

## Armenia

Although the international community has looked favorably upon Armenia for its economic reforms in 2004, the government has failed to improve its human rights record. The legacy of the 2003 presidential elections, which were marred by widespread fraud, dominates political life. An opposition boycott of Parliament, in response to the ruling coalition's refusal to debate a "referendum of confidence" in President Robert Kocharian, exemplified an increased polarization between the government and opposition.

The opposition led a broader campaign calling on President Kocharian to step down, triggering a countrywide government crackdown. The campaign peaked in a massive, peaceful protest on April 12, 2004, which the authorities dispersed using excessive force. Repeating a cycle of repressive tactics from the 2003 election, the authorities arrested opposition leaders and supporters, violently dispersed demonstrators, raided political party headquarters, attacked journalists, and restricted travel to prevent people from participating in demonstrations.

In response to international pressure, the government has released some opposition leaders detained during the crackdown, and has participated in discussions about cooperation with the opposition. The government has made limited attempts at reforms in other areas. It set up a council to fight corruption, a widespread, endemic problem in Armenia. Critics, including Transparency International, dismissed the measure as ineffectual, citing the council's lack of independence from the executive. The judiciary remains under the influence of the executive and torture and ill-treatment continue in places of detention.

### ***Freedom of Assembly***

The authorities restrict the right to freedom of assembly, effectively banning most opposition rallies. In May 2004, President Kocharian signed a new law on public gatherings that Parliament had adopted despite criticism from the Council of Europe and the Organization for Security and Cooperation in Europe (OSCE) that the law did not comply with European human rights standards. Among other things, the law prohibits public gatherings in numerous specific locations and bans mass public events "for the purposes of election or referendum campaigning" if they interfere with traffic regulations. After the law came into force, the authorities denied the opposition permission to hold a rally in at least one case, and permanently banned public gatherings outside the presidential residence, the site of the April 12 protest.

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Repeating a pattern established during the 2003 presidential election, the authorities restricted travel on major roads to Yerevan when opposition rallies were held in the capital from March to May 2004. Police set up roadblocks, stopped cars, questioned passengers, and denied permission to travel further to those they believed were opposition supporters.

### **State Violence**

Torture and ill-treatment in police custody remain widespread in Armenia. In 2004, Human Rights Watch documented cases of torture of opposition supporters in police custody. Police beat and threatened to rape the detainees, later releasing them either without charge, or with petty charges punishable with fines or short periods of imprisonment under the Administrative Code. No officials were held to account for these incidents.

A dramatic low point in 2004 was the authorities' use of excessive force to break up the April 12 demonstration. Police and security forces violently dispersed a peaceful crowd of about three thousand protesters who were calling for President Kocharian's resignation. Security forces sprayed the crowd with water cannons and then beat protesters with batons, shocked them with electric prods, and threw stun grenades into their midst. High-level government officials later claimed the violence was not excessive, though no investigation was carried out.

Security forces and unknown assailants have carried out a series of brutal attacks on journalists who were reporting on opposition rallies. Attackers confiscated and smashed journalists' equipment, significantly preventing television coverage of these events and their violent dispersal. Although there was evidence of the identity of attackers, the authorities charged only two men, who received a fine of less than U.S. \$200, in stark contrast to the custodial penalties imposed on opposition activists for lesser offences.

An environment of impunity for attacks against government critics continues. The authorities failed to bring to justice the perpetrators of at least four attacks on opposition leaders and a human rights activist in March and April 2004. On March 30, four unknown men assaulted Mikael Danielian, a human rights defender, punching and kicking him. Danielian spent four days in a hospital after the attack, which he believed was aimed at stopping him from monitoring the growing street protests by the political opposition. The General Prosecutor's investigation produced no results and was closed on June 1.

### **Arrests and Raids**

As the opposition began a series of protests in late March 2004, the government resorted to its long-established tactic of detaining potential protesters under the Administrative Code for short periods of time for what is termed "administrative detention." From March to June, police detained several hundred people, for such offences as petty hooliganism and failing to carry out a police directive. The trials breached basic standards, including the defendant's right to a lawyer and to present evidence in his or her defense. Judges imposed penalties ranging from a fine to fifteen days in prison.

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On March 30, the authorities stepped up the pressure on the political opposition, opening a criminal case against a coalition of opposition parties and its supporters. Prosecutors charged a handful of opposition party leaders with publicly calling for the seizure of power and publicly insulting representatives of government, keeping them in custody for up to several months. By September, the prosecutor general had dropped the charges and released all the accused men. In another example of political intimidation, on the night of April 12-13 security forces stormed the Yerevan opposition headquarters of the Republic Party, the National Unity Party, and the People's Party, arrested those present, and closed two of the headquarters for several days.

### **Media**

Although Armenia has a significant independent and opposition print media, the government continued to restrict full media freedom in the country. On April 5, 2004, the Russian television channel NTV had its broadcasting suspended throughout the country, after broadcasting footage of opposition protests. The official reason given for the suspension was "technical problems." By the end of September, NTV had not resumed broadcasting and the government had given its broadcasting frequency to another Russian channel that does not do news programming. In October, Kentron, a private Armenian television station, cancelled a Radio Free Europe and Radio Liberty (RFE/RL) news and analysis program three days after it began broadcasts. RFE/RL believed that a high-level government official had forced the cancellation. Local NGOs continue a campaign for broadcasting rights for A1+ television, which had been a highly popular and independent channel. The national broadcasting commission remains steadfast, however, refusing to grant licenses to A1+ and Noyan Tapan television channels, which were shut down in 2002 and 2001 respectively.

### **Freedom of Religion**

There was some improvement for religious freedom in 2004 with the registration in October of the Jehovah's Witnesses, after a string of rejected applications. However, despite the authorities' promises to release all Jehovah's Witnesses imprisoned for refusing to perform military service, the courts continue to impose fresh prison terms. In September, according to the Armenian Helsinki Association, eight Jehovah's Witnesses were serving prison terms for their refusal to perform military service, and a further eight, five of whom were in custody, were awaiting trial for the same offences.

### **Key International Actors**

The U.S. appears to be gaining influence in Armenia, which traditionally has looked to Russia for military and economic ties. The U.S. increased military aid and cooperation and, after initially refusing to involve itself, in 2004 Armenia agreed to send a small contingent of non-combatant military personnel to Iraq. The U.S. also designated Armenia as one of sixteen countries to be eligible for a multi-million dollar aid program called the Millennium Challenge Account. The U.S. stated that the flow of money was dependent on improvements in Armenia's human rights record.

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The Council of Europe effectively engaged Armenia to roll back some of the government's more authoritarian practices in 2004. The council continued its scrutiny of Armenia's post-accession obligations, noting progress in complying with some commitments, such as abolition of the death penalty, while expressing disappointment in other areas, such as the conduct of the 2003 elections. In April, the council's Parliamentary Assembly passed a resolution under an urgent procedure, expressing concern about the government crackdown against opposition supporters that month. Armenia responded by releasing the opposition supporters who were in custody on criminal charges and dropping the charges against many of them.

In September 2004, the European Union and Armenia met under the framework of the Partnership and Cooperation Agreement. Unfortunately, the E.U. failed to use this forum publicly to encourage human rights improvements, issuing a press release that did not raise human rights concerns. In a step that could increase the ability of the E.U. to influence Armenia on human rights, it included Armenia in its European Neighborhood Policy, giving privileged ties with the bloc. Officials warned that economic benefits would not flow until at least 2007, when Armenia will have to have negotiated action plans on economic and political reforms.

## Azerbaijan

The Azerbaijani government has a long-standing record of pressuring civil society groups and arbitrarily limiting critical expression and political activism. It has done so with a new intensity following the October 2003 presidential elections, which international and domestic observers said were marred by widespread fraud.

Trials of opposition supporters, accused of the 2003 post-election violence, did not comply with fair trial standards and showed once again how the authorities use the criminal justice system to discourage government critics. An environment of impunity for government officials implicated in acts of torture, excessive use of force, and election fraud, shows that the government did not seriously attempt the reconciliation that the international community was urging after the political and human rights crisis surrounding the presidential elections. Freedom of assembly for groups seen to be associated with the political opposition remains severely curtailed and independent and opposition press face major barriers to their work.

### ***Post-Election Trials***

Over one hundred opposition party members and supporters were tried on charges relating to the post-election violence. Only four were released on bail, the rest remained in pre-trial detention for up to six months. Azerbaijani courts convicted all of the defendants, sentencing forty-six people to custodial sentences ranging from two to six years. The remainder were released on three- to five-year suspended prison sentences. On October 22, the Court of Grave Crimes sentenced seven opposition leaders to between two and a half and five years in prison for their role in the post-election violence. According to local observers, prosecution witnesses retracted their testimony in court, claiming that Ministry of Interior officials had tortured and coerced them into signing statements incriminating the defendants. Independent observers raised serious allegations of procedural abuses, including defendants' restricted access to lawyers, and the admission of evidence in court that was based on confessions extracted under torture. Judges' failure to address these deficiencies called into question, as in the past, the independence of the judiciary.

### ***State Violence***

Torture, police abuse, and excessive use of force by security forces are widespread in Azerbaijan. Peaceful protests are frequently met with the use of force and arbitrary arrest. Severe beatings at police stations are routine and torture methods in pre-trial detention include electric shock and threats of rape. In 2004, the government failed to address these problems, perpetuating an environment of almost total impunity for security force abuses surrounding the October 2003 presidential elections. Although

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international interlocutors repeatedly called on Azerbaijan to investigate allegations of torture by the Organized Crime Unit of the Ministry of Interior, and security forces' use of excessive violence during the protests following the elections, at the time of writing the authorities had not prosecuted any cases.

### **Political Prisoners**

Azerbaijan is making some progress toward releasing or retrying political prisoners, a long-standing problem. By July 2004, following several amnesties in late 2003 and early 2004, the government had released thirty-two political prisoners and agreed to retry eleven, from a Council of Europe list of forty-five. However, the Council of Europe and local groups maintained that additional political prisoners remain in custody, and that the recent imprisonment of opposition supporters, accused of the post-election violence, added to their ranks. The chance of a fair trial for political prisoners facing retrial remains slim because of the lack of an independent judiciary. The Council of Europe previously condemned retrials of political prisoners as a "sham" controlled by the presidential authorities rather than the judiciary.

### **Civil Society Organizations**

The government attempts to tightly control civil society and pressures and harasses groups that are critical of government policies. In a dramatic example of this tendency, the authorities tried Ilgar Ibrahimoglu, the head of the Center for the Protection of Conscience and Religious Freedom, and a government critic, for alleged participation in the post-election violence. In April 2004, a Baku court found him guilty and handed him a five-year suspended prison sentence, despite serious allegations that the charges were falsified. While Ibrahimoglu was in custody, a court ordered the eviction of the Juma Mosque community, which Ibrahimoglu headed, from the mosque it had used since 1992. In June, police forcefully evicted worshippers from the mosque, detaining several of them. On July 30, police prevented the community from meeting at a private house, raiding the premises and temporarily detaining all twenty-six members present.

### **Media Freedom**

Authorities use a variety of informal measures to prevent or limit news critical of the government from reaching the public. Major television outlets are either state-owned or affiliated and the government fully controls the issuing of radio and television broadcast licenses through a licensing board that consists entirely of presidential appointees. The opposition and independent media are under constant pressure, through limited access to printing presses and distribution networks, imposition of crippling fines from government-initiated defamation cases, and harassment of journalists. In 2004, *Hurriet*, an opposition newspaper affiliated with the Azerbaijan Democratic Party, had to suspend publishing due to financial burdens and government harassment leading to difficulties distributing and selling the newspaper outside of Baku. In addition, journalists and editors face the threat of physical assault by unknown attackers bent on intimidation. For example, on July 17, four masked men kidnapped the editor-in-chief of the independent *Baki Khaber* ("Baku News") newspaper and demanded that he cease his journalism work, beating him for two hours before releasing him. Also at the end of July, an unknown assailant attacked a

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journalist for the *Monitor*, an independent weekly magazine. At the time of writing no one had been prosecuted for either attack.

### **Key International Actors**

Construction on two new major oil and gas pipelines routed across Azerbaijan, Georgia, and Turkey is currently underway. The huge foreign investment in these projects has focussed international attention on issues of security and stability in the region, sometimes at the expense of human rights.

United States policy toward Azerbaijan has focused on military cooperation and oil interests. Since 2001, U.S. military aid and cooperation has increased significantly in Azerbaijan. Correspondingly, Azerbaijan has cooperated in U.S. military operations, with approximately 150 troops in Iraq and thirty in Afghanistan. The U.S. role in Azerbaijan has been marred by inconsistent and sometimes weak responses to rights abuses, particularly in response to the 2003 presidential elections.

In September 2004, the European Union (E.U.) and Azerbaijan met under the framework of the Partnership and Cooperation Agreement. Unfortunately, the E.U. failed to use this forum publicly to encourage human rights improvements, issuing a press release that did not raise human rights concerns. In a step that could increase the ability of the E.U. to influence Azerbaijan on human rights, the E.U. included Azerbaijan in its European Neighborhood Policy, which brings with it economic benefits. Officials signaled that these benefits would not flow until at least 2007, when Azerbaijan will have begun to implement action plans on economic and political reforms.

The Council of Europe has played a constructive role in attempting to address human rights problems in Azerbaijan, pressing for the release of political prisoners, greater pluralism, and a devolution of political power away from the presidency. In January 2004, the Parliamentary Assembly of the Council of Europe (PACE) expressed concern about events surrounding the 2003 presidential elections and called on the government to rectify the abuses. In October, the PACE reviewed Azerbaijan's compliance with the January resolution, and stated that although some progress had been made, it was inadequate.

The European Bank for Reconstruction and Development (EBRD) is one of the largest multilateral investors in Azerbaijan, having committed more than U.S. \$473 million in projects. Although article 1 of the bank's founding document commits the EBRD to promoting democracy, human rights, and the rule of law, the Bank did not raise human rights concerns during the human rights crisis surrounding the 2003 presidential elections. Its board approved financing of U.S. \$125 million for the Baku-Tbilisi-Ceyhan oil pipeline in November 2003 and provided the government with \$41 million for road reconstruction projects in July 2004 with no conditions addressing democracy, human rights, or rule of law concerns.

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The Organization for Security and Cooperation in Europe's Minsk Group, co-chaired by the U.S., France, and Russia, led talks on the conflict over Nagorno-Karabakh between Armenia and Azerbaijan; however, no breakthrough appears imminent.

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## Belarus

The government of Belarus failed to ensure free and fair election in 2004, in large part by attacking the independent media and undermining freedom of association. The situation worsened in the months leading up to October 2004 parliamentary elections and a simultaneous referendum to remove presidential term limits. Several independent newspapers were closed, and journalists jailed on libel charges. Nongovernmental organizations (NGOs) and independent trade unions were given warnings or closed. Many opposition politicians were prevented from registering as election candidates. Some were arrested on trumped-up charges.

### *Elections*

The 110-member House of Representatives was elected in October without the election of a single representative from the opposition parties. According to official statistics, 77 percent of those who voted approved the lifting of presidential term limits. The results pave the way for President Alexander Lukashenka to stand for a third term of office.

The government took full advantage of defective electoral legislation to manipulate the election campaign and engineer the outcome of the vote. An Organization for Security and Cooperation in Europe (OSCE) observer mission to the October vote emphasized that the poll was undermined by problems with the election laws, including: the accreditation process for independent election observers; rules regarding early voting and the storage of the resulting ballots, and procedures for adjudicating electoral complaints.

In early 2004, authorities arrested three prominent opposition politicians on politically-motivated charges. Valery Levonevsky, a member of the coordination committee of "Free Belarus," and his deputy Aleksandr Vasilyev were convicted of defamation on September 7. Both received two-year prison sentences. Mikhail Marynich, who joined the opposition after resigning his post as ambassador to Latvia, is awaiting trial on charges of storing illegal arms.

Would-be candidates for the October elections were denied registration of their candidacy on questionable grounds. The Central Election Authority denied the candidacy of Mecheslav Grib, deputy chairman of the Belarus Social-Democratic Party, "Narodnaya Gramada," citing his failure to register company stock purchased in the early 1990s. It also rejected the candidacy of Vladimir Parfenovich of the Respublika parliamentary group, alleging that signatures on his registration petition had been falsified.

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Those opposition candidates who did manage to register their candidacy faced difficulty campaigning. Election law entitles each candidate to a total of five minutes broadcast time during the course of the campaign. However, state-controlled media allowed many pro-government candidates more than five minutes, while limiting opposition candidates to the statutory period. State-run newspapers published articles designed to discredit opposition candidates in the run-up to the vote.

The October elections and referendum were marred by irregularities. Members of the opposition were barred from observing at voting stations during early voting and on election day. During the vote count, officials did not announce numbers out loud as votes were being tabulated, and observers had only a limited view of the counting process, making verification impossible. The OSCE observer mission concluded that the parliamentary elections fell significantly short of international standards. The OSCE did not monitor the referendum.

During the week following the October vote, opposition activists organized demonstrations to protest the official results. Belarusian police beat, detained and arrested dozens of protesters, among them Anatoly Lebedko, the leader of the leading opposition party, the United Civil Party. Lebedko was hospitalized with severe injuries. He was discharged after receiving treatment.

### ***Human Rights Defenders***

The government continues to use presidential decrees to suppress human rights activities. Presidential Edict 24, introduced on November 28, 2003, allows for strict control over foreign financial assistance to NGOs, and prohibits foreign funding to educational and “political” activities. Any NGO, political party, or other organization, deemed to violate the decree can be shut down. Several NGOs have been closed down for alleged violations. Others received warnings from the Ministry of Justice. Two warnings in a year constitute grounds for closure.

At this writing, the Belarusian Helsinki Committee (BHC), a prominent NGO, faced closure on charges of alleged tax evasion. Although the Minsk Economic Court and the Court of Cassation acquitted BHC of tax violations on June 23, 2004, the Ministry of Justice decided on September 16 to file another lawsuit on the same charges, after BHC criticized publicly the October 17 referendum.

On January 29, 2004, authorities closed down the Independent Society of Legal Research (ISLR), citing repeated violations of the Law on Public Associations. Independent lawyers believe that the real reason was that ISLR members had defended other NGOs in court proceedings.

### ***Trade Unions***

Independent trade unions are under threat in Belarus. The sole remaining independent trade union federation, the Belarusian Congress of Democratic Trade Unions (known by its Belarussian-language abbreviation BKPD) and its affiliates face the constant threat of denial of registration or closure. The activities of unregistered unions are effectively illegal. BKPD union members risk dismissal and

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imprisonment, and pressure to join state-controlled unions. In March, authorities in Navapolatsk denied registration to the Free Trade Union (FTU), a BKPD member, for alleged deficiencies in application documents. The organization had been registered since 2002, but was required to re-register after amending its internal bylaws.

In September 2004, BKPD President Aleksandr Yaroshuk was sentenced to ten days in prison. Yaroshuk was convicted of defamation following the publication in the independent newspaper *Narodnaya Volya* (Will of the People) of his article criticizing the August 2003 decision by Supreme Court to liquidate the Trade Union of Air Traffic Controllers of Belarus. Authorities had pressured members of the union to resign before the court's ruling closed it down entirely.

### **Media Freedom**

All national television stations, and most radio stations, in Belarus are controlled by the state. Independent radio broadcasts are limited to non-political music and advertising. Citizens do not receive objective information from the state-controlled media. Re-broadcasted Russian television programs are often manipulated through the insertion of Belarusian footage presented as part of the Russian program.

The long-standing government pressure on independent newspapers intensified in the run-up to the October elections. Some printing houses were pressured to stop printing independent newspapers, damaging their circulation. Several large stores in Minsk refused to sell independent print media. On August 27, 2004, the Ministry of Information suspended the operations of the newspaper *Navinki* (The News) for three months, saying it had failed to inform authorities about changes in its publishing schedule, and published articles that the Ministry considered to "jeopardize public morals." The Ministry also ordered a three-month closure of the independent weekly *Novaya Gazeta Smorgoni* (The New Newspaper of Smorgon) on August 16, citing an alleged failure to comply with registration procedures.

Journalists who criticize the government face prosecution. On September 30, a court convicted Alena Rawbetskaya, the editor-in-chief of the independent newspaper *Birzha Informacii* (Stock-exchange Information), on defamation charges and fined her 1.3 million rubles (approximately U.S.\$630), after the paper criticized the upcoming referendum. On the day of the elections, Pavel Sheremet, a Russian journalist from Channel One television was arrested on charges of "hooliganism." Channel One broadcast two documentaries immediately prior to the elections in which Sheremet described the Lukashenka government as dictatorial. Sheremet was later released and the case against him suspended pending additional investigation.

### **Key International Actors**

In June 2004, the U.N. Special Representative on human rights defenders, Hina Jilani, expressed serious concern over restrictions on freedom of association in Belarus. She highlighted legislation permitting the authorities to deny registration to, and close down, NGOs without justification. Jilani also criticized the government's actions against the Belarusian Helsinki Committee.

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In September, the OSCE Office in Minsk criticized the prison sentences given to Valery Levanevsky and Aleksandr Vasilyev for allegedly defaming the president. In July, the OSCE condemned the closure of the private European Humanities University.

In February, the Parliamentary Assembly of the Council of Europe (PACE) published a report accusing high-ranking officials of involvement in the disappearances of former Interior Minister Yuri Zakharenko, former Prime Minister Viktor Gonchar, former electoral commission chairman Anatoly Krasovski and journalist Dimitri Zavadski between 1999 and 2000. The report accuses the current Belarusian Interior Minister, Prosecutor-General and Sports Minister, as well as a high-ranking officer in the special forces, of involvement. PACE members demanded that the government investigate the disappearances. PACE criticized the detention of the human rights activists Tatsiana Reviaka and Hary Pahaniayla for distribution of its disappearances report. The body also expressed concern over the decision of President Lukashenka to hold a referendum on removal of presidential term-limits.

On April 8, 2004, the U.N. Commission on Human Rights adopted a resolution expressing concern about human rights in Belarus—including the key disappearance cases, flawed elections, and the continued harassment and closure of NGOs—and appointed a Special Rapporteur to investigate the situation in the country.

In September, the European Union issued a travel ban against the three government ministers and special forces officer named in the PACE disappearances report. The ban prevents the four from entering the E.U.

U.S. officials twice criticized the Belarusian government during 2004 for its actions against NGOs, independent journalists, and opposition politicians. The U.S. State Department has enacted a similar travel ban to that imposed by the E.U. The State Department expressed doubts that the results of the October referendum reflected the opinion of the Belarusian people, and on October 20, three days after the elections, President George W. Bush signed the Belarus Democracy Act, prohibiting U.S. financial aid to the Belarusian government, while authorizing assistance for NGOs and independent media.

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## Bosnia and Herzegovina

Entrenched ethnic divisions among the political elites in Bosnia continue to shape political and human rights developments in the country. While ethnic violence has for the most part ended, ongoing ethnic divisions among Bosnia's constituent peoples – Bosniacs (Bosnian Muslims), Serbs, and Croats – continue to impede progress in key human rights areas, such as war crimes accountability and the return of refugees and displaced persons.

### *War Crimes Accountability*

For the first time in years, the NATO-led Stabilization Force (SFOR) did not arrest a single Bosnian citizen indicted before the International Criminal Tribunal for the former Yugoslavia (ICTY) in 2004. Nevertheless, SFOR intensified efforts to arrest Bosnian Serb wartime leader Radovan Karadzic, conducting several operations near Sarajevo and in remote mountain villages in the east of the country, where Karadzic was believed to be hiding. SFOR also arrested several individuals believed to belong to the network of persons who were helping Karadzic hide. Still, Karadzic remained at large as of October 2004.

Leading political and military figures in the wartime Croatian Republic of Herzeg-Bosnia – Jadranko Prlic, Bruno Stojic, Slobodan Praljak, Milivoj Petkovic, Valentin Coric, and Berislav Pusic – surrendered to the Tribunal on April 5, 2004. They are charged with crimes against humanity and war crimes committed against Bosnian Muslims in Western Bosnia and Herzegovina during the early 1990s.

Although officials in Republika Srpska (the majority Serb area of Bosnia) repeatedly agreed to cooperate with the ICTY, Republika Srpska continued to be the only area of the former Yugoslavia that has not surrendered a single war crimes indictee to the Tribunal. On October 15, 2004, the Republika Srpska Commission on Srebrenica submitted to the Republika Srpska government a report concerning the 1995 events in Srebrenica and acknowledged for the first time that the Bosnian Serb Army had been responsible for the killing of more than seven thousand Bosniac men and boys. Republika Srpska authorities had previously claimed that only one hundred Bosniacs had been executed and that another 1,900 had died in combat or from exhaustion.

Local officials in each entity of Bosnia remain unwilling to prosecute members of the ethnic majority in their region for war crimes. Hundreds, possibly thousands, of war crimes committed in Republika Srpska have yet to be investigated and tried before the Republika Srpska courts. In May 2004, Republika Srpska opened the first war crimes trial ever against ethnic Serbs; eleven Serbs are accused of the illegal detention of Catholic priest Tomislav Matanovic in 1995, who was later found murdered. In the

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Federation of Bosnia and Herzegovina (the Bosniac majority area), there have been more indictments against members of the local ethnic majority, but these efforts have been plagued by a lack of support on the part of police and political elites, as well as poor cooperation between the countries in the region and entities in Bosnia and Herzegovina on judicial matters, and a lack of witness protection mechanisms.

At the end of 2004, the process of establishing a special war crimes chamber, as part of the State Court of Bosnia and Herzegovina, was nearing completion. The chamber, which is to be based in the Bosnian capital Sarajevo, is expected to try the most serious war crimes cases. As of October, however, the position of the special war crimes prosecutor had not yet been established.

### ***Return of Refugees and Displaced Persons***

According to the United Nations High Commissioner for Refugees (UNHCR), as of the end of August 2004, 1,001,520 out of a total of more than 2 million people forcibly displaced during the war had returned to their home areas. Of these, 445,735 persons had returned to municipalities where they currently constitute an ethnic minority. UNHCR hailed the figures as a sign of success. However, these statistics would appear to show that the results of ethnic cleansing in the country remain largely intact.

The sharp decrease in minority returns that began in 2003 continued in 2004. Between January and the end of August, UNHCR registered 11,529 minority returns to pre-war homes, two-thirds less than in the same period in 2003. This trend reveals that, nine or more years after they initially fled, a decreasing number of people are willing to return to their pre-war homes. Limited economic opportunities in the areas of return, aggravated by ethnic discrimination in employment, are a principal impediment to return. What is more, nine years after the war ended, the homes of tens of thousands of families who had expressed a desire to return have yet to be repaired.

### ***Key International Actors***

The Office of the High Representative (OHR), which oversees civilian aspects of the 1995 Dayton Peace Accords, stepped up its efforts to advance the process of war crimes accountability. The OHR played a key role in establishing the special war crimes chamber in Bosnia's State Court and in drafting the legislation on witness protection, use of ICTY evidence in domestic proceedings, and the Office of the State Court Prosecutor, which was introduced in the Bosnian parliament in October 2004.

The ICTY issued a series of important, and in some cases controversial, judgments in cases arising from the war in Bosnia in 2004. Other important trials commenced or reached an advanced stage during the year. On April 19, the Appeals Chamber of the ICTY confirmed an earlier finding by a trial chamber that in July 1995, Serb forces had committed genocide in Srebrenica. The Appeals Chamber sentenced Bosnian Serb Army General Radislav Krstic to thirty-five years of imprisonment. A trial chamber in the case of Bosnian Serb Radoslav Brdjanin, however, found that no genocide had occurred in 1992 in the area of Krajina, where Serb forces killed hundreds of Muslim and Croat civilians and expelled hundreds of thousands. In another controversial decision, on July 29, the Appeals Chamber reversed the majority

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of the trial chamber's March 2000 conviction of Bosnian Croat Tihomir Blaskic and reduced his sentence to nine years. He had initially been sentenced to forty-five years of imprisonment. While ICTY decisions have sometimes caused at least initial perplexity among some victim groups in Bosnia, the integrity of the proceedings before the tribunal and the legal reasoning underlying its decisions remained remarkable.

Other ICTY judgments in 2004 include the ten year prison sentence for Miroslav Deronjic, a Bosnian Serb guilty of crimes against humanity in eastern Bosnia in 1992, and the eighteen year prison sentence for Ranko Cesic, another Bosnian Serb, for crimes against humanity and war crimes committed in 1992 in the Luka prison camp near Brcko.

The court also tried two major cases against accused Bosnian Muslims. On July 23, the prosecution presented its closing argument and concluded its case against Bosnian Muslim generals Enver Hadzihasanovic and Amir Kubura, both charged with war crimes against Bosnian Croats and Serbs in Central Bosnia in 1993-94. The trial of Naser Oric, commander of the forces of the Army of Bosnia and Herzegovina in the Srebrenica area, for crimes against Serb civilians, began on October 6.

Along with the OHR, the ICTY initiated the establishment of the special war crimes chamber in Bosnia's State Court. In September, the Office of the Prosecutor made a motion to refer the cases against Bosnian Serbs Zeljko Mejakic, Momcilo Gruban, Dusko Knezevic, and Dusan Fustar, regarding the Omarska and Keraterm detention camps in northwestern Bosnia, to the war crimes chamber. The president of the ICTY requested additional information from the Office of the Prosecutor on the ability of Bosnia and Herzegovina to provide fair trials before a competent court.

In June, the E.U. Council approved European Partnership, a document detailing short- and medium-term priorities for Bosnia and Herzegovina's preparations for further integration with the E.U., which had been identified in the European Commission's 2004 Annual Report. The human rights objectives, which serve as a checklist against which to measure progress, include: assuming full organizational and financial responsibility for the 2004 municipal elections; creating an effective judiciary (including establishing a single High Judicial and Prosecutorial Council for Bosnia and Herzegovina); adopting and bringing into force outstanding legislation supporting refugee returns; completing the transfer of the human rights bodies to Bosnian control; making progress on the merger of the State and Entity Ombudsmen; and, full cooperation with the ICTY, particularly on the part of Republika Srpska. On October 4, the Commission praised the conduct of the municipal elections and declared that Bosnia had fulfilled this political condition from the Partnership.

The E.U. police mission to Bosnia and Herzegovina (EUPM) continues the international policing operation in the country, which it took over from the United Nations in the beginning of 2003. At the June 28-29 summit in Istanbul, NATO announced that an E.U.-led peacekeeping force (EUFOR) would replace its Stabilization Force (SFOR) before the end of 2004. On July 12, the E.U. Council indicated

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formally that, beginning in December 2004, the E.U. would conduct a peacekeeping operation in Bosnia in order to contribute to a safe and secure environment in the country.

## Croatia

Croatia made progress in 2004 toward membership in the European Union (E.U.) but did little to improve its still checkered human rights record. Key rights concerns include the government's continuing failure to pursue Croat suspects as aggressively as it does non-Croats in domestic war crimes trials, insufficient cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY), and slow progress toward the return of displaced and refugee Serbs.

The task of enhancing Croatia's human rights record now falls to the Croatian Democratic Union (HDZ), which took power following its victory in November 2003 parliamentary elections. Soon after taking office, Prime Minister Ivo Sanader made a series of policy statements intended to signal a new willingness on the part of the traditionally nationalistic HDZ to undertake necessary human rights reforms. The government's limited progress to date, however, has resurrected concerns among HDZ's key interlocutors—including the Serb members of the Parliament who support the HDZ minority government and the chief prosecutor of the ICTY—about whether it can deliver on its promises.

### *Refugee Returns*

Between 300,000 and 350,000 Croatian Serbs left their homes during the 1991-95 war in Croatia, mostly for Serbia and Montenegro, and Bosnia and Herzegovina. By August 2004, the government had registered 112,162 Serb returnees. The actual number of returns is significantly lower because many Croatian Serbs leave again for Serbia and Montenegro or Bosnia after only a short stay in Croatia.

It took almost a decade for most minority refugees and displaced persons to repossess their houses, which had been occupied after they fled or were forced out of Croatia. The explanation lies in a pattern of obstruction and discrimination by previous governments and local authorities. However, the process is now finally nearing completion. According to government data, the authorities returned 1,800 houses to their owners in the first seven months of 2004, with only 1,700 occupied houses still to be vacated.

There has yet to be tangible progress on the issue of lost tenancy rights in socially-owned property. Croatian authorities terminated the tenancy rights of tens of thousands of Serb families after they fled their apartments during and after the war. In June 2003, the Croatian cabinet adopted a set of measures to enable former tenancy rights holders in Zagreb and other big cities to rent or purchase government-built apartments at below-market rates. In August 2004 the government admitted that the implementation of the scheme had yet to begin.

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A July 2004 decision by the European Court of Human Rights (ECtHR) on tenancy rights in Croatia may limit future progress in restoring Serb tenancy rights. In the *Blecic* case, the ECtHR upheld Croatian court decisions terminating the tenancy rights of a woman who had left Zadar shortly before the outbreak of hostilities in 1991 and had not returned to her apartment within the six-month period specified by Croatian law at the time. The misguided decision by the ECtHR appears to stand for the proposition—at odds with basic tenets of humanitarian law and refugee law—that a displaced civilian must return to a war zone to preserve property rights.

For the second consecutive year, reconstruction of damaged or destroyed Serb homes in Croatia has continued at a satisfactory pace. The government announced in 2003 that it would reconstruct 10,800 houses and apartments during 2004-05, most of them owned by ethnic Serbs. In March 2004, the government also extended, until end-September, the deadline for submission of reconstruction claims for those who missed the original 2001 deadline.

Economic opportunities for minority returnees are limited by employment discrimination in local government and other public sector employers. A December 2002 constitutional law on minority rights obliges the state to ensure pre-war levels of minority representation in local government and in state, county, and municipal courts, but the law has yet adequately to be implemented in most areas.

### **Accountability for War Crimes**

The government's willingness to provide documentary evidence to the ICTY and its efforts to persuade ethnic Croat indictees to surrender to the tribunal were overshadowed by its failure to hand over Ante Gotovina, a Croatian Army general indicted for 1995 crimes against Croatian Serbs. On March 11, Croatian generals Ivan Cermak and Mladen Markac voluntarily traveled to the Hague, ten days after the government received the ICTY indictment against them. Both are accused of crimes against humanity and war crimes against Croatian Serbs in 1995. Similarly, six Bosnian Croat military and political leaders indicted by the ICTY flew from Zagreb to the Hague on April 5, two weeks before the European Commission was to issue an opinion on Croatia's bid for E.U. membership. All six are charged with participating in a joint criminal enterprise to forcibly expel Bosnian Muslims and Serbs from the self-declared Croat statelet of Herceg-Bosna during the Bosnian war.

Following the surrenders in March and April, ICTY Chief Prosecutor Carla Del Ponte stated that Croatia was cooperating fully with the tribunal. In her November 2004 report to the U.N. Security Council, however, Del Ponte revised her assessment, indicating that Croatia will be cooperating fully once Gotovina is handed over to the ICTY.

Accountability efforts in Croatian courts continue to fall short of international standards. In 2004, Croatian courts tried only two cases involving war crimes perpetrated against ethnic Serbs. On April 10, the Osijek district court convicted one person and acquitted a second for the killing of nineteen Serb civilians in December 1991 by ethnic Croat forces in the village of Paulin Dvor. Despite evidence that

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others were involved in the killing, no one else has been indicted. On September 21, the county court in Karlovac reopened the trial of Mihajlo Hrastov, a former military police officer accused of killing thirteen Serb prisoners of war in 1991 and twice acquitted in the past.

While the prosecution of individuals responsible for atrocities against ethnic Serbs made little progress, trials against ethnic Serbs accused of war crimes continued throughout the country. Despite clear directives from Croatia's chief prosecutor that lower level prosecutors drop charges not supported by credible evidence and cease to bring cases in the absence of the accused, the courts in Zadar and Vukovar continued with such practices.

### ***Key International Actors***

On April 20, 2004, the European Commission issued a positive opinion on Croatia's membership application. The commission found that Croatia was a functioning democracy that largely respects fundamental rights. The European Council named Croatia as a candidate country for E.U. membership on June 18.

The E.U. continues to emphasize, however, that improved policies on the return of Serb refugees are a precondition for improved relations. The commission's April opinion stressed the need for additional efforts on minority rights, refugee return, judiciary reform, regional cooperation, and the fight against corruption. The European Partnership document, adopted by the E.U. Council on September 13, 2004, details short and medium term priorities for Croatia's preparations for E.U. membership. Key human rights priorities—in addition to those highlighted in the Commission opinion—include: implementation of the Constitutional Law on National Minorities, enhanced freedom of expression and non-interference in the media, improved government cooperation with the human rights ombudsman, and full cooperation with the ICTY. The document fails to make reference to shortcomings in domestic war crimes trials, and the need to ensure justice regardless of the ethnicity of victims and perpetrators.

The Organization for Security and Cooperation in Europe (OSCE) mission to Croatia has continued to develop a dialogue with the government, while issuing reports critical of its return-related practices, minority rights record, and progress in domestic war crimes trials. In a July 2004 periodic report, the OSCE mission acknowledged the new government's expressed willingness to reconcile with the country's minorities, and welcomed progress in property reconstruction assistance to refugees and property repossession. The report, however, noted the slow progress in resolution of the issue of tenancy rights, and lingering problems in developing the rule of law, including the barriers to successful domestic war crimes prosecutions.

The OSCE mission has systematically monitored and reported on domestic war crimes prosecutions, identifying several areas—lack of impartiality, pressures on witnesses, weak inter-state cooperation, and the need for additional training of judges and prosecutors, among others—where further reforms are essential. The mission nevertheless concluded in June that efforts undertaken by the Ministry of

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Justice—including training by the ICTY for judges in the Zagreb, Osijek, Split, and Rijeka County Courts—made it likely that the Croatian courts would be adequately able to handle the limited number of cases that are expected to be transferred from the ICTY.

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## European Union

In a watershed year for European institutions, 2004 marked the expansion of the European Union (E.U.) from fifteen to twenty-five member states and initial agreement on a new Constitutional Treaty. A series of train bombings in Madrid on March 11, 2004, marked a more sinister milestone: the worst terrorist attack in modern European history, leaving 191 civilians dead and hundreds wounded. Such defining events leave Europeans with the challenge of protecting rights in a newly enlarged union and meeting the threat of terrorism while protecting Europe's long human rights tradition.

European governments and institutions did not rise to these challenges, instead continuing to scale back rights protections—in particular, for asylum seekers and migrants. They also missed the opportunity to distinguish European practice from the abusive actions of other countries by employing counterterrorism strategies that also violate fundamental rights, including the prohibitions against torture and indefinite detention.

### *Asylum Seekers and Migrants*

Migration into the E.U. poses clear challenges for European governments, and few would question the legitimacy or urgency of policies to address these concerns. But the exclusive focus on combating illegal immigration in Europe reflects a disturbing and prevailing attitude that migrants have no rights. Consequently, regional and national policies and practices have focused on keeping migrants and asylum seekers out of Europe. The tragedies of September 11 and March 11 are used to justify such exclusionary practices. The labeling of migrants and asylum seekers as terrorists or national security threats has resulted in the “securitization of migration,” often to the serious detriment of migrants’ rights.

### Regional Developments

Five years after the 1999 Tampere European Council, during which member states decided to establish the E.U. as an “area of freedom, security and justice,” the conclusion of the first phase of harmonizing regional asylum and immigration law in May 2004 reflected the further erosion of the right to seek asylum and of migrants’ rights more broadly. In December 2003, the European Parliament (E.P.) requested that the European Court of Justice (ECJ) review the legality of the Family Reunification Directive, adopted in September 2003. Human rights and children’s rights organizations shared the E.P.’s serious concern that the directive failed to guarantee the protection of family life enshrined in the European Convention on Human Rights, the E.U. Charter of Fundamental Rights, and the U.N. Convention on the Rights of the Child.

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In March 2004, in an unprecedented move, Human Rights Watch together with other human rights groups called for the withdrawal of the proposed Asylum Procedures Directive, eventually adopted by the European Council in April 2004, because it clearly eroded the individual right to seek asylum. The directive failed to guarantee the right of asylum seekers to remain in a country of asylum pending an appeal and provided for a “safe country of origin” regime. The “safe country of origin” regime would result in a common list of safe countries of origin whose nationals would be tracked into an accelerated asylum procedure, often so brief as to deny asylum seekers full and fair hearings on their claims. The most alarming feature of the directive was provision for the use of the “safe third country” and “super safe third country” concepts, the result of which would prohibit access to asylum procedures for persons who traveled through a third country deemed “safe.” A “safe third country” would be one that has ratified the 1951 Refugee Convention and the European Convention on Human Rights, and has a functioning asylum system.

One positive development came in the form of the Qualification Directive, adopted in April 2004. The directive duplicates the definition of what constitutes a “refugee” provided in the Refugee Convention and includes an express obligation on E.U. member states to grant asylum to individuals falling within that definition. The directive also recognizes that non-state actors are often agents of persecution, and acknowledges child-specific and gender-specific forms of persecution. Those persons not recognized as refugees will be eligible for “subsidiary protection,” but human rights and refugee organizations have raised concern that persons granted other forms of protection will not be eligible for the same social benefits as recognized refugees.

### **Implications of Enlargement**

The ten new member states admitted to the E.U. in May 2004—Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia—were confronted instantly with the challenge of becoming countries of final destination for asylum seekers, without having the means and the experience to deal with increased numbers of refugees. Long considered refugee-producing and transit countries (for asylum seekers making their way to the E.U.), the new member states’ asylum systems and immigration procedures are woefully under-developed and under-resourced to meet this challenge. Early reports indicate that few of the new member states have systems that can offer full and fair asylum determination procedures; detention regimes that comport with international standards; and policies in place to ensure that no person is sent back to a place where her or his life or freedom is threatened.

### **Processing Migrants and Asylum Seekers Outside the E.U.**

Instead of responding adequately to criticism regarding the absence of human rights safeguards in the harmonization process or the need for such safeguards to be in place in the new member states, key E.U. countries resurrected the previously discredited idea of processing claims for asylum outside the E.U. In August 2004, Rocco Buttiglione, then European Commissioner-designate of the Directorate-General for Justice, Freedom and Security voiced enthusiastic support for a German proposal to establish detention

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centers in North Africa to process asylum applications for protection in the newly-expanded European Union. While Buttiglione's nomination was ultimately defeated, proposals to process asylum seekers and migrants in select off-shore locations have gained momentum.

That momentum is somewhat counterintuitive given the negative reaction of Germany and key E.U. institutions to a similar proposal from the United Kingdom in early 2003. In March 2004, the European Parliament Committee on Citizens' Freedoms and Rights expressed concern that off-shore centers could violate an individual's right to seek asylum and could shift responsibility for migrants and asylum seekers to developing countries with scarce resources and poor human rights records. The committee stated that processing centers could undermine the 1951 Refugee Convention, the European Convention on Human Rights, and the key idea of responsibility-sharing.

The off-shore processing idea is not dead, however. It became apparent in 2004 that in the face of opposition to the earlier U.K. proposals, the E.U. had decided to take a more gradual approach aimed at the development of off-shore centers. In the meantime, the E.U. embarked on a project of *rapprochement* with potential host countries, including Libya. As a result, bilateral agreements were concluded in August 2004. They focused on combating illegal migration from Libya to Italy and into the E.U., and the E.U. agreed to lift an eight-year long arms embargo on Libya in October 2004.

In October, Italy expelled several hundred persons to Libya without a proper assessment of their asylum claims or any access to fair asylum procedures. These persons are believed to have been sent to detention camps in Libya. Libya has not ratified the 1951 Refugee Convention, signed a cooperation agreement for a formal relationship with the United Nations High Commissioner for Refugees (UNHCR), or developed an asylum system in compliance with international standards. In addition to Libya's appalling human rights record with respect to its own citizens, reports regarding its treatment of migrants and asylum seekers raises special concern about placing processing centers there.

The German Ministry of Interior was also actively involved in supporting the revival of the idea of developing extraterritorial processing centers though its concrete proposals were not made available to the public. Although France, Spain, and Sweden rejected such proposals and called for "absolute caution" and "respect for human rights of refugees," in October 2004 the E.U. Informal Justice and Home Affairs Council considered five pilot projects proposed by the Commission to improve immigration and asylum regimes in Libya, Tunisia, Algeria, Morocco, and Mauritania.

### **Role of the International Organization for Migration**

The operations of the International Organization for Migration (IOM), an independent intergovernmental organization with no formal human rights or refugee protection mandate, came under increasing scrutiny in 2003-2004. The organization's mandate states that it provides assistance to governments and migrants for only voluntary migrant returns, but Human Rights Watch's research

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revealed that some IOM field operations have placed migrants at risk of return to places where they face persecution. Human Rights Watch is also concerned about the role of the IOM as convener of the 5+5 Dialogue of the Western Mediterranean Forum and the Forum's emphasis on combating illegal migration. In September 2004, the IOM sent a special technical team to Libya to consult with the government about the management of illegal migration. The timing of the visit, coming on the heels of proposals to establish off-shore detention centers for the processing of asylum seekers in North African countries, gives rise to concerns that IOM will be involved in advising Libya and the E.U. about the establishment and management of such centers in the future.

### **National Developments**

Asylum policy and practice in the Netherlands and an aggressive program for the return of failed asylum seekers raised considerable alarm in 2003-2004. Concerns include the use of an accelerated (forty-eight hour) asylum determination procedure (AC procedure); the inappropriate treatment of migrant and asylum-seeking children; restrictions on asylum seekers' rights to basic material support, such as food and housing; and proposals for returning large numbers of failed asylum seekers, some in violation of international standards. The AC procedure is regularly used to process and reject some 60 percent of asylum applications. The brevity of the procedure affords applicants little opportunity to adequately document their need for protection or to receive meaningful legal advice, and the right to appeal is severely curtailed. To date, there has been no measurable change in the AC procedure to ensure that asylum seekers receive a full and fair hearing.

In light of such restrictive asylum policies, a key concern over the last year has been the increasing rate of migrant returns to states where failed asylum seekers would face persecution or a real risk of torture or ill-treatment. In early 2004, for example, the Dutch government revealed proposals to deny failed asylum seekers community-based social assistance and to place them in special centers prior to their "voluntary" return—or in detention centers pending their forcible deportation. Thousands of failed asylum seekers would be threatened with return over the next few years, including persons from countries where ongoing conflicts will threaten their safety, such as Chechens, Afghans, Liberians, some Somalis, and persons from Northern Iraq.

Human Rights Watch publicly challenged the Dutch returns plan in February 2004, arguing that it represented a further degradation of the Netherlands' commitment to the right to seek asylum and the principle of *nonrefoulement*, and signaled a continuing and disturbing trend on the part of Dutch authorities to depart from international standards in their treatment of asylum seekers and migrants.

### **Counterterrorism Measures**

The climate of fear generated by the September 11 attacks in the U.S. and further exacerbated by the March 2004 Madrid bombings resulted in regional and national counterterrorism laws and policies permitting the indefinite detention of foreign terrorism suspects; extended periods of incommunicado

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detention; and the erosion of the absolute ban on torture, including the use of evidence extracted by torture and growing reliance upon so-called “diplomatic assurances” to return alleged terrorist suspects to places where they face a real risk of torture or ill-treatment.

### **Indefinite Detention**

In the aftermath of September 11, the U.K. passed the Anti-Terrorism, Crime and Security Act (ATCSA), which provided for the indefinite detention of foreign terrorist suspects. In order to establish such a detention regime, the U.K. had to suspend (“derogate” from) some of its human rights obligations under the European Convention on Human Rights and the International Covenant on Civil and Political Rights (ICCPR) by formally declaring “a public emergency threatening the life of the nation.” The U.K. is the only Council of Europe and U.N. member state to declare such an emergency and to determine that the global threat from terrorism required it to abandon one of its core human rights obligations—the prohibition against indefinite detention without charge or trial.

Under the ATCSA, the Home Secretary can certify a foreign national as a “suspected international terrorist” if he has a “reasonable belief” that the person is a threat to national security and a “suspicion” that the person is an international terrorist or had links with an international terrorist group. Certification is based on secret evidence. Detainees can challenge their detention in the Special Immigration Appeals Commission (SIAC), a tribunal with limited procedural guarantees and a low standard of proof. Detainees are assigned a security-cleared barrister known as a “special advocate.” Classified evidence is heard during “closed” sessions attended by the special advocate. Detainees and their lawyers of choice are excluded from those sessions, and contact between the special advocates and detainees is limited.

Seventeen men in total have been detained under the ATCSA regime. To date, eleven men remain detained indefinitely without charge or trial. The treatment of detainees under the ATCSA in high security U.K. prisons also raises concerns that they have been subject to cruel, inhuman, or degrading treatment. Detainees have complained of long periods of isolation; lack of access to health care, religious observance, and educational services; lack of exercise; obstacles to visits from friends and family; and psychological trauma associated with not knowing when they will be released.

The indefinite detention regime has been criticized and challenged in U.K. courts. Two U.K. parliamentary committees—the Privy Council Review Committee (known as the “Newton Committee”) and the Joint Human Rights Committee—have called for the urgent repeal of the measures that allow for indefinite detention. In October 2002, upon a challenge that the indefinite detention regime discriminates against foreign nationals, the British Court of Appeal ruled that indefinite detention was compatible with U.K. and international law. In October 2004, a specially convened nine-judge panel in the House of Lords heard an appeal on the lawfulness of the derogation and the compatibility of the legislation with other human rights obligations from which Britain has not derogated. That decision is pending.

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## Incommunicado detention

In Spain, the prolonged detention of foreign terrorist suspects has also given rise to serious concerns about procedural and other violations in the special detention regime. The Spanish Code of Criminal Procedure (*Ley de Enjuiciamiento Criminal*) provides for incommunicado detention for up to thirteen days, limitations on the right to counsel, pre-trial detention for up to four years, and secret legal proceedings (*causa secreta*). The proceedings governing the detentions of suspected al-Qaeda operatives apprehended in Spain since September 11, among others, were declared secret by the Audiencia Nacional, a special court that supervises terrorist cases. The imposition of secrecy can bar defense access to the prosecution evidence—except for information contained in the initial detention order—for the majority of the investigative phase. Human Rights Watch detailed its concerns with the Spanish counter-terrorism regime in a December 2004 report titled, *Setting An Example? – Counterterrorism Measures in Spain*. Many of those concerns have been echoed by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), and the U.N. special rapporteur on torture.

## Evidence Extracted under Torture

In August 2004, Britain's second highest court ruled that evidence obtained under torture in third countries could be used in special terrorism cases. The Court of Appeal held that the British government can use evidence extracted under torture as long as the U.K. neither "procured the torture nor connived at it." Such evidence can be used to "certify" foreign terrorist suspects and during appeals against indefinite detention in the SIAC. The court's decision undermines the global prohibition against torture. Article 15 of the Convention against Torture explicitly prohibits the consideration of evidence obtained under torture in any legal proceedings. The House of Lords has been asked to review the question of use of evidence obtained under torture on appeal.

## Diplomatic Assurances No Safeguard against Torture

European governments also contributed to the erosion of the ban on torture by relying on so-called "diplomatic assurances" to return terrorist suspects and foreigners labeled national security threats to countries where they were at risk of torture or ill-treatment. Diplomatic assurances are formal guarantees from the receiving government that it will protect a person from torture upon return. Under international law, the absolute prohibition against torture includes the obligation not to send a person to a country where he or she is at risk of torture or ill-treatment. Human Rights Watch's research, detailed in an April 2004 report titled, *"Empty Promises:" Diplomatic Assurances No Safeguard Against Torture*, revealed that such assurances provide no guarantee against torture, which is practiced in secret and often denied by governments in states where torture is systematic or used to repress and intimidate particular groups. The report detailed cases where persons returned based on diplomatic assurances were in fact tortured or ill-treated, and highlighted cases in several European countries where the courts intervened and ruled that diplomatic assurances from governments in states where torture is a serious problem were not reliable. Schemes for "post-return monitoring"—that is, an agreement by the two governments involved that the sending government could deploy its diplomats to monitor a person's treatment after return—did not provide an additional safeguard against torture.

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Cases in which European governments have relied upon or attempted to employ assurances to effect a return have been documented in Sweden, the U.K., Germany, the Netherlands, Austria, Georgia, and Turkey, among others. In Sweden, the cases of two Egyptian asylum seekers expelled in December 2001 from Stockholm to Cairo based on diplomatic assurances from the Egyptian government were of particular note. The Swedish authorities determined in 2001 that the men, Ahmed Agiza and Mohammad al-Zari, had a well-founded fear of persecution if returned to Egypt. Based on secret evidence never made available to the men or their lawyers, the Swedish government excluded the men from protection under the 1951 Refugee Convention and ordered their expulsions, based on assurances from the Egyptian authorities that the men would not be subject to the death penalty, subject to torture or ill-treatment, and that they would receive fair trials. The men were expelled from Sweden on the same day the decision to deny them protection was made.

It was subsequently revealed that the men were handed over to U.S. operatives at Bromma Airport in Stockholm; hooded, shackled, and drugged by these operatives; placed aboard a U.S. government-leased plane; and transported to Cairo. They were held in incommunicado detention for a full five weeks before the Swedish ambassador to Egypt visited them. The men have credibly alleged that they were tortured and ill-treated in those five weeks and that such treatment continued even after the Swedish diplomats began monitoring their treatment. A classified Swedish government monitoring report from January 2002 indicated that the men told the Swedish authorities about this abuse, but the Swedish government took no action and in fact deleted these allegations from its public reporting on the cases.

In October 2003, al-Zari was released without charge and he remains under constant surveillance by Egyptian police. Ahmed Agiza's April 2004 re-trial (he had been tried *in absentia* in Egypt in 1999 and sentenced to 25 years of hard labor) was conducted in a special military court. A Human Rights Watch trial monitor, present throughout the trial, documented numerous serious fair trial violations. In the course of the trial, Agiza told the court that he had been tortured in prison and requested an independent medical examination, which the court denied. The Swedish authorities were denied access to the first two of the four trial hearings, and did not take action on Agiza's claims that he was tortured. Human Rights Watch criticized the Swedish government for violating its absolute obligation not to return a person to a country where they are at risk of torture and publicly called for an international, independent inquiry under the auspices of the United Nations to investigate all three governments' involvement in the men's abuse.

This disquieting trend was further substantiated by recent indications of the growing use of diplomatic assurances in Germany, the Netherlands, and the United Kingdom. Thus, although in May 2003 a German court rejected as insufficient diplomatic assurances offered by the Turkish government in the extradition case of Metin Kaplan, the leader of the banned Islamic fundamentalist group, "Caliphate State," Mr. Kaplan was subsequently deported to Turkey in October 2004. Similarly, in September 2004, the Dutch government decided to extradite Nuriye Kesbir, a high-level member of the Kurdistan

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Workers' Party (PKK), following diplomatic assurances from Turkey that she would not be tortured or ill-treated upon return and would receive a fair trial. In a letter to the Dutch Minister of Justice, Human Rights Watch detailed the real risk of torture and ill-treatment Kesbir would face upon return and stated that assurances from Turkey could not be considered reliable given Turkey's failure to implement adequate monitoring mechanisms to ensure that torture did not occur. In October 2004, during the House of Lords appeal on the lawfulness of the indefinite detention regime (see above), the British government indicated that it is actively seeking diplomatic assurances from states where there is a risk of torture to facilitate the removal from the U.K. of men currently subject to indefinite detention.

A number of international and regional actors have also criticized states' growing reliance on diplomatic assurances. In his October 2004 report to the U.N. General Assembly, the U.N. Special Rapporteur on Torture stated that assurances from governments in countries where torture is systematic cannot be relied upon and should not be employed to circumvent the obligation not to return a person to a country where he or she risks torture. Similarly, in his April 2004 report, the Council of Europe Commissioner for Human Rights. Gil Robles expressed concern that the use of diplomatic assurances in the Agiza/al-Zari cases did not provide the two men with an adequate safeguard against torture. The U.N. Human Rights Committee has also expressed concern about the adequacy of such assurances as an effective safeguard. The Agiza case is pending before the U.N. Committee against Torture.

At the regional level, the European Court of Human Rights was presented with the opportunity to reaffirm the absolute nature of the prohibition against returning any person to a country where she or he would be at risk of torture or prohibited ill-treatment in *Mamatkulov and Askarov v. Turkey*, a case for which Human Rights Watch and the AIRE Centre submitted an *amicus curiae* brief. In its brief, Human Rights Watch documented the systematic practice of torture in Uzbekistan, a conclusion echoed by a February 2003 report by the U.N. special rapporteur on torture. Human Rights Watch also questioned the reliability of the diplomatic assurances proffered by the Uzbek authorities as well as the follow-up monitoring of the assurances by the Turkish government, which was limited to one prison visit by Turkish officials (more than two years after the men were returned) and reliance on medical certificates from prison doctors employed by the state and alleged to be implicated in acts of torture. A decision is expected in the *Mamatkulov* case before the end of 2004.

## Georgia

Georgia's new president, Mikheil Saakashvili, was elected in January 2004, after campaigning on a platform of radical reform. His predecessor, Eduard Shevardnadze, was ousted in November 2003, as a result of peaceful mass demonstrations against fraudulent parliamentary elections. In March 2004, a coalition of parties aligned with Saakashvili won a landslide victory in repeat parliamentary elections. With this strong mandate, the new government began a campaign against corruption and for territorial integrity.

The government's reform agenda is delivering mixed results on human rights. The environment for religious freedom—a long standing concern—has improved. However, torture and ill-treatment in pre-trial detention remain widespread. Chechen refugees also remain vulnerable to state discrimination and abuse by Georgian security forces.

### ***Mixed Results on Reform***

In February, the new government rushed several constitutional changes through Parliament. One change empowered the president to appoint and dismiss judges. This change—which contravenes international human rights norms—increases the president's influence over a judiciary which already lacked independence. There have been incidents of police violence towards peaceful demonstrators, creating an environment less conducive to freedom of assembly than under Shevardnadze. The media remains relatively free, although media previously aligned to the opposition now support the government, as does the state owned media, leaving very few outlets without a pro-government orientation. In a positive move, the government appointed Sozar Subeliani, a human rights activist and former journalist, to the Ombuds office on September 15. The post had been empty for twelve months.

The government is engaged in a highly publicized fight against corruption, with frequent arrests of high profile figures. Georgian nongovernmental organizations (NGOs) and others are concerned that the authorities are selectively targeting individuals for political reasons, and that the law is not being applied equally to all. Allegations of due process violations are common, and some of those detained for corruption allege torture and ill-treatment.

### ***Georgia's Regions***

During the first months of 2004, tensions over tax and customs revenues, political freedoms, and law and order issues, between the central government and Aslan Abashidze, the autocratic leader of the autonomous republic of Adjara, escalated almost to the point of armed conflict. The human rights situation in Ajara deteriorated, with regular reports of beatings, detentions, and harassment of those

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critical of Abashidze and his government. In May, after negotiations led by Russia, Abashidze backed down and left Ajara. Since then, reports of abuses in Ajara have declined dramatically, particularly those concerning freedom of the press and freedom of association. Tension between Georgia and the breakaway republic of South Ossetia also worsened during 2004, resulting in sporadic armed clashes. Negotiations in August between Georgia, South Ossetia, and Russia calmed the situation, at least temporarily. Both sides accuse the other of torturing members of their security forces who were taken prisoner. Human Rights Watch has insufficient information to substantiate the claims.

### **Religious Freedom**

During the last four years of the Shevardnadze government, Georgia experienced an increase in religious intolerance towards non-traditional religious groups, including Baptists, Jehovah's Witnesses, and Evangelists. These groups faced hate speech and violent attacks by organized groups of Orthodox Christian vigilantes. The state failed to respond adequately, and sometimes even cooperated in the attacks, which consequently became more frequent and pervasive. The attacks and hate speech subsided prior to the November 2003 elections, leading to speculation about how closely the government controlled the violence. In 2004, there were some reports of intimidation and violence against religious minorities, although at significantly reduced levels to previous years. This decrease has improved the environment for freedom of religion.

In a positive move against impunity, the police arrested Vasili Mkalavishvili and seven of his followers in March. Mkalavishvili has led many violent attacks on religious minorities. However, the police used excessive force during the arrest, which was broadcast on television. At this writing, Mkalavishvili remained in custody awaiting trial. The new government has failed to bring to justice the perpetrators of scores of other attacks, and at times, appears to fuel religious intolerance through the use of nationalist rhetoric aimed against "alien influences," a veiled reference to non-traditional religious groups.

### **Torture**

Torture in detention and due process violations remain widespread in Georgia. There are continuing reports of the practice of isolating detainees in circumstances that amount to incommunicado detention, and restricting access to defence counsel. Judges sometimes ignore torture allegations. There were reports of several deaths in custody under suspicious circumstances, an increase from previous years. Reports of torture in detention include beatings, cigarette burns, threats of rape, and the use of electric shock. The authorities prosecute the perpetrators of torture in some cases. However, in many cases, the perpetrators are not brought to justice.

In a case that exemplifies the more troubling aspects of the government's fight against corruption, the former chair of the State Audit Agency, Sulkhan Molashvili, alleged he was subject to torture in pre-trial detention following his arrest in April on corruption charges. An independent forensic expert confirmed signs of torture on Molashvili's body after his arrest, including cigarette burns, and injuries consistent with the use of electric shocks. The Tbilisi city prosecution office opened an investigation into the

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torture allegations on July 5, 2004. In mid-July the Tbilisi city prosecutor stated that the investigation showed that the wounds had been inflicted either by Molashvili himself or other prisoners. At the time of writing, the investigation is on-going.

In October, in response to increasing reports of torture, Minister of Internal Affairs Irakli Okruashvili discussed with NGOs and the Ombuds office a plan to set up independent monitoring groups to supervise arrests and detention facilities. At this writing, the plan was yet to be implemented.

### **Chechen Refugees**

Chechen refugees in Georgia remain vulnerable to abuse. They lack adequate housing, medical care, and employment opportunities. The refugees are subject to police harassment and threats of *refoulement*. Georgian authorities suspect some refugees of involvement in terrorism, and abuses take place during counter-terrorism operations. In May, Chechen refugees in the Pankisi Valley went on a hunger strike for over a week, protesting police harassment, including unauthorized and intimidating house searches. In August, following Russia's unilateral closure of the border and pressure from Moscow about the presence of "terrorists" in the Pankisi Valley, masked Georgian security forces carried out raids against homes occupied by refugees and Kists (ethnic Chechens from Georgia). Up to twelve men were detained and accused of illegally entering Georgia. All were released within several days without charge.

In February 2004, two Chechens, Khusein Alkhanov and Bekhan Mulkoyev, were released from custody after a Georgian Court refused to extradite them to Russia on terrorism charges, citing the fact that Alkhanov is a refugee and a dispute about Mulkoyev's identity. The men went missing soon after their release, and later appeared in Russian custody. Human rights groups in Georgia suspect that Georgian authorities aided the Russian security forces' detention of these men, in breach of Georgian law and international standards prohibiting return in cases where there is a risk of torture.

### **Key International Actors**

The World Bank and European Commission co-sponsored a donors' conference in June 2004. In a move illustrative of the huge international support enjoyed by Georgia, the international community pledged U.S. \$1 billion in aid over the next two years at the meeting. The donors stated that the aid was to promote economic reform, improve governance, and combat poverty.

In June, the European Union (E.U.) pledged to double its financial assistance to Georgia over the next three years and announced the inclusion of Georgia in its European Neighborhood Policy. The policy offers financial benefits subject to Georgia's compliance with jointly negotiated political and economic criteria.

In May 2004, the Council of Europe Committee for the Prevention of Torture visited Georgia, completing a trip interrupted by the upheaval in November 2003. Members of the Committee found that prison conditions were disastrous and encouraged the authorities to develop a plan to improve them.

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The relationship between the U.S. and Georgia continues to strengthen. In May 2004, Georgia was deemed eligible to apply for a further large aid package under the Millennium Challenge Account. In November, Saakashvili stated that as a result of Georgia's engagement in peacekeeping operations, the U.S. would fund a new, large scale military assistance program. Just prior to this, Georgia agreed to increase the number of Georgian troops in the coalition forces in Iraq from 159 to 850. The U.S. reconfirmed a commitment to combat terrorism in Georgia. A State Department spokesperson claimed that past U.S. military assistance had been successful in reducing a terrorist threat in the Pankisi Valley, but failed to mention human rights concerns associated with past operations there. In 2002, the U.S. assisted in training Georgian security services for counter-terrorism operations in the Pankisi Valley. That year, Georgian security services carried out operations there that breached international human rights standards.

In the wake of the Beslan atrocity in North Ossetia, Russia has stepped up pressure on Georgia over Chechens seeking refuge in the Pankisi Valley, claiming that they are operating terrorist bases there. In October, Georgian Minister of Internal Affairs Irakli Okruashvili agreed to hand over a list of all residents in the Valley to unspecified Russian officials. Russia remains a key player in the negotiations over the status of the breakaway republics of South Ossetia and Abkhazia.

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## Kazakhstan

Mired in an international corruption scandal and taking a heavy hand to its political rivals, the government of Kazakhstan has done little to dispel critics' perceptions of its policies as increasingly predatory and authoritarian.

Corruption is pervasive in Kazakhstan. In 2004 Transparency International gave Kazakhstan one of its worst ratings, and identified it as part of a global phenomenon of oil-rich states with excessive levels of corruption. The Kazakhgate oil funds corruption scandal, which began in 1999, has tarnished the government's reputation at home and abroad.

President Nursultan Nazarbaev wins international praise for taking half-steps toward human rights reform and for refraining from further backtracking, though he has presided over few improvements in practice. Instead, the government continues its aggressive persecution of independent media and the political opposition. State antagonism toward critical media was particularly heated in advance of September 2004 parliamentary elections.

### ***Persecution of Independent Media***

The government of Kazakhstan has made some preliminary moves to improve its poor reputation with respect to media freedoms. For instance, in January 2004 it paroled Sergei Duvanov, an independent journalist and fierce government critic convicted in 2003 on questionable rape charges. President Nazarbaev also vetoed a highly restrictive media law after it was widely criticized abroad and deemed unconstitutional by the country's Constitutional Council.

But these moves do not indicate a policy shift. Kazakh television, the main source of news for the country's population, remains dominated either by government or pro-government media. The government's fierce intolerance for critical media reached new heights in the run-up to parliamentary elections. On July 22, 2004, the president ordered foreign media to include praise of the government and its policies along with any criticism, and reportedly said that his lawyers were prepared to sue foreign media who "discredit the country."

Indeed, the government uses politically motivated lawsuits to intimidate and shut down domestic media that are critical of the government or cover such sensitive issues as corruption. One such lawsuit resulted in the closure of a leading opposition newspaper, *SolDat* (Let Me Speak), in July 2003. In 2004, a bizarre set of events resulted in the closure of the *Assandi Times*. On June 2, 2004, a fake version of the *Assandi Times* filled with stories that misrepresented the political opposition was circulated throughout Almaty.

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The editorial staff issued a statement that disavowed the fake edition of the paper and expressed the staff's belief that "the presidential administration or...people close to it" were responsible. The administration sued for defamation. The court found in favor of the government, fined the newspaper, and ordered its bank account and property seized. This effectively closed down the main opposition newspaper in the country just two months prior to parliamentary elections. In August, the paper regrouped and began publishing under its former name, *Respublica*.

Critical newspapers are also the targets of anonymous violence presumably aiming to intimidate dissent. In August 2004, the office of an independent newspaper in southern Kazakhstan was attacked by unidentified men who threw Molotov cocktails through the windows. The incident, which did not cause injuries or the destruction of the office, was nonetheless reminiscent of the firebombing of the *Respublica* premises two years earlier. The editor of the paper speculated that the attack may have been in retaliation for the newspaper's coverage of the parliamentary election campaign or its pieces about local organized crime.

### ***Persecution of Political Opponents***

The government harasses members and supporters of Kazakhstan's opposition political parties, including through arbitrary criminal and misdemeanor charges and threats of job dismissal, often aimed at preventing the individuals from running for public office.

The continued incarceration of Galimzhan Zhakianov, the leader of the Democratic Choice of Kazakhstan (DVK), revealed the government's resistance to genuine political competition. Zhakianov was convicted in 2002, following an unfair trial on charges that have been widely viewed as politically motivated. In August 2004, authorities transferred him to a low-security settlement, where he remains under police supervision. Security officials have repeatedly tried to "convince" him to drop out of political life altogether in exchange for his release. In apparent response to his refusal, authorities are threatening new criminal charges against Zhakianov. He has also been denied his rights to reside in his home town and work while under the supervision of the settlement authorities.

DVK co-founder Mukhtar Abliazov was also apparently pressured to disavow his political affiliation and halt his political activities as a condition for release from prison in May 2003.

### ***Obstacles to Political Participation***

President Nazarbaev's government was rightly applauded for registering several key opposition parties, including the DVK. However, the government failed to provide the level playing field necessary for free and fair parliamentary elections in September 2004.

The Organization for Security and Cooperation in Europe (OSCE) and the Council of Europe found that the elections "fell short" of international standards, citing unbalanced election commissions and media bias favoring pro-presidential parties.

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Local groups also voiced concern about the lack of voter education regarding the introduction of electronic voting, the disqualification of the leader of the centrist Ak-Zhol party, and unconfirmed reports that the pro-presidential Asar party, headed by Nazarbaev's daughter, coerced people on the government payroll to join the party or risk losing their jobs.

The OSCE and the Council of Europe criticized the vote count, citing compromised voter lists, voters turned away at the polling station, and the significant discrepancy between paper and electronic voter lists. In many cases domestic observers were reportedly "denied full access to polling station procedures, in spite of new legislation which allows them access." International observers noted with dissatisfaction that the government failed to implement a number of positive changes that had been introduced with the April 2004 election law.

In the end, President Nazarbaev's Otan party swept the elections, claiming forty-two of seventy-seven possible seats. The pro-presidential AIST and Asar parties were in second and third place respectively. The official tally gave the DVK no seats in parliament.

### ***Nongovernmental Organizations (NGOs)***

In 2003 the government attempted to pass legislation specifying that NGOs must be found by the government to be engaged in "useful" activity in order to obtain registration. President Nazarbaev withdrew the bill in October 2003 only after it met with almost universal condemnation from the local and international human rights communities.

But local NGOs report continued government harassment through intimidating visits and threats by security and law enforcement agencies, arbitrary investigations by the tax police, and surveillance by law enforcement and security agents.

### ***Fueling the AIDS Epidemic***

Human rights abuse against injection drug users and sex workers in Kazakhstan is fueling one of the fastest-growing AIDS epidemics in the world and threatening the country's economic and social development. Human Rights Watch has documented instances of police brutality, lack of due process, and harassment and stigmatization that drive drug users and sex workers underground and impede their access to life-saving HIV prevention services.

The government of Kazakhstan has failed to review government legislation regarding HIV/AIDS in order to bring it into compliance with international standards on HIV/AIDS and human rights. It has not expanded prevention and treatment services for all persons affected by HIV/AIDS, nor has it addressed abusive police practices toward drug users, in particular toward those seeking to access, or who have accessed, needle exchange services for HIV prevention.

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## **International Cooperation**

The government has taken several half-steps toward better compliance with international standards, but still needs to follow through to make these steps meaningful. For instance, the government at last signed on to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, but failed to ratify these instruments.

Similarly, the government extended an invitation to the U.N. Special Rapporteur on the Independence of Judges and Lawyers, who visited the country in June 2004. Local and international rights groups called for caution in assessing this move as progress, noting that true progress would be made only if and when the Kazakh government implements the Special Rapporteur's resulting recommendations.

The government took an important step toward abolition of the death penalty when it adopted a moratorium on state executions in January 2004.

## **Key International Actors**

The OSCE plays an active role in advocating for improvement in Kazakhstan's rights record. On July 22, 2004, the OSCE representative for media freedom, Miklos Haraszti, expressed his organization's objections to the heavy fine against the *Assandi Times*. "My first concern is that this decision will force *Assandi Times*, a major opposition news outlet, out of business, de facto annihilating the newspaper," he said.

Following a July 2004 Cooperation Council meeting between the European Union and Kazakhstan regarding the parties' Partnership and Cooperation Agreement (PCA), the E.U. cautioned that "a positive assessment of the [September parliamentary] elections would be an essential consideration in any decision on the bid of the Republic of Kazakhstan to hold Chairmanship of the OSCE in 2009." The bulk of the E.U. statement, however, failed to hold Kazakhstan to the standards set forth in the PCA and instead essentially praised the Nazarbaev government for its half-measures toward reform.

The U.S. government certified in 2004 that Kazakhstan had complied with the human rights standards on which military and other assistance is conditioned. In May 2004, the U.S. State Department announced that Kazakhstan had made "significant improvements in the protection of human rights in the last six months."

## Kyrgyzstan

Kyrgyzstan moved further from its reformist past and ever closer to joining the ranks of the more authoritarian states of Central Asia. Since the country's last national elections in 2000, the government has been closing space for political competition and civil society. President Askar Akaev's chief political rival, Feliks Kulov, remains imprisoned on arbitrary grounds, and the government is presiding over the steady erosion of the independent media, violations of free assembly, and unfair elections.

### ***Independent Media***

Almost all of Kyrgyzstan's national television stations, the source of news for most people in the country, are run by the government, the president's relatives, or supporters of the president. The lone exception has been the television station *Pyramida*, which in the past occasionally gave airtime to government critics. But even this relative independence was compromised after new investors obtained a significant interest in *Pyramida* in 2004. Rumors that President Akaev's son was behind the deal increased fears that the station would be unwilling to broadcast critical content.

The November 2003 opening of a U.S.-funded independent printing press has helped to bolster the independent print media, but the government uses heavy-handed lawsuits to intimidate and silence these outlets. A particularly outrageous example of such tactics was a complaint filed by the government newspaper *Vicherny Bishkek*, along with several other private and pro-government newspapers, against the independent newspaper *MSN*, formerly known as *Moya Stolitsa-Novosti*. The complaint, filed with the government's antimonopoly agency, said that *MSN* was charging too little for its newspaper, thereby undercutting the competition. The antimonopoly agency ruled that *MSN* had committed "monopolistic actions," ordered the paper to raise its prices, and recommended that the complainants sue the paper for damages.

Recent years have seen a pattern of physical attacks by unknown assailants on the children of independent journalists and human rights activists. The most recent of these was an April 24 attack on Chingiz Sydykov, the twenty-one-year-old son of Zamira Sydykova, editor-in-chief of the independent newspaper *Respublica*. Sydykov sustained serious injuries.

### ***Nongovernmental Organizations (NGOs)***

Fear spread throughout the Kyrgyz human rights community after rights defender and political activist Tursunbek Akunov went missing. As of November 22, 2004 his whereabouts remained unknown. Akunov, the leader of the Human Rights Movement of Kyrgyzstan and a former presidential candidate in 2000, was last seen on November 16, 2004, when he allegedly told his wife he was going out to meet

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with officers from the National Security Services (NSS, formerly the KGB). Following his disappearance, the NSS denied that any meeting took place or that it had Akunov in custody. In the days before he went missing Akunov was actively campaigning for President Akaev's resignation from office.

Government officials use aggressive tactics to disrupt the work of NGOs. In April 2004 local officials in Issyk-Kul province reportedly obstructed the convening of several meetings on human rights organized by NGOs. The Bishkek Helsinki Group was essentially dissolved after its two leading members were forced to flee the country in 2003 because of government persecution.

In September 2003, the Ministry of Justice stripped the leadership of a prominent human rights group, the Kyrgyz Committee for Human Rights (KCHR), of its registration, instead recognizing an alternate executive body using the KCHR's name. On July 3, 2004, unknown men broke into the home of Ainura Aitbaeva, the daughter of KCHR chairman Ramazan Dyrlydaev, and beat her, rendering her unconscious. KCHR also reported that a car tried to run over Aitbaeva when she was walking with her husband on the evening of November 4. The car hit Aitbaeva lightly, but the couple escaped uninjured.

In October 2003, the government re-registered the Coalition for Democracy and Civil Society, an election monitoring and civic education group, following a significant international outcry. The government had denied the group re-registration three times in September 2003.

### ***Freedom of Assembly***

The state failed to resolve contradictions in the law regarding whether advance written notification and permission are necessary for holding public assemblies. The vagueness of the law allows for its arbitrary enforcement. For instance, the authorities allowed a protest against the Renton group, a company that allegedly defrauded investors, to proceed. Police also did not intervene when protestors allegedly publicly burned signs and threw condoms at officials during a demonstration against a sex-education text.

However, police commonly disband demonstrations in support of the political opposition. For example, on April 15, 2004, dozens of peaceful protestors gathered in Bishkek to call for the release of Feliks Kulov. Participants say they provided the authorities prior notification, but police intervened before the march could begin, detaining eighteen people, including leading civil society activists. Ironically, they were held at the Pervomaiskiy District Police Department, the site of a pilot project of the Organization for Security and Cooperation in Europe (OSCE) to aid and reform the police. One of the department's police officers punched rights defender Aziza Abdirasulova, who was observing the demonstration as part of a project monitoring the right to free assembly in Kyrgyzstan. Several protestors were charged with holding an unsanctioned march and fined before being released.

### ***Political Participation***

The government refused to release political prisoner Feliks Kulov, head of the opposition Ar-Namys party, who was President Akaev's chief rival in the 2000 presidential election. The Ministry of Justice

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stated that Kulov will not be released before November 2005. Presidential elections are scheduled for October 2005.

Revelations that opposition members of parliament were under surveillance shocked the country. On January 14, 2004, listening devices were found in the government offices of several leading opposition parliamentarians. Such surveillance of citizens is illegal in Kyrgyzstan, except in cases of ongoing criminal investigation and with the sanction of the prosecutor's office. A parliamentary report accused the NSS of illegally placing the listening devices; the NSS denied responsibility. The report revealed that prominent civil society leaders were also the targets of illegal surveillance operations during past years.

### **Elections**

While dozens and even hundreds of political rivals fought for positions in local council elections in the cities, many local council seats in villages went uncontested in the October 10, 2004 election. Rural apathy may be explained partly by the fact that villages are virtual "information-free zones" and receive little or no news. Many village residents simply may not have been aware that local councils' responsibilities were recently increased to include authority over local budgetary matters and so did not view them as significant. Potential candidates may have been dissuaded from running because of the new 1,000 som (about U.S. \$24) fee imposed this year.

The Coalition for Democracy and Civil Society reported problems with the composition of the elections commissions and inaccuracies in voter lists—some of which reportedly included the names of people who had left the country or died. Independent monitors were prevented from entering at least one polling station, and there were also complaints that police stationed themselves inside polling places.

Pro-presidential parties swept the elections. The opposition won only a handful of local council seats.

Parliamentary elections will be held in February 2005, and developments to date, including the conduct of local council elections, bode badly for a free and fair vote. The new pro-government party *Alga*, *Kyrgyzstan!* (Forward, *Kyrgyzstan!*), reportedly run by President Akaev's daughter, has been accused by numerous and credible sources of forcing people paid from the state budget—teachers, doctors, government officials, students—to become members of the party, under threat of losing their jobs.

### **Torture**

Police torture is widespread in Kyrgyzstan. The most commonly reported forms of torture and ill-treatment are beatings, asphyxiation, threats of sexual violence, and deprivation of food and sleep.

In November 2003, the Criminal Code of Kyrgyzstan was amended to specifically outlaw torture, creating penalties of three to five years of imprisonment. However, Ministry of Justice and Ministry of Internal Affairs (MVD) officials failed to acknowledge the extent and gravity of Kyrgyzstan's torture problem or to formulate a plan to resolve it. The MVD controls temporary detention facilities in police

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stations while other places of pre-trial detention and prisons have been transferred to Ministry of Justice jurisdiction.

### ***Key International Actors***

U.S. officials were rightly proud of the positive contribution made by the new independent printing press they established in Kyrgyzstan. U.S. diplomats continued efforts to ensure that Akaev would relinquish the presidency in 2005.

The U.S. continued to station 1,150 troops at Manas airbase for operations in Afghanistan. Kyrgyzstan appeared to try to leverage Russia as a counterweight to U.S. influence, even allowing the Russians to establish a military base in Kant, outside Bishkek. Economic and political relations with China also grew closer during the year.

In September 2004 Kyrgyzstan hosted a meeting of the Shanghai Cooperation Organization (SCO) at which members—Russia, China, Kyrgyzstan, Kazakhstan, Uzbekistan, and Tajikistan—vowed to make economic cooperation and counter-terrorism priorities.

The E.U. failed to take serious issue with Kyrgyzstan's deteriorating human rights record during its annual meeting regarding the parties' Partnership and Cooperation Agreement (PCA). A statement issued on July 13, 2004, said only that the E.U. welcomed measures by Kyrgyzstan toward further democratization and that the parties "reaffirmed their commitment to tackling terrorism in accordance with fundamental principles of human rights."

There were serious, persistent concerns that the OSCE's project to provide material support to Kyrgyz police lacked sufficient human rights or reform focus and might serve only to reinforce an abusive government agency. The assistance is part of a pilot project meant to be replicated in other former Soviet countries.

## Macedonia

By the end of 2004, almost all provisions of the August 2001 Framework Peace Agreement (known as the Ohrid Agreement), which ended the 2001 armed conflict between ethnic Albanian insurgents and Macedonian government forces, had been implemented. Certain provisions of the agreement, however, remained controversial and served to exacerbate tensions among Macedonia's ethnic minorities. In general, discrimination against national minorities, including in particular ethnic Albanians and Roma, and police violence continue to be problems in the country.

### ***Implementation of the Ohrid Agreement and Its Implications for Minority Rights***

Although ethnic tensions between the Macedonian majority and Albanian minority reached a climax during the 2001 armed conflict, relations remained tense throughout 2004, especially as the redistricting plans called for by the Ohrid Agreement were under consideration. In addition, other unresolved concerns—such as the ongoing situation of displaced persons from the conflict and the absence of a successful disarmament program—continue to plague inter-ethnic relations.

On August 11, 2004, the parliament passed a Territorial Organization Act, the last of a package of legislative initiatives required by the Ohrid Agreement. By increasing the powers of administrative districts and decreasing their number from 123 to seventy-six in 2008, the act decentralizes the country by giving more powers to local government and increases the representation of ethnic Albanians in local government. According to the last census held in 2002, ethnic Albanians make up 25 percent of the population in Macedonia. New administrative districts will be created by joining Albanian rural areas with majority Macedonian districts, thereby increasing the number of districts in which the ethnic Albanian population will comprise more than 20 percent of the population (in Kičevo and Struga to more than 50 percent). As a result, Albanian language will become a second official language in these districts (as stipulated in the Ohrid Agreement), and members of the Albanian minority will be able to elect a larger number of local government representatives.

The introduction of the Territorial Organization Act by the government in August 2004 exacerbated the already existing tensions between the majority Macedonian and minority Albanian populations. Some ethnic Macedonian groups feared that the plan would lead to a division of the country along ethnic lines and ultimately make it easier for ethnic Albanians to secede and unify with neighboring Kosovo. Many Macedonians organized demonstrations against the Act, some of which became violent. For example, the media reported that forty protestors and police officers were injured during anti-redistricting riots in the town of Struga on July 22, 2004. Ultimately, charges were filed against more than fifty people in connection with the disturbances. Contributing further to inter-ethnic tensions, a referendum was called

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by the World Macedonian Congress to overturn the redistricting plan. However, the referendum, which took place on November 7, 2004, failed due to low voter turn out.

Three years after the end of the armed conflict, the government has still not succeeded in fully disarming the ethnic Albanian population, contributing to a worsening of the security situation in areas populated predominantly by Albanians.

There are still 1,900 persons who remain internally displaced as a result of the 2001 conflict. The Macedonian Helsinki Committee reported that security is no longer the primary obstacle to return. Instead, the main obstacle appears to be the poor economic situation of the internally displaced, who need financial assistance in order to replace basic household items and farming supplies that were destroyed during the conflict.

Despite the ethnic tensions discussed above, implementation of the Ohrid Agreement has contributed to some positive developments regarding minorities. According to the Macedonian Helsinki Committee for Human Rights, during the three years since the Ohrid Agreement was signed, there has been an 80 percent increase in the employment of minorities. As a result, for example, Albanians have obtained a level of representation in the state administration that is closer to their share of the overall population. In addition, after years of controversy regarding the Albanian-language Tetovo University, it received legal recognition in February 2004. Furthermore, pursuant to the Ohrid Agreement, a constitutional amendment was adopted that requires a “double majority” for laws related to ethnic minorities: the majority of all parliamentary deputies and the majority of all deputies representing ethnic minorities must support such a law in order for it to be adopted.

### **Police Abuse**

Police abuse and violations of defendants' procedural rights continued to be a serious problem during 2004. From January to September 2004, the Macedonian Helsinki Committee reported at least nineteen cases of people who were interrogated by the police without being informed of their rights or the reason for the interrogation. What is more, in the course of their detention and/or interrogation, individuals often reported being ill-treated. Local nongovernmental organizations also reported widespread impunity for police abuses, with the judiciary often responding ineffectively and slowly to complaints of ill-treatment.

The Macedonia government has committed its police and military forces to support the global campaign against terrorism. However, in one bizarre and troubling case, the former Macedonian interior minister, Ljube Boskovski, is currently under investigation along with several others for smuggling an Indian and six Pakistani refugees into the country and then killing them in 2002. Boskovski and the other suspects are also accused of having altered the scene of the crime in an attempt to make it appear as if the seven men were armed Islamic militants who had planned an attack on Western embassies, the aim of which

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was to show Macedonia's contribution to the global war on terrorism. Boskovski was arrested in August 2004 and is currently under investigation in Croatia.

### **Roma Rights**

Roma continue to be the most disadvantaged and marginalized minority in Macedonia and are often victims of police abuse and other discrimination. To date, the Macedonian government has failed to adopt affirmative policies that would improve the situation of Roma and generally tends to neglect the concerns of the Roma population.

Although police brutality is not limited to ethnic minorities in Macedonia, reports by human rights groups suggest that Roma are particularly vulnerable to police abuse. For the most part, Roma have been unsuccessful in obtaining redress for police brutality.

### **Key International Actors**

The worst cases of human rights violations committed during the 2001 armed conflict between the Albanian National Liberation Army and Macedonian security forces are being investigated by the Skopje-based bureau of the International Criminal Tribunal for the former Yugoslavia. However, to date no indictments on Macedonia have been issued.

The E.U. and the North Atlantic Treaty Organization (NATO) are among the most active and influential international actors with regard to Macedonia's human rights policies. Macedonia applied for E.U. membership on March 22, 2004. Throughout the year, the E.U. and NATO exerted pressure on Macedonia to pass the Territorial Organization Act discussed above in order to complete the implementation of the Ohrid Agreement, which the E.U. has set as a condition for beginning accession negotiations.

NATO monitored the security situation in Macedonia throughout 2004 and concluded that there had been significant progress towards stability in the country. Specifically, NATO pointed not only to Macedonia's success in showing that ethnic communities can live peacefully together, but also to improvement in equitable representation of ethnic minorities. NATO has stressed that respect for international human rights standards as required by the Ohrid Agreement, as well as reforms of Macedonia's defense structures, are preconditions for it to gain membership in the NATO alliance.

The activities of the Organization for Security and Cooperation in Europe (OSCE) in Macedonia focus primarily on police training and election monitoring. The OSCE monitored the presidential elections on April 28, 2004, and concluded that they were largely in compliance with international standards. However, although the OSCE did raise concern about several electoral irregularities, the Macedonian authorities failed to condemn these irregularities publicly or take steps to investigate or remedy them. The OSCE also carried out several studies on Macedonian local government and encouraged the decentralization of the state.

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In the months leading up to the referendum to overturn the Territorial Organization Act, the U.S. said that a “yes” vote would be contrary to the “word and spirit” of the Ohrid Agreement. The U.S. urged Macedonia to complete the implementation of the agreement to increase its chances for membership in the Euro-Atlantic structures.

Eager to maintain good relations with the United States, Macedonia signed a Bilateral Immunity Agreement with the U.S. government, which protects U.S. troops and the troops of its allies from extradition to the International Criminal Court (ICC). With this move, Macedonia joined the U.S. and a number of other countries in their efforts to undermine the authority of the ICC and its mandate to prosecute war crimes, crimes against humanity, and genocide.

## Russia

In 2004 Russia endured the worst terrorist attack in its modern history. The year also saw further erosion of fundamental rights that underpin the country's fledgling democracy. Now entering its sixth year, the bloody war in Chechnya continues unabated with both sides committing numerous and unpunished human rights abuses. The government once again failed to take on Russia's numerous entrenched human rights problems, including widespread police torture and violent hazing in the armed forces.

### ***Political Rights and Freedoms***

Throughout his first term in office, Russian President Vladimir Putin kept Russia experts guessing about the role of democracy and human rights in his vision for Russia's political development. While speaking of a commitment to democracy, he presided over slow but deliberate moves to marginalize opposition forces. While Putin expressed support for the free press, his administration gradually established control over television channels and other key news sources. By his reelection in 2004, both the political opposition and independent television had been obliterated. Yet Putin continues to present himself as a believer in democracy and human rights—and most of the international community continues to believe him.

In September 2004, a few days after the worst terrorist attack in Russia's history ended in the massacre of hundreds of children, their parents and teachers at a school in Beslan, North Ossetia, Putin revealed his vision. In a speech to the nation, he linked terrorism to the collapse of the Soviet Union and the deficiencies of Russia's transition to democracy, and announced a package of political measures that would take the Kremlin's already overwhelming dominance of Russian politics to a new level. The proposals would give the president de facto power to appoint governors, even more sway over the parliament, or State Duma, and increase the executive's influence over the judiciary. Though many Russians were privately unhappy with these proposals, checks and balances on the president's power had already eroded so badly there was no force capable of stopping the proposals.

Russia's political institutions may have been flawed and dysfunctional when Putin came to power in 1999, but public debate of policy issues, one of the great achievements of *glasnost* and a basic element of any democracy, was vigorous. Political parties of different persuasions clashed regularly in parliament over issues ranging from foreign affairs to agricultural policy. The electronic and print media, though dominated by oligarchs who used them as tools to promote their own interests, presented a wide variety of different opinions. Regional governors were a force to be reckoned with, and the courts had gained a degree of real, though limited, independence from the executive. Finally, a sophisticated and expanding community of nongovernmental organizations (NGOs) had started playing a role in policy-making.

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Four years on, this picture is dramatically different. Public debate on key policy issues has all but disappeared. The pro-presidential United Russia party controls more than two-thirds of all seats in the State Duma, enough to adopt any law or even change the constitution. Opposition parties have been either decimated or eliminated altogether, partially a result of the deeply flawed elections of December 2003. During this election campaign and the presidential election that followed, television media shamelessly promoted United Russia and a few other Kremlin-favored parties while constantly vilifying the opposition.

After a two-year long assault on the independent electronic media, all television stations are firmly under Kremlin control, as are most radio stations. Television news has become monotone, perpetually portraying the president in a positive light and avoiding criticism of his policies. Most programs featuring live debate on political issues have been cut. Only a small number of newspapers and internet publications provide some plurality of opinion, but their readership is marginal.

After convincing regional governors to give up their seats in Russia's senate as a concession to Putin early in his presidency, the Kremlin gradually destroyed them as an independent political force. Through intensive meddling in gubernatorial election campaigns, using its sway over television media and its enormous administrative resources, the Kremlin effectively made the gubernatorial candidates dependent on its support. By September 2004, the governors' power had been reduced to such an extent that not one of them dared publicly to criticize Putin's proposal to scrap gubernatorial elections.

It is conventional wisdom that the executive has also sought to increase its influence over the judiciary. Opinion polls show that few Russians believe that the courts are independent. The Kremlin's use of selective criminal prosecutions against perceived opponents, like Mikhail Khodorkovskii, and scientists working with foreigners on sensitive topics, has put considerable pressure on the courts. Indeed, in several of these cases, like that of arms researcher Igor Sutiagin, the courts have recently found defendants guilty on highly dubious charges. In another such case, the Supreme Court overturned scientist Valentin Danilov's acquittal of espionage charges and ordered a retrial, at which he was found guilty. After Beslan, Putin proposed establishing executive control over the nomination of members of a key Supreme Court body that supervises the hiring and dismissal of judges—another erosion of the independence of the judiciary.

Until recently, the NGO community was the only part of civil society that had not faced any significant meddling by the Kremlin. However, in May 2004 Putin used his state-of-the-nation speech to launch an attack on NGOs. He accused them of "receiving financing from influential foreign foundations and serving dubious groups and commercial interests," and of forgetting "about some of the most acute problems of the country and citizens." Just days after the address, the Ministry of Foreign Affairs accused humanitarian organizations in Chechnya of using their missions as a cover for anti-Russian activities. One of the central Russian television stations, TVC, devoted an hour-long primetime program

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to denouncing the work of human rights groups, accusing them of what the presenter called their “hatred” for Russia. Along the same lines, a political analyst close to the Kremlin, Gleb Pavlovskii, rebuked rights activists for being “engrossed” in Western ideals.

The day after President Putin’s state-of-the-nation address, on May 27, masked intruders ransacked the office of a major human rights organization in Tatarstan that provides legal support for victims of torture. The group continues to face harassment from law enforcement agencies, as do many other regional human rights NGOs. In October, an influential member of parliament called for an investigation into the Committee of Soldiers’ Mothers, Russia’s oldest and most widespread grass roots human rights organizations, which helps victims of violent hazing in the Russian military.

### ***Chechnya***

The Chechnya conflict entered its sixth year, with the Kremlin continuing to insist that it was successfully restoring peace in the republic. However, the assassination of pro-Moscow Chechen president Akhmad Kadyrov in May 2004, and a series of terrorist attacks linked to the conflict, belied Russia’s claims of normalization. As in earlier years, Russian troops committed hundreds of enforced disappearances and extrajudicial executions, and tortured detainees on a large scale. They did so with almost complete impunity. Official statistics released in September reveal that since the beginning of the Chechen war in 1999, a total of twenty-two servicemen are serving active prison terms for crimes committed against civilians. Russian troops also stepped up their pattern of harassment of Chechen applicants to the European Court of Human Rights.

Chechen rebels were responsible for numerous direct and indiscriminate attacks on civilians, both inside Chechnya and elsewhere in Russia. They conducted devastating terrorist attacks, including the hostage-taking and murder of several hundred people at a school in Beslan. They also assassinated Akhmad Kadyrov and numerous local Chechen leaders working with the Russian authorities.

### ***Entrenched Problems***

The government failed to make use of Russia’s current economic prosperity to reform state institutions that have entrenched human rights problems. Despite his image of a can-do leader, Putin’s administration has not devised or implemented sound strategies to deal with systematic hazing practices in the armed forces, torture and ill-treatment of criminal suspects by police, poor treatment of children in orphanages, and inhumane treatment of persons committed to psychiatric institutions. The administration also failed to take effective steps to fight a rapidly spreading HIV epidemic that is being fueled by human rights abuses. The only area where truly significant reform has taken place is in the prison system, where overcrowding has eased.

### ***Key International Actors***

The international community believed for years that Putin’s lip service to democratic principles was sincere. Although many Western leaders expressed concern about Putin’s plans to abolish gubernatorial

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elections, several continued to insist that Russia was on the right track. Neither the U.S. nor E.U. governments developed a strategy for Russia that spelled out diplomatic or economic consequences for Russia's turn toward authoritarianism. Although a European Commission document in early 2004 frankly assessed the situation in Russia and observed that the E.U. can "influence developments in Russia if it is ready to take up difficult issues... in a clear and forthright manner," for too long the E.U. did not follow this observation.

The Parliamentary Assembly of the Council of Europe continued to be one of the few international bodies willing to frankly assess and openly discuss the situation in Chechnya. It adopted sharply worded resolutions in October that called for a real accountability process for crimes committed in the conflict. In October, the European Court of Human Rights held hearings on the first six applications by Chechens. The U.N. Commission on Human Rights failed for the third consecutive time to adopt a resolution expressing concern over the situation in Chechnya. Despite repeated requests, the U.N. Special Rapporteurs on torture and extrajudicial executions were not able to visit Chechnya.

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## Serbia and Montenegro

Serbia and Montenegro is taking some small steps to promote human rights, however, its progress is limited by continued impunity for those who committed war crimes. The government is unwilling to cooperate fully with the International Criminal Tribunal for the former Yugoslavia and efforts to prosecute war criminals before domestic courts are inadequate. Additionally, the government has failed to respond effectively to attacks against ethnic minorities.

### *International Criminal Tribunal for the former Yugoslavia (ICTY)*

Serbia and Montenegro's cooperation with the ICTY took a marked turn for the worse after the December 2003 parliamentary elections and the establishment of a new Serbian government dominated by the nationalistic Democratic Party of Serbia (DSS). Serbian Prime Minister Vojislav Kostunica openly opposes the arrests of suspects indicted by the ICTY, arguing that they should surrender voluntarily.

On October 9, 2004, former Bosnian Serb army general Ljubisa Beara, charged with genocide for crimes committed against Bosnian Muslims in Srebrenica in 1995, was transferred to the ICTY. Serbian officials insisted that Beara surrendered voluntarily, notwithstanding the claims by the ICTY Office of the Prosecutor that Beara was arrested. As many as fifteen ICTY indictees remain at large in Serbia and Montenegro, or traveling back and forth between Serbia and Montenegro and Republika Srpska (Bosnia and Herzegovina). They include Ratko Mladic, the former general of the Bosnian Serb army, and Bosnian Serb wartime leader Radovan Karadzic.

The government has been particularly obstinate in its refusal to transfer to ICTY custody three former army and police generals—Nebojsa Pavkovic, Vladimir Lazarevic, and Sreten Lukic—indicted for war crimes in Kosovo in 1999. Prime Minister Kostunica and his cabinet continue to insist that the ICTY should allow them to be tried in Serbia. The political climate in Serbia and Montenegro—where the men are widely regarded as patriots—and the absence of a genuinely independent judiciary make the chances of a credible prosecution being mounted against them in Serbia very slim.

### *Domestic War Crimes Trials*

The prosecution of war crimes cases before domestic courts in Serbia is hampered by a lack of political will on the part of the authorities, and the unwillingness of the police to provide evidence to the prosecutor's office. The creation of a special war crimes chamber in 2003 appeared to signal an increased seriousness of purpose. But during 2004 the chamber heard only one trial, yet to be completed at the time of this writing, in a case arising from the November 1991 killing of 200 Croats, near Vukovar, Croatia. In addition, Sasa Cvjetan was convicted in March 2004 by the Belgrade district court for killing

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fourteen Kosovo Albanian civilians in March 1999 in Podujevo, Kosovo. Cvjetan was sentenced to twenty years' imprisonment.

Current legislation in Serbia contains only rudimentary witness protection mechanisms. The government has drafted a new law on protection of witnesses and other participants in criminal trials, but as of November 2004 the draft law had yet to be enacted.

The office of the special war crimes prosecutor with five prosecutors, and the special war crimes unit within the Serbian police, with eight inspectors working on war crimes investigations, both remain severely understaffed. The office of the special war crimes prosecutor is reportedly preparing several cases pertaining to war crimes in Kosovo in 1999. However, the security situation in Kosovo, coupled with a lack of initiative on the part of the office of the special war crimes prosecutor, has prevented it from getting access to ethnic Albanian witnesses in Kosovo. The office has yet to prepare any cases arising from crimes committed in Bosnia or in Croatia.

### ***Ethnic and Religious Minorities***

The government failed adequately to respond to the explosion of ethnic and religious violence in Serbia in March 2004. It is similarly failing to address a year-long wave of low-level violence against non-Serbs in the Vojvodina region in northern Serbia.

On March 17, mobs burnt down mosques in Serbia's biggest towns, Belgrade and Nis. The violence was sparked by reports from Kosovo of widespread rioting and attacks on minorities by ethnic Albanians. The few police officers deployed to protect the mosques were unable to control the rioters. In a March 17 television interview, Serbian Interior Minister Vladan Jovic effectively encouraged the rioters, assuring viewers that the police would not use force against "its own people." On the same evening, the police in Novi Sad stood by as demonstrators attacked and seriously damaged an Islamic community center, as well as pastry shops and bakeries belonging to ethnic Albanians and Muslims. In the following months, prosecutors in Nis and Belgrade charged three dozens rioters with participation in a violent group, rather than with ethnically- or religiously-aggravated forms of violence. To date, there have been no indictments for the violence in Novi Sad.

There have been dozens of incidents against ethnic minorities in Vojvodina since January 2004. The violence ranges from tombstone desecration and painting of nationalistic graffiti to confrontations involving young persons of different ethnicities. The government initially claimed that the incidents were not ethnically motivated. In the face of mounting evidence that most of incidents had an ethnic motivation, and European Union and Council of Europe condemnations of the violence, the government eventually acknowledged there was a problem. In September, Serbian Prime Minister Kostunica and the Minister of Serbia and Montenegro for Human and Minorities Rights Rasim Ljajic visited Vojvodina and vowed to end ethnic intolerance. By October there had been only one case in

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which a court charged perpetrators with ethnically motivated crimes. Most other cases have either not reached trial, or resulted in minor penalties for disturbing the peace.

In southern Serbia—a predominantly ethnic Albanian area bordering eastern Kosovo—the school curriculum continues to ignore Albanian culture and history. There is still no progress on improving educational opportunities for Roma children in Serbia. Most Roma children drop out of school altogether at an early stage, or are channeled into the schools for students with mental disabilities. Thousands of Roma families—many of them displaced from Kosovo—live in makeshift settlements on the outskirts of towns, without electricity, running water, sewers, or access to public health and education services.

Serbia and Montenegro has seen some progress during the year in the implementation of the 2002 Law on the Rights and Freedoms of National Minorities. Most minority groups have completed establishing national councils under the law. The councils play a consultative role in minority education and cultural matters.

### ***Key International Actors***

The United States government enjoys considerable influence with the authorities in Serbia. Serbia's failure to cooperate with the ICTY is a growing cause of friction in their relations. The U.S. suspended U.S.\$26 million in economic assistance to Serbia on March 31, 2004, over its non-cooperation with the ICTY. It is the first time the U.S. has taken such a step since the fall of Slobodan Milosevic in October 2000. The U.S. position has been less than principled, however. The Serbian government's request to try Serbian generals wanted by the ICTY in Serbia rather than handing them over to the tribunal has met with a sympathetic response from two senior U.S. government officials. Mixed signals from the U.S. encourage the Serbian officials to persist in non-cooperation with the ICTY.

On March 18, the ICTY sentenced former Yugoslav Navy admiral Miodrag Jokic to seven years in prison for the 1991 shelling of the Croatian town of Dubrovnik. In February, the ICTY prosecutor rested its case against the former President Slobodan Milosevic, who faces crimes against humanity and genocide charges. The beginning of Milosevic's defense has been frustrated by his refusal to cooperate with the lawyers assigned to him on September 2. Milosevic continued to insist on representing himself, which the trial chamber has determined was not appropriate given the serious deterioration in his health. On November 1, ICTY Appeals Chamber confirmed the decision on the assignment of lawyers, but gave Milosevic greater scope to run his case. The overall perception of the Tribunal's work among Serbian public remains negative, mainly due to the hostility of consecutive Serbian governments and the media to the work of the tribunal.

The European Union is attempting to make a more effective use of the association and stabilization process to leverage improvements in Serbia's performance on human rights. The Stabilization and Association report from April 2004, noted progress in the area of minority rights, but also the slower

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than hoped-for reform of the police and judiciary, and shortcomings in the conduct of domestic war crimes trials. The European Partnership document, adopted by the E.U. Council on June 14, details a list of short- and medium-term human rights priorities for Serbia and Montenegro's further integration with the E.U. On October 11, the European Commission announced that it would re-launch the Feasibility Report on a Stabilization and Association Agreement (SAA) with Serbia and Montenegro. The report, due to be finalized by spring 2005, will assess the country's capacity to negotiate and implement the far-reaching political and economic obligations the agreement entails.

## **Kosovo**

In March 2004, the United Nations-administered province of Kosovo returned to the international agenda. Two days of widespread riots—the worst violence since 1999—revealed the precarious situation of the province's minority population, the weakness of security structures, and the frustration of the majority population at the international institutions that govern Kosovo. Lack of security for minorities, coupled with a continuing accountability gap and uncertainty regarding the province's political status, limit the return of internally displaced and refugee Kosovars to their homes. The impact of Kosovo's inadequately functioning judicial institutions is felt by majority and minority populations alike. October elections for Kosovo's legislative assembly were free of violence, but most Serbs did not participate.

### ***Protection of Minorities***

The March 17-19 riots shattered the illusion of security for Kosovo's minority communities. At least thirty-three major riots took place across the province, involving an estimated 51,000 predominantly ethnic Albanian participants. The violence—directed at international organisations as well as minorities—left twenty-one people dead, more than 950 wounded, and some 4,100 people displaced, almost all of them Serbs, Roma, Ashkali, or other non-Albanian minorities. At least 730 minority-owned homes—including some belonging to recent returnees—and twenty-seven Orthodox churches and monasteries were burned and looted, together with at least ten public buildings providing services to minorities, including a hospital, two schools, and a post office.

During the riots, the security organizations in Kosovo—the NATO-led Kosovo Force (KFOR), U.N. international civilian police, and the local Kosovo Police Service (KPS)—almost completely lost control. In too many cases, minorities under attack were left entirely unprotected. Poor inter-agency coordination, limitations on deployment in individual KFOR contingents (so-called “caveats”), and lack of riot-control training and equipment for KPS, U.N. police, and KFOR, provide part of the explanation.

Beyond the destruction of homes, and the displacement of more than four thousand people, the violence reinforced existing concerns among minorities about their personal safety, fuelled by routine—and frequently unreported—ethnically-motivated harassment and intimidation, verbal abuse, property defacement, and stone-throwing. Minorities also face persistent discrimination in the provision of

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education, social welfare, and health services, and limited access to administrative offices and courts. There has been little progress in implementing the new anti-discrimination law.

Efforts to improve coordination among KFOR and U.N. police have yet to reassure either minority communities or those agencies working on their behalf that international security structures would be able effectively to manage a repeat of March violence. Assurances from the U.N. Interim Administration Mission in Kosovo (UNMIK) that the situation has stabilized—often supported by crime statistics considered on par with many Western European countries—ring hollow at a time when many minorities have little or no freedom of movement, and remain subject to harassment and intimidation.

### ***Return of Refugees and Internally Displaced Persons***

Even before the March violence, the overall picture on returns in Kosovo was bleak. Fewer than 5 percent of the more than 200,000 internally displaced and refugees from minority communities who left their homes since 1999 have returned. The majority are in Serbia, Montenegro, and Macedonia. By the end of September 2004, fewer than 1,500 voluntary minority returns had occurred. (During the twelve months of 2003, there were 3,801 minority returns). The figures include returns of displaced ethnic Albanians to locations where they are in the minority. Those returns that did take place were often incomplete or partial returns—with only part of the family returning, or the family returning only for part of the year. As of early October 2004, 2,288 of the 4,100 minorities driven from their homes by the March violence remained displaced.

Even prior to March, the United Nations High Commissioner for Refugees (UNHCR) warned against the forced return of minorities, including ethnic Albanians from areas where they are in the minority, and those from mixed families. Forced returns of minorities have continued, however, together with the return of larger numbers of ethnic Albanians to majority areas.

### ***Impunity and Access to Justice***

While there has been progress toward the establishment of a functioning and sustainable justice system in Kosovo over the past five years, the current picture of accountability for crimes is one of rampant impunity. Ongoing legislative drafting, including the recently enacted criminal procedure, criminal, gender equality, and anti-discrimination laws, though an important part of the judicial process, can do little to remedy many of the practical obstacles to accessing justice in Kosovo.

The current justice system continues to suffer from a significant, and ever increasing, backlog of cases; a shortage of international and local judges; virtually non-existent mechanisms for witness protection and relocation; poorly-trained and inadequately supported investigators and prosecutors; persistent concerns over the perceived bias of ethnic Albanian judges; and serious problems in ensuring the right to be tried within a reasonable time, including securing the attendance of the accused at trial. The problems affect all communities, undermining confidence in the criminal justice system and the rule of law.

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There have been few prosecutions for war crimes committed in 1998 and 1999 and for post-war inter-ethnic and political violence, especially during the period of late 1999 and 2000. The second major trial of former Kosovo Liberation Army (KLA) members began in October 2004. All of the alleged victims are ethnic Albanian. Verdicts in the first domestic war crimes trial, the so-called “Llap” case, were only rendered in late 2003. All but one of the victims in that case are ethnic Albanian. There has also been little progress in resolving the more than three thousand outstanding cases of missing persons from Kosovo.

In comparison to the dismal rate of prosecutions for offences prior to March—whether for war crimes, inter-ethnic crimes, or ordinary criminal offences—the response to the March events has been dramatic. More than 270 people have been arrested for criminal acts relating to the violence. The bulk of these arrests, however, have resulted in charges for fairly minor offences, adjudicated by the local Municipal and Minor Offences Courts. Despite the minor nature of the offences charged, and the relative speed at which these cases should be adjudicated, fewer than half had been resolved by late October 2004. Of the fifty-seven more serious cases relating to murders, ring-leaders, serious inter-ethnic crime, and major arson attacks, only about one-third were in the judicial process by late October 2004, with indictments filed in little more than half of those cases. Cases involving allegations of police complicity in violence are still under investigation.

Trafficking of women and girls—a significant problem in Kosovo—is another area where there is a serious accountability gap. There have been few prosecutions for trafficking. Women and girls rounded up in police raids have been prosecuted for being unlawfully present in Kosovo or for prostitution. The inclusion in the UNMIK witness protection program of trafficking victims facing serious threat as of September 2004 is a welcome development.

The problems with the criminal justice system are mirrored in Kosovo’s civil courts. Case backlogs, access to the courts for ethnic minorities, and a sometimes chronic failure to implement court decisions, are among the obstacles.

### ***Key International Actors***

The United Nations remains the key international actor in Kosovo. The appointment of the experienced diplomat Søren Jessen-Petersen as special representative to the secretary general (SRSG) in August was broadly welcomed as an opportunity to re-energize the tired U.N. mission ahead of negotiations on Kosovo’s political status. The new SRSG faces a major challenge to reinvigorate the U.N.’s work on police and justice issues, and restore confidence in the mission among Kosovo’s communities. In October, the U.N. Human Rights Committee requested that UNMIK submit a report to it on the situation of civil and political rights in Kosovo.

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The first trial of former KLA members at the International Criminal Tribunal for the former Yugoslavia began on November 15. Fatmir Limaj, Haradin Bala, and Isak Musliu are charged with crimes against humanity for their alleged role in the torture and murder of Serb and ethnic Albanian civilians at a KLA prison camp in 1998. The three men have pleaded not guilty to all charges.

The Contact Group—France, Germany, Italy, Russia, the United Kingdom, and the United States—renewed their focus on Kosovo in the wake of the March violence. The group has emphasized that progress on minority protection and other human rights standards remain a precondition for a viable political settlement in Kosovo.

The Organization for Security and Cooperation in Europe (OSCE) Mission in Kosovo is increasingly emphasizing the capacity-building elements of its mandate, including training for judicial officials and officers from the Kosovo Police Service. It continues to monitor the courts and produce periodic reports on minority rights together with UNHCR.

NATO has been working at a diplomatic level to remove national restrictions (“caveats”) on the deployment of NATO contingents in Kosovo—widely seen as a barrier to a coordinated and effective KFOR response to security incidents.

The European Union remains the key international player with regard to economic development, including Kosovo’s vexed privatization process. The E.U. is assuming a growing importance in the political sphere—a role suggested in the June 2004 U.N.-commissioned report by Norwegian NATO Ambassador Kai Eide. New envoys from the E.U. High Representative on Common Security and Foreign Policy and the European Commission were dispatched to Pristina/Prishtina in the wake of the March violence.

## Tajikistan

The human rights situation in Tajikistan is fragile. Despite reforms on paper—including a new election law and a moratorium on capital punishment—the government continues to put pressure on political opposition, independent media, and independent religious groups. The political climate has deteriorated as President Emomali Rakhmonov attempts to consolidate power in advance of 2005 parliamentary and presidential elections.

### *Political Opposition*

Hizbi Demokrati-Khalkii Tojikiston (the People's Democratic Party of Tajikistan), led by President Rakhmonov, dominates political life. Under 1997's power-sharing arrangement, opposition parties are guaranteed 30 percent of top government posts. In January 2004, Rakhmonov replaced senior government officials from other political parties with members of his own party, reducing the other parties' share of top posts to 5 percent.

Rakhmonov's opponents are vulnerable to prosecution on politically-motivated charges. In January 2004, the Supreme Court sentenced Shamsuddin Shamsuddinov, deputy chairman of Nahzati Islomi Tojikiston (the Islamic Renaissance Party, IRP)—which participates in the power-sharing government—to sixteen years in prison on charges of polygamy, organizing an armed criminal group during the civil war, and illegally crossing the border. Three other IRP members were given lengthy prison terms for alleged complicity in Shamsuddinov's armed group. Shamsuddinov, who has maintained his innocence since his arrest in May 2003, alleges he was beaten and tortured with electric shocks while awaiting trial.

Other opposition parties enjoy limited resources and popular support. In principle, they are allowed to exist. In practice, the parties face significant obstacles in registering with the Ministry of Justice. In early 2004, the ministry refused to register the charter of the Taraqqiyot (Tajikistan Development) party, citing violations of the Law on Political Parties. In March, four party members went on a six-day hunger strike in protest. The Vakhdat (Unity) party also encountered difficulties registering.

### *Electoral Reform*

Tajikistan has a history of flawed elections. Neither the 1999 presidential vote nor the 2000 parliamentary elections met international standards. The June 2003 presidential referendum (allowing Rakhmonov to stand for another two seven-year terms as president) was also marred by allegations of vote fraud.

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The government has come under increasing pressure to reform the electoral system. In November 2003, the Socialist and Socialist Democratic parties organized the Coalition for Fair and Transparent Elections. The IRP and the Democratic Party joined the coalition in calling for an overhaul of national election law. The Organization for Security and Cooperation in Europe (OSCE) and United Nations also advocated electoral reform. In July 2004, the president signed a new election law. The amended law has drawn criticism from the United States, European Union, and opposition parties, however. The introduction of a U.S.\$500 registration fee for each election candidate is particularly troubling. Critics fear it will prevent opposition politicians from running in upcoming parliamentary elections.

### **Freedom of Expression**

Freedom of expression remains under threat in Tajikistan, despite the growing popularity of independent newspapers. While independent newspapers and magazines are technically legal, state-run publishing houses refuse to print them, making production difficult or impossible. The state-controlled printing house Sharq-i-Ozod in Dushanbe decided in November 2003 to stop publishing *Ruzi Nav* (New Day), a major independent newspaper. No explanation was given.

The independent printing house Jiyonkhon continued to print *Ruzi Nav* and other independent newspapers in Dushanbe, including *Nerui Sukhan* (Power of the Word), *Odamu Olam* (People and the Word), and *Najot* (Salvation), a publication of the IRP. In August 2004, authorities closed the Jiyonkhon printing house for alleged tax violations. Other independent and state-owned printing houses have refused to take on publication of the four papers. A printing press in neighboring Kyrgyzstan offered to carry *Ruzi Nav*, and it issued one print run in November. However, the papers were confiscated by Tajik transportation tax police upon arrival in Dushanbe. *Ruzi Nav* is filing charges.

Obtaining official registration is the main obstacle for independent television and radio stations. In September 2003, the State Radio and Television Committee refused to grant the Asia Plus news agency a television broadcast license, stating that the agency lacked the necessary technical equipment and qualified personnel. Asia Plus claims that the committee never examined its equipment or personnel.

Harassment of independent and opposition journalists is a serious concern, although physical attacks on journalists have declined. There have been at least twelve cases of harassment of journalists since January 2004, according to the National Association of Independent Media in Tajikistan. Mavluda Sultonzoda, a reporter for *Ruzi Nav*, received numerous anonymous telephone calls threatening her and her family with violence unless she stopped writing articles critical of President Rakhmonov. Turko Dikayev, an Asia Plus correspondent, reported receiving similar calls. In July 2004, unidentified assailants attacked Rajab Mirzo, an editor for *Ruzi Nav*.

### **Capital Punishment**

Tajikistan's use of the death penalty has long been of international concern. In 2003, four men—Rachabmurod Chumayev, Umed Idiyev, Akbar Radzhabov, and Mukharam Fatkhullojev—were

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sentenced to death for membership in a criminal gang. The cases of Mr. Chumayev and Mr. Idiyev were considered by the U.N. Human Rights Committee as potential breaches of the International Covenant on Civil and Political Rights. Despite the requests by the Committee to the Tajik government issued on January 22, 2004, and on April 13, 2004, to stay the men's executions while it examined their claims, all four were executed in April 2004. On April 30, 2004, President Rakhmonov introduced a proposal to outlaw the death penalty. As of November, the resulting bill has been approved by both houses of Parliament, but awaited Rakhmonov's signature.

### **Religious Freedom**

The Tajik Constitution guarantees freedom of religion. In practice, government officials monitor, and interfere with, the activities of religious groups. All religious organizations must register with the State Committee on Religious Affairs. Independent religious groups considered extremist or politicized—including the banned group *Hizb ut-Tahrir*, or Party of Liberation—face government scrutiny and harassment. During 2003, approximately 160 suspected Hizb ut-Tahrir members were arrested and thirty-four were convicted on subversion charges. In 2004, more than seventy alleged members of Hizb ut-Tahrir were arrested. In September, twenty suspected members were convicted: nine received prison sentences from thirteen to fifteen years for crimes including: “organizing a criminal group, inciting national, racial, religious and ethnic strife.” The rest were given short prison terms. Some of those detained on suspicion of involvement in Hizb ut-Tahrir allege beatings, sexual violence, and electric shocks in police custody.

### **Human Trafficking**

Human trafficking is a significant problem in Tajikistan. According to the International Organization for Migration, Tajikistan is a major country of origin for trafficked women and children. Tajik authorities have undertaken some positive steps to curb trafficking, including the creation of new anti-trafficking department in the Ministry of Internal Affairs. In August 2003, Parliament adopted a bill criminalizing human trafficking, with sentences from five to fifteen years. In December 2003, a Tajik woman was sentenced to fourteen years in prison, and her property confiscated, following conviction for trafficking women into the sex industry in the United Arab Emirates. Four members of a trafficking group were convicted in April 2004, and another fourteen cases have been opened by the Ministry of Internal Affairs.

### **Key International Actors**

Russia has been a dominant influence on Tajikistan's economy and military since the country's independence in 1991. Tajikistan continues to host Russian soldiers under Moscow's direct control. During 2004, Presidents Putin and Rakhmonov negotiated the partial withdrawal of Russian troops by 2006. Tajikistan owes approximately U.S. \$300 million to Russia, and its fragile economy is dependent upon remittances sent home by Tajik migrant workers in Russia. Russia has promised to forgive a large portion of Tajikistan's debt in return for permanent rights to maintain a military base on Tajik soil.

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Tajikistan has assumed a heightened importance for the United States government since the 2001 military operation in Afghanistan. The U.S. military provides technical assistance and training to Tajik armed forces. The U.S. contributed \$50.7 million in assistance during 2004. While the majority of U.S. non-military economic assistance to Tajikistan is in the form of humanitarian aid, it increasingly funds democratization, law enforcement, and market development efforts. The February 2004 State Department country practices report is critical of the Rakhmonov administration's record of torture and ill-treatment of detainees, its suppression of political opposition, and violations of free speech.

On October 11, 2004, Tajikistan became the final Central Asian state to sign a Partnership and Cooperation Agreement (PCA) with the European Union. While the PCA contains human rights conditionality, E.U. policy toward Tajikistan continues to be defined primarily by security and terrorism concerns. Tajikistan receives more E.U. aid per capita than any other Central Asian country. During 2003, the E.U. provided €10 million in humanitarian aid. In 2004, it scaled down its aid projects to about €8 million, while focusing more on reconstruction loans.

In August 2004, OSCE voiced concern over the closure of the Jiyonkhon printing press and the attack on newspaper editor Rajab Mirzo, and called on the Tajik authorities to respect media freedom in the run-up to elections. The OSCE advised the government on the conditions necessary for free and fair elections and campaign finance regulations. The widely criticized final version of the election law did not reflect its recommendations.

## Turkey

Turkey's human rights record continued to improve during 2004, albeit slowly and unevenly, as the country attempted to recover from the legacy of gross violations committed by state forces and armed opposition groups fighting in the countryside and cities in the early 1990s. The reduction in political violence since 1999 has encouraged reform. It was therefore disappointing when Kongra-Gel (Kurdistan People's Congress, formerly known as the Kurdistan Workers' Party [PKK]) resumed attacks in the mountainous southeast of the country, and state forces responded with heavy-handed security operations affecting civilians in rural areas.

Reform has taken one step back for every two steps forward as police, governors, prosecutors, and government institutions tend to interpret legislation as restrictively as possible. Nevertheless, there have been significant turning points: on June 9, 2004, for example, four Kurdish former deputies imprisoned for their non-violent activities since 1994 were released, and the state broadcasting channel gave its first program in the Kurdish language.

Progress in extending basic freedoms has been frustratingly slow, but continues a consistent trend of improvement as over previous years. Achievements in combatting torture remain fragile, with a risk of backsliding into old habits as anti-terror operations resume. The government has once again failed to establish an effective framework for the return of the hundreds of thousands of Kurds forcibly displaced from the southeast during the early 1990s.

Events reflect the interplay of four strong forces: pressure for reform coming from Turkish civil society, impatient with longstanding restrictions and ingrained institutional abuses; the incentive provided by the European Union through Turkey's candidacy for membership; resistance to change presented by the powerful sectors within the military, security forces and the state apparatus; and the destructive effects of political violence.

### ***Freedom of Expression***

These tensions have produced a very mixed picture for freedom of expression. Journalists and politicians who in earlier years would have received prison sentences for their statements have been acquitted, but prosecutors continue to indict people for their non-violent expression, and several writers served prison sentences during 2004. For example, in May, Hakan Albayrak (Milli Gazete) began a fifteen-month sentence at Kalecik prison near Ankara under the Law on Crimes against Atatürk for writing that prayers were not said at the funeral of Mustafa Kemal Atatürk, the founder of the Turkish Republic. Nevin

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Berktaş is now serving a three and a half year sentence under article 169 (supporting an armed organization) of the Turkish criminal code for writing a book critical of isolation in F-type prisons.

State security courts, commonly used to prosecute and imprison people for their non-violent opinions, were abolished in June 2004, but laws used to stifle free speech such as articles 159 of the criminal code (insulting state institutions) and 312 (incitement to racial hatred) remain in place, and were copied into the new criminal code that was adopted in October.

In June 2004 Turkey's longest-standing prisoners of opinion, the four Kurdish former deputies Leyla Zana, Orhan Doğan, Hatip Dicle, and Selim Sadak, were released pending retrial, after ten years at Ankara Central Closed Prison. They had been convicted in 1994 for their non-violent activities as parliamentary deputies in an unfair trial under the Anti-Terror Law.

In June 2004 state television began broadcasts in Kurdish, Bosnak, Circassian, Arabic, and Zaza. The programs were short with uninspiring content, but represented a significant change in official attitudes to minority languages. Private radio stations in southeastern Turkey applied to the High Council for Radio and Television for permission to broadcast in Kurdish, but had not received permission by the end of 2004.

### ***Torture and Ill-treatment***

There were fewer cases of torture and ill-treatment in 2004, largely due to safeguards imposed in recent years, and by the government's frequent assertions of zero-tolerance for such abuses. Nevertheless, detainees from all parts of the country report that police and gendarmes beat them in police custody. In some cases, detainees still complain that they have been subjected to electric shocks, sexual assault, hosing with cold water, and death threats. The persistence of these violations is a consequence of poor supervision of police stations, which permits security forces to ignore detainees' rights – and most importantly, the right to legal counsel. Human Rights Watch has urged the government to impose measures to improve internal monitoring of police stations by provincial governors and prosecutors, to permit independent monitoring by members of bar and medical associations, and to launch ministry-level investigations of all allegations of torture.

### ***Internal Displacement***

More than a quarter of a million villagers, mainly Kurdish, remain unable to return to their homes in the southeast, after having been forced out of their homes by security forces in brutal operations accompanied by torture and “disappearance” during the conflict between security forces and the PKK during the 1990s. In most cases, communities were forcibly evacuated if they refused to join the paramilitary “village guards,” a brutal and corrupt force that was armed and paid by the government to fight the PKK.

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Government projects for return did not provide the displaced with adequate resources to re-establish their lives in their former homes or establish conditions which would enable them to return in safety. Those villagers who attempted to return were in some cases turned back by local gendarmes because they refused to join the village guards, or were at risk of attack by village guards. In September a village guard allegedly shot and killed Mustafa Koyun and wounded Mehmet Kaya in the village of Tellikaya of Diyarbakir. The villagers who were attacked had been forced to leave Tellikaya in the early 1990s after they refused to join the village guard

Those who attempted to draw attention to the plight of the displaced risk official persecution. In January 2004, Şefika Gürbüz, president of the Migrants' Association for Social Cooperation and Culture (Göç-Der), was convicted of "incitement to racial hatred" for preparing a study of the difficulties faced by displaced Kurds. Gürbüz received a ten-month prison sentence converted to a fine.

### **Key International Actors**

The Parliamentary Assembly of the Council of Europe (PACE), which had imposed human rights monitoring on Turkey in 1996, lifted the mechanism in June 2004. This was an appropriate move, in view of the general improvement in the intervening nine years, but it is crucial that Turkey and the Assembly do not lose site of the wide-ranging recommendations that accompanied the decision. Other Council of Europe bodies continued their long-standing and close engagement with Turkey. In June the Committee for the Prevention of Torture (CPT) published a report on its September 2003 visit to Turkey. The CPT noted a general improvement, with lawyers, human rights organizations, and even detainees themselves noting a sharp decline in "heavy torture." On the other hand, there were consistent reports of electric shocks used in one custody unit, and medical evidence consistent with beatings in three others. The CPT found that in southeastern Turkey the "great majority" of those detained by the police or gendarmerie were unable to gain access to a lawyer, and that there were "major deficiencies" in the system for medical examinations.

The European Court of Human Rights (ECtHR) issued further judgements against the Turkish government on issues ranging from freedom of expression to torture and extrajudicial execution. In February 2004 the court found the Turkish government responsible for the deaths of Ikram and Servet Ipek, who "disappeared" after being taken into custody by soldiers who were destroying houses in southeastern Turkey in 1994.

The ECtHR ruled in June 2004 that the ban on wearing the headscarf in universities was not a breach of the right to freedom of religion. Leyla Sahin had been denied access to university because she wore a headscarf. The court echoed the Turkish government's arguments that the ban is justified in order to preserve the secular public order and to protect the rights of other non-Muslim students and students who choose not to wear the headscarf. Human Rights Watch believes that the ban is discriminatory and breaches the rights to freedom of religion and expression.

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International and domestic attention has been firmly fixed on the E.U.'s dealings with Turkey. 2004 was the fifth year of close monitoring to establish whether or not Turkey had met the Copenhagen Criteria: "the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities." This was seen as a make-or-break moment, since a decision in December to open negotiations for membership would strengthen the government and those within the government who have pushed for reform, while a refusal or postponement was likely to be regarded as a sign that the E.U. intended to pull out of the process unilaterally in spite of the substantial human rights improvements.

In October 2004 Hina Jilani, the special representative of the United Nations Secretary-General on Human Rights Defenders visited Turkey to examine the pressures still faced by civil society. In a statement at the end of her visit she noted "genuine steps toward change" but urged that the growing human rights movement should no longer be treated with suspicion by security forces. In November the government issued a circular recognizing the legitimate role of human rights defenders and requiring security forces to treat them accordingly.

Also in October 2004, the European Commission recommended that Turkey's candidacy should move forward to the next step, with the opening of membership negotiations in 2005. The recommendation included extra monitoring measures, including a "brake clause" that would suspend the candidacy process if respect for human rights are put under threat. In December the Brussels European Council will give a final decision on the opening of negotiations.

## Turkmenistan

The regime of president-for-life Saparmurat Niazov is one of the most repressive in the world. It crushes independent thought, controls virtually all aspects of civic life, and actively isolates the country from the outside world. The perverse cult of personality around President Niazov dominates public life and the education system. Civil society, already on the brink of extinction, this year took another blow with a new law criminalizing involvement in unregistered nongovernmental or religious groups. Although 2004 saw the abolition of exit visas and a slight mitigation of the laws on religious freedom and nongovernmental organizations (NGOS), in practice the rights to freedom of movement and conscience are severely restricted. Indeed, the human rights situation in Turkmenistan today is noticeably worse than it was a few years ago.

### ***Freedom of Expression***

Turkmen law bans criticism of any policies initiated by President Niazov and equates it with treason. Therefore, the open expression of alternative points of view is practically impossible. A dramatic example of the harsh consequences for seeking to express alternative views occurred in February, when a dissident from the city of Balkanabad, Gurbandury Durdykulyev, was forcibly taken to a psychiatric hospital after he submitted a request to the president to conduct a peaceful protest.

All national and local media outlets in Turkmenistan belong to the government, cable television and access to the Internet are tightly controlled, and foreign press in practice is forbidden. In July the authorities cut off the transmitting signal inside the country for the Russian radio station *Mayak* (Beacon) after it broadcast an interview with the leader of a foreign-based Turkmen opposition party.

The authorities persecute the few scattered individuals associated with foreign media, in particular Radio Liberty. In 2004, Rakhim Esenov and Ashirkuli Bairiyev, who worked regularly for the Turkmen service of Radio Free Europe/Radio Liberty, were detained on false charges of smuggling into Turkmenistan Esenov's novel about medieval India. Several of Esenov's and Bairiev's relatives were fired from their jobs following the detention. Former film director Khalmurad Gylychdurdyev was also detained and questioned about his work for Radio Liberty. The Ashgabat correspondent of Radio Liberty, Saparmurad Ovezberdyev, was forced into exile in July.

On April 30 a Turkmen political émigré, Mukhamedgeldy Berdiev, who was working at Radio Liberty, was brutally beaten in Moscow by unknown assailants. The attack is presumed to be linked to Berdiev's work criticizing President Niazov on an opposition website.

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## **Civil Society**

In November 2003, a new law on nongovernmental organizations (NGOs) came into force criminalizing the activities of unregistered NGOs. Shortly after its passage, activists from dozens of unregistered groups received warnings that they may be subject to criminal charges for their work. Court cases initiated on arbitrary pretexts led to the liquidation of even well-known, registered NGOs. The government relented on including the criminalization language in the criminal code, though work by unregistered NGOs remains banned. The shrinking community of independent NGOs received a fatal blow in April 2004, when the Ashgabat environmental group Catena was closed. Security agents put pressure on activists of unregistered NGOs, in some cases preventing their contact with foreigners and limiting their ability to travel outside of and within the country.

The educational system continues to deteriorate. Compulsory education is limited to nine years. Niazov's books of poetry and spiritual guidance, the *Rukhnama*, and hagiographic propaganda about the president are replacing all other curricular materials. The authorities have almost entirely expunged grade-school instruction in the languages of ethnic minorities. Most people who received higher education abroad after 1993 must have their diplomas confirmed by Turkmen authorities in order to hold jobs in certain sectors, including law, medicine, education, and many other jobs in public service. Authorities require these individuals to take exams in *Rukhnama*.

Until recently, The Russian Orthodox church and the Sunni Islam were the only permitted religious confessions in Turkmenistan. In early 2004, the draconian law on religious organizations that had been adopted several months before was softened, after which several groups of so-called "nontraditional faiths" (Baptists, Adventists, Baha'i, and Hare Krishna) were allowed to register. Seven Jehovah's Witnesses, who earlier had been sentenced to jail as conscientious objectors to military service, were released. Two other Jehovah's Witnesses, however, were sentenced to prison terms in May and June on the same charges, and in August the secret police obstructed the group meetings of Adventists and Baptists who had registered under the new law.

## **Freedom of Movement**

Freedom of movement and choice of place of residence are strictly limited. Visiting two of the country's five *velayaty* (provinces) and the border regions requires prior police permission. In some large cities the sale of property to residents of other provinces is restricted. Despite the fact that exit visas were abolished in January, thousands of people are on "black lists" and are denied the right to leave the country. Several relatives of so-called "enemies of the people" (see below) were arrested in mid 2004 on charges of planning to "cross the border illegally."

By presidential decree, some quarters of Ashgabat and villages in other provinces were razed to the ground, and residents in many cases were subjected to forced resettlement.

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The authorities continue to use internal exile as a method of punishment. A clear example of this is Sazak Begmedov, who has been in internal exile since he was forced to leave Ashgabat in September 2003.

### ***The Battle with “Internal Enemies”***

The government continues its search for numerous “internal enemies” within its ranks, which began after the November 25, 2002, attack on Niazov. In 2004 President Niazov sanctioned the arrests and secret trials of a number of former ministers, heads of provincial administrations, and other former officials suspected of disloyalty. They were formally charged with corruption, abuse of office, and similar offenses. Several secretly went abroad or were detained upon attempting to flee the country. In many cases, officials confiscated their property or harassed their relatives.

In March, the former *mufiti* (or leading Muslim cleric) of Turkmenistan, Nasrulla ibn Ibadulla, was sentenced to twenty-two years in prison on charges of anti-government activities. No official information is available about his arrest and trial, though some observers believe the authorities convicted him on charges related to the 2002 attack on President Niazov. Significantly, Ibadulla is implicated in the attack in a book ascribed to the former foreign minister, now imprisoned on charges of leading the attack. The book was published after the former minister’s incarceration, and should be considered a quasi-official source of information.

The authorities also put pressure on the relatives of well-known political émigrés. These people are denied their rights to work and to leave the country.

The fate of more than fifty prisoners, convicted for the 2002 attack on Niazov, remains unknown. It is, however, unofficially related that they are being held in strict isolation in the new secret prison Ovadan-Depe (near Ashgabat). Visits by relatives are forbidden. There are unconfirmed reports of cruel treatment and the deaths of several of the convicted.

While the government has no official policy of ethnic discrimination, some analysts believe the government is suspicious of the political reliability of the country’s ethnic Uzbek population. The Turkmen government accused the Uzbek government of involvement in the November 2002 attack on Niazov, by association casting suspicion on the country’s Uzbek minority. At the end of 2003 and beginning of 2004, dozens of ethnic Uzbeks were removed from positions of leadership in Dashoguz and Lebap provinces, which are located on Turkmenistan’s border with Uzbekistan; several of them were arrested.

### ***Key International Actors***

In the current climate of political isolationism and contempt for the international community, third party governments and international organizations have had little success in improving the human rights situation in Turkmenistan.

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After the United Nations General Assembly adopted a resolution on human rights in Turkmenistan in December 2003, the Turkmen authorities began to assert their intentions of strengthening their relationship with international institutions; however, these assertions in many cases proved to be without substance.

In April 2004, at its 60<sup>th</sup> session, the U.N. Commission on Human Rights adopted a resolution on the situation of human rights in Turkmenistan acknowledging the liberalization of laws on religious freedom, but also noting the lack of progress in other key areas that had been highlighted in the General Assembly's resolution of the previous year.

The relationship between Turkmenistan and the Organization for Security and Cooperation in Europe (OSCE) remains tense. The Turkmen authorities continued to ignore the recommendations made in last year's report, which had been prepared within the framework of the OSCE's Moscow mission, and they used their veto power to block the reappointment of the head of the OSCE's Turkmenistan mission, P. Badescu. In October 2004 it was announced that Turkmenistan will not invite OSCE observers to oversee parliamentary elections at the end of the year.

The U.S. leveraged its influence by tying benefits to freedom of religion and freedom of movement, which has led to partial improvements in both areas. The United States resisted seeking other improvements, perhaps due to an unwillingness to jeopardize the corridor to Afghanistan and flyover rights granted by Turkmenistan.

In contrast, Russia, which enjoys a great deal of influence over Turkmenistan through economic leverage, softened its criticism of Niazov's regime and took a passive position even in disagreements over the status of people with dual Russian-Turkmen citizenship.

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## Ukraine

A November presidential election that was neither free nor fair plummeted Ukraine into its deepest political crisis since gaining independence in 1991. At this writing the two leading candidates, Prime Minister Viktor Yanukovich and opposition candidate Viktor Yushchenko, had both claimed victory. Hundreds of thousands of protesters had occupied the streets of Kiev, and parliament had adopted a vote of no confidence in Yanukovich. Initiatives in several regions in eastern Ukraine to seek autonomy should the opposition candidate win the presidency had raised concern of a possible break-up of the country. While the Ukrainian political elite, together with foreign mediators, were looking hard for a way out of the crisis, the danger of the situation turning violent remained very real. To their credit, the authorities had to date not cracked down on demonstrators.

On December 3, 2004, the Supreme Court, citing allegations of widespread fraud in the vote, ruled that new elections had to be held by December 26.

The crisis, however, was entirely preventable. Its roots lay in the government's persistent violations of basic human rights norms, and political freedoms in particular. For years, under the leadership of President Kuchma, the government imposed ever stricter controls on media coverage, repeatedly sought to manipulate electoral processes, and ignored widespread popular discontent. By doing so, it has undermined legitimate avenues for people to express their grievances in a meaningful way. The government's blatant attempts to manipulate the presidential vote in favor of Prime Minister Viktor Yanukovich—notwithstanding a clear popular preference for opposition candidate Viktor Yushchenko—served to convince many Ukrainians that mass street protests are their only hope of being heard.

The Ukrainian government has a poor track record on press freedom. The government or individuals close to the president own most major media outlets, including almost all television stations. It blatantly uses its sway over these media to influence their coverage of the news, in part by issuing instructions to news editors, sometimes in writing, detailing what news stories should be covered and how. As a result, the government has received a disproportionate amount of positive coverage in most media, while opposition parties and figures have struggled to have their voices heard. Under international pressure, the authorities have taken some steps to address press freedom problems—most notably by adopting a law defining censorship and criminalizing government interference with the press. But the government's continued manipulation of the media strongly suggests that these were not genuine attempts to ensure a free press.

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The independent—and often opposition minded—media consists primarily of newspapers and internet publication that have a small readership. Yet, attacks on independent journalists have been frequent and President Kuchma was personally implicated in the worst one: the disappearance and murder of opposition journalist Georgiy Gongadze. In 2000, a former presidential body guard made public hours of secretly taped conversations between Kuchma and his inner circle. On one of the tapes, Kuchma appeared to order Gongadze's murder. The president has denied involvement in the murder but to date his administration has hindered a full investigation. In 2004, there were repeated attacks on opposition journalists. In June, Ichvan Kotsanik, a cameraman for an opposition-linked television station, was beaten into a coma and died several days later. It remains unclear who was behind the attack.

In the run-up to the presidential elections, the authorities made extensive use of their administrative resources and the media under their control to promote their favored candidate, Viktor Yanukovich. In August, the Committee of Voters of Ukraine, a nongovernmental watchdog group, stated in a report that government funds were being used to support Yanukovich's candidacy, and that local officials had forced state employees, such as teachers, to take part in pro-Yanukovich rallies. As in previous elections, political opponents have faced harassment and intimidation. Several months prior to the elections, Viktor Yushchenko suddenly fell ill after what he called an attempt by the authorities to poison him. The authorities have denied the charge and the hospital that treated Yushchenko has not confirmed that he was poisoned.

### ***Entrenched Human Rights Problems***

Ukraine has been plagued by numerous human rights problems that require a structural approach on the part of the government. While it has begun to act on some of these issues, many remain unaddressed.

Torture and ill-treatment continues to be a significant problem in police detention and prisons in Ukraine. Ukraine's human rights ombudsman receives numerous complaints of torture from criminal suspects and estimates that 30 percent of all detainees may become victims of torture or ill-treatment by law enforcement agents. Ill-treatment has resulted in permanent physical damage to many victims, and in the most severe cases, resulted in death. In the vast majority of cases, the perpetrators of torture are not investigated or prosecuted for their crimes. Prison conditions in Ukraine continue to be poor. Prisons are overcrowded, and prisoners have insufficient access to food and health care. As in many other former-Soviet nations, tuberculosis is widespread in prisons.

Ukraine has one of the fastest growing HIV/AIDS epidemics in the world, and human rights violations are fueling its growth. Widespread discrimination against members of high risk groups— injection drug users, sex workers, and men who have sex with men—prevents people from seeking preventative health services and thus increases their risk of contracting HIV. There is also a history of discrimination against people infected with HIV. Although the government has made a commitment to fighting the spread of HIV/AIDS and plans to distribute generic antiretroviral drugs, these steps alone are insufficient to stem the epidemic.

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Ukraine has recently legalized the use of methadone, widely regarded as the single most effective means of treating opiate dependency. Although the medical and public health establishment has been generally supportive, resistance to methadone by Ukrainian law enforcement bodies have so far prevented its use. One critically important outcome of this situation is that many drug users living with HIV will not benefit from expanding access to antiretroviral (ARV) therapy, as they will be barred from receiving the major tool necessary to support treatment adherence.

Women face severe discrimination in Ukraine's workforce. Men hold a disproportionate number of managerial positions and receive better pay than women in comparable jobs. Discrimination is especially prevalent in the job market, where women's access to high paying or high prestige jobs is limited in both the public and private sectors due to discriminatory recruitment processes. Many women are forced into lower paying jobs or remain jobless—women make up 80 percent of the unemployed in Ukraine. Some women, frustrated by the lack of opportunities at home, seek employment outside Ukraine and become victims of trafficking into forced labor abroad, including forced sex work. Women are also victims of widespread domestic abuse.

Ukraine is both a transit point and a point of origin for human trafficking. Ukrainian women and girls are sent to the Middle East and other European countries and forced to be sex workers, while Ukrainian men are sent to other parts of Europe and North America for forced labor. Many victims of human trafficking from Moldova and Asian nations travel through Ukraine, on their way to countries where they will be exploited. The past year has seen an increase in the number of trafficked children, many of them orphans. The government of Ukraine has recently taken steps to reduce human trafficking using increased prosecution of suspected traffickers and programs to help victims. Despite this progress, however, Ukraine still does not meet international standards meant to fight trafficking, and the problem persists.

### ***Key International Actors***

The international community has closely monitored the presidential elections. With the exception of the monitors from the Commonwealth of Independent States, which is made up of twelve former Soviet States, international monitors found that the presidential vote had fallen short of international standards. The Organization for Security and Cooperation in Europe stated that the second round “did not meet a considerable number of [international] commitments for democratic elections.” The E.U., U.S., Council of Europe, and NATO have all expressed concern over widespread fraud and have urged a peaceful solution to the political crisis. The E.U. has strongly endorsed a new vote as the best way forward.

## Uzbekistan

Uzbekistan's disastrous human rights record is long-standing and changed little in 2004, with major violations of the rights to freedom of religion, expression, association, and assembly. Uzbekistan has no independent judiciary and torture is widespread in its pre-trial and post-conviction facilities. In response to international pressure the government has introduced, but not implemented, incremental reform, resulting in no fundamental improvement. The government continues its practice of controlling, intimidating, and arbitrarily suspending or interfering with the work of civil society groups, the media, human rights activists and opposition political parties.

In 2004 Uzbekistan was shaken by two episodes of violence—bombings, and shootings in Tashkent and Bukhara in late March and early April, and bombings of the U.S. and Israeli embassies and the General Prosecutor's office in Tashkent on July 30.

Uzbekistan is a key ally of the United States in the global campaign against terrorism, but undermines that campaign by using it to justify gross human rights abuses. Unfair trials of terror suspects in Uzbekistan that result from gross abuses further undermine counterterrorism efforts by producing unreliable convictions which damage rather than promote the rule of law.

### ***Religious Persecution***

For years, the government has imprisoned on “fundamentalism” charges individuals whose peaceful Islamic beliefs, practices, and affiliations fell outside of strict government controls. An accumulated total of about 7,000 people are believed to have been imprisoned since the government's campaign against independent Islam began in the mid-1990s. The government justifies this campaign by referring to the “war on terror,” failing to distinguish between those who advocate violence and those who peacefully express their religious beliefs; it used the March-April attacks to give new validation to the campaign.

By November 1, 2004, Human Rights Watch documented 241 convictions; the true numbers are believed to be much higher. Police use torture and other illegal means to coerce statements and confessions from these detainees. Courts fail to investigate torture allegations made by defendants at trial, despite an instruction by the Supreme Court to judges to exclude any evidence obtained under illegal means, and routinely sentence defendants to long prison terms based solely or predominantly on such testimony.

Conditions in Uzbekistan's prisons are poor, and religious and political prisoners suffer particularly harsh treatment. According to testimony by relatives, prisoners are forced to sign statements begging President

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Islam Karimov for forgiveness, renouncing their faith, and incriminating themselves as terrorists. Prisoners who refuse are punished with beatings, time in punishment cells, and even new criminal prosecutions.

### ***Terrorism Trials***

Approximately one hundred people were tried on terrorism, murder, and other charges relating to the March-April 2004 violence. Trials monitored by Human Rights Watch and other observers failed to meet international fair trial standards. Many defendants denied any knowledge of or involvement in the violence and alleged that police had held them incommunicado and used torture, threats, and other pressure to coerce confessions during the investigation. Bakhtior Muminov, tried in October along with four others for alleged participation in the March-April violence and alleged membership Hizb ut-Tahrir (a non-violent religious organization that is banned in Uzbekistan) had been held incommunicado from his arrest in late March to August. At trial he testified that he had been tortured with beatings and electric shocks to coerce a confession. The judge failed to launch any inquiry into Muminov's or other defendants' torture allegations and sentenced him to sixteen years' imprisonment.

### ***Torture***

The government has made no visible progress on ending the use of torture in practice and only minimal progress on implementing the recommendations made by the United Nations (U.N.) Special Rapporteur on Torture after his visit to Uzbekistan in 2002. The Supreme Court issued an instruction to judges to exclude defendants' testimony and confessions extracted under torture. In practice, however, judges do not implement this instruction. Although the government states that it has prosecuted law enforcement officers for torture and other illegal methods, Human Rights Watch has received no response to its request for further information about these cases. Judges routinely accept as evidence testimony and confessions in cases where torture is alleged as well as base convictions solely on confessions made by defendants during the investigation. Human Rights Watch continued to receive credible allegations of torture in investigations and pre-trial custody as well as in prisons.

### ***Crackdown on Civil Society***

The government tightened its grip on civil society in 2004 by extending to international nongovernmental organizations (NGOs) many of the repressive tactics it has used against local NGOs. In 2004 it introduced burdensome new registration and reporting procedures requiring international NGOs to obtain "agreement" from the Ministry of Justice (MOJ) on the content, agenda, timing and place of any activity, and to invite MOJ officials to attend. The government closed the Open Society Institute, which provided vital support for civil society groups, and suspended the activities of the local affiliate of the media-support organization Internews for six-months for alleged minor administrative violations. It also forced all women's NGOs to undergo re-registration procedures.

The government refused to register any independent human rights organizations in 2004. Throughout the year, the government harassed, threatened, and detained human rights defenders in an attempt to

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restrict information on human rights abuses. At least two activists were severely beaten by unknown assailants after receiving threats from the government to stop their activities. On February 16, authorities arrested defender Muidinjon Kurbanov and held him incommunicado for three days, during which they threatened and forced him to sign a dictated confession. He was tried and sentenced to three years' imprisonment on fabricated charges of weapons possession in an unfair trial that focused on his human rights work. The sentence was reduced to a fine on appeal and after international outcry.

Uzbek authorities continue to harass, detain, and hold under effective house arrest activists who attempted to stage demonstrations. For example, in June authorities prevented Bahodir Choriev, a farmer trying to prevent government confiscation of his farm, from holding a demonstration by holding him and his relatives in their apartment. Police forced Choriev and eighteen of his relatives onto a bus and drove them outside Tashkent where they interrogated them and confiscated their passports.

### ***Elections***

There are no genuine opposition parties registered in Uzbekistan. The government refused to register opposition political parties in advance of the December 26 parliamentary elections. The Birlik (Unity) party applied for registration several times, each time denied by the MOJ, most recently in January 2004, when the MOJ claimed that the party's signature lists were flawed. On appeal, the Supreme Court ruled that the court had no jurisdiction to review registration decisions. Although the law allows unaffiliated candidates to run through initiative groups, in practice, independent candidates faced intimidation, harassment, and other serious obstacles obtaining registration and few ultimately ran. The government also refused to allow independent observers to observe at polling stations. Citing serious flaws in Uzbekistan's election laws, the lack of registered opposition parties and restrictions on freedom of the press, the Office of Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Cooperation in Europe (OSCE) refused to send a full election observation mission to Uzbekistan.

### ***Key International Actors***

In July, the U.S. State Department determined that Uzbekistan had failed to make sufficient progress on its human rights commitments as outlined in the U.S.-Uzbek Bilateral Agreement and therefore did not qualify for direct government assistance, cutting U.S. \$18 million in aid. However, in August, the Department of Defense undermined the principled message this decision sent by pledging U.S. \$21 million in new military aid. The U.S. continues to regard Uzbekistan as an important partner in the war on terror.

The E.U.-Uzbekistan Partnership and Cooperation Council met in January 2004 to discuss implementation of the Partnership and Cooperation Agreement (PCA). The PCA requires that partner states guarantee basic civil and political rights. The E.U. missed the opportunity to obtain a commitment from the Uzbek government to implement specific reforms and prematurely gave the Uzbek

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government credit for progress on torture and civil society liberalization, when such progress had not been made.

In March 2004, following the expiration of the one-year deadline it had set for the Uzbek government to meet specific human rights benchmarks as a condition for further engagement, the Board of Directors of the European Bank for Reconstruction and Development (EBRD) took the unprecedented decision to suspend direct assistance to the government of Uzbekistan, citing the government's failure to make progress on the benchmarks. It decided to limit investment to the private sector and stay involved in public sector projects only to the extent that they directly affect the well-being of the general population, or involve neighboring countries.

The benchmarks had been set in the bank's March 2003 country strategy for Uzbekistan, issued less than two months before it held its annual meeting in Tashkent. They pertain specifically to human rights: greater political openness and freedom of the media; registration and free functioning of independent civil society groups; and implementation of the recommendations issued by the U.N. Special Rapporteur on torture.

The U.N. Human Rights Commission voted to impose a confidential monitoring mechanism on Uzbekistan due to persistent lack of improvement in its human rights record. In October 2004, an independent expert appointed by the Commission visited Uzbekistan to conduct a human rights assessment. He will present his findings in a confidential report at the next meeting of the Commission.