to liquidate the consequences of the Soviet occupation and annexation of Latvia and to renew the lawful rights of the Republic of Latvia's body of citizens."

**national disorder and hatred;" have served as Communist Party or Komsomol (Communist Youth Party) personnel; are registered in institutions that treat alcoholism and drug addiction; or are living without legal financial sources.**

**Helsinki Watch strongly opposes the exclusionary approach adopted by the Estonian and Latvian parliaments, their language requirements for current permanent residents, and their categorical denial of citizenship to entire groups of individuals. In a recent exchange of letters, Helsinki Watch urged the Latvian government not to adopt the October 15 draft law, citing the latter's specific violations of international human rights law. (See III.) The letter objected to the law's residence and language requirements and its exclusion of the above categories of individuals (among those who lived on Latvian territory before its reestablishment of independence) from Latvian citizenship, and called on the Latvian government to adopt citizenship legislation that conforms to international human rights principles.**

**In response, the Latvian parliament's Human and Nationalities Committee justified its support for the draft law by referring to the illegal nature of the Soviet army's occupation of Latvia. (See appendix.) The Committee's approach assumes that since people who lived in or moved to Latvia during the Soviet period (who were not the descendants of those who were Latvian citizens in 1940) may be entitled to another country's citizenship, the Latvian government has no responsibility to grant them special terms for citizenship.<sup>7</sup> In its February letter, Helsinki Watch emphasized the importance of providing citizenship regulations that do not treat such people as immigrants.**

**As of this writing, the Latvian parliament has not adopted the draft law. It is now debating plans to conduct a referendum on who can become citizens, in which only those individuals who are currently citizens of Latvia may participate. According to statistics provided by ITAR, a Russian news agency, this referendum would exclude between thirty-five and forty-eight percent of Latvia's population, a group consisting mainly of Russians.**

## **II. Helsinki Watch Policy Statement on Citizenship Legislation Adopted or Under Consideration in Former Soviet Republics**

**Helsinki Watch views with concern various laws and proposals under consideration in states of the former USSR<sup>8</sup> that could exclude from citizenship in the state in question many individuals with significant links to that state. Those excluded are individuals who, while the Soviet Union was a unified state, migrated to a republic that did not coincide with his or her ethno-national identity. We believe that most individuals who migrated within the country could not have foreseen the change in the Soviet Union's political status, and that they lived in any given republic with the expectation that their residence would not be interrupted by the issue of their citizenship. This policy statement addresses the effects of new citizenship laws on the rights of only these individuals, and not the rights of new immigrants (i.e., people who applied for citizenship after the republic's declarations of independence or after the dissolution of the Soviet Union).**

**Our concern with respect to citizenship entitlements is twofold: first, citizenship entitles individuals to basic**

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<sup>7</sup> **According to this view, such people are either the perpetrators or unfortunate tools of Soviet colonialism.**

<sup>8</sup> **The terms "states" or "former Soviet republics" are used in this Policy Statement without implying any position on the legitimacy or desirability of any past, present, or future form of political affiliation of the former republics with each other, with the former Soviet Union, or with the Commonwealth of Independent States. This Policy Statement applies to legislation proposed for adoption and enacted by former Union republics, and would apply *mutatis mutandis* to such legislation considered by other political units within the former USSR, such as autonomous republics.**

rights such as voting and residence. Denying citizenship to deserving individuals would therefore violate their voting rights guaranteed in Article 25 of the International Covenant on Civil and Political Rights. Second, the allocation of property and other social and economic rights often hinge upon citizenship. Citizenship laws that exclude otherwise deserving individuals would create categories of people who would be the victims of systematic discrimination, banned by Article 27 of the International Covenant.

We believe that principles of international human rights must be used to evaluate the proposed citizenship laws. This policy statement identifies some of the considerations that we urge all ex-republics to take into account in fashioning their laws.

#### ***A. General Considerations***

##### **1. Applicability of International Human Rights Law in All Territories Formerly Under Soviet Control**

The requirements of customary international human rights law are fully in force with the effect of law in all territories that have been under the control of the USSR. In addition, the USSR had ratified and accepted many of the major human rights treaties and other international documents. A number of the new states that the republics have become have either expressly acceded to them or acknowledged their applicability, and we urge the remaining states to do so. All of the former republics (except Georgia) have formally accepted the CSCE human rights agreements.

##### **2. The Need to Strengthen Rather Than Diminish Protection of Human Rights in the Former Soviet Republics**

It is a moral, political, and legal obligation of each of the former Soviet republics to protect human rights within its territory. In no event should the establishment or re-establishment of independence serve as a pretext for cutting back on the rights to which former Soviet citizens are entitled under international human rights law.

##### **3. The Obligation to Ensure Protection of the Rights of All Persons Subject to Governmental Authority, Whether or Not They Are Formally "Citizens"**

Most aspects of international human rights law apply to "everyone" or to "all persons," regardless of citizenship or nationality. A government's obligations do not end with ensuring the rights of only its citizens.

##### **4. The Obligation to Minimize Statelessness**

Because citizenship is the principal mechanism through which people take part in governmental affairs, it is incumbent on the former republics to develop and implement their citizenship laws in a manner that avoids rendering individuals stateless. This is especially crucial for individuals who are of a nationality that has no corresponding territorial unit in the former USSR empowered to extend

**citizenship. We therefore urge the new states of the former Soviet Union to ratify the 1961 Convention Relating to the Status of Stateless Persons.**

#### **5. Obligations With Respect to Persons Who May Also Have Links to Another State or Republic**

**Avoidance of statelessness does not exhaust the responsibilities of the new states with respect to persons who may have links to more than one republic or state. If proposed citizenship legislation would adversely affect an individual's human rights, objection on human rights grounds is warranted even if he or she qualifies for citizenship (or another status such as permanent residence or asylum) in another state.**

#### **6. Prohibition of Arbitrary Deprivation of Citizenship**

**Under Article 15 of the International Covenant, a person may not be arbitrarily deprived of citizenship (nationality). Since under international law Soviet citizens could not have been deprived of their citizenship on arbitrary medical, political or other grounds, these same individuals cannot be denied citizenship for similar grounds.**

### **B. Specific Considerations**

#### **1. Claims Based on Duration of Residence and Reasonable Expectations**

**In the context of the dissolution of the USSR, claims based on a reasonable expectation of continuing residence deserve special attention. Disrupting expected residence may impose serious hardships on individuals whose jobs, families, and other relationships depend upon being able to continue living where they have been living. International human rights principles safeguard the reasonable expectations of individuals who, as citizens of the former USSR, have been living in one of the former republics that has now established or re-established independence. The rights of those individuals to continue in their habitual residence should not be impaired because of political changes in the world around them.**

**Two sets of citizenship requirements would therefore be preferable: one applicable to people who settled in the former republic before the establishment or re-establishment of independence and one applicable to those migrating to it thereafter. This arrangement prevents imposing a hardship on those residents who could not have reasonably foreseen a change in their legal status.**

**Persons with established ties of residence to a former republic should be presumptively eligible for citizenship in the state the republic has become, whether or not other criteria for citizenship (such as *jus soli* or *jus sanguinis*) would be met. This principle applies regardless of (1) whether one views the Soviet presence in the former republic as an illegal occupation; and (2) whether a person moved to the republic on his or her own free will or was forced to do so by the Soviet government. Accordingly, Helsinki Watch will oppose any proposed citizenship laws that would mandate excessively long periods of residence or other restrictive conditions as a qualification for citizenship for persons who were Soviet citizens with a settled place of residence in the former republic at the time of independence.**

**Persons with a reasonable expectation of continued residence who do not elect or qualify for citizenship of that state should be allowed to remain in their place of habitual residence in any event, and to return there after temporary absences. Helsinki Watch will oppose any bills or laws that would require involuntary change of residence, whether or not the affected persons are "citizens."**

## **2. Claims Based on Family Ties**

International human rights law, e.g. Article 23 of the International Covenant on Civil and Political Rights, protects the family as a social unit and the right of persons to marry and found a family. Proposals that give greater weight to an individual's ancestry or ethnicity than to his or her present circumstances could disrupt family life by allocating citizenship entitlement to one but not both spouses, to a child and one parent but not to the other parent, or on other similarly arbitrary lines. For the reasons previously suggested, political changes extraneous to an existing family unit should not impair the rights or expectations of the members of that unit. Accordingly, Helsinki Watch will oppose citizenship proposals that would have the effect of arbitrarily dividing a family into citizens and non-citizens.

## **3. Proposed Disqualifications on Grounds Such as Medical Needs, Criminal Status, or Political Affiliation**

Certain citizenship proposals would deny eligibility for citizenship in a former republic to persons who have been convicted of a crime or who were under criminal prosecution, have received treatment for alcoholism or drug addiction, or who belong or have belonged to certain political groups such as the Communist Party apparatus.

a. Denying citizenship to previously convicted criminals effectively adds an additional, *ex post facto*, and heavier penalty to the convicted person's punishment. Imposing penalties heavier than those that applied at the time a crime was committed violates Article 15 of the International Covenant.

b. Excluding persons who have received treatment for alcoholism or drug addiction is a cruel punishment that would discourage people from seeking needed treatment. Article 7 of the International Covenant, which prohibits "inhumane or degrading treatment or punishment," protects individuals against this exclusion. Denying citizenship on these grounds creates a new penalty that represents an attempt to criminalize an individual's past act of having registered at a clinic for substance abuse. Finally, it creates categories of people who are targets of discrimination on the basis of status or state of being that is beyond their control. This kind of discrimination is forbidden by Article 26 of the International Covenant.

c. Excluding categorically persons who worked for the USSR Communist Party, KGB, or any other institution, on the grounds that they perpetrated grave abuses of human rights, collectively punishes individuals and violates the International Covenant's Article 22 (on freedom of association). Before such a person is denied citizenship, he or she should be **individually** proven culpable in a court of law for specific crimes that were outlawed at the time of the acts in question. The record of each citizenship applicant should be judged individually, with the appropriate recourse to judicial institutions.

Even though similar political and medical tests are or have been used as criteria for immigration or naturalization eligibility in various countries (including the United States), Helsinki Watch believes that a fundamentally different situation is presented when such criteria are applied not to determine eligibility for admission of new entrants into a given state, but rather to determine how citizenship entitlements should be allocated when an existing state (such as the USSR) fragments into smaller units. Persons falling into the above medical, political, or similar categories were already citizens of the USSR; by virtue of falling into these categories, they could not have been involuntarily expatriated by the USSR. They should not be worse off by virtue of political developments occurring in the territory of the former USSR.

**Helsinki Watch will oppose eligibility tests such as those suggested above, to the extent that they are applied to deny citizenship to persons whose ties with the former republics would otherwise qualify them for citizenship.<sup>9</sup>**

#### **4. Language Requirements**

**Helsinki Watch generally opposes language requirements for people who lived in the state before the establishment or reestablishment of independence. However, if citizenship requirements include a language proficiency examination, a citizenship law should also provide *gratis* language instruction to individuals who resided on the territory of the former republic before the establishment or re-establishment of independence. Special consideration should be granted to the elderly, who may have particular difficulties learning a new language.**

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<sup>9</sup> **Because different equitable considerations are at issue, this Policy Statement does not address whether any of the above criteria would be legitimate if applied to admission of new entrants (i.e., to immigrants, or to naturalization of persons who would not otherwise qualify for citizenship).**



### **III. Exchange of Letters Between Helsinki Watch and the Latvian Government**

















*This newsletter was written by Rachel Denber.*

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