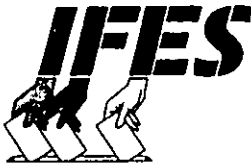


Date Printed: 11/06/2008

JTS Box Number: IFES_12
Tab Number: 13
Document Title: Tajikistan: Compendium of Technical
Assistance Reports
Document Date: 1995
Document Country: Tajikistan
IFES ID: R01900



* 7 9 0 2 4 7 0 3 - 6 1 D 1 - 4 3 E C - A 4 3 0 - 6 A 5 F 5 4 D 1 9 1 7 9 *



International Foundation for Electoral Systems

1101 15th STREET, N.W. • THIRD FLOOR • WASHINGTON, D.C. 20005 • (202) 828-8507 • FAX (202) 452-0804

INTERNATIONAL FOUNDATION FOR ELECTORAL SYSTEMS
COMPENDIUM OF REPORTS ON
TECHNICAL ELECTION ASSISTANCE TO TAJIKISTAN

March 1995

PART I

Pre-Election Assessment

PART II

Election Day Observations

PART III

Post-Election Technical Assessment

***DO NOT REMOVE FROM
IFES RESOURCE CENTER!***

BOARD OF DIRECTORS

Charles T. Manatt
Chairman

Patricia Hutar
Secretary

David R. Jones
Vice Chairman

Joseph Napolitan
Treasurer

Barbara Boggs

Frank J. Fahrenkopf Jr.

Judy Fernald

Victor Kamber

Maureen A. Kindel

Jean-Pierre Kingsley

Peter McPherson

Sonia Picado S.

William R. Sweeney, Jr.

Leon J. Weil

DIRECTORS EMERITI
James M. Cannon
Richard M. Scammon

Randal C. Teague
Counsel

Richard W. Soudriette
Director

EDITOR'S NOTE

The International Foundation for Electoral Systems conducted a three-phase program in Tajikistan during the period immediately surrounding its November 6, 1994 Referendum and Presidential Elections. This report is written in three parts. Each part covers a specific phase of IFES program. Readers will also note that each part reflects information and recommendations relative to the time period in which the analysis was undertaken.

PART I

PRE-ELECTION ASSESSMENT

September 19 - October 3, 1994

Team Members

Linda Edgeworth
Walter Smith

PART II

OBSERVATIONS ON ELECTION DAY

November 4 - 7, 1994

Team Members

Gwenn Hofmann
Linda Edgeworth
Scott Lansell
Zara Dashtamirova

PART III

POST-ELECTION TECHNICAL ASSESSMENT

(Recommendations Regarding Parliamentary Election Law)

November 29 - December 2, 1994

Team Members

Linda Edgeworth

In Cooperation With Barnabas Johnson, Consulting Attorney
American Legal Consortium

TABLE OF CONTENTS

PART I PRE-ELECTION ASSESSMENT

EXECUTIVE SUMMARY

COUNTRY PROFILE

- Location and Topography
- National and Ethnic Groups, Language and Religion
- The Economy
- Social Issues

TAJIK POLITICAL EVOLUTION

- History
- The Soviet Period
- Post-Soviet Events and the Emergence of Political Parties

THE CIVIL WAR

- Opening Clashes
- Escalation
- Denouement
- Dimensions and Origins of the War

CURRENT POLITICAL CLIMATE

- Government/Opposition Relations
- Environment for the Elections
- Issues for the International Community

LEGAL FRAMEWORK

- Constitutional Implications in Holding Simultaneous Elections
- Applicable Laws

THE RIGHT TO ASSOCIATE AND THE LAW ON PUBLIC ASSOCIATIONS

- Law on Public Associations

THE MEDIA

Law on Press and Other Mass Media
Freedom of Speech and Campaigns

OVERVIEW OF THE ELECTORAL SYSTEM

Administrative Structure
District and Polling Site Commissions
System of Representation and Threshold Requirements
Nomination of Presidential Candidates
Registration of Candidates

PREPARATION OF THE VOTER LISTS AND SPECIAL VOTER SERVICES

Voters Who Have Moved and Supplemental Lists
Voting Outside the Republic
Advance Voting

PROCESSING AT THE POLLS

Organization of Polling Sites
Opening the Polls
Preliminary Entries on the Protocol Before Voting Begins
The Ballots
Ballot Security Measures
Processing Voters
Voters Who Must Vote at Home
Door-to-Door Solicitation

VOTE TABULATION AND REPORTING RESULTS

Counting the Votes
Reporting Results

WEAKNESS IN THE ELECTION PROCESS AND ON-SITE TECHNICAL ASSISTANCE

Preparation and Security of Ballots
Assistance to Voters Voting at Home
Voting at Polling Stations Outside the Republic
Political Campaigns and the Media
System of Nomination and Status of Political Parties
Transparency at the Polls

PART II
OBSERVATIONS ON ELECTION DAY

BACKGROUND

Threat of Violence

IFES OBJECTIVES AND STRATEGY

Difficulties Experienced on Election Day

MIXED REVIEW REPORTED BY INTERNATIONAL DELEGATIONS

IFES Findings

Issues of Concerns

Recommendations

PART III
POST-ELECTION TECHNICAL ASSISTANCE
RECOMMENDATIONS REGARDING PARLIAMENTARY ELECTION LAW

BACKGROUND LEADING TO IFES ASSISTANCE

Strategy

RECOMMENDATIONS

Priority 1.	Transparency
Priority 2.	Right to Nominate Candidates
Priority 3.	Ballot Accountability and Security
Priority 4.	Role of the Central Election Commission
Priority 5.	Candidate Campaigns

**PASSAGE OF THE NEW LAW ON THE ELECTION OF DEPUTIES TO THE MAJLISI
OLI**

PART I
PRE-ELECTION ASSESSMENT

REPUBLIC OF TAJIKISTAN
November 6, 1994
REFERENDUM AND PRESIDENTIAL ELECTION

Team Members

Linda Edgeworth
Walter Smith

September 19 - October 3, 1994

EXECUTIVE SUMMARY

Tajikistan is a country in crisis. In the aftermath of the collapse of the Soviet Union, civil war erupted which left the country in severe strife. Although negotiations resulted in a cease fire, its terms are tenuous at best. Estimates suggest that hundreds of thousands of people have been displaced and scores of thousands of refugees still remain outside the country. Economic decline threatens to worsen significantly, potentially raising the specter of widespread social unrest.

It is in this environment that the government of Tajikistan, seeking to bring about stability and secure international respectability, called a special election in which voters would vote on the adoption of a new constitution and elect their president. Originally scheduled for late September, the elections were postponed until November 6, 1994 in response to pressures within the Republic and from the international community.

In answer to an invitation from the U. S. Embassy in Dushanbe, the International Foundation for Electoral Systems sent a two-member team to conduct a comprehensive pre-election technical assessment. The team was comprised first of Walter Smith, a 29-year veteran of the U.S. Foreign Service with extensive experience in the former Soviet Union and specific expertise in the region. The second member of the team was Linda Edgeworth, an expert in election law and administration with extensive experience in the international arena, including prior elections work in Kazakhstan and Kyrgyzstan.

The assignment had two parts: 1) to review the legal framework and administrative procedures which would be implemented in conducting the election; and, 2) to assess the overall environment in which the elections were to take place. Incumbent in the latter was an expectation that the team would be able to come to some preliminary conclusions as to the likelihood that the elections would conform to acceptable democratic principles. The team was also to assess the degree to which these elections might ultimately be construed to have been free and fair.

The team conducted its work in Tajikistan from September 21, through October 3, 1994. During its stay the team met with government officials, members of election commissions at the central, raion and polling site levels. Meetings were also held with officials of local executive authorities, representatives of candidates, movements and political parties, members of the media and leaders of civic organizations. The team had the opportunity to visit several raions outside Dushanbe including Varzob, Faizabad, Hissar, Tursunzade, Leninsky and Khojand.

Throughout discussions with key participants in the election process it became apparent that the government perceived an urgent need for improving their respectability with the international community. They expressed the view that adoption of the new constitution and election of a president were avenues by which Tajikistan could receive more positive recognition. This underlying motivation provided the opening which allowed the IFES team to leap the fence between strictly performing an assessment and having the opportunity to provide some immediate technical assistance.

The team's strategy was to capitalize on the experience of Kazakhstan during that country's March 1994 elections. Tajik officials were very interested in the problems Kazakhstan had encountered in their first elections under a new electoral law, and how their elections had been evaluated by the international community. Using the Kazakhstan experience as the basis of discussions, government officials recognized that a number of issues which came under fire in those elections would also relate to Tajikistan's electoral system.

The second part of the team's strategy was to focus its technical assistance objectives on improvements which were still achievable prior to election day given the current legal and administrative frame work, the crisis environment, and the constraints of time and resources.

Full recognition was given to the fact that ideal conditions simply could not be achieved by election day. Prior to November 6, flaws in the law would not be amended. There was insufficient time for new or existing political parties to sufficiently strengthen their organizations and sphere of public support. Nor would there emerge a totally free and independent press. However, two major elements of the election process were still to follow: 1) the campaign period; and, 2) election day itself including the processing of voters, casting of ballots, counting of votes and reporting of results.

Therefore, the IFES team concentrated its technical assistance on these elements. All in all, 26 pages of procedural recommendations were prepared, translated into Russian and discussed with election officials. Each component was designed to improve the security and accountability of the system, enhance administrative efficiency or provide a greater degree of transparency for the process. The ultimate goal was to strengthen the foundation on which the election could achieve at least a minimal degree of fairness deserving of public confidence and international acceptance.

In the report that follows, the IFES team provides a brief history and analysis of the social and political environment which currently exists in Tajikistan. The team has also attempted to assess the status of the Republic's relationships with its neighbors and other members of the international community and their influences on recent events. The legal and administrative structures underpinning the election process are discussed, as are the weakness and strengths of the election system itself. The report includes a discussion of the team's general findings and recommendations relevant to the November 6 elections as well as to future assistance which might be warranted as Tajikistan prepares for its parliamentary election anticipated late in 1994.

COUNTRY PROFILE

Location and Topography

With a land area the size of Wisconsin's (55,251 sq. mi.) and a population the size of Virginia's (5.6 million,) Tajikistan was economically the poorest of the 15 constituent republics of the former Soviet Union. It borders Uzbekistan and Kyrgyzstan to the north, China to the east, Afghanistan to the south, and Uzbekistan to the west. Over 90% of the country is mountainous. Tajikistan's thinly populated eastern province, Badakhshan Autonomous Oblast, contains the Pamir Mountains, called the "roof of the world." The extremely rugged Tian Shan Mountains run along the country's northern border and divide the rest of the country from its northernmost province, the relatively populous and prosperous Leninabad Oblast. The capital of Leninabad Oblast is Khujand, Tajikistan's second largest city after the nation's capital Dushanbe. Leninabad Oblast is connected to the rest of the country by a finger of territory extending north through the Tian Shan and then broadening into Tajikistan's large section of the fertile Fergana Valley around Khujand. Because of heavy snows in the Tian Shan Mountains, Khujand and the rest of Leninabad Oblast can be reached from other parts of the country only by air during two-thirds of the year, if that much. Floods and landslides are also problematic.

The Syr Darya (River), along which Khujand is located, runs through Leninabad Oblast east-west and explains the Fergana Valley's fertility. The border between Tajikistan and Afghanistan to the south is formed by the Pyanzh River, running east-west and emptying into the famed Amu Darya (River) at the southwest corner of Tajikistan. Lesser rivers run through the country east-west and east-southwest. Rainfall except in the mountains is only a parched six inches a year. Because of the lack of water and the rugged terrain of most of the country, only 6% of its land area is under cultivation; another 23% is used for pasture.

National and Ethnic Groups, Language and Religion

Unlike the Turkic speaking peoples of the other four Central Asian republics, the Tajiks' language belongs to the Farsi or Persian group and is Indo-European, not Altaic-Mongol. The language is very close to the Farsi spoken today in Iran and most of Afghanistan. The sparse population of about 150,000 Pamiris of the large eastern Badakhshan province have a language that is distinct from Tajik, deriving from an east Farsi linguistic grouping rather than west Farsi from which Tajik comes. The Tajiks look upon the Pamiris as Tajik, but the Pamiris consider themselves a separate ethnic group and have aspired for political separation. Educated and urban segments of the Tajik population and the rural population near urban centers speak Russian; most of the rural population does not.

Tajikistan has two large national minorities: Uzbeks, comprising 23.5% of the population, and Russians, who comprised 7.6% until the civil war of 1992. Most Uzbeks and some Russians of Tajikistan have lived there for several generations. As many as two-thirds of the Russians left the country during the 1992 civil war. Eight other national minorities, most of whom individually comprise less than 1%, represent in toto another 6.6% of the population. Until the

1992 fighting, when their proportion increased to about 68% because of the departure of Russians, Tajiks made up 62.3%. There is a Tajik minority of close to 1 million in Uzbekistan. Resident there since ancient times, concentrations of Tajiks center in mostly in and around Samarkand and Bukhara. A long-resident Tajik minority in Afghanistan has been estimated to be as large as 3 million.

Except for the population living in Badakhshan province, the overwhelming majority of the non-European inhabitants of Tajikistan accounting for 90% of the population are Sunni Muslim, unlike their Afghan and Iranian linguistic cousins to the South who are Shia Muslim. Less than 5% of Tajikistan's population is Shia Muslim. The Pamiris of Badakhshan province, on the other hand, belong to the Ismaili sect of Islam concentrated in Pakistan and led by Aga Khan.

The Economy

Primarily agricultural, the Tajik economy is dominated by cotton culture, grain, and fruit. Livestock, mainly sheep and goats and to a lesser extent cattle provide an additional economic base. Agriculture accounted for 38% of employment as of 1990.

The key industries are mining, natural gas, textiles, food processing and carpets. Included also are aluminum production and the generation of hydropower. Manufacturing centers around machine tools, refrigerators and freezers. Deposits of uranium, lead, zinc and tungsten are also present in the country. The major earners for Tajikistan have been cotton and aluminum. The per capita GNP in 1991 was \$1,050.

Among the Soviet republics, Tajikistan consistently received the lowest per capita rate of investment by the USSR. The concentration on cotton has been attributed to Soviet neglect of the economy there. By 1989 the annual Tajik crop of 900,000 tons represented only a tenth of Soviet cotton production. However, it was the long-staple variety and therefore of much greater value than less desirable types. On the other hand, the emphasis on cotton has been somewhat improvident because of the need for high water use to produce the crop.

The production of the country's large aluminum plant at Tursunzade, only a few miles from the border to the west with Uzbekistan, has figured significantly in the Tajik industrialization effort. However, Uzbek complaints over water and air pollution by the plant and demands for monetary damages led to talks in 1991 and a Tajik agreement to stop the operation of 100 electrolysis units at the plant.

The Tajik economy, already badly disrupted by the breakup of the USSR in 1991, was devastated by the civil war in 1992 resulting in starvation in some areas. The GDP is estimated to have dropped by 34% in 1992 and industrial production by 25%. Inflation hit 35% a month in early 1993. These factors have stabilized somewhat in the relative tranquility since the end of 1992. Yet at the time of the IFES team's visit residents of the capital Dushanbe were still having to stand in line 2-4 hours on any day to buy bread.

Social Issues

Even before the USSR's breakup in 1991 and the resultant economic tailspin for Tajikistan, the country faced serious social problems. The population grew at an average of 3% a year from 1959 to 1979, a total increase by over 100% in the period. This was higher than that of most other developing nations in the world. Rural unemployment hit over 25% of the able-bodied work force. Soviet efforts to remedy the situation in the 1980s were not accompanied by economic investment, and therefore, led only to spreading rural poverty into urban poverty.

From 1979 to 1991 the population grew by 41%. Further, 70.7% of the population in 1991 was under 30 years age. The rural population represented 68.6% of the total.

In the late 1940s the Soviet authorities forcibly transferred large numbers of the rural population of the mountainous Garm region in the center of the country to Qurgohon Teppa (Kurgan-Tyube) Oblast in the southwest corner of the country to become cotton pickers.

A smaller number was transferred to Kulyab Oblast, just east of Qurgohon Teppa (Kurgan-Tyube) Oblast. The devoutly Muslim Garmis were looked down upon by the permanent residents of Qurgohon Teppa (Kurgan-Tyube) and Kulyab Oblasts and in many cases were mistreated.

Although regional, political, and religious factors all contributed, the deep socio-economic grievances of the Garmis of Qurgohon Teppa (Kurgan-Tyube) Oblast appear to have been the most important single cause of the ferocious, brutal nature of the Tajik civil war of 1992. Some observers have said it exceeded in cruelty the "ethnic cleansing" of the communal fighting in ex-Yugoslavia.

TAJIK POLITICAL EVOLUTION

History

Tajik nationalist writers take pride in the archeological evidence that the precursors of the Tajiks may have been living in the valleys of the Amu Darya and Syr Darya already in the first millennium B.C. By the time the Arabs conquered Central Asia in the 8th and 9th centuries AD, the Tajiks were the settled or sedentary population of the area. The Samanid dynasty flourished in that era, with Bukhara which became a center of Persian learning as its capital. The development of a distinct Tajik language written in the Arabic script, dates from that time.

Turkic-speaking Mongol invaders poured into the area in the 11th century. The leaders of those nomadic peoples adopted Persian as their language, while the rest of the population continued with their native Turkic. By the 15th century the Turkic and Tajik languages were living side by side and were both used by the educated population which was unified by a single Muslim and Arabic civilization but not a single state. A conscious stress on the difference between the

Tajik and Uzbek languages and peoples came much later.

Russia conquered almost all of Central Asia in the 1860s. Many Tajik areas continued to find themselves under the emirate of Bukhara, which defied the Russians and continued a precarious existence down to the Russian Revolution of 1917.

The Soviet Period

The Red Army took control of Central Asia in 1918, including the area now constituting Tajikistan. It declared the existence of the Turkestan Autonomous Republic comprising all of Central Asia as a part of the Russian Federation. Local armed Islamic rebel groups called the Basmachi continued to resist. By 1920 they had been suppressed everywhere in the region except Tajikistan. In 1924 the Soviet authorities created several separate constituent republics out of "Turkestan" and other parts of Central Asia and made Tajikistan an autonomous republic within Uzbekistan.

This did not sit well with the Tajiks. In 1929 the Soviets created Tajikistan as a separate constituent republic of the USSR. The border the Soviets drew between Tajikistan and Uzbekistan caused grievances between the two parties which have persisted. Many Tajiks found themselves inside Uzbekistan and many Uzbeks inside Tajikistan; given the checkered nature of the ethnic geographic distribution, it is doubtful that any border between the two republics would satisfy both parties. The first phase of Basmachi rebellion was crushed by the mid-1920's; the revolt revived in the 1930's in reaction to collectivization. By the 1930s, the Soviets finally succeeded in stamping out the Basmachi resistance in Tajikistan.

The Stalinist collectivization of agriculture throughout the USSR met with massive Tajik resistance. As many as 10,000 Tajiks may have lost their lives brutally. Land-owning Muslim philanthropic institutions were hard hit. Bloody purges of the Tajik Communist Party also took place in the 1930s. The capital Dushanbe was renamed "Stalinabad," the name it retained until the 1960s.

The ethnic-Tajik ranks of the Tajikistan Communist Party leadership were thinned by the purges. An ethnic Russian, Dmitrii Protopopov, became First Secretary in 1937 and ruled the republic with an iron hand until 1945. He was followed by a Stalinist Tajik, Bobojan Ghafurov, who held the post until 1956. In succession was another Stalinist, Tursunbai Uljabaev, who was removed for corruption in 1961. The next three First Secretaries, Jabar Rasulov, Rakhman Nabiev, and Kakhar Makhkamov, who followed in the office until the USSR's collapse in 1991, were no reformers and did little to seek a more benevolent attitude toward the republic from Moscow.

The post-World War II era under the Soviets spelled steady economic decline for Tajikistan. The gradual conversion of the Tajik economy into a cotton mono-culture was Moscow's doing. One feature, already mentioned, was the forcible and permanent transplanting of Gharimis from the center of the country to the southwest region to become cotton pickers, creating a social

time bomb. Moscow did not offset its emphasis on cotton cultivation with badly needed investments in other aspects of the economy. The explosive population growth of 1959-1979 meant the steady spread of poverty and unemployment. The 1989 census revealed that two-thirds of the inhabitants were living in small, underdeveloped rural villages.

Post-Soviet Events and the Emergence of Political Parties

Tajik intellectuals made early use of Gorbachev's policy of glasnost to create non-Marxist political parties starting in 1989. In 1990-1991 Tajikistan became the first Central Asian republic to have a fairly functional multiparty system. Coexisting alongside the Communist Party were:

1. the Democratic Party, highly nationalistic and favoring a democratic framework with strong executive rule;
2. the Rastokhez (rebirth) Party, a movement favored by many members of the intelligentsia espousing a mixture of nationalist and religious elements;
3. Lale Badakhshon, a movement seeking greater autonomy for Badakhshan Autonomous Oblast and its Pamiri people; and
4. the Islamic Renaissance Party, favoring greater emphasis on the country's religious tradition, but resistant to the establishment of sharia (Islamic law) in place of the existing secular juridical system or other Iranian-style features of a theocratic regime.

A word of caution is needed about these four organizations: none has emerged as a true political party in the Western sense. Their memberships continue to be very small and comprise almost exclusively the educated elite. With the exception of the Islamic Renaissance Party (IRP), none has had a resonance with broad segments of the population.

The emergence of the four organizations in 1989-1991 made the ruling Communist Party apparatus nervous. After the failed coup against Gorbachev in Moscow in August 1991, the Mayor of Dushanbe, Magsud Ikramov, had the capital's large statue of Lenin taken down and became an instant hero. Tajikistan declared its independence on September 9, 1991. As the November 1991 presidential election approached, the four non-Marxist parties did not coordinate or pool resources and instead fielded many candidates. Ultimately, all four major non-Communist parties endorsed Davlat Khudonazarov.

By what many consider rigged elections, the Communist leader Rahmon Nabiev won handily. His victory was helped by his open challenge to First Secretary Mahkamov, a hard-liner who evidently supported the anti-Gorbachev plotters in August 1991. When Mahkamov was forced to resign a few days after the foiled coup in Moscow, Nabiev was named interim head of government.

The four opposition parties claimed vociferously that the 1991 presidential election was rigged and Russian election analysts supported this claim. Many observers think that it probably was but also that Nabiev would have won with a solid majority in any case. While radio and TV openly campaigned for him, the printed media gave balanced coverage to the candidates. Between the election in November 1991 and the outbreak of the Civil War in May 1992, Nabiev and the opposition parties were on a collision course.

THE CIVIL WAR

Opening Clashes

In March 1992 the Nabiev government jailed the popular Mayor of Dushanbe, Maksud Ikramov, on corruption charges. It also sharply criticized Internal Affairs Minister Mamadaez Navzhuvanov, a leader of the Badakhshan separatist movement. Opponents poured into Dushanbe and began an long-term, noisy demonstration in front of the parliament building. Many demonstrators were residents of the Dushanbe area and Badakhshan Autonomous Oblast. Most evidently, they were unemployed rural Gharmi youths from Qurgohon Teppa (Kurgan-Tyube) Oblast, supported by the IRP, which fed them in soup kitchens in Dushanbe.

Early in May, the government organized a counter-demonstration in a square only about 500 meters away. The civil war erupted when weapons were issued to the counter-demonstrators on 3 May 1992, allegedly by the Tajik secret police. The opposition demonstrators seized weapons promptly from local police stations. On May 7, shaken after several days of serious bloodshed, the Nabiev regime agreed to a government of national reconciliation; opposition groups received 8 of 24 portfolios.

Neither side was satisfied. The leadership of Leninabad and Kulyab Oblasts, centers of antagonism toward the opposition, refused to recognize the new central government, claiming it was unconstitutional. Fighting spread to other areas, in particular, Qurgohon Teppa (Kurgan-Tyube) and Kulyab Oblasts in the south. There, the oppressed Gharmi minority fought savagely against the permanent population and in turn was dealt with brutally.

Escalation

The civil war dragged on throughout the summer and fall of 1992. It would stop briefly with numerous truces and would then resume more fiercely. Both sides steadily improved their fire power. Allegations that Russia, Uzbekistan, Iran, and/or the Afghan Islamic militants systematically fed weapons to the respective sides seem questionable, at least in the May-August 1992 period, although many Russian weapons were stolen or bought covertly by both contending forces.

Based on reliable secondhand reports it is clear that "ethnic cleansing" was a standard feature of the war. Surviving members of Gharmi families in Qurgohon Teppa (Kurgan-Tyube) Oblast, for example, often fled with mothers, fathers, and children scattering in all directions. As late

as October 1994, families were still being newly reunited, often living in tents because their houses had been burned to the ground.

On 3 September 1992 the presidents of Russia, Uzbekistan, Kazakhstan, and Kyrgyzstan, evidently fearing the creation of an extremist Islamic Tajik regime, issued a statement calling on the Tajik authorities to seal their border with Afghanistan, and threatening to take "all necessary measures" to assure compliance. Opposition forces took control of Dushanbe a few days later and forced Nabiev to resign on 7 September. Akbarshah Iskandarov, Pamiri chairman of parliament, became acting president and the opposition formed a new government.

Later in September, Russia and Uzbekistan dispatched large military contingents to reinforce the Commonwealth of Independent States (CIS) border guards, predominantly Russian, along the Afghan-Tajik border. Inside Uzbekistan the Uzbek military began training and arming locally stationed ethnic-Uzbek members of the Tajik forces of the pre-civil war government. During the same period, individual Russian units inside Tajikistan were apparently providing some support to the same Tajik forces, evidently at the local commanders' initiative, not Moscow's.

Denouement

By November the opposition was clearly losing ground. The nationalist-Muslim coalition agreed to the holding of a session of the Tajik parliament in Khujand, capital of Leninabad Oblast and major stronghold of the pre-civil war government. Elected in 1990, the parliament comprised 94% Communists. Instead of seeking reconciliation, at its session of 16 November - 2 December the parliament invalidated Nabiev's resignation and Iskandarov's interim appointment and abolished the post of president. In addition, they ejected sympathizers of the opposition from its ranks, and purged them from government. They also elected the country's current chief of state, Imomali Rakhmanov - a Kulyabi.

The opposition agreed to abide by parliament's decisions and accepted a cease-fire. It broke down when pre-civil war government forces in the Hissar area, armed by Uzbekistan, moved on Dushanbe and overpowered the opposition forces there in fighting 6-11 December. The Uzbek Air Force bombed opposition strongholds in the Gharm region at this point. Rakhmanov took up his new post in Dushanbe on 14 December.

Reprisal killings of Gharmis and Pamiris in the south and the destruction of their homes by uncontrolled armed bands became widespread in the first months of 1993, resulting in a major flight of the population. Thousands were left homeless. In Dushanbe, the government indicted and executed or imprisoned most opposition leaders. Others were indicted in absentia. It banned opposition publications. On June 24, 1993 the supreme court agreed to the government's petition to ban the four political parties of the opposition. Leaders of at least one of the banned parties indicated that no representative of their party had been present or allowed to present arguments during the court's hearing or ruling on the petition.

Dimensions and Origins of the War

At least 50,000 people lost their lives as a result of the war. Some 400,000-650,000 people were displaced, at least temporarily. And 60,000-80,000 were left homeless. Notwithstanding the thousands of Russian natives of Tajikistan who left for Russia, several hundred thousand people became refugees. Estimates suggest that roughly 35,000 refugees mainly in Afghanistan have not yet returned to the country.

The civil war has been characterized alternately as:

1. a confrontation between pro-Communists and Islamists; and
2. a conflict between regions or clans.

These are over-simplifications. It was both...but more. The fuel for its intensity seems to have come from the social injustices suffered by the huge impoverished elements in the country, generally and especially the transplanted Gharmi cotton pickers of the southwest. At the same time, the war cannot be called simply a clash between the "haves and the have-nots".

Nor was it specifically an ethnic clash. While the 31% of the country's population comprising Uzbeks and Russians clearly sympathized with the existing regime rather than opposition, they evidently played no major role in the war. The country's one indigenous ethnic group, the Pamiris of Badakhshan, did actively take part on the side of the opposition; but, they represent less than 5% of the population.

Thus, there is no precise explanation for the civil war or its surprising intensity. Regionalism may well be the main single factor. The Khujandis, inhabitants of Leninabad Oblast, dominated the country both politically and economically throughout the Soviet era. While representing only 1/4 of the population, they are said to have produced 65% of Tajik GNP as of 1989. Significantly, they also produced every first secretary of the Tajik Communist Party from 1918 to 1991.

The Khujandis have run the country in an uneasy truce with the Kulyabis of the south. Friction between them has been common. A consistent Kulyabi ambition has been to dominate the adjoining Qurgohon Teppa (Kurgan-Tyube) Oblast to its west. Another contributing factor is the pro-Uzbek and pro-Russian sentiments of the people in those areas, in contrast to the purely Tajik sympathies and affiliation of the population elsewhere.

The regional interests of Badakhshan, Leninabad, Kulyab, and Qurgohon Teppa (Kurgan-Tyube) Oblasts are clearly defined. However, the influence of Dushanbe itself and its surrounding areas cannot be understated. In addition, there is the large center of the country to the east of Dushanbe which belongs to no oblast and is called the "region subordinate to the central administration." This area comprises Gharm and other thinly populated mountainous parts of

the country. From all indications, greater Dushanbe and the Hissar region to the west have been pro-Russian and pro-Uzbek, while the mountainous east has generally sided with the opposition.

CURRENT POLITICAL CLIMATE

The government's prosecution of opposition leaders in early 1993 has been followed in 1993-1994 by government harassment and in some cases detention of journalists sympathetic to the opposition. There has been no hint of government willingness to lift the ban on the four opposition political parties. It has, however, sought to calm its relations on several fronts.

First, the government has attempted to ease tensions with the Pamiri separatist movement. In March 1993 the central government and the government of Badakhshan Autonomous Oblast signed an agreement, under which the former undertook not to send armed forces into the province and the latter withdrew its claim to sovereignty.

The government has also initiated programs to encourage and help displaced persons inside the country as well as refugees in Afghanistan return home. In this regard, the government has been cooperating with the UN High Commission on Refugees (UNHCR).

To ease conditions for returning refugees, the government has taken steps since 1993 to disarm and disband the irregular armed groupings, notably the Popular Front (PF) which had been created to aid the government during the civil war. While the PF leader favored these moves, he encountered some dissension from the powerful Kulyabi faction within the Front. Although the situation has steadily improved, uncontrolled armed groups continue to exist in some areas in the far south. Assassinations have continued, but by spring 1994 overt cases of harassment of returning refugees had largely ceased.

Government/Opposition Relations

Hoping to start the reconstruction of the country and anxious for foreign economic assistance, the government appealed for international help in ending the guerrilla incursions emanating from Afghanistan. But having won the civil war and seeing no reason to make political concessions to its defeated protagonists, the government initially was not inclined to enter into direct negotiations with the militant opposition, principally operating from outside the country in Afghanistan. However, UN, CSCE, European Union (EU), and especially Russian persuasion has prevailed.

The militant opposition raised a significant threat by agreeing to the cease-fire only until the day before the election. If at the next round of inter-Tajik talks the militant opposition should dangle some carrot increasing the prospects of reconciliation contingent on a postponement of the election, the government will face a difficult decision. However, the holding of the election on schedule may be seen by the government as ultimately strengthening its hand for dealing with the militant opposition, whatever short-term instability may result.

Three rounds of formal talks between government and opposition forces have taken place under the auspices of the UN Secretary General, organized by the latter's special representative, Ramiro Piriz-Ballon of Uruguay: April 1994 in Moscow, July 1994 in Tehran, September 1994

in Tehran. A fourth session is scheduled for October 1994 in Islamabad. The September session produced a formal cease-fire, scheduled to end on 5 November, the day before the presidential election.

Environment for the Elections

During the summer of 1994 the government proposed to parliament a new constitution, the reestablishment of the post of president, the holding of a presidential election in autumn 1994, and the adoption of a new election law. Parliament debated these issues throughout July 1994 and by month's end reached agreement on a draft constitution. The new election law adopted a decision to hold a presidential election simultaneously with a national referendum on approving the new constitution.

The matters were discussed throughout the country and were widely publicized in the media. Although the militant opposition abroad was not consulted, an omission for which the government has been criticized by many observers, criticism that the government arrived at these political decisions secretly is not true.

The date initially set for the presidential election was 25 September. By early September only one candidate had been nominated, chief of state Rakhmanov. On 7 September, reportedly after coming under strong pressure from the Russian and Uzbek Governments, Rakhmanov successfully proposed to parliament the election's postponement to 6 November, an extension of the nominations deadline to 27 October, and the release of 1,000 prisoners under the 25 August amnesty. Rakhmanov urged the militant opposition to nominate candidates and take part in the election. A few days later, a second candidate was nominated: Abdumalik Abdullojanov, member of a powerful Khujand family and current Ambassador to Russia who had served as Tajik Prime Minister from late 1992 until his dismissal by Rakhmanov in late 1993. From firsthand knowledge, it may be said that no love is lost between the two candidates. In addition to a strong Khujand political machine at his disposal, Abdullojanov is well known in other areas of the country and has a solid following. Thus, a viable electoral contest was in the offing.

The only two powerful opposition groups on the Tajik political landscape include the militant opposition, most leaders of which are in exile, and the legal electoral opposition, feared far more by the group in power.

Only two political parties now exist legally in the country, the Communist Party and the Party for Economic and Political Renewal. But it is arguable that, given the country's limited experience with political parties, they will be less influential for popular involvement in the election than the participation of personalities of the regions. This fact can be of less significance in a Presidential election, however there is concern that such political party weaknesses (or effective illegality) may deprive the electorate of a diverse selection of reasonable candidates in forthcoming parliamentary contests.

Despite international urging, the government had shown no signs of lifting the ban on the

political parties of the militant opposition. It had not amended its new presidential election law to liberalize the arrangement for nominations to make it easier and more inviting for the leaders of the militant opposition to enter the contest. The government did not drop its criminal charges against most leaders of the militant opposition. Further, it had not stopped its de facto censorship of the press or its harassment of opposing journalists. It had not issued a new and sweeping amnesty of political prisoners. It had not altered its practice of allowing token visits by the International Red Cross and similar groups into the country's prisons. In spite of its cooperation with UNHCR, critics suggest that only minimal headway has been made in bringing about a major repatriation of the remaining Tajik refugees in Afghanistan, although, in fairness, this clearly was not solely dependent on the government.

The government has, however, put in place at the local level a seemingly well prepared and organized electoral apparatus. The IFES team had the opportunity to interview officials in 6 of the 62 election administrative units. A review of the technical procedures, ballots, materials and administrative documentation appears to be adequate to conduct an accountable election. The ability of the apparatus to operate in a free and fair way in the areas in the far south where armed bands are still present is of course open to question. How they will be borne out in actual practice remains to be seen, however stringent and publicized regulations on the provision of equal attention to the candidates by the mass media are in place.

Contrary to some international criticism, the government does have a plan for facilitating election participation by Tajiks residing outside the country, including political refugees, and sought technical assistance from the team on how to improve it. The government expects approximately 10,000 persons residing outside the country, the majority of which are in Afghanistan and other nearby countries, to participate. The government has also invited international observers to be present for the election.

The prospect of a meaningful election is also enhanced by the fact that there are two viable candidates, each with strong followings and good organizations, so that the outcome is by no means a foregone conclusion.

The present government, in deciding to hold the election, has exposed itself to considerable risk of being turned out of office. By all indications it has a strong motivation to proceed. As numerous high officials told the IFES team, the government perceives an urgent need to increase the international respectability of the government. Given their expressed desire for international recognition and economic assistance, to allow an election to take place that could be branded by the international community as flagrantly undemocratic would presumably defeat the government's purpose in holding the election.

At the time of the team's visit, it was impossible to assess with certainty the degree to which the government is committed to ensure that the elections are free and fair. As the remainder of this report illustrates, Tajikistan has a number of obstacles to overcome if its electoral system is to fully achieve internationally accepted democratic principles and standards. Hopefully, these elections will represent a significant first step in Tajikistan's continuing evolution as an emerging

democracy.

Issues for the International Community

The Europe-Middle East Subcommittee of the House Foreign Affairs Committee on 22 September 1994 held the first hearing ever of the American Congress on U.S. policy toward Tajikistan. Among the close followers of the Tajik situation presenting testimony, the Director of the Center for the Study of Central Asia of Columbia University, the Washington Director of Human Rights Watch, and the Special Adviser to the President of the Soros Foundation all urged that the United States seek a postponement of the 6 November Tajik presidential election.

The Columbia University professor called on the U.S. to stand behind the strong and largely negative judgments issued by the CSCE of the Tajik Government's unilateral political reforms. He made the point that the fairness of an election is mainly political, not technical; even if there is an honest vote count in an election, it is not a fair and free election if the opposition cannot participate. He added that democracy is much more than elections: institutions of law, independent media, and free associations are also important.

The Human Rights Watch functionary took the view that the 6 November Tajik election be opposed because basic civil and political rights are absent in the country. She added that it would be different if the government freed political prisoners, created greater freedom of the press, lifted the ban on the political parties of the militant opposition, and changed the election law to incorporate arrangements enabling refugees to vote.

The Soros Foundation representative noted the U.S. should press through the CSCE for a postponement of the election until the negotiations between the government and the militant opposition reach fruition. The U.S., at a minimum, he argued should insist on lifting the ban on political parties of the militant opposition. He expressed the hope that, if the election could not be stopped, the CSCE and the International Foundation for Electoral Systems (IFES) would monitor it closely.

Each of the points made before Congress warranted careful consideration. The question here is whether the Tajik militant opposition cannot participate in a new election in Tajikistan because of objective political and security conditions, or whether it has taken a political position that precludes its taking part.

The militant opposition's position implied that the current government, having no legitimacy in their view, does not have the right to conduct an election and that it must first agree to the establishment of an interim coalition government with the militant opposition. Some believe that the militant opposition was trying to gain, through pressures imposed by the international community, what it lost on the battlefield two years earlier.

The point of a Soros Foundation witness suggested a questionable solution. It may take years before the current government and the militant opposition can negotiate a compromise. One

might question whether it is advisable that any or all elections be postponed until such an accommodation is reached - if one assumes that elections, per se, tend to agitate political situations, release political impulses now in check, and create new possibilities. In other words, it would seem wrong to oppose any democratic move by the present Tajik regime, regardless of the motive behind it.

LEGAL FRAME WORK

The call for the election scheduled for November 6, 1994 has posed interesting legal questions which some critics believe are unsatisfactorily answered. The most significant question relates to the issue of holding the referendum on the Constitution simultaneously with the election of President. Under the existing constitution there is no provision for the office of president. The office of president is contemplated in the proposed constitution being put before the voters.

Opponents and critics have expressed their view that it is inappropriate to conduct the elections simultaneously. Rather, they believe that the referendum should have been called, and only then, if the Constitution is adopted, should there be an election for President. As a practical matter, the holding of the simultaneous elections was promoted as a cost saving measure.

Constitutional Implications in Holding Simultaneous Elections

Lawmakers clearly understood the constitutional question involved, and sought a remedy which would lay a "legal" frame work for the conduct of the two elections at the same time. Their solution was to amend the existing Constitution through Article 103 which allows the parliament to pass "constitutional laws." The team was advised that under this provision, a "constitutional law" would have the same affect and force as any provision of the constitution itself. The main difference between a "constitutional law" and legislative law is the threshold by which it is enacted by the legislative body. While legislative law is passed by a simple majority, "constitutional law" requires a 2/3 majority vote.

Having passed the amendment to Article 103 of the current Constitution, the Supreme Council was then able to adopt the Law on the Election of President as a "constitutional law." These two steps laid the ground work for the holding of the simultaneous elections on the referendum and the election of president.

According to the constitutional amendment signed into effect by the Chairman of the Supreme Council on July 20, 1994, "constitutional laws" are a "component part of the Constitution." As the team came to understand the legal scheme, even if the referendum on the adoption of the new Constitution were to fail, the "constitutional law" would still be in effect to legitimize the office of President, and the election of the person to hold the office.

Another "constitutional law" was also passed laying the ground rules for the order of adoption and enactment of the new Constitution. This law encompassed the call for the simultaneous elections and set in place the establishment of a Central Election Commission to oversee them. Several other important stipulations were covered in this "constitutional law."

1. Although a separate law on referendum elections already exists, it would be set aside for these simultaneous elections. The Central Election Commission was to conduct the referendum and the election of the president on the basis of the new "constitutional law" on the Election of the President.

2. It was further stipulated "all laws and legal acts have to be harmonized with the new Constitution within two years following its being enacted."
3. In the interim, it provided that existing laws and legal acts established by state authorities, or those parts of them which do not conflict with the new Constitution, would remain in effect.
4. "Constitutional laws" referred to in the new Constitution would have to be adopted within one year of its enactment.
5. This law on the order of adoption and enactment of the new Constitution also outlined the terms and time table for the transition of authority for the Council of Ministers, local executive authorities, the Supreme Council, and the various courts.

Applicable Laws

The conduct of elections in Tajikistan is impacted by a number of laws which must be taken together to complete the full picture of election system and how it works. Clearly, the work on formulating a new legal structure to underpin the electoral process along democratic principles has only just begun. Many of the provisions of the current laws remain entrenched in soviet era philosophy. Where new laws have been developed, they often contain inconsistencies with other related laws which remain unchanged. But, piece by piece, there appears to be a movement to realign the various laws related to elections. However, they are likely to remain weak sisters as they compete with the myriad of other significant legislation for their place on the priority list.

Of particular importance in the conduct of the referendum and presidential election scheduled for November 6, 1994 are the following:

1. the Law on Public Associations;
2. the Law on Press and the Media;
3. the Constitutional Law on the Election of President;
4. the Law on Referendum.

These separate laws will be referenced throughout this report as each component of the election process is discussed.

THE RIGHT TO ASSOCIATE AND THE LAW ON PUBLIC ASSOCIATIONS

Notwithstanding the current status of opposition parties in Tajikistan which has been discussed earlier in this report, serious impediments exist to the general right of citizens to associate, and specifically for citizens to organize meaningful political parties. The law governing the organization and registration of public associations appears to follow typical norms for post-soviet countries and appears to remain entrenched in soviet-style thinking. In general, the right to "associate" implied even under Tajikistan's proposed Constitution, continues to leave open a legitimate question as to whether such a freedom as it is generally understood in democracies of the west will really exist in practical terms.

According to the English translation of the new Constitution provided to the IFES team, "citizens have the right of association." However, the full text of the provision in conjunction with the requirements this law provide only the right to "participate in the creation" of an association. Additionally, another similar provision of the new Constitution stipulates "communal associations are formed and act within the limits of the Constitution and the laws."

More accurately, critics suggest, the "right to associate" hangs on the state's guarantee to provide associations "equal opportunities for their activity." Legitimacy of any association is based on their ability to achieve official status as a registered organization. The registration of an association or party falls under the authority of the Ministry of Justice. Failure to achieve registration means that the association is illegal and is prohibited from functioning.

The Law on Public Associations:

Political parties and movements are lumped together under the same Law on Public Associations as are boys clubs, cultural groups, hobbyist clubs, etc. Given their unique purpose and potential role in public and legislative affairs, political parties should be governed by separate legislation. The IFES team was told that this distinction was considered by lawmakers but that the parties were added to the Law on Public Associations as a matter of expedience.

The issue that deserves serious consideration is that the law governing the organization of political parties provides a basis of control whereby the state can maintain a relatively tight rein over political activism. Such strict oversight can severely inhibit strong and healthy multi-partyism, and, if abused, can erode meaningful democracy. Of equal concern is that the legal requirements provide wide loopholes whereby the Ministry of Justice can rescind a party's registration at any time. In fact, a number of previously registered parties have been banned in recent months.

The law is designed to give the state an extraordinary amount of oversight and control over the activities of public associations. The application requirements are stringent. They give the government detailed information about the organization's leadership, membership, assets and finances, and provide government ample opportunity to find grounds to rescind its registration and halt its operation. Applicants must provide:

1. the names and residences of the organization's leadership, and data regarding the scope of their authorities;
2. a description of the rights and duties of members, as well as conditions for joining or withdrawing membership;
3. sources and means of funding;
4. objectives of the organization and a charter which stipulates its activities and functions; and,
5. the method of introducing or amending its charter.

Any activity engaged in by the organization which has not been addressed in the charter may be grounds for rescinding a party's or public association's registration. In addition, each amendment to the charter requires re-evaluation by the Ministry of Justice (or its local counterpart, if the organization is organized only locally) which, again, subjects the organization with possible closure. An amended application is subject to fees and charges which are not stipulated in the law.

Other loopholes are also created which, if abused, could result in a party being banned or de-registered.

1. Article 4 prohibits any association from encroaching on the "health or morals of the population." Associations including political parties are prohibited from "inflaming social discord." However, no guidance is provided as to how such vague terms such as "morals of the population" or "social discord" are defined. Nor are their guidelines formalized as to how alleged violations will be evaluated or judged. If a political party raises issue with the failing economy or the failure of government to address inflation or curb crime, could that be interpreted as "inflaming social discord?"
2. Like the Constitution, many provisions are qualified by language such as "except as stipulated by law." In these instances the specific law which might be applied or have relevance is not stipulated. This type of qualifying language leaves the door open for hidden laws, or new laws to be used to purposely create grounds for banning a party. A couple of examples illustrate the point.
 - a. "By legislative acts" it may be determined the types of property which may not be in the possession of a public association.
 - b. Interference in the activities of public associations by national bodies or officials is prohibited, "except in cases when it is stipulated by law."

3. Surveillance over public associations rests with the Public Procurator's Office.
4. If a public association is de-registered or banned, its assets are converted to state ownership.

Some parts of the law simply cannot be reasonably administered or enforced. For example, there is no method or mechanism established to monitor size of membership although the law requires that republican associations have at least 500 members. Other sections of the law pose questionable requirements or limitations. For example, the law requires that associations hold their events during members' "non-working" hours. How does an association or a political party deal with members who are shift workers or who work nights? In another example, members of collectives, institutions, organizations and associations of citizens can take part in the activities of public associations, "except political parties and trade unions, in cases stipulated by their charters." Such language could create opportunities where citizens are restricted from participating in or supporting a political party by virtue of their employment.

THE MEDIA

Just as legitimate questions can be raised about the extent to which Tajik citizens are guaranteed the right of association, similar questions come to mind with regard to freedom of the press. And, to the same degree that political activity is strictly monitored by the state, all media remains under strict government control as well. Little or no progress has been made in establishing a free and independent press since Tajikistan became an independent Republic. In fact, under a recent decree, independent radio and television was totally banned. Additionally, even government controlled regional television stations have been shut down for the time being. According to one mayor with whom the team met official statements indicated that with Republican Television there is "no need" for local television broadcasts any more. This action may be rationalized as a cost cutting measure, however, any closure of media during a critical election period leaves room for critics to question whether political motivations contributed to the decision. This is especially true in view of the clearly delineated centers of support for the individual candidates in certain regions of the country.

As a side note, Republican Television may be able to adequately cover the campaigns of two candidates in the presidential race. However, loss of local television stations could severely limit broadcast opportunities for districtwide candidates during parliamentary elections tentatively slated for January or February.

The Law on Press and Other Mass Media

The current Law on Press and Mass Media enacted in 1990 remains subordinated to the old USSR law. As might be expected, it follows traditional soviet-style form. In particular, the law appears to grant liberal freedoms and liberties of expression and free speech on one hand, while providing a plethora of loopholes and qualifications whereby those freedoms can be restricted or rescinded by the state altogether.

Just as political parties must undergo a complicated registration process, so do entities seeking to establish a publication or broadcast station. An application process is required whereby the entity wanting to establish a publication or station must provide:

1. detailed information regarding the editorial staff;
2. a formal charter under which it will operate;
3. a description of aims and objectives;
4. a definition of its supposed audience;
5. the language in which it will disseminate information;
6. the schedule on which it will publish or broadcast; and,

7. the sources of any funding which will be used for operation.

A fee is charged for registration "in the amount stipulated by legislation," however, the existing Law on Press and Other Mass Media does not state the figure. No medium may operate until it is officially registered. Registration is only granted for one year at a time. And, any change in a principle officer, the language in which broadcast or publication will be made, or the type of transmission which will be used requires a new application and re-registration.

Even the roles and duties of individual members of the editorial staff are governed by the law. The law also requires that each medium's charter stipulate the distribution and use of income received from its activities. Additionally, production property and financial relations between editorial staff and the publisher are regulated by law. With regard to use of other languages in publication or broadcast, the law requires that mass media materials must first be written in the official language and then be translated for publication on the alternative language. The mass media must also receive official permission from the state to send correspondents abroad.

Freedom of Speech and Campaigns

Under Article 2, not only does it state that "press and other mass media...are free", it also mandates that each citizen has the right to freely express his convictions and views, and to disseminate them in any form through the press. Under this provision, "censorship of mass information is not permitted." However, Article 34 makes journalists criminally liable for an "abuse of freedom of speech" including "defaming the honor and dignity of a citizen or organization." The law is silent as to how those terms are defined, or how such violations are monitored.

Article 7 provides that the media are regulated not only by the media law, but also "other provisions of Tajik SSR legislation issued pursuant to it." Legislation related to elections offers a specific example as to how "other provisions" of law can be used by the state to dilute the freedoms from censorship guaranteed under the Law on Press and Other Mass Media. Under Article 27 of the Law on the Election of President, candidates are provided the right to participate in the pre-election campaign on an equal basis. The law also stipulates that they are entitled to the "equal right to use the means of mass information, including radio and television." It became apparent to the team that officials in Tajikistan have apparently stretched the interpretation of this provision not only to regulate equity of candidate access to the media for their campaign purposes, but also to limit editorial freedom of the media itself. According to the Ministry of Press and Information, the agency responsible for monitoring the media's compliance with the law, open editorial support for or opposition against a candidate would be a violation subject to severe censure. At the extreme, the Minister advised the team that he was going to close down one newspaper that had already started to "praise one candidate and criticize the other."

Even the rights of a candidate to "freely express his convictions and views" guaranteed under the Law on Press and Other Mass Media is qualified by the law on the Election of President.

Article 27 of the latter law mandates that the program of a candidate "may not contradict the Constitution" of the Republic. This limitation bears a special significance in view of the referendum on the Constitution being held at the same time as the presidential election. As a technical matter, one official with whom the team met pointed out that the law does not make it clear as to which constitution the restriction would apply, the existing constitution or the new one subject to referendum. The argument was raised that a candidate could actually be censured for supporting the proposed constitution. In contrast, supporters of the opposition candidate expressed concern that caution would have to be exercised regarding the candidate's expressing his reservations about specific provisions of the proposed constitution. A question could be raised as to whether voters should be entitled to know a candidate's views on the constitution as well as his intentions to seek amendments upon his election.

In another example, the team was advised that a special order was prepared by the Ministry intended to govern the manner in which candidates would campaign. One of the stipulations was that "gossip and allegations" were prohibited. The criteria by which a campaign statement would be considered an "allegation" or a fact was not made clear. Such a mandate by ministerial order would appear to overstep the bounds of authority vested by the law itself. Depending on the manner by which such restrictions are interpreted and enforced an open field potentially exists for bias and abuse in the treatment of candidates.

OVERVIEW OF THE ELECTORAL SYSTEM

Administrative Structure

Elections are administered by a hierarchy of appointed electoral commissions supported by an administrative staff at the Central Election Commission (CEC) level and by local executive authorities at the District levels. At the top of the hierarchy is the Central Election Commission, a temporary body appointed by the Supreme Council, based on recommendations of its chairman. The nine member commission is appointed within 3 days after the date the elections are called. Their terms expire on the date the new president takes office.

Because of the temporary nature of the Central Election Commission, every Republic-wide election will be administered by a new, potentially inexperienced administrative entity. Under this scenario, Tajikistan is not affording itself the benefit of building continuity, experience and institutional memory necessary for the consistent, accountable and efficient conduct of elections. For each and every major election, the wheel will have to be reinvented. It is likely that the same problems will continue to arise as inexperienced officials attempt to address the complex legal questions and challenging logistics issues anew.

Under the law, the CEC exercises its authority and comes to its decisions through meetings, at which at least 2/3 of its members must be present. The law provides that the commission's decisions are passed if a majority of those present express their approval by a "voice" vote. Dissenters have the right to express their opinions in written form so that they can be attached to the minutes of the meeting. In the case of a tie vote, the Chairman of the Commission casts the deciding vote. The decisions of the Central Commission are binding on lower commissions. In addition, within the limits of its authority the CEC may direct the activities of other government agencies, community organizations, collectives, military departments, and enterprises as they might directly relate to conduct of the election. In particular, these entities may be asked to provide information, such as that which might be necessary to prepare voter lists. They may also be requested to provide facilities and materials necessary to accommodate public meetings for the benefit of candidate campaigns.

The CEC is responsible to ensure that the Law on the Election of the President is uniformly applied and is authorized to issue various instructions and clarifications which might be necessary. The CEC establishes the boundaries of the election districts and also makes decisions as to the location of polling sites which may be established outside the Republic for refugees and foreign service workers.

Another of the key responsibilities of the Central Election Commission is the registration of candidates in presidential elections. The CEC exercises a degree of control over the conditions prescribed for the manner in which candidates will conduct their campaigns. Incumbent in this function is the responsibility to determine the process whereby candidates will benefit from equal access to the media.

The form of the ballot is also determined by the CEC, as are all other forms and protocols considered necessary for documenting the electoral process.

District and Polling Site Commissions

For the purposes of the referendum and presidential elections, District (Circuit) Election Commissions (DECs) function at the raion level and in the City of Dushanbe. DECs monitor and facilitate campaign activity by candidates, establish polling sites and supervise polling site commissions in their jurisdictions. There are 64 DECs - one in each of the Republic's 63 raions and another serving the City of Dushanbe.

Polling Site Commissions (PSCs) are the poll workers who process voters on election day and count the votes cast at their polling sites. The PSC's also facilitate voter registration and prepare the voter lists for the area served by the polling site. There were 2,665 polling sites established for these elections within Tajikistan. In addition, polling sites were also established in Tajikistan's diplomatic and representative offices outside the Republic to serve workers in foreign offices and refugees remaining outside the country as a result of the civil war.

System of Representation and Threshold Requirements

Tajik election law requires that voter turnout and participation must represent at least 50% of the eligible voters if the election is to be considered valid. Should turnout as a whole be less than 50%, the election is considered not to have taken place and no candidate is considered to have been elected.

The election of president in Tajikistan is based on a majority system. A candidate is elected by a simple majority of the votes cast. If more than 50% of the voters participate, the candidate is elected who has received the most votes.

Nomination and Registration of Presidential Candidates

Under the Law on the Election of President, candidates may be nominated by republican political parties, Oblast Soviets of People's Deputies, the Council of People's Deputies of the Gorno-Badakshan Autonomous Oblast, Regional Councils of People's Deputies, Dushanbe City Council of People's Deputies and the Congress of People's Deputies for the regions and cities under Republic Subordination. Each group seeking to nominate a candidate must hold a meeting at which its decision must be supported by a vote of the membership.

In meetings with election officials, reference was made to a provision of law allowing nominations by the Association of Unions and the Youth Union. Indeed, one candidate was nominated by the Youth Union. However, in two separate English translations of the Law on Election of the President no such provision was found by the IFES team.

Under the law, the nominating period begins 50 days before the election and ends 30 days before

the election. When the election date was postponed from September 25, to November 6, the nominating period was extended accordingly.

By law, the number of total candidates which may be nominated is not limited. However, each group eligible to nominate a candidate may not nominate more than one person. A single candidate may be nominated by a number of separate local soviet organizations as well as by different political party or authorized unions.

For the November 6 election, only two candidates were ultimately nominated: Imamali Rahmonov, the current Head of State and Chairman of the Supreme Council; and, Abdumalik Abdullojonov, former Prime Minister and current Tajik Ambassador to Russia.

Of particular significance was that for the November 6, election, no political party was prepared to field a candidate.

Under the law, each nominating group submits its choice of nominee to the Central Election Commission within 3 days after it reaches its decision. The group must notify the candidate of its decision within 2 days.

The nominating group must organize a unit of supporters who then circulate petitions within its territorial jurisdiction. The law requires that nominations be supported by petitions signed by a number of voters equalling 5% of the eligible citizens. According to officials, for the November 6 election that meant that over 133,000 signatures had to be gathered. Petitions containing the signatures of voters supporting the candidate's nomination are certified by the local executive committee in the raion or town in which the petition is circulated. The certified petitions from the local level are submitted to the Central Election Commission. The CEC then determines the cumulative number of signatures gathered by various support groups who may have separately nominated each individual candidate.

Registration of Candidates

Candidates for President are formally registered by the Central Election Commission based on the submission of the following documents:

- a. minutes of the decision to nominate a candidate by the highest sitting body of the nominating group;
- b. petitions containing the signatures of voters which have been certified by the relative local executive committees;
- c. biographical data of the candidate;
- d. signed declaration of the candidate the he or she is willing to stand for office.

The CEC registers the candidate within 3 days of the submission of the documents. The petitions from the various nominating groups supporting each candidate are combined to verify that the total number of signatures gathered by all groups meets the statutory requirement. The appropriate credentials acknowledging their registration as official candidates must be issued to those successfully nominated within 2 days of their registration.

Each registered candidate is allowed to designate 15 trustees who will assist him in his campaign and represent him in his relations with electoral commissions and public institutions. Trustees are registered with the Central Election Commission from whom the trustees will receive their credentials.

PREPARATION OF THE VOTER LISTS AND SPECIAL VOTER SERVICES

Any citizen over the age of 18 is eligible to vote under Tajikistan law. Persons adjudicated by a court as mentally incompetent and those held in prison or custody are the only citizens restricted from voting. However, civil war has caused hundreds of thousands of people to be displaced. Some villages have been destroyed. Thousands of refugees still remain outside the country. These circumstances made preparation of the voters' lists very difficult.

In Tajikistan, voter lists are prepared by Polling Site Commissions with support from the local executive committees. Registration of voters is accomplished by a door-to-door canvas. Voter lists are made public 15 days before the election.

Voter lists for members of the armed forces are prepared by the commander of the military units to which they are assigned. Military men and women who reside off base are included on the lists of the polling site designated for the place in which they live. Voters who are in hospitals, rest homes, resorts and in foreign service are included on the lists especially prepared for the place in which they are serving, are hospitalized or are institutionalized as of election day.

Voters Who Have Moved and the Supplemental Lists

If a voter has changed his place of residence after the voter list has been published, the law provides that he or she can apply to the District Election Commission for a special identification form to show the polling site where he will be voting instead. A notation is made next to the voter's name on the voter list for his former residence. Upon presentation of this form at the new polling place, the voter's name is added to a supplemental list on election day and the voter is allowed to vote.

At each site poll workers also maintain a supplemental list to accommodate voters whose name were inadvertently omitted from the list while it was being prepared. The practice ensures that voters will not be disenfranchised because of errors made by election officials. In practice, any voter who presents identification showing an address within the boundaries of the polling station is added to the supplemental list and allowed to vote. In view of the large number of displaced persons who have not yet been able to return to their home in the aftermath of the civil war, the supplemental lists provide assurance that these voters will not be disenfranchised. However, the open-ended supplemental lists do warrant special attention. They do provide fertile ground for suspicions to be raised about the potential for manipulation and opportunity for abuse. Reliance on the supplemental list makes up for general inadequacies in the formal voter lists. However, incomplete and inaccurate voter lists weaken the fundamental principles of accountability provided by the balancing of a precise and accurate number of voters with the number of ballots issued.

Voting Outside the Republic

Important questions were raised by militant opposition groups who argued against the holding

of these elections at all. Key to their resistance was their argument it was inappropriate to conduct a nationwide election with so many refugees remaining outside the country. This issue became a paramount factor in debate raised during the tenuous peace talks. In what many considered an inadequate and unsatisfactory solution, officials arranged for special absentee sites to be established at Tajik Embassies or representative offices outside the Republic. These sites were formed not only to serve refugees but also to provide voting opportunities to citizens working in foreign countries.

Advance Voting

The law also makes special provision for voters who will be away from their voting residences on election day. Any voter who learns that he or she will not be in his precinct on election day may go to the local election commission and vote in advance of the election.

Upon presentation of identification, the voter is asked to sign a special voter list. If official ballots have not yet been distributed, a special blank ballot is provided which allows the voter to write in the name of the candidate he or she prefers. If official ballots are available, a voter voting in advance is issued the official ballot. The voted ballot is sealed in an envelop to be maintained by officials until election day when it will be deposited into the ballot box with the regular ballots voted on election day.

PROCESSING AT THE POLLS

For the November 6, election, 2,665 polling sites were established throughout the Republic. Polling hours were from 6:00 a.m. to 8:00 p.m. Under the law, polling stations at military installations, sanatoriums, hospitals and other special sites may be closed early if every voter on the voter list for that site has voted.

Organization of Polling Sites

Responsibility for equipping the polling site rests with the District Election Commission. Each polling site is to have an adequate number of voting booths or cabins to allow voters to vote their ballots in secret. The ballot box is supposed to be positioned so that it is in plain view of the members of the commission and any observers who might be present. However, wording in the law does not make it clear. The law stipulates that the box should be positioned so that the voters "on their way to the box pass through" the cabins or rooms for secret voting. Taken literally, officials could interpret the provision to mean that the voting booths should be designed to have curtains on two sides which would allow the voter to walk in one side and out the other, with the ballot box placed on the far side out of the view of officials.

Opening the Polls

Before voting begins on election day, the Chairman of the Polling Site Commission is to display the empty ballot box and seal it in the presence of all members of the commission. Presumably, representatives of nominating groups, the media and international monitors who have been properly accredited may observe this procedure, however, the law does not make it clear. Taken in the narrowest of interpretations, some commissions could determine that observers may not necessarily be allowed to be present for this part of the activity. The way the law is currently written, it leaves the door open for a polling site commission to determine that the opening of the polls begins with the first voter, after the box has already been sealed. Obviously, the opportunity for observers to watch the empty box being opened, displayed and sealed is a necessary ingredient of a transparent election. This unclear provision of law should be amended in order that observers be provided full opportunity to be present for this important part of the process.

Each polling site also has smaller portable ballot boxes which will be used to assist voters voting at home. These boxes should also be displayed and sealed in the presence of all the commission members and observers. In addition, it is important that these boxes remain in the full view of commission members and observers throughout the polling day except when they are actually being used to serve voters at home.

Preliminary Entries on the Protocol Before Voting Begins

The law requires that polling site commissions prepare a protocol on which full document about voting activity, counting of votes and reporting results, and maintaining information which

accounts for all ballots that were initially received. The law implies that this protocol is completed after the polls close. However, it should be required that some of the entries be made before voting begins. These preliminary entries should include the total number of voters on the voter list and the number of ballots originally received.

The Ballots

Because voters were going to vote on both the referendum on the adoption of the Constitution and on the election of President, the Central Election Commission decided to prepare two separate ballots. Although there had been some discussion about combining both issues on a single ballot paper, the concept was never implemented.

Under the law, ballot papers are printed in Tajik (Farsi), Russian or in any other language which is used by the population of the district, as determined by the Central Election Commission. Names of the candidates are listed alphabetically, and include the candidate's full name, date of birth, present occupation and employment.

In Tajikistan, voters are still required to mark their ballots by crossing out the names of the candidates AGAINST whom they vote. On referenda questions voters mark their preference the same way, leaving their choice exposed. This practice is rooted in soviet tradition when often only one candidate ran for office unopposed. In this situation, the only choice a voter had was to vote against the single candidate by crossing his or her name out. In the future, and as elections become more competitive, it will be worthwhile for lawmakers to reconsider the method by which a voter expresses his choice.

According to the procedures outlined by the Central Election Commission, each polling station should receive a number of ballots sufficient to accommodate the number of voters on the voter list. In addition, each site would receive a number of extra ballots to accommodate voters who may have been omitted from the voter list in error or voters who have moved who will be added to the supplemental list on election day. Because of the vast numbers of displaced voters resulting from the civil war, officials expected to have an unusually large number of additions to be made on the supplemental voter lists. Therefore, the number of extra ballots on hand was expected to be larger than usual, making accurate ballot accountability and security an even greater issue to be considered.

Ballot Security Measures

According to the law, ballots must be delivered to polling sites not later than 2 days before the election. Prior to election day, they are to be stored in a secure area under safeguard by officers provided by the ministry of Internal Affairs.

In Tajikistan, inadequate resources prevent ballots from being sequentially numbered or padded is common in most established democracies. Nor do the ballots used in Tajik elections have any kind of stub or counterfoil. According to discussions with officials at the central and district

levels, polling site commissions a procedure was to be implemented whereby each official ballot would be signed by an official. The signature was to be affixed to provide a method by which officials could distinguish an officially issued ballot from one that was fraudulently placed in the ballot box.

Polling Site Commissions are responsible to account for every ballot they receive. A protocol is maintained at each site on which the commission records the number.

Processing Voters

According to the law and the procedures outlined by the Central Election Commission each polling station maintains the master list of voters identifying the persons residing in the area served by the site who are eligible to vote. Space is provided next to the person's name for the voter's signature. Under the new system, each voter is required sign the register to acknowledge receipt of the ballot.

Each voter is also required to present his or her passport or other suitable identification upon arrival at the polling site before a ballot is issued. A shortcoming in the law is that there is no guidance as to what other kind of identification is acceptable. It did not appear that the Central Election Commission had considered rules which would apply.

An "Invitation to Vote" is sent to each person on the voter list reminding him of the date of the election, the polling hours and the location of the polling site. Although the Invitation is not a secure document or adequate to prove identity, some officials indicated that they would accept it in lieu of proper identification. The policy regarding this practice had not yet been formalized, leaving the door open for inconsistent and unreliable processing to ensue.

The law is very specific in imposing the requirement that each voter vote personally. In the past it may have been acceptable for a single family member to present the passports of family members and vote on their behalf. However, for the November 6 elections such practices were prohibited under the new law. Poll workers were specifically instructed to refuse to allow anyone to vote on behalf of another person.

Once the ballot is issued, the voter enters the voting booth or specially arranged place where he or she can mark the ballot in private. The presence of anyone except the voter inside the voting booth is prohibited under the law, although special assistance is allowed if a voter is unable to mark the ballot without help. Under these circumstances the law provides that the voter can request the help of any person he or she chooses and trusts. The law stipulates that assistant cannot be a member of the commission.

After the ballot is marked, the voter drops the ballot into the ballot box placed in plain view of the commission members and representatives of nominating organizations or media observers who are present.

Another failing of the law is that it provides no guidance as to how spoiled ballots are to be handled. If voters recognize during the process of voting that they have inadvertently marked the ballot incorrectly or contrary to their choice, they should be able to return the spoiled ballot to the commission and get a new one. However, the law is silent on how this circumstance should be handled. The best course would be for the commission to immediately void and segregate the spoiled ballot and issue the voter a new one. The spoiled ballots should be accounted for on the protocol prepared at the end of the day.

Voters Who Must Vote at Home

Special provisions of the law also address the needs of voters who are elderly, ill or otherwise incapacitated and who are, therefore, unable to go to the polls on election day. These voters may apply to have a ballot delivered to his or her home on election day. The need for these services is most commonly determined at the time Polling Site Commissions complete the door-to-door canvas while preparing the voter list, although requests may be made to official at any time. In fact, officials reported that on election day, members of polling site commissions actually visit homes of individuals on the voter list who have not yet voted to determine if they need these special services. While such a practice may appear well-motivated, it does raise legitimate concerns about the potential for abuse if ballots are allowed to be taken from the polling site and outside the view of authorized observers. Unless extraordinary care is exercised for the accountability of ballots used for this purpose the practice could easily provide fuel to the arguments of critics who are concerned about potential abuse and manipulations of the process.

Procedures for accommodating these voters were described by the Central Election Commission. On election day, 2 or 3 members of the commission count the number of voters on the special "at home" list and count out the same number of ballots which will be needed to accommodate them. The ballots, a sealed portable ballot box and the list is then taken to the home of each voter who made such a request. These voters are also required to sign the special list acknowledging that they have received a ballot. Their voted ballots are deposited in the ballot box. It is not clear whether a special notation is made in the master voter list to indicate that the person has voted at his place of residence and will not be voting at the polling site, although such a practice would eliminate the possibility of the person voting twice.

Door-to-Door Solicitation

Because of the requirement that there be at least 50% turnout for the election results to be valid, it was evident that some commissions were likely to review the voter list later in the voting day to determine who had not yet voted. Following the traditional soviet practice most officials acknowledged that they would go to these voter's homes to encourage them to participate. This would be most likely to occur at sites where they felt there is insufficient turnout to meet the threshold turnout requirement. Of greatest concern is the possibility of their taking ballots with them, out of the view of observers and other commission members. Any time ballots are removed from the site, windows of opportunity for abuse are created. Not only can ballots be

fraudulently marked but voters approached at their homes can experience undue influence and/or feelings of intimidation at the presence of officials knocking at their doors and requiring them to vote. In addition, in a true democracy, incumbent in the right to vote is the right not to vote. In the future, door-to-door solicitation on election day should be not be allowed.

VOTE TABULATION AND REPORTING RESULTS

Under Tajik law, ballots are counted at the polling sites by the Polling Site Commissions after the polls close at 8:00 p.m. Voters who are present at the polling site at that time are allowed to vote.

The law provides that authorized observers representing the media, nominating groups and international organizations are entitled to be present at the count.

Before the ballot box is opened and counting begins, the PSC begins to prepare the protocol on which they account for the ballots under their control. All the unused ballots are counted and "cancelled" by the commission. The number of ballots is recorded on the protocol. The commission is also required to review the number of envelopes containing the ballots which were voted in advance against the special voter list maintained for that purpose. The envelopes which should still be sealed are then dropped into the ballot box in the presence of the members of the commission. Again, the law fails to make it clear that the observers are also allowed to be present during this activity. The commission also records the number of voters on the voter list, and the number of voters who actually were issued ballots.

Only after these preparations are completed does the commission open the ballot box. Opening the ballot box at any time during the voting day and prior to the close of the polls is prohibited.

Counting the Votes

Because the vote on the referendum and the presidential election involves 2 separate ballots, processing required sorting the ballots first by ballot type (e.g. referendum and presidential.) Once sorted by type, the ballots were sorted again. This time the ballots were sorted into stacks on the basis of the votes cast for each candidate. Once all the ballots have been sorted by candidate, the number of ballots in the stack for each candidate will be counted and reported on the protocol. Under the law, tabulations are done not only to count the number of votes FOR the candidate, the number of votes cast against each candidate are also reported. Votes on the referendum were counted in the same way.

According to the law, a ballot will be rejected or invalidated for the following reasons:

- a. if the ballot is not an official ballot, or is fraudulently reproduced;
- b. if the ballot contains a write-in candidate;
- c. if the voter has left more than one choice exposed.

If the commission has doubts about the validity of a ballot, the decision is settled by a vote of the commission members.

Reporting Results

When the counting of votes has been completed, the law requires that the Polling Site Commission completes the protocol on which the results are to be reported. Included on the protocol is the following information:

- a. the total number of voters recorded on the main voter list and its supplements;
- b. the number of voters who received ballots;
- c. the number of voters who actually voted;
- d. the number of votes cast FOR and the number of votes cast AGAINST each candidate or question; and,
- e. the number of ballots which were determined to be invalid.

The protocol is signed by the Chairman, Deputy Chairman, Secretary and members of the Commission and sent to the District Commission with the ballots and materials.

The District Commission consolidates the information from all the polling sites under its responsibility to determine the districtwide results. Once the summary is complete, the District results are forwarded to the Central Election Commission. The CEC is responsible for the reporting of combined results for the Republic at large. The Central Election Commission is required to publish the results in the newspaper. What is not clear is whether there is any requirement that the results be published polling station by polling station or only by oblast or regional totals. This issue should be resolved clearly in the law to ensure that full disclosure is guaranteed. The publication of results by polling site adds another layer of transparency in the process which can help raise the confidence level of the candidates and the voters at large.

WEAKNESS IN THE ELECTION PROCESS AND ON SITE TECHNICAL RECOMMENDATIONS

In the course of discussions various issues came to the fore which were destined to pose special challenges in the conduct of the elections, especially in view of the difficult environment in which they were to take place. What follows are some technical recommendations in response to specific concerns raised in discussions with government officials election administrators, candidates, political activists, media representatives and other participants in the process. In each case, the team's suggestions were designed to accomplish one or more of the following objectives:

1. to improve the accountability and security of the election system;
2. to strengthen the potential that the elections will be free and fair;
3. to promote a perception that the elections are free and fair among the voters, candidates and nominating organizations;
4. to improve the efficiency of the system; or,
5. to assist election officials in responding to potential questions related to substantive issues of the law itself.

In the short time the team was in Tajikistan it was not possible to analyze or fully understand every aspect of the election system. However, the team focussed its attention on some of the most obvious issues. The recommendations offered may not represent the only solutions worthy of consideration. However, they were offered as examples of how some problems might be solved. They were also provided as a basis for the Commission's own deliberations on other aspects of the process.

A. Preparation and Security of the Ballot

Throughout the IFES team's visit, interest was widely expressed in favor of having ballots for the elections printed outside Tajikistan. Supporters of such an option expressed their belief that unless ballots are printed outside the Republic it would be impossible to ensure an adequate degree of security against forgery or manipulation. In fact, the situation was so sensitive that election officials acknowledged that allegations were being raised that extra ballots were already printed and pre-marked to replace ballots voted ballots at the polls.

Printing ballots outside the Republic could provide an extra degree of confidence. This is particularly true in view of sophisticated facilities and printing techniques which might be available in other countries which would make counterfeiting or misuse much more difficult.

However, at the time of the team's visit there appeared to be little likelihood that such an option

would be realistically possible. It was the team's opinion that the Central Election Commission should be prepared to consider security measures which were possible even considering the financial constraints and limitations of facilities which exist within the Republic. The following recommendations were offered for the Central Electoral Commission's consideration.

1. Reducing Costs

Through the team's discussions it became apparent that existing plan called for printing a separate ballot for each of the issues to be voted upon. One ballot would be prepared for the referendum on the constitution, and a separate ballot would be prepared for the election of the president. It was estimated that 2.6 million ballots would be required of each type for a total of 5.2 million ballot papers.

The IFES team suggested that because each of the ballot issues will be relatively short, it should be possible to combine both questions on the same ballot paper. In the case of the referendum, the question requires a YES or NO answer. In the vote for president it appeared unlikely that there would be many candidates. Only two were registered at the time of the team's visit, and the possibility of a large number of new candidates appears unlikely.

- a. By combining both questions on the same ballot paper it would cut the cost of production in half. Only half the paper would be required. It would take half the time at the printing presses. It would reduce the cost of transport.
- b. It would also drastically reduce the man-hours involved in counting out the exact number of ballot papers to be distributed to each Okrug, and subsequently to each polling station. Overall, maintaining the accountability for all ballot papers would be made much easier.
- c. The change to a single ballot alternative could have helped lay to rest allegations about pre-printed ballots if additional security measures were also implemented.

The team also alerted the Central Election Commission to two considerations which would have to be addressed.

- a. To avoid any confusion for the voters, it would be necessary to publish a sample of the combined ballot in the print media. The illustrated sample could have included instructions to educate the voter on how they are to mark the ballot.
- b. At the time of counting, officials would have to sort the ballots to complete the count of votes on one of the issues. Once those vote totals are recorded on the protocol, they would have to sort the ballots again to count the votes on the second issue.

2. Security Measures

It was recommended that the Commission try to develop ways to provide extra security measures in the way the ballots are printed to promote greater confidence among voters, candidates and support groups. Ideally, it would be helpful if the ballots to be sent to each Raion could be sequentially numbered from 1 to the maximum number of voters within the Raion. A code or number of the Raion could precede the sequential numbers. This would allow the Okrug Commission to keep a log of the sequence numbers of the ballots they distribute to each polling place. It would also help them in distribution because they could rely on the sequence numbers rather than having to count out the exact numbers of ballots to be sent to each polling station. A copy of the distribution log from each Raion could be submitted to the Central Electoral Commission. This method would make it more difficult for misuse of ballot to occur because of the greater degree of accountability involved in knowing exactly which ballots are sent to which polling site.

Existing facilities may not have made this option feasible. However, other techniques should be possible as standard procedure for the preparation of ballots for any election.

- a. Two or three members of the Central Electoral Commission could be assigned to devise a secret symbol which is to be printed on all official ballots. It would be their responsibility to maintain confidentiality among only themselves as to what the symbol will be. It could be possible for them to select a symbol to be assigned to each Okrug. At the last minute, when the ballots are actually ready to be printed, they would provide the symbol(s) to the printer who would also be held accountable for the confidentiality about the symbol. Any ballot found that did not include this symbol would be rejected or invalidated. The ballot printing facilities should also be provided extra security until ballots are ready for distribution.
- b. Another technique was used in Albania during their elections in 1992. At the time of printing, the printer printed a very faint pattern on the ballot paper in the background behind the bold names and text of the ballot. This faint screen did not interfere with the readability of the ballot, but it did make it difficult for anyone to reproduce it.
- c. Ballot papers should also be padded or packaged in standardized quantities by the printing facility itself. The Commission could pre-determine the standard quantity in each package. Usually this quantity is from 50 to 250. Standardized packaging simplifies distribution. Officials then would only need to count out the number of packages to go to each site and to count the individual partial packs to meet the exact number of voters to be served at each site. In any circumstances Okrug commissions should maintain a log of the number of ballots sent to each polling station. Polling site commissions should be required to

confirm receipt of the exact number sent to them.

3. Ballot Security at the Polls

At the time of the IFES team's visit officials were considering security measures whereby ballot papers would be signed by officials to signify that they were "official" ballot papers. The team was led to believe that this would be accomplished at the Okrug level before ballots were distributed, or by the polling site before election day.

This is a measure that deserves consideration. However, the IFES team offers the following comments.

- a. By signing the ballot papers in advance, the level of security that the signature is intended to provide is defeated. Once the ballots are signed, they ALL become official ballots. The signature might certainly differentiate an official ballot from one that is forged. However, by itself it would not necessarily distinguish one which was officially and properly ISSUED to a voter by an authorized official, from one that was not.
- b. One of the areas of mistrust is that extra ballots will be marked illegally and stuffed into the ballot box. To overcome this concern, the team suggested that rather than all ballots being signed before voting begins, each ballot should be signed or initialled by the official as it is issued to a voter. Any ballot found in the ballot box that did not have the signature could be rejected. Unused ballots would be blank without a signature. Once the polls close they should be counted and destroyed in front of the observers before the ballot box is opened and before counting begins.

One concern expressed by some officials is that this process would take too much time. Naturally, that should be of concern during the processing of voters on election day. However, since the voter has to sign his name to the voter list before getting his ballot, the official could be initialling or signing the ballot while the voter is signing the voter list.

Ideally, it would be helpful if stamps could be provided to the polling sites for this purpose but the cost might be too great.

B. Assistance to Voters Voting At Home

The law provides opportunities for voters who are elderly, ill or incapacitated to vote at home rather than at the polls on election day. During the hours of regular voting at the polls, officials take a number of ballots and a portable ballot box from the polling station, visit these voters at their homes and assist them in voting.

According to officials with whom the IFES team met the polling station has a special list of the voters who will need to vote at home. It is assumed that this list was compiled as officials went door to door during their preparation of the full list of voters. Voters may also make application to officials to have ballots delivered to them at home. Their names are also added to the special list of voters needing this assistance. When the ballot is delivered to the voter so that he can vote, he is asked to sign the special list to acknowledge his receipt of his ballot. When he has marked his ballot, he puts it into the portable ballot box. The officials ultimately return to the polling station. After the polls close the portable ballot box is opened so that the ballots can be counted and included in the summary of votes for the polling station.

During the IFES team's meetings with various election officials there were discussions about the need for maximum accountability and transparency throughout every aspect of the electoral process. It is often the technical details of the procedures which can improve the public confidence that the elections are secure.

To accommodate voters at home officials take a ballot box and a number of unvoted ballots out of the polling station. That means that official ballots are also being taken out of the view of other officials and the authorized observers. Once they are out of view there exists a potential for abuse. Even if actual abuse does not occur, it provides fuel for doubt among competing candidates, nominating organizations and observers.

A few recommendations were offered for the Commission's consideration designed to alleviate this potential for mistrust while also improving the level of accountability and transparency.

1. It seems that in the past officials at the polls carried out these responsibilities independently as a part of routine business on election day. There was little involvement of the observers who may not even have been aware as to when or how these duties were actually being carried out. To overcome this deficiency the following steps were recommended:
 - a. There should be no more than one portable ballot box at each polling station.
 - b. Before officials prepare to leave the polling site an official announcement should be made for all the voters and observers present at the polls that the process is about to begin. An announcement should also be made as to the names of the officials who will be carrying out these duties.
 - c. The Chairman should hold up and display the special list of voters who applied to vote at home, and the exact number of those voters should be announced.
 - d. Observers should be allowed to watch as the exact number of ballots is counted out to match the number of voters on the special list.
 - e. The portable ballot box should be opened in front of the observers to show that

it is empty. The box should then be sealed in their presence.

2. Upon the return of the officials when they have finished their visits to voters' homes, another official announcement should be made for all observers and voters present that the procedure has been completed.
 - a. The special list should again be displayed and an announcement should be made as to the number of voters on the list who actually voted.
 - b. In front of the observers any ballots which were not utilized should be counted to show that they have been returned unused.
 - c. A notation should be made in the minutes of the names of the officials who were responsible for assisting voters at home, the number who voted and the number of ballots which came back unused. The notation should also include the time the officials left the polling site and the time they returned.
3. When it is time to count the ballots, the seal on the portable ballot box should be broken in full view of the observers and the number of ballot papers in the box should be counted. This procedure will afford observers the opportunity to see that the number of ballots in the box does not exceed the number of people who signed the special list and voted at home.

C. Voting at Polling Stations Outside the Republic

One of the major issues facing election administrators related the feasibility of providing voting opportunities to the thousands of refugees who have not returned to Tajikistan. The issue posed two fundamental challenges: 1) how to provide the broadest opportunity to the maximum number of refugees; and, 2) how to ensure an acceptable level of security and accountability so that the integrity of the election would be less subject to challenge. The Central Election Commission, Ministry of Labor and Ministry of Foreign Affairs were working out options to deal with the first issue. The IFES team proposed some ideas for consideration by the Central Election Commission to better manage the second issue.

Throughout discussions it became apparent that officials would rely on their diplomatic offices in other countries to serve as polling stations for voters outside the country. Further, it was explained that these stations would maintain a voter list of all individuals who came to vote and presented appropriate identification. The ballots would be issued to these voters who would mark them in private. Ultimately the ballots would be counted by the officials responsible for the voting station. The voted ballots, voter lists and protocols would be returned to the Central Election Commission.

The Commission had also planned that the voting results reported from these locations would be summarized with the vote totals in Raion #1, Dushanbe Railway Station.

The team proposed an alternative plan which would provide a greater degree of transparency which would help to alleviate some of the mistrust would be likely to emerge.

1. Instead of each voting station outside the Republic maintaining a single voter list, it is suggested that they be prepared to maintain a separate list for each Raion in the country. When voter comes to vote and presents his identification, the official could add his name to the voter list for the Raion of his residence as it appears on his passport. His passport number could also be entered on to the voter list.
2. After the voter has voted his ballot, it could be sealed in an envelope in a manner similar to the procedures followed by voters voting within Tajikistan in advance of election day. On the outside of the envelope the official could write the voter's name, passport number and Raion.
3. Instead of having the ballots counted at the foreign voting station a packet of sealed envelopes containing the voted ballots and the voter list on which the voters' names were entered could be sent to the appropriate Raion.
4. Upon receipt of the packet the Okrug Electoral Commission could review each envelop and evaluate whether the voter would have been eligible to appear on the voter lists for that Raion. The Commission could also check the voter lists to see of anyone had already voted under that person's name on election day.

If the person is eligible and no vote was already cast by someone under that name then the envelope could be preserved for counting. If the person is ineligible, or if someone had already voted under that person's name, the envelope could be set aside and not included in the count.

The Commission's decision in each case could be written on the outside of the envelopes, and minutes could be prepared noting each decision to reject an envelope.

5. The Okrug Electoral Commission could establish a specific date and time when the ballots could then be counted. Official observers could be invited to be present at the count.
6. At the appointed time, and in the presence of observers, the Commission could announce how many voters appear on the voter list, how many are eligible to have their ballots counted, and how many are to be set aside. For each ballot set aside the Commission could state the reason on which the decision was made.
7. In order to preserve secrecy of vote, each envelope containing a ballot that is to be counted could be carefully opened and the ballot dropped into a container. As the envelopes are opened the ballots would be commingled so that no individual ballot would be identifiable as coming from any specific envelope.

8. The Commission could then count the ballots in the standard manner.
9. A protocol of the results could be prepared, and the vote totals could be added to the overall summary for the Raion. Materials could then be forwarded to the Central Electoral Commission.

The team alerted officials to the unavoidable delay of several days which would occur under this strategy before the ballots voted outside the country can be transported, counted and included in overall results. It was suggested that this delay be fully disclosed and explained to voters, candidates and their nominating organizations well in advance so that the wait will not be unexpected. However, the advantage resulting from this type of management would be that observers at the local level would have access to the process. It would also provide a mechanism whereby voter eligibility could be substantiated. It would also allow some assurance that no one else has voted under a person's name before. Finally, it would preserve transparency and accountability for the actual number of ballots which are returned and included in the local counts.

D. Political Campaigns and the Media

The Law on the Election of President in Tajikistan places the Central Election Commission at the helm in defining the conditions under which the political campaigns will be carried out. It is vested with responsibility for overseeing campaign funding, and that all candidates have equal access to the media. Even more importantly, the Commission is required to monitor political campaigns and make decisions as to whether violations of the stringent set of laws imposed on candidates, their supporters and the media have taken place. At the extreme, exercise of this authority could result in a candidate losing his right to campaign and to appear on the ballot. The team was also advised that relevant decisions of the Central Election Commission or the Ministry of Information could also result in the closing of newspapers. The team recommended that such extreme measures be avoided at all costs and that the campaign environment be as free and independent of government control as possible.

The team encouraged officials with whom it met to understand that the impartiality with which they exercises their authority in overseeing the campaign process could ultimately prove to be one of the main standards by which the freeness and fairness of these elections would be measured. By their actions and through their decisions in overseeing the campaign process officials would have extraordinary power to alter the outcome of the elections themselves. It is in this aspect of the election process that government officials and election administrators would also be particularly vulnerable to allegations of partisanship and bias, not only from forces within Tajikistan but from the international community as well.

In order to neutralize the potential for such severe and potentially devastating circumstances and to ensure that all rules and decisions of officials are perceived to be equitable and fair, it was recommended that official guidelines be formally developed in writing. The team's proposal suggested that:

1. written policies or procedures be made available to the media and to the candidates in advance of the campaign period so that the rules are fully understood before political campaigning begins;
2. detailed rules governing the method by which candidates would be guaranteed equal opportunities include clearly defined criteria by which the "appropriateness" of campaign messages and political activity will be judged;
3. the system by which violations will be remedied be formalized;
4. instructions define the appeal process which will be available to any candidate, nominating group, or newspaper aggrieved by a decision of the Commission or government ministry;
5. directives be binding on all executive committees and election commissions who play any role in campaign monitoring or administration of media access;
6. guidelines include descriptions of campaign activities which may be engaged in by citizens or groups in support of a candidate;
7. rules specify what kinds of materials and advertisements may and may not be produced or paid for by groups wishing to support or to oppose a candidate.

Incumbent in any democracy is a free and open press which simply does not yet exist in Tajikistan. The team candidly expressed its concerns regarding the apparent restrictions and state control that could potentially impact the campaign period and public understanding of the process. However, even within the context of current laws and traditional practices which will undoubtedly linger in the immediate future, the team suggested some objectives which could be achieved immediately. They included the following:

1. newspaper editors and radio and television commentators should be allowed a certain degree of freedom to express their view regarding candidates or their programs, but editorial commentary should be required to include a statement that the information being presented is an expression of their personal view and has not been solicited or paid for by any candidate or supporting group;
2. suspensions or closing of newspapers should be avoided at all costs;
3. criteria should be defined in writing to explain to the press what types of messages, statements criticisms or editorial comments will and will not be tolerated;
4. restrictions should be narrowly applied, and not imposed on generalized allegations about a candidate's background, motivations, connections, or qualifications, even if they are unsubstantiated;

5. if, in a rare circumstance, a newspaper is found to be in severe violation of the published rules, it should be given a written warning prior to any additional steps being taken;
6. candidates should be allowed total freedom in preparing the text for their printed materials and presentations, including determining the language or languages in which they want it printed;
7. for radio and television appearances, candidates and their supporters should be given freedom to prepare their individual presentations in any way they wish, without being required to follow a pre-determined format except as it relates to duration;
8. if a radio or television station invites the candidate to take part in an interview or debate with other candidates, the station should be required to inform the candidates about the format which will be used.

The team also recommended that every campaign advertisement, brochure, or poster be required to include a statement as to the name of the individual or organization who has prepared it, submitted it or paid for it. The purpose of this disclosure is to allow the citizens to know who is attempting to influence their decisions. Even materials such as the candidate posters which are prepared by the government should include the same type of disclosure statement.

In view of the statutory requirement that each candidate receive equal campaign opportunities, it was also proposed that each newspaper, radio or television station be required to maintain a registry or log of the space or time made available and used by each candidate. The log should include the length of the advertisement and the date of publication or airing. The log should also include notations about space purchased for a candidate by a citizen or group supporting the candidate. This registry should be open for inspection by a candidate or their trustee. Candidates should be informed that it is their responsibility to take advantage of the equal opportunities afforded them under the law and guidelines established.

Finally, it is important that all candidates understand the rules that will be applied to them in every aspect of the campaign process. It could be anticipated that questions would arise about campaign funding, access to media, registration of candidate trustees and supporters, and campaign opportunities in general. It was recommended that a candidate handbook be prepared in which answers to the most commonly asked questions would be provided. If the handbook was also distributed to candidates, executive committees and to Okrug election officials at the same time it would diminish the potential for misinformation or inconsistent information being given to candidates at the local level.

Ultimately, as democratic principles evolve and strengthen in Tajikistan it will be important for lawmakers to reconsider the degree of control government should exert over the political campaign process. Incumbent in a strong democracy is a free and independent media protected from interference by the state. These are long term objectives which will hopefully be achieved

in Tajikistan as democracy evolves.

E. System of Nomination of Candidates and the Status of Political Parties

These are areas which always become a prime focus in analyzing the freeness and fairness of any election system. There is room for significant questions to be raised by the international community with regard to the laws covering nomination of candidates for president in Tajikistan.

1. The law severely limits the types of registered associations that can nominate a candidate.
2. There are no provisions for independent candidates to nominate themselves through the petition process.
3. Questions will more than likely be raised about the nominations of candidates for president by regional representative councils and councils of Republican subordination.
4. Questions are also likely to arise regarding the status of political parties and, in particular, the recent banning of political parties that had already achieved official status. Observer delegations will take note of the fact if no party has nominated a candidate for the upcoming elections.

With regard to nominations by representative bodies, this provision is not consistent with traditionally accepted international democratic standards. To the best of our knowledge there is no other democracy which allows such bodies to nominate candidates. However, there are reasons why such provisions may be vulnerable to criticism in the international view. Nomination of candidates by representative councils presents legitimate questions about a conflict of interest. Members of representative councils, through the exercise of their powers as officials in their jurisdictions, have extraordinary opportunity to exert undue influence on voters in their areas. Any potential misuse of the power of their office to sway the public will can completely damage the "level playing field" to which all candidates are entitled in a democratic system.

Perhaps there were some thoroughly thought out practical as well as philosophic reasons why lawmakers included these provisions while omitting others which are commonly accepted in established democracies.

1. This provision will deserve reconsideration by lawmakers at the earliest possible opportunity. A number of alternative solutions should be evaluated. However, in most democratic systems preference is given to nomination by registered political parties, through petitions by citizen's groups, and by independent candidates through self nomination.
2. The team recognizes that in view of the nominations which have already been accepted, the short time period available before the elections, and the unlikelihood that any amendment to the law may be made at this time, officials must deal with the system as

it currently exists. However, officials should be prepared to define and explain safeguards which have been developed to:

- a. ensure that the petition process has been fairly and equally administered;
 - b. guarantee that no candidate or party or nominating group has been aggrieved by the requirements of the law or by the procedures which have been implemented;
 - c. ensure that the evaluation procedures by which petitions and nominating documents are accepted or rejected are formalized in writing and uniformly applied; and,
 - d. guarantee that all petition documents and evaluations are open to public scrutiny and may be reviewed by entities making written requests for such opportunities.
3. Although the law provides that nominating groups and citizens may freely agitate for or against candidates for election, consideration should be given to discouraging any agitation by representative bodies even if they have nominated a candidate. In addition, executive committees at all levels should be prohibited from participating in campaigns for or against any candidate. This is especially important in view of the specific role that the executive bodies may play in administering the elections themselves. They must remain absolutely neutral if the playing field for fair elections is to remain level, and if the elections are to be perceived as free and fair.

F. Transparency at the Polls

One of the key problem areas that the team viewed as fundamental to improving the security and integrity of the system related to the presence of observers at the polls. These observers at the polling places can become a valuable asset to election administrators in their work to ensure that election day procedures, ballot accountability and count of the votes is perceived to be free and fair. The transparency afforded by adequate observer delegations at the polls can also raise the confidence level of all opposing candidates that their interests are being equitably safeguarded on election day. Ideally, an environment should be created that allows opposing candidates to have their personal representative observers at all polling sites.

Article 4 of the Law on Election of the President attempts to provide opportunities for observer participation. These provisions allow presence by media representatives and representatives of international organizations on election day. While these groups can report on their observations overall, none of these entities would be in a position to represent the interests of individual candidates. The way the article is written, candidates are represented only through the groups that have nominated them.

Under the narrowest and most restrictive interpretation of the article, the provision would become almost meaningless in that only the smallest number of polling stations would be

covered. There would simply be an insufficient number of representatives of these nominating groups to be present at enough polling stations to provide the level of transparency to which all candidates should be entitled.

In order to ensure that adequate transparency is provided to all candidates and to strengthen public confidence in the process the following recommendations were offered for consideration.

1. The team suggested that Article 4 be interpreted extremely liberally so that all candidates and their nominating organizations would be allowed to register their representative observers to be present at any or all polling stations throughout the Republic. The same privilege should be allowed even in the Raions in which they may not have received a nomination.
2. Supporters of the opposition candidate expressed their concern that even if they were allowed to have their candidate's representatives at all polling sites, such observers would be difficult to recruit in regions which were clearly in support of the incumbent candidate. They voiced a fear that delegates recruited to observe polling sites on behalf of their candidate in particularly hostile regions would be subject to intimidation and potential physical harm. The team advised government officials that they should be prepared to take any steps necessary create an environment in which representative observers could feel safe from intimidation or pressure as they participate as observers on election day.
3. The team recommended that steps should be taken to raise the level of transparency at polling places in general. While media and international representatives should have full access to information throughout election day, it was recommended that specific accommodations be made by election commissions for observers representing the candidates.

Before Voting Begins:

- a. The chairman of the commission should provide information to the representative observers about the procedures which will be followed throughout the day. They should advise these observers as to their rights and responsibilities. The manner in which observers are to bring any complaints or objections to the attention of the chairman should be explained as should the process by which they will be evaluated and remedied. Written guidelines would be helpful in preparing officials for this presentation.
- b. The chairman should announce to all those present the number of voters on the voter list and the number of ballots received by the polling station. Representative observers should be encouraged to write these figures down for their own personal record.

- c. The ballot box should be opened to show all observers that it is empty. The commission should then seal the box and place it in its proper position where it can be observed by all members of the commission and the observers throughout the day.

At the Close of the Polls

- a. Prior to the ballot box being opened, officials should count the number of voters on the voter list who participated in the election. This number should be announced to the observers who should write it down for their personal record.
- b. The unused ballots should also be counted in public view and the exact number announced to the observers. The unused ballots should then be destroyed immediately in their presence. This measure will help to limit allegations that the left over ballots are misused after they leave the polling station.
- c. Once the ballot box is opened in their presence, the observers should watch as the number of ballot papers in the box is counted. This total number should be announced and, again, the observers should be encouraged to make note of the number in their record. They should also be reminded that minor discrepancies between the number of signatures on the voter list and the number of ballots in the box are likely due to human error and should not cause undue alarm.
- d. Representatives' observation of the count should not be impeded in any way. Observers should be allowed to walk around the table or area where the ballots are being counted as long as they do not interfere with the work being done, they do not touch the ballots, attempt to influence the decisions of the authorized officials. Once the totals are known, they should be announced so that the observers can write down the totals for their personal record.
- e. It was also suggested that representative observers be requested to also sign both copies of the protocol on which the results will be reported. Even if the forms have already been prepared and no specific space is provided, there will more than likely be some room on the bottom of the page for this purpose. If the observers representing the interests of the candidates sign the protocol it is more likely that they will not question the reported results at a later date.

PART II
OBSERVATIONS ON ELECTION DAY

Team Members

Gwenn Hofmann
Linda Edgeworth
Scott Lansell
Zara Dashtamirova

November 4 - 7, 1994

BACKGROUND

At the invitation of U. S. Embassy in Tajikistan, and in follow-up to its earlier mission, IFES sent a three member team to Dushanbe to view election day activities during the November 6 election. The team was made up of Scott Lansell, IFES Program Officer for Europe and Asia, Gwenn Hofmann, IFES Regional Project Manager in Almaty, and Linda Edgeworth, an IFES election consultant who had been a member of the pre-election assessment team. Accompanying the team was Zara Dashtamirova, facilitator and staff member from IFES Almaty office. The team confined its visits to polling stations in Dushanbe and raions just outside the city. The duration of the team's stay in Tajikistan was November 4 - 7, 1994.

During the months immediately prior to the election, the Government of Tajikistan had invited the international community to provide observer delegations for the elections. The political opposition endorsed the concept. In fact, their general lack of confidence in the electoral process was reflected in their expressed view that only with the benefit of a full complement of foreign observers would the election be fair.

Various proposals had apparently been considered by such organizations as the Conference for Security and Cooperation in Europe (CSCE) and the United Nations for organizing a comprehensive foreign observer mission. Ultimately, however, these organizations declined the government's invitation. Among other issues which may have contributed to their refusal may have been the tenuous success of on-going peace talks scheduled at intervals before and after the election. Another question which undoubtedly influenced their decisions was serious concern that Tajikistan's movement toward democracy had not sufficiently advanced to allow realistic evaluation against traditionally accepted international standards. In addition, pressure was being exerted to postpone the elections altogether. The demand for a postponement was not only being pressed by the militant opposition. Organizations like CSCE, and the Soros Foundation encouraged a delay of the elections pending satisfactory negotiations between the government and the militant opposition.

Although no single organization sponsored a major contingent, ultimately 23 countries participated with individual observers. Most represented countries of the former Soviet Union, including eight delegates from Russia. Delegates were also sent by Belarus, Ukraine, Kazakhstan, Kyrgyzstan, Georgia, and Azerbaijan. In addition, observers from Turkey, India, Pakistan, Iran, and Afghanistan participated. A small contingent was reportedly sent representing the European Union.

In an unexpected twist, a charter flight transporting over 100 Russians who were reportedly members of an official observer mission was detained at the Khojand airport prior to their being allowed to fly on to Dushanbe. Apparently they had not been expected and had no authority to enter the capital. The IFES team had the opportunity to talk with members of the Russian group. Those with whom team members spoke indicated they had been recruited only days before and had apparently been selected from various political parties in Russia. It was clear that they were not sure who had arranged for their group's travel, nor did they seem to know

how their expenses were being covered or what plans had been made for their itinerary of activities while in Tajikistan. The Russian Embassy was apparently also taken off guard by their arrival. While they were eventually allowed to arrive in Dushanbe, the group was never formally recognized by the Central Election Commission and they had not been issued official documentation as authorized observers. At the time of the team's departure questions regarding the group's sponsorship had still not been fully answered.

The Threat of Violence

As election day grew nearer, tensions seemed to grow. The civil war remained fresh in the population minds for the wounds to have been completely healed. It seemed clear that the major concern among people with whom the team met, was that the peace under the cease fire be maintained. There appeared to be a genuine concern that the elections could cause an resurgence of more violence. Indeed, security was increased. Although they had not been present during the period of IFES's pre-election assessment, military tanks were strategically placed on the street in Dushanbe at election time. Armed militiamen were evident throughout the city and were frequently observed outside polling sites. In a few instances armed personnel were actually seen inside the entrances of voting stations.

A few days before the election was to take place there were four bombings in the capital city. Damage was limited and only minor injuries resulted, however, perpetrators seemed to be signalling that the threat of renewed violence could be very real. On election day itself, members of the United Nations Mission of Observers to Tajikistan (UNMOT) lent their uniformed presence to monitor the streets while voting was taking place.

Voters made their way to the polls early in the day, leaving the streets notably quiet as evening and nighttime approached. IFES team members were told that on election day Russian radio had reported some rocket fire or shelling in the capital city. However, the reports were inaccurate. There were a few local reports of gunfire in Dushanbe election night. Indeed shots were heard by one IFES team a within a short distance of the polling place at which they had intended to watch the counting of ballots. However, no confrontations were reported and it appeared the shots had simply been fired into the air. Fortunately, in spite of the apprehensions, election day progressed quietly.

IFES OBJECTIVES AND STRATEGY

The IFES team was aware that given the critical environment in which these elections were to take place it would be difficult to measure Tajikistan's current election process against internationally accepted democratic principles and standards. Several prerequisite conditions conducive to truly free and fair elections had simply not yet satisfactorily evolved.

1. A free and independent press does not yet exist in Tajikistan.
2. Multi-partyism continues to be a fragile concept, marked by the banning of a number of

political parties and imprisonment of some of their leadership in the recent past. The fledgling parties which remain are burdened with restrictive registration procedures and government control.

3. The law favors nomination of candidates through regional soviet bodies. Political parties and other organizations have a negligible window of opportunity to gain ballot access in presidential elections. No opportunities exist for independent candidates to gain access to the ballot.
4. Access to the ballot is further constrained by an excessively large number of signatures to be gathered on a petition in a short time period. And, equity in campaign opportunities, while mandated in the law, remains questionable in practical terms.

In the face of these shortcomings it would still have been possible to achieve at least some minimum standards through the free and fair conduct of activities on election day. Even if the legal and political environment remained seriously flawed, a significant step in a positive direction could have been realized through the free and accurate expression of the people's will at the polls. It was with this premise in mind that the IFES delegates, in cooperation and support of representatives provided by the U. S. Embassy, viewed polling place activity throughout election day.

It was not intended that the IFES delegation serve as official observers as they are commonly understood. Rather, the IFES team, in follow-up to its pre-election assessment, sought to view election process in actual practice and to evaluate the effectiveness of set procedures as they reflected reasonable and fair application of law. The opportunity was also presented to determine whether IFES earlier analysis and technical assistance had proved reliable and workable. A major goal was also to benefit from the on-site experience of election day observations with an eye toward appropriate future technical assistance as Tajikistan as it continues to find its course as an emerging democracy.

In order to maintain a constructive and supportive program and to evaluate the practicality of IFES earlier recommendations, it was decided that the IFES team would not apply for certification as "official" observers. However, the day before the election Ambassador Escudero had formally written a letter to the Ministry of Foreign Affairs in response to the invitation he had received requesting that the United States send observers. In his response he introduced the members of the team.

In addition, the team met with the Deputy Chairman of the Central Election Commission to discuss the purpose of the team's visit. (During the pre-election assessment trip a month earlier, the Chairman of the Commission had expressed his hope that IFES team members would return for the elections.) During the courtesy meeting, IFES also asked for assistance in getting a list of the polling places in Dushanbe. The Deputy Chairman seemed reluctant to assist. Instead, he referred IFES team members to district election offices to pursue the lists. At the first district office visited by the team, the list of sites within their jurisdiction was released without

hesitation. However, at the second office, it became obvious that the district official had received a phone call in which he was instructed to not make the list available. The resistance seemed unwarranted since the lists had been published in the newspaper.

In consultation with the Ambassador, it was decided that four teams would be formed with one member of the IFES delegation on each team accompanied by designated representatives from the Embassy. The city was divided into 4 parts with each team assigned to cover one portion of the city. As time allowed, teams planned also to visit polling sites in neighboring raions.

In preparation for its work, IFES had developed written guidelines which provided an overview of Tajikistan's election system, explained legal requirements, and described procedures which were to be implemented by officials on election day. The guidelines also suggested specific things to watch for and criteria by which election day activities should be evaluated. At a preliminary meeting with representatives of the UNMOT and CSCE, copies of the IFES guidelines were disseminated. In addition, IFES led a briefing session with Embassy representatives during which the guidelines were distributed and reviewed. Survey report forms were developed on which teams could record their notes as they viewed polling site activity throughout election day.

Difficulties Experienced on Election Day

All in all, over 40 polling sites were visited in the course of election day. However, some difficulties were experienced by the IFES teams which required intervention. Each team had planned to be present at selected polling sites before the polls opened. The purpose was to view preliminary preparations including the sealing of ballot boxes prior to the polls being opened for voting. At least two of the teams were denied access to the first site they visited. Technically, officials were correct in requesting documentation identifying team members as "official" observers. However, one team was given the impression that the polling officials had been telephoned and told to specifically deny access to the IFES team. Ambassador Escudero met with appropriate officials and ultimately, he was guaranteed that IFES teams would be allowed to visit polling sites for the remainder of the day, in spite of their "unofficial" status.

During the polling hours, teams found that they were welcomed at every site they visited. Officials were extremely cooperative and appeared to be quite candid as they answered questions and volunteered information about progress of election activities throughout the day. Surprisingly, however, a problem was again encountered at the close of the polls when two of the IFES teams were denied access to watch the counting of votes. One of the sites had been selected for observing the vote count specifically because officials had expressed their worry that problems would arise during the count. Ultimately, only two teams were allowed to be present for counting.

MIXED REVIEWS REPORTED BY INTERNATIONAL DELEGATIONS

At a press conference called by the Central Election Commission following the elections, a number of delegates from CIS countries offered general comments regarding their observations. Consistent among all of those who spoke was the opinion that they had not noticed any undue pressure on voters. The Chairman of the Russian Central Election Commission who had visited polling sites in what he characterized as a particularly unstable region concurred with that assessment. Another observer representing the CIS voiced his opinion that there had been "no violations of human rights on polling day and that all voters had the opportunity to vote." In general, those speaking at the press conference indicated their common view that no irregularities were noted and that the election was generally carried out in a free and fair manner.

Their generally positive comments were not altogether endorsed by other organizations who were closely following the election. In an article released shortly after the election, Human Rights Watch/Helsinki charged that "these official observers were whisked through polling stations, accompanied by government officials and television cameras, and that they did not have the opportunity to make a meaningful assessment of the election." The article also cited reports of voter intimidation in the southern region of Khotlan where overzealous Rahmonov supporters, both armed and unarmed, allegedly threatened citizens of reprisals if they were found to have voted for Abdulajanov. The Khotlan region was subject to massive evacuation of refugees in 1993 who had recently returned. Other sources referenced similar intimidation by pro-government militia in the public market in Qurgohon Teppa (Kurgan-Tyube). It was also reported that in the capital city of Dushanbe, pro-Rahmonov activists pressured workers in factories to sign petitions promising their vote for their candidate.

Complaints were also forthcoming by opposition supporters that the campaign period had not been totally equitable. In particular, the opposition charged that Republican television had not provided equal media coverage of the two candidate's campaigns. While Rahmonov's campaign was covered extensively, they alleged that coverage of Abdulajanov's campaign received minimal attention. According to state media officials, Abdulajanov had simply not provided sufficient footage.

At the CEC press conference, journalists raised questions about the seeming absence of equal representation by the opposing nominating groups at the polls. Kazakh delegates reported that they had visited 11 sites in Leninabad Oblast where representatives of the nominating groups for both candidates were represented. However, the Leninabad region was an acknowledged Abdulajanov stronghold where support for the opposition candidate was substantive. Concerns were raised that in other areas there appeared to be no representative of nominating groups who supported Abdulajanov present at the polling sites. One journalist asked the CEC how many opposition representatives had been registered as observers, however that information was not available.

The Chairman of the Central Election Commission announced that violations had occurred in

Tursunzade and that results from that area were being rechecked. It was also reported by the Central Election Commission that voting had not been conducted in several areas because of severe opposition resistance. Twenty-seven polling sites in Vanch district of Gorno-Badakhshan were among those where voting did not take place. The team was also led to understand that voting at two Afghan refugee camps may have been curtailed because of disruptive activities.

IFES Findings

The IFES team was not in a position to verify reports of irregularities reported by other delegations. Rather, the IFES team based its findings and its recommendations solely on its own impressions through first hand observations at polling stations throughout election day. The sites visited by the team were confined to Dushanbe and raions in the immediate vicinity.

Three elements became evident as the teams visited polling stations on election day.

1. In areas canvassed by team members, voters appeared hopeful and genuinely interested in participating in the election. High turnout was apparent at all polling stations visited. Based on their observations IFES teams estimated that turnout would prove to be 75% to 85% in Dushanbe.
2. The team believed most poll workers seemed committed to conducting election day activities in compliance with their understanding of the law and established procedures. The poll workers expressed their desire to do a good job and seemed anxious to serve the voters at their polling site.
3. The organizational structure, basic technical procedures, ballots, materials and administrative documentation appeared to be adequate to conduct an accountable and accurate election.

Based on these factors the election appeared to be poised to be carried out in a manner worthy of public confidence. Unfortunately, these fundamental strengths were jeopardized by circumstances observed at numerous polling sites visited by the IFES teams. There is no way to know how widespread these specific problems might have been throughout the Republic. Nor would it be appropriate to suggest that they might have been sufficient to have altered the final results of the election. They are raised in this report because if left unresolved, they would continue to leave questions as to the overall security and integrity of the election process that marred these elections.

Issues of Concern

1. Candidates were not equally represented at polling sites. The law provides observation privileges to nominating groups and other government organs. Except for rare

exceptions, there were virtually no representatives of Abdulajanov's nominating groups on hand to observe polling site activity in the areas observed by the IFES teams. Most nominations were forwarded by regional soviet bodies. Representatives of regional soviets that nominated Rahmonov were present in strong numbers. IFES teams also noted a strong presence of agents representing local executive authorities, and state security forces and militia at polling sites as well. The overwhelming presence of "observers" who almost exclusively represented the incumbent power structure created an election "observation" system where *government was simply monitoring government*. Balanced monitoring by observers which genuinely represented the interests of opposing candidates on an equal basis did not exist.

The law gives overwhelming weight to monitoring by government structures. The resulting advantage given to an incumbent candidate cannot be overcome by an opponent who does not have the same degree of access or control over these potentially biased groups who are, after all, accountable to the head of state. It is unlikely that any opposing candidate could compete for equal representation under these circumstances on a Republic-wide basis.

2. At many polling sites visited by the teams, there appeared to be an excessive number of representatives from the *Youth Union*, one of the nominating organizations supporting Rahmonov. Their overbearing presence appeared to be in violation of Article 4 of the Law on the Election of President. Under this provision, no nominating group is to have more than one representative at any polling site. At one site, when a team member asked officials about the *Youth Union* representatives, an attempt was made to hide the excess number present. Both an official and one of the observers claimed that he represented Abdulajanov. However, his credentials identified him as a *Youth Union* delegate.

Not only were there an excessive number of representatives, it appeared they played a participatory and intrusive role. In one instance, two of their representatives were seen standing on either side of the ballot boxes. They were seen taking ballots from voters and placing them in the ballot box themselves, which may have compromised the very secrecy of the ballot. In other instances, they were observed entering the voting booth with voters. Clearly, such observer activity should not be allowed to interfere with official voting procedures.

3. A surprising number of poll workers at different polling sites confided to several teams they had been intimidated throughout the day by the presence of government and militia "oversight" officials. Some suggested to team members they feared intimidation and manipulation after the polls closed. At one polling site the chairman said that he had sent two commissioners home prior to the polls closing because he feared for their safety. Others indicated that they were afraid vote totals would be altered during or after counting of the ballots at the end of the day. It was clear that their concerns were not directed toward the opposition and its supporters. Even if their concerns had been unfounded, such apprehensions point to serious failure of the system if such a lack of

confidence exists among lower level officials who are charged with carrying out the election itself.

4. One team was present at the ballot counting when the polling site commission discovered a significant number of voted ballots which had obviously been stuffed into the ballot box at simultaneously. The entire stack of these ballots were marked in the same manner and all of them were in favor of the incumbent candidate. This case was documented and reported to the District Electoral Commission. To the best of the team's knowledge no public report was made about this situation. Nor, apparently, was any consideration given to the possible invalidation of the results at this site because of such an irregularity as is provided for in the Law.
5. When one team returned to a polling site to watch the counting of ballots they found that some members of the commission had been dismissed. Although the team arrived prior to 20:00 they noted that the ballot boxes at the site no longer had red coverings. Team members also observed men identified as *Youth Union* representatives removing these ballot boxes from the room where the voting had occurred. The team was not allowed to watch the count and was unable to determine where the boxes had been taken.
6. On the day after the election, one polling site official told a team member that the results that were reported on the protocol submitted by the polling site did not coincide with the actual vote totals which had resulted from the count.
7. At some polling sites candidate posters remained posted on election day and at several sites posters were not displayed for both candidates equally. At one site in particular, at least a dozen posters for the incumbent were displayed at the entrance to the polling station. At this same location only one poster for the opponent was evident and it was posted at the farthest corner of the building away from the entrance.

Several other irregularities were noted at this site. There were approximately 750 names of voters added to the supplemental list who had not been listed on the voter rolls which reportedly listed approximately 1,400. At the very least, the disproportionate number of "extra" voters illustrated the degree of laxness with which the voter list had been prepared. At least 250 of the supplemental names apparently resided in an apartment building which had not been canvassed prior to election day. Such an omission should have been corrected in view of the postponement of the election.

Another incident was noted at this same site. Officials were very vague when team members inquired about the number of voters who would be voting at home using the portable ballot box. Commissioners did not seem to have an advance list identifying these voters. Instead, the Chairman indicated that he thought there would be about 10. Coincidentally, a member of the commission assigned to serve the "home-bound" voters was returning with the portable ballot box while the team was present. One of the subordinate officials was seen rushing outside to greet the returning member and was overheard telling him that if asked, he was to say that there were only 10 ballots in the

box.

8. Ballot security was inadequate. Of greatest concern was the fact that the primary security measure originally planned by the Central Electoral Commission was suddenly overturned immediately prior to the election. At the time of the IFES Pre-election Assessment, officials advised the team that each ballot would be signed by an authorized official. The signature was intended to identify officially issued ballots from those which might be fraudulently voted. However, on election day, the IFES teams noted that officials were not signing the ballots as they were issued. It was not clear as to how the change in plans had come about. At some sites it appeared that poll workers had never been given the original instructions. However, at one site the team was told that on the Friday before the election they were specifically instructed not to sign any of the ballots. This sudden reversal diminished a major security measure and left an open window for the abuses that occurred.
9. Following the completion of the counting at one site, members of the team which was present noted that although the signatures of the polling site officials were written on the protocol in ink, the vote totals for the candidates were recorded in pencil. The use of pencil to record the vote totals leaves open an opportunity for alterations.
10. There were a number of other procedural irregularities which were witnessed at virtually every polling site visited by the teams. Among those which will deserve continued attention include: the issuance of multiple ballots to a person voting on behalf of family members; inconsistent voter identification documentation requirements; and, multiple people in the voting booths at one time.

These issues, combined with other instances reported an election day irregularities and voter and poll worker intimidation, cast a doubt on the integrity of the election process in Tajikistan.

Recommendations

The seriousness of these issues will continue to jeopardize the confidence of lower-level election officials, candidates and voters unless significant improvements are made to raise the transparency, accountability, equity and integrity of the system. A legitimate concern was the disillusionment with which these elections were likely to be viewed and their potential impact on the public's participation in the parliamentary elections scheduled for later that winter. The team believed that it would be incumbent on lawmakers and government officials to ensure that the upcoming elections not fall prey to shortcomings which befell these elections. In view of the specific issues which undermined the credibility of the November 6 elections, the following recommendations are made.

Fundamental to the necessary improvements will be the adoption of a new Law on the Election of Deputies to the Majlisi-Milli which neutralizes the excessive intrusion of partisan government influences on the election process.

1. The law should eliminate regional soviets from the list of groups eligible to nominate candidates. Rather, nominations should come from political parties and an expanded group of public organizations. In order to ensure that the work place remains depoliticized and to spur political party development, work collectives and labor unions should also be restricted from nominating candidates. Citizens should be granted the right to self-nomination as independent candidates.
2. For candidates nominated by registered organizations, there should be no requirement for a petition. Removal of the petition process would place government agencies in a strictly ministerial role with regard to the registration of candidates, thereby closing the window on opportunities for abuse and/or allegations of partisanship.
3. Candidates should be allowed to have a personal representative present at each polling site, not only for the polling but also for the counting of votes. The presence of unnecessary government officials and miscellaneous security and militia forces should be precluded from the polling sites. The independence of election officials needs to be strengthened. They should be able to conduct their activities unimpeded by extraneous government influence.
4. Nominating groups should be allowed to have representatives on District and Polling Site Election Commissions.
5. While equal funding and campaign opportunities should be provided under the law, candidates should have greater discretion over their campaign strategies and spending priorities. Since mass media is controlled by the state, every effort should be made to develop verifiable rules by which all candidates receive equal access to the media.
6. Political parties are currently covered under the Law on Public Associations. Given their unique role in political and legislative affairs, political parties should not be lumped together with boys' clubs, cultural organizations, athletic associations and social groups whose purposes and activities have little relevance to the political process. A new law should be adopted to cover political parties. The law should be designed to give government agencies a less intrusive role in the control and oversight of party organization and activities.

PART III
POST-ELECTION TECHNICAL ASSISTANCE
RECOMMENDATIONS REGARDING PARLIAMENTARY ELECTION LAW

November 29 - December 2, 1994

Team Members

Linda Edgeworth

In Cooperation With Barnabas Johnson, Consulting Attorney
American Legal Consortium

BACKGROUND LEADING TO IFES ASSISTANCE

In the period immediately following the November 6 referendum and presidential elections, work was already beginning in preparation of parliamentary elections which were scheduled to follow in the near future. In particular, the Committee on Legislation and Human Rights was working on the draft of a new Law on the Election of Deputies to the Majlisi Oli. IFES had on its two earlier missions to Tajikistan formalized recommendations for consideration by lawmakers in developing the new law. The Council for Security and Cooperation in Europe (CSCE) had also been monitoring the work closely. In particular, CSCE had solicited the services of consultants to analyze the actual working draft and make specific technical recommendations as to amendments which would improve the democratic character of the law. A formal analysis was prepared by Dr. Frederick Quinn, Mr. Jacques Roussellier and Professor Zdzislaw Jarosz on behalf of CSCE ODIHR.

In a similar vein to the concerns and recommendations presented by IFES in its earlier work in Tajikistan, the CSCE team identified significant weaknesses in the draft. Although the technical aspects of the draft reflected a well-crafted document, the CSCE team pointed out that the deficiencies were not based on legal content. Rather, they rested in "political positions" taken, and the retention of soviet-style thinking whereby government control impedes free and contested elections. They concluded that the law as drafted departed from traditionally accepted standards established in the CSCE Copenhagen Document to which signatory countries agreed, in four ways:

1. The law limits the participation of political parties and independent candidates in the election process.
2. The need for an independent, neutral and objective electoral administrative structure is not adequately addressed. The draft sustains the Central Election Commission at the center as the "key player" rather than an "umpire" of the election process.
3. The draft fails to provide an adequate level of transparency in the counting of votes.
4. The need for media to be free to report on the elections, candidates and parties, and to express their views is not adequately safeguarded.

In summarizing their conclusions, the CSCE team wrote:

"This draft law organizes elections in a traditional Soviet manner. It gives every appearance of being a formally democratic document, but in reality severely limits free and contested elections, because such initiatives do not come from independent political parties or ultimately from individuals free and collectively self-organized. The main political basis of these elections are to be found in a variety of long established and

controlled collectives such as worker and youth groups where entrenched privileges and vested interests prohibit the emergence of real political differences and genuine aspiration. There is an excessive concentration of power in the hands of the Central Electoral Commission which drastically limits transparency and fairness of the process, making public scrutiny of all stages of election virtually impossible."

In view of the CSCE team's findings, Gantcho Gantchev, Head of the CSCE Mission in Tajikistan had strongly urged the government to postpone the adoption of the law until an improved version could be thoughtfully developed, and, if necessary to postpone the parliamentary elections accordingly. This view was jointly held by the United States Embassy in Tajikistan. However, it became clear that the Government of Tajikistan was not willing to consider such an option. Instead, the draft was scheduled to be voted upon by the existing parliament on December 1, 1994 with the elections to be scheduled very soon after.

In a final attempt to ward off the impending adoption of what was perceived to be a seriously flawed election law, Ambassador Escudero submitted a request through the Regional Office of the U.S. Agency for International Development in Almaty for the services of an election expert to provide immediate technical assistance. In response to that request, it was decided that two consultants would be sent to Dushanbe, each selected for their specific expertise. They were, Linda Edgeworth, an IFES election consultant who had worked on the pre-election assessment and election day observation teams in Tajikistan, and Barnabas Johnson, a consulting lawyer from the American Legal Consortium (ALC) with specific experience in elections in the region. Both consultants were currently working in neighboring Kazakhstan greatly enhancing the immediacy with which they could respond. The joint team was able to arrive in Dushanbe on November 28, just three days before the scheduled parliamentary vote on the draft was to take place. The scope of their joint mission was to work closely with the CSCE to develop a strategy for encouraging amendments which could have an immediate affect in a law conducive to freer and fairer elections in Tajikistan.

Strategy

The IFES/ALC team carefully reviewed the draft Law on the Election of Deputies to the Majlisi Oli, Republic of Tajikistan, as well as comments on the draft prepared by the CSCE advisors. The team agreed with the CSCE's evaluation of the weaknesses of the draft as it was being proposed.

As a practical matter, and in view of the urgency with which the joint work was to be accomplished, the IFES/ALC focused on a few key areas which, if left unchanged, would continue to jeopardize any meaningful progress in improving the electoral system. It had become clear that there would be no postponement of the adoption. Since the vote was to take place in two days, it was critical that the proposed amendments be well focussed, simple, and designed for the greatest impact. For each of these areas the team tried to identify technical solutions that would require the least complex or detailed amendments to the existing draft. In order to improve the chances of tangible success in encouraging key amendments, the team tried

to ensure that at the very least, simple wording could even be hand written into the final drafts being put before parliament. In each area the team proposed minimal changes which would have the greatest immediate impact on the integrity of the electoral process.

Based on review of the law and experiences which impaired the free and fair conduct of the November 6 elections, the five issues the team attempted to address were:

1. Transparency
2. Nomination of Candidates
3. Ballot Accountability and Security
4. Role of the Central Election Commission
5. Candidate Campaigns

On the pages that follow is a brief discussion of the technical amendments the team suggested to meet the immediate objectives.

In recognition of the fact that this approach would not resolve the full scope of deficiencies the draft was bound to perpetuate, the team also recommended a provision that would require the Central Election Commission to evaluate the practical experience of the upcoming elections -- including deficiencies. This provision would require reconsideration of the process, hopefully lead to a new election law that the time constraints made impossible at the current time. It would also provide the international community with continuing opportunities to exert appropriate influence on the evolution of democratic principles in Tajikistan.

Through the joint effort of the U.S. Embassy and the CSCE Mission, the IFES/ALC team had the opportunity to meet with the Committee on Legislation and Human Rights in approximately 5 hours of work sessions on the day before the law was to come to a vote in parliament. Although at first there appeared to be strong resistance to any amendments the team proposed, the committee ultimately agreed to most suggestions being offered. However, there was no way to guarantee that they would ultimately be passed into the final law.

What follows are the key amendments which were proposed by the team.

PRIORITY 1. TRANSPARENCY

The team identified the issue of transparency as the top priority in attempting to achieve a greater degree of freeness and fairness in the election process. Many of the serious problems which occurred during the recent election on the adoption of the new Constitution and the election of the President could have been alleviated had there been an adequate level of

transparency through all aspects of the process, and especially through the counting and summarization of election results.

Immediate Changes Recommended:

1. Article 7, Paragraph 3 - Authorized Observers

The single most important addition to the list of observers who can participate at the polling sites should be **"representatives of the candidates."**

The presence of a personal representative of each candidate during all phases of the process, including the counting of votes, would increase the likelihood of greater accountability and uniform compliance with law in the processing of voters, as well as reduce the potential for manipulations of election results after the close of the polls.

2. Article 15, Section 10 - Publication of Results
(With conforming language in Article 42)

This section should be amended to require that the report of election results published in the press include the vote totals for each candidate by polling station within each election district.

The publication of results for each polling station would provide detailed information to support district-wide totals, and allow candidates and nominating organizations to compare and confirm the reported vote totals with their own observations at polling stations on election day.

3. Articles 14 and 16 - Membership on Central and District Commissions

Provisions should be added that membership on the Central Election Commission and District Commissions include at least one representative of each political party and political movement.

Inclusion of these representatives would provide a degree of self-monitoring within the administrative structure itself.

4. Article 39, paragraph 3 - Checking the Ballot Boxes

Wording should be added to the end of paragraph three to require that the ballot boxes be checked and sealed in the presence of all committee members, and **"authorized observers present at the polling station."**

PRIORITY 2. RIGHT TO NOMINATION OF CANDIDATES

1. Article 8 - Who May Nominate Candidates
(With conforming amendments to Articles 7, 22, and 30)

In order to ensure that military installations and the work place remain depoliticized, work collectives, labor unions and military units should be restricted from nominating candidates. These environments can subject workers and military personnel to intimidating and inappropriate influences over their political views.

This article should be amended to read, **"The right to nominate candidates belongs to political parties, political movements, meetings of voters at places of residence, and citizens by means of self-nomination."**

2. Article 22 - Process of Nomination
(With conforming language in Article 15, Section 8 covering the forms to be designed by the Central Election Commission)

A conforming section should be added to Article 22 to define the process by which self-nominated candidates gain access to the ballot. **"The candidacy of a self-nominated citizen must be supported by at least 300 voters residing in the election district, who sign their names on a petition form provided for that purpose by the District Election Commission."**

This recommendation setting the number of signatures required at 300 conforms with the number of voters at places of residences who must attend the meeting at which a candidate may be nominated.

PRIORITY 3. BALLOT ACCOUNTABILITY AND SECURITY

1. Article 39, last paragraph - Procedures at the Polls
(With conforming language in Article 41)

An additional provision should be added to the law requiring the **polling station official to sign the ballot paper at the time it is issued to a voter.**

This would provide an additional security measure that would allow officials to distinguish officially issued ballots from those deposited into the ballot box fraudulently.

Article 41, 3rd paragraph - Invalid Ballots

This article should require that **ballots not containing the signature of an election official will be invalidated.**

2. Article 39, last sentence - Notation on Voter List

To ensure a greater accountability for the number of voters who participate in the election, **a voter should be required to sign the voter list to acknowledge receipt of the ballot.**

Not only would such a provision ensure greater accuracy and accountability, it would also conform to the requirement in the Law on the Election of President.

3. Article 41 - Counting Votes and Reporting Polling Station Results.

A specific instruction should be added to the last paragraph, that **information recorded on the protocol or minutes in which vote totals are reported is to be written entirely in indelible ink.**

Such a provision would reduce the likelihood that results could be altered after they leave the polling site where observers have watched the counting of votes.

PRIORITY 4. ROLE OF THE CENTRAL ELECTION COMMISSION

1. Article 42, paragraph 3, and Article 43 - Invalidation of an Election

It is critically important that a limitation be stressed in both articles that an election can only be invalidated if the errors or violations were **sufficient to have potentially altered the outcome.** We recommend that the wording in this law be replaced by the better text found in Article 34 of the Law on the Election of President.

Without sufficient limitations and guidance as to the conditions under which an election can be invalidated, arbitrary and subjective application of such authority could result in abuses and manipulations for partisan purposes.

2. Article 15 - Duties of the Central Electoral Commission

Duties of the Central Election Commission should be expanded to require that they formalize and publish:

"rules by which candidates will be ensured equal and fair campaign opportunities and access to the media; and

"uniform procedures to be followed at all polling stations for the accurate

counting of voted ballots, which ensure that authorized observers have an unimpaired view of the counting process."

PRIORITY 5. CANDIDATE CAMPAIGNS

1. Article 28 - Pre-Electoral Programs and Restrictions on Campaign Content

This provision of dictates that in their campaigns, candidates may not contradict the constitution.

In the second sentence, the period should be replaced with a semi-colon, followed by: "but this shall not be construed to limit responsible proposals for changes and improvements to existing law."

This proposed change should be self-explanatory. The essence of the role of a parliamentarian is to participate in reviewing current law and proposing changes, additions, and deletions. Therefore, candidates should not be restricted from discussing their views regarding the need for such changes.

This recommended language will also restrict the role of election commissions in evaluating or judging the substance of campaign messages or impairing free and open exchanges between competing candidates.

Finally, the team proposed that the Law explicitly require that, following the parliamentary election, the Central Election Commission -- plus one representative of any political party or movement which received at least 10% of the total votes cast -- review and evaluate the election and formalize recommendations for a new law.

PASSAGE OF THE NEW LAW ON THE ELECTION OF DEPUTIES TO MAJLISI OLİ

From the project's outset, the severe time constraints made the likelihood of real success in achieving all objectives questionable. First, with the vote on adoption of the law scheduled for the day immediately following the team's meetings with the committee, there was little time to nurture a true understanding of the issues behind the IFES/ALC team's recommendations. In fact, it became clear from the committee's reactions to some of the specific suggestions that members believed that they had already been sufficiently covered in the draft as written. The substance behind the recommendations simply did not appear to be fully understood.

Another unexpected circumstance added to the challenge. At the last minute, the team learned that on the afternoon before, another version of the bill had been finalized which had not yet been made available. It was not even clear as to what review process had been involved, or the extent to which any Deputies may have seen the new version. As a result, the copy that the team had been working from was not the version which would actually be presented to the parliament. Therefore, throughout the discussions about the proposed amendments, the team had to quickly adjust as members of the committee described related provisions in the newer version.

Ultimately, the committee members agreed to include the majority of the proposed changes in spite of their initial reluctance. However, as a practical matter, the simple problem of logistics in making the proposed changes available to the Majlisi Oli in time for their deliberations posed problems, too. In spite the team's efforts to propose amendments which could even be handwritten into the floor copies, the team was not sure how it would be accomplished in time for the early morning parliamentary session the following day.

A representative of the U. S. Embassy attended the parliamentary session at which the vote on the election law took place. According to his observations, each provision of the bill was covered in sequence and each was accepted with virtually no discussion. He was unable to determine if the committee had followed through with its commitment to include most of the recommendations presented by the team. A copy of the actual bill being voted upon was simply not available to anyone except the parliamentarians. Ultimately, however, the team was advised that the bill was apparently passed with no floor amendments being incorporated as the votes on its provisions ensued, although some discussion arose with regard to nomination of candidates. Whether or not handwritten changes were included in the bill being voted upon could not be ascertained. It should also be pointed out that eight bills were passed that day. The team was advised that the Majlisi Oli had been assembled specifically to vote on these issues before the 21st session was adjourned.

At the time of the team's departure from Tajikistan on December 2, the bill law that had actually been adopted had not yet been published. It did not become available until after the IFES/ALC representatives had left the country.

Ultimately, it was learned that none of the proposed amendments had been adopted.

A few comments are warranted about some of the features of the law that did pass.

1. Nomination of Candidates: In contrast to the law on the election of the president, the eligibility to nominate candidates for Deputies to the Majlisi Oli has been expanded to include a broader spectrum of participants. However, the additions perpetuate traditional soviet-style thinking. The key addition is that work collectives which had not been able to participate in the presidential elections, will be allowed to nominate the candidates for the parliamentary elections.

In the draft from which the team worked, there had also been two notable deletions. The Labor and Youth Unions were not identified as groups eligible to nominate candidates. In addition, the illegality of locally elected councils to nominate candidates had been omitted, although they had been the primary supporters promoting the two presidential candidates. The team had been encouraged by this apparent departure from the prior practice. However, in the final version put before the parliament and ultimately passed, the illegality of local representative councils to nominate candidates had been reinstated.

In another twist, the original draft reviewed by the team introduced a narrow opening for entry by independent candidates into the political arena. The provision had empowered unaffiliated individuals to be nominated through "meetings of voters at places of residence." However, it became clear during discussions of the new draft that the team had not had the opportunity to see, that this window for independent candidates had been closed. Through exploration of the issue, and in particular the team's recommendations regarding independent candidates, the reason behind the removal of the provision made itself clear. The idea of independent candidates, even as it was cautiously worded in the prior draft, had been reconsidered by the committee because of their apprehensions in view of the recent war and the tenuous status of peace talks. Quite candidly, committee members discussed concerns that such options could raise difficult questions related to nominations by the militant opposition or exiles currently outside the country.

In an attempt to provide a broader scope of access while at the same time avoiding what they obviously perceived to be a potentially sensitive political situation, drafters developed a weakened substitute solution. The new law grants the right of any citizen to nominate himself as a candidate, "through a work collective." Nothing in the law requires the individual to be otherwise affiliated with the work collective. In practical terms it means that any citizen can approach a work collective, present himself as an interested hopeful and solicit their support to nominate him. It will be interesting to see the extent to which this option is exercised in the future. The law sets no restrictions on the number of names which can be proposed and considered during the congresses of nominating groups as they vote on the selection of their nominee.

In a positive move, the new law eliminates the need for candidates to garner support through a petition process. This streamlined approach will make it easier for more candidates to participate, while minimizing the opportunities abuses and manipulations

which were alleged during the last elections.

2. Transparency: This issue had been paramount in the team's development of recommendations given the difficult circumstances which surrounded the presidential elections. The new law maintains the substance of the provisions from the presidential election law whereby nominating groups would be allowed to have one representative observe activities at the polling sites. While the addition of representatives of the candidates themselves was not incorporated, the impact of such an omission may not be as significant in parliamentary elections as it was in the presidential race. In that election the difficulty was that not all candidates had been nominated in each region. Therefore, the opposition candidate had no representation at the polling sites. Strongholds of support for only one of the candidates in certain hostile regions seriously disadvantaged legitimate representation of observers for the opposing candidate. However, since the parliamentary elections will be based on districtwide nominations, every candidate will have the opportunity to have someone from his or her nominating group represent his interest at the polling sites equally.

Foreign observers and international organizations are identified among observers who may be present as well as are members of the media. The new law states more clearly that these observers are also allowed to be present for the counting of votes. No window is created for the presence of any non-partisan, neutral domestic observer delegations. One concern is that appropriate conforming language is not specified in provisions related to certain polling day activities. For example, as written, ballot boxes are to be sealed in the presence of "all commission members" but no wording is added to specifically require the presence of the authorized observers.

Another area which could potentially perpetuate some problems that occurred in the presidential election relates to the wording used to identify local majlisi oli representatives to observe the polling. According to the final version, observation rights are afforded observers of the "representative structures of power." Unlike the wording associated with other nominating groups, there is no requirement that the local representative council would have to have nominated a candidate to be present. One of the issues which became significant during the prior election was the intimidating presence of extraneous officials overseeing the work of polling commissions.

Finally, details regarding observer presence throughout the counting process are left a little vague. For example, when it comes to determining the reporting of results, it could be interpreted that this phase occurs separately after the counting is completed. As written, the results of the counting of votes "are considered at a meeting of the polling site commission." In view of allegations which surfaced that vote totals were inaccurately reported it would have been preferable if this step had unequivocally been identified as part of the counting process itself rather than leaving the door open for an interpretation that it is a function which could be accomplished after observers have been dismissed.