

HUMAN RIGHTS CENTRE (HRIDC)

RESTRICTED RIGHTS:

ANNUAL HUMAN RIGHTS REPORT FOR 2010

Tbilisi, Georgia

2011

Prepared by:

Bakar Jikia
Victoria Yeager
Shorena Latatia
Nino Tsagareishvili

Edited by:

W.H. King
Ucha Nanuashvili

Acknowledgements:

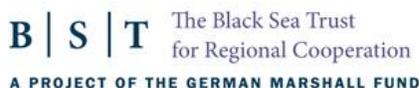
Nino Gvedashvili
Giorgi Margiani
Natia Chachanidze
Ana Natsvlishvili

Non-governmental organization the **Human Rights Centre (HRIDC)**, formerly Human Rights Information and Documentation Center (HRIDC) was founded on December 10, 1996 in Tbilisi, Georgia.

The **Human Rights Centre (HRIDC)** is dedicated to protection and promotion of human rights, rule of law and peace in Georgia. It is free of any political and religious affiliation.

The Human Rights Centre (HRIDC) believes that everyone is entitled to exercise her/his civil, political, social, economic and cultural rights freely and without any discrimination as guaranteed by national and international law. We consider that protection and promotion of these rights and respect for rule of law are the key preconditions for building sustainable peace and democracy in Georgia.

The **Human Rights Centre (HRIDC)** has five priority areas of action: strengthening the rule of law, supporting freedom of expression and media, promoting equality and social inclusion, reinforcing democratic processes and supporting transitional justice.



The HRIDC wants to express its special gratitude to the Norwegian Helsinki Committee, the National Endowment for Democracy (NED) and the Black Sea Trust for Regional Cooperation of the German Marshall Fund for their support to the Human Rights Monitoring Program.

The contents of this publication are the sole responsibility of the Human Rights Centre (HRIDC) and can in no way be taken to reflect the views of donors.

Contents

Introduction	6
Legislative Amendments	8
The New Constitution	8
Reducing Legal Standards	11
Modalities for activities in conflict zones	13
The new Tax Code	14
The Freedom Charter	15
Strengthening Internet Control	16
Judiciary	16
Pressure On ECHR Applicants	16
Plea Bargain	17
The New Criminal Procedure Code	18
Jury Trial	19
Human Rights Defenders	20
Smear Campaign	20
Vakhtang Komakhidze	21
Arnold Stepanyan	22
Saba Tsitsikashvili	23
Political Prisoners	25
General Overview	25
New Developments in Vakhtang Maiasia’s Case	26
Media	27
Transparency Issues in Media Ownership	28
March 2010 Hoax Report	29
Incident at “Kavkasia TV”	30
Penitentiary	32
Overcrowding	32
Healthcare	33
Ill-treatment	34
Freedom of Assembly and Manifestation	35
Irakli Kakabadze and the Young Poets	35
Crackdown on Veteran’s Action	36

Consequences of the 2008 Armed Conflict	37
Possible War Crimes during the 2008 conflict	37
ICC Involvement	39
Enforced Disappearances	39
Internally Displaced Persons (IDPs)	41
Lack of Communication	41
Medical Care	42
Compensation Issues	42
IDP Status	43
Evictions	43
Protests of IDPs	44
Local Municipal Elections	45

Introduction

2010 marked several novelties as well as the continuation and strengthening of some trends observed in previous years in Georgia. The report represents the summary of work carried out mostly by Human Rights Centre in 2010. The report also relies on the work of Human Rights House Tbilisi, also the Public Defender, International Organizations as well as other partner NGOs. It covers the main points of concern regarding the dynamics of democratic transition in the country and shows that the effective execution of power achieved by the current government is used not to eliminate alarming trends in the field of basic rights and freedoms but abused in many cases to further strengthen the position of the ruling elite.

The wave of legislative amendments continues to be the biggest threat to democratic processes in the country. The issue of the implementation of relatively liberal legislation adopted in the 90s is fixed not by improvement in implementation itself, but by the reduction of liberal legal standards. Human Rights Center has been reporting on the alarming trend of legislative amendments in the previous year as well. This trend continued in 2010 and forged a different direction: if the amendments of 2009 were mostly related to the restriction of the right to peacefully assemble, motivated by continuous protests in the spring of 2009, the 2010 amendments have penetrated deep into the life of every citizen and have the potential to undermine their privacy.

In particular, the Freedom Charter, which alongside the introduction of a ban on Soviet and Nazi symbols and propaganda, obliges commercial banks to report large money transfers to private and legal entities from abroad (GEL 25, 000 and above) to the MIA; new regulations in the law on Operative-investigative activities grant the investigators access to the internet traffic of any user in the country; a new position of inspector of personal data was introduced and public- as well as private organizations are obliged to provide data on their employees to the inspector. Information such as political, religious beliefs, as well as sexual orientation have become available to the inspector with no guarantees of confidentiality; police now have the right to stop any person in the street based on a “reasonable doubt” and perform external examinations which can lead to a full-scale search without the permission from a judge or a prosecutor; non-government or international organizations require the agreement of the state to implement projects related to occupied territories and taxation of grant- funded activities has been increased from 12 to 20% by the new tax code. Finally, Georgia has a new constitution, which strengthens the role of the prime minister whilst reducing the power of the president. This fact raises concerns within Georgian society regarding the future employment of President Saakashvili.

The judiciary continued acting as a notary of the executive branch and particularly, the prosecution. Criminal proceedings have turned into a money-making machine thanks to plea-bargain agreements in 84% of cases; no proper adjudication of cases is carried out during trials, acquittals equal to 0.1% for the reporting period; judges are subjected to pressure, as they can be easily dismissed for disciplinary violations which are easy to “invent” in case of misbehavior; judges can also be assigned to serve in distant locations without their prior consent; ECtHR applicants are subjected to pressure.

Human Rights Defenders became victims of a smear campaign within the Georgian state controlled media. Investigative journalist and a member of the South Caucasus Network of Human Rights Defenders, Mr. Komakhidze received political asylum in Switzerland because of death threats from Georgian authorities.

The mainstream media remained extremely biased, major TV stations literally represent government interests airing one-sided reports and rarely voicing reasonable criticism comprehensively. The alarming situation within the Georgian media culminated in a hoax Report by Imedi TV in March, when thousands and thousands of Georgians believed that the war [with Russia] had started again; transparency issues concerning media ownership were discussed by the parliament with a proposal to ban companies registered in off-shore zones from holding shares in the Georgian media. Hearings will continue in 2011.

The 2008 armed conflict with Russia continues to influence the life the country strongly. Alleged war crimes during the conflict have not been investigated effectively by all sides and there is a lack of public information in this regard; the situation of IDPs remains difficult, especially after their eviction from a number of facilities in Tbilisi. Certain measures were taken to address issues concerning their accommodation and healthcare but they are far from being enough and there are serious shortcomings in their implementation as well. Some IDPs face serious obstacles while trying to obtain their statuses.

Municipal elections held on 30th of May 2010 ended with the ruling party wining in all municipalities. International observers regarded the elections overall as a significant step towards meeting international standards. However, Human Rights Centre, monitoring together with other civil society organizations in several regions revealed instances of serious violations and deliberate falsification- many of which were filmed on cameras and issued as a video report.

Legislative Amendments

Liberal legislation guaranteeing fundamental rights and freedoms has been one of the most important achievements in Georgia throughout its transition to democracy. What remained problematic was the implementation of those laws into practice. Impunity for violating human rights and freedoms has been a long-established practice in the country.¹ Human Rights Defenders have documented dozens of such cases in recent years and continuously called upon relevant authorities to eliminate trends which undermine the very foundations of society.

What followed, however, have not been actions to address the systemic problems, but amendments to the laws and the shrinking scope of rights and freedoms guaranteed by the national legal system. Legalizing what once was considered as a severe violation of human rights, has become a new trend threatening human rights and democracy in Georgia.

The new constitution was adopted by the parliament, reducing the role of the president and providing increased powers to the prime minister.

The New Constitution

Georgia's constitution has been amended twice since the Rose Revolution. Whereas the 2004 amendments concentrated power in the hands of the president, the most recent amendment this year strengthened the prime minister's authority.

The prime minister can now countersign presidential decrees; his authority over foreign affairs has been increased. He has a freer hand in the dismissal of government members and he can present the state budget to parliament without prior consultation with the president. The president no longer has the right of legislative initiative. His main role is to act as a neutral arbiter between parliament and the government in times of crisis.²

¹ Ineffective investigations into human rights abuses and lack of judicial independence to sanction these abuses have been a part of this problem. Selective application of justice has been another part of the problem, manifesting itself in shielding some groups, e.g., law enforcement authorities, from accountability or giving them lenient sanctions, pardoning them, etc., This takes place against the background of a "zero tolerance" policy declared by the highest political authorities.

² <http://www.civil.ge/eng/article.php?id=22700>

The latest amendments give parliament a leading role in the formation of a government. Georgia can, therefore, be said to be moving towards a system of mixed governance.

The Council of Europe's advisory body on constitutional matters, the Venice Commission, considered that the relationship between parliament and government envisaged in the draft constitution needed revision. Parliament was therefore asked not to vote on the project until the publication of the Commission's final conclusions.³

According to the new rules, the prime minister could survive a vote of no confidence by 51% of parliament because of the president's veto which can only be overturned by 60% of parliamentarians. In practice, it would be virtually impossible for members of the parliament to pass a vote of no confidence to the prime minister. For even if they went through all the steps required, the president could still exercise his veto to prevent the government being dismissed. For a vote of no confidence, the unconditional guaranteed support of 60% of parliament would be needed. Otherwise, if the vote of no confidence were unsuccessful, the president could dissolve parliament.⁴

According to the Venice Commission:

“There does not appear to be any need for an initial vote to ‘launch’ the procedure of non-confidence; there should be only one vote. The requirement under Article 81 paragraph 4 (second proposal by parliament of the same candidate with three-fifths of the votes) does not really fit into the general scheme of distribution of power. It is not logical to require the support of two fifths of the MPs for the Prime Minister, but to demand three fifths in order to overcome a Presidential veto raised in the no-confidence procedure. This gives too much power to the President and diminishes not only the power of parliament, but also the political responsibility of the Prime Minister that should be a corner stone in the new system.”⁵

The right of the parliament to form a government would appear to be the draft's most important innovation and a democratic step. But in fact parliament's increased authority is restricted. According to the new amendments, the largest political group puts forward its candidate for prime minister. Thus, if for

³ <http://www.civil.ge/eng/article.php?id=22738>

⁴ Article 81 of the new Constitution

⁵ Venice Commission 2010; p.12 [http://www.venice.coe.int/docs/2010/CDL-AD\(2010\)028-e.pdf](http://www.venice.coe.int/docs/2010/CDL-AD(2010)028-e.pdf)

instance, the coalition is formed after elections, it will be unable to nominate a member of parliament as a candidate.⁶

The existence of parliament as an independent legislative body is further threatened by Articles 67 and 81 of the Constitution. These stipulate that the parliament is obliged at the request of the government to consider any draft law in a special session. Should parliament refuse a draft law, the government can propose a vote of confidence on it. If parliament does not pass the draft law at a single hearing during a 14-day period, the procedure of declaring no confidence in the government will be deemed to have been initiated. This presents parliament with a dilemma: to pass the proposed draft law and comply with government wishes or reject the draft law, thus initiating a procedure likely to result in its dissolution.

Concern for parliament's independence is also raised by two other issues: i) the consent of the government would be required in order to make amendments to a draft budget; ii) it will not be possible to pass a law that increases government expenditure without the government's consent. In the view of the Georgian Young Lawyer's Association (GYLA) both these provisions impinge on the legislative function of parliament.⁷ The Civil Constitutional Commission asserts that provision i) infringes parliament's historic role in determining the budget, because parliament's fear of a confidence vote and eventual dissolution will enable the government to force through its budget.

The independence of the judiciary is also threatened by a proposal to introduce a 3-year probationary period for judges.

The right of a parliamentary minority to set up a temporary investigative commission has also been effectively abolished, as any such decision, even if raised by 20% of members of parliament, would require the consent of a parliamentary majority.

The Georgian Parliament decided not to wait for the final conclusions of the Venice Commission and the amendments passed with the third and final reading on October 15, 2010 (112 votes to 5).

It should be noted that the public hearings of the draft were held in the hot days of July and August, the dead season for political activity. There would obviously have been a greater degree of participation and contribution by ordinary citizens if the hearings had taken place after the end of the holidays. No reasonable argument has been given for such haste.

⁶ Article 80, paragraph II

⁷ Georgian Young Lawyers Association Findings on the draft Constitution are available in Georgian. Summary of main points is available in English at http://gyla.ge/index.php?option=com_content&view=article&id=779:gyla-presented-its-findings-on-constitutional-amendments&catid=45:news-eng&Itemid=1&lang=en

Reducing Legal Standards

From July 2009 the government began to limit the right to assembly and manifestation, increase police powers, and impose harsher sanctions. Apparently, in response to the thousands-strong protests throughout the spring and summer of 2009 in Tbilisi, demanding resignation of the president, the parliament adopted regressive amendments seriously undermining the legal environment conducive of peaceful public protests in July.⁸ These amendments were adopted in a rush, during an extraordinary session of the parliament, and despite the call from human rights groups to wait for the legal opinion from the Venice Commission.⁹ These new amendments imposed a blanket ban on assemblies in certain public areas (within 20 meters of government buildings); the law also banned full or partial blocking of roads during rallies unless the rally cannot be held elsewhere due to the number of participants. This law was passed despite the call from human rights groups to wait for the legal opinion from the Venice Commission.¹⁰

Police also received the right to use special means of dispersal (including plastic and rubber bullets, pepper gas, etc.), which were legally prohibited before. (It should be noted here that Georgian legislation does not expressly require that use of force in all circumstances, which must be proportionate to the legitimate aim pursued.) Moreover, legitimate grounds for the use of force listed in the law go beyond the list provided in Article II of the ECHR¹¹. e.g., unlike ECHR, Georgian legislation authorizes the use of force solely for the purposes of the protection of property.

The government also approved stricter sanctions for administrative violations. The terms of administrative detention were increased from 30 to 90 days. The sanction can be applied for minor hooliganism and defying police orders, as well as violating the rule of holding a public assembly.¹² The measure appears excessive given that the pretrial detention for criminal charges is only 60 days. Furthermore, these amendments were introduced against the background of continuous impunity for

⁸ Will Law Prohibit Demonstrations? <http://www.humanrights.ge/index.php?a=main&pid=7722&lang=eng>

⁹ The Venice Commission is the legal advisory body on constitutional matters for the Council of Europe. The commission has become an independent, internationally recognized, legal think-tank.

¹⁰ New Law about Freedom of Assembly and Demonstrations entered into force on August 18

<http://www.humanrights.ge/index.php?a=main&pid=11214&lang=eng>

¹¹ Article 2, European Convention of Human Rights; <http://www.hri.org/docs/ECHR50.html#C.Art2>

¹² New Law about Freedom of Assembly and Demonstrations will entered into force on August 18

<http://www.humanrights.ge/index.php?a=main&pid=11214&lang=eng>

previous instances when peaceful assemblies and manifestations were severely dispersed by the police.¹³

The July 2009 amendments were used to silence the dissent, particularly youth groups who use peaceful street actions for condemning cases of corruption, mismanagement and human rights abuses. New changes came in July 2010 with the limit of public access to information and a change in the law regarding military reserves. A new amendment to Georgia's freedom of information law introduced strict limits on "third-party" access to information about cases involving the Georgian government in international courts.¹⁴ The amendment marked the first case when the government restricted the country's FOI legislation since the 2003 Rose Revolution.

Amendments also increased the term of compulsory service in the reserve forces. According to the law, male citizens before the age of 40 can be called for compulsory service several times per year, but the total days of service per year should not exceed 45.¹⁵ The law does not however provide any other limitation on the powers to call a citizen into the reserve, and does not clarify whether and in which situations a citizen is entitled to ask for postponement of the service. Such gaps in the law create a disproportionately high risk of abuse of power and arbitrariness.

September 2010 brought a new set of changes by the government- including another increase of police power, limits to the protection of personal data and a new criminal procedure that takes away the transparency of the criminal justice system. First, police received the power to stop any person at street for a search – (called "surface examination", which can easily be followed by a full search, as formulated in the law). This procedure can be conducted based on a "reasonable suspicion" – a notion undefined further - that one might have committed a crime. The law does not specify a limit or the amount of time for conducting such a procedure, nor does it grant the person in question any legal status and procedural rights to protect oneself from illegal intrusion and abuse. The law further eliminates the need to draw up search protocol, and to obtain the prior authorization of a judge, or prosecutor in emergency situations (as specifically mandated by the previous law).¹⁶

¹³ Particularly, November 7, 2007, May 6 and June 15 of 2009 - when police violently dispersed peaceful demonstrations, used excessive force and prohibited weapons. Up to date, no proper investigation has been held and no one has been brought to justice for these actions. (Allegedly, several police officers faced administrative sanctions; however their names remain undisclosed to the public).

¹⁴ GYLA Calls on the Parliament of Georgia to Turn Down Anti-Constitutional Draft Law;
http://gyla.ge/index.php?option=com_content&view=article&id=771%3Agyla-calls-on-the-parliament-of-georgia-to-turn-down-anti-constitutional-draft-law&catid=45%3Anews-eng&Itemid=1&lang=en

¹⁵ Military Reserve of Georgia- Lessons and Challenges;
<http://www.humanrights.ge/index.php?a=main&pid=12272&lang=eng>

¹⁶ Urgent Appeal of Georgian Human Rights NGOs;
<http://caucasusnetwork.org/index.php?a=main&pid=230&lang=eng>

Second, amendments to the “Law on the Protection of Personal Data” were initiated by the parliamentary majority. The amendments oblige any public or private entity to collect data on its employees, process it and send it to the “Inspector of Personal Data”, a new position the draft law also envisages. While the need for introducing such a law remains vague vis-à-vis declared democratic goals, the law does not provide proper guarantees for ensuring that information, such as one’s religious and political beliefs or sexual orientation will be protected appropriately.^{17,18}

Finally, changes were made to the new criminal procedure code which came into force on October 1, 2010. Although the new code has many commendable provisions, their effectiveness in practice to facilitate justice has yet to be tested. One of the most problematic parts is that the new code eliminates the notion of a victim as a part of the proceedings, and consequently, leaves the latter without any procedural rights or mechanisms to be involved in the investigation and exercise scrutiny on its effectiveness. That, in itself, leads to the elimination of the legal mechanisms used by the broader public to exercise such scrutiny over investigations, which are of critical importance, especially when public interest is at stake.¹⁹

Although, the Georgian government has showed openness to hear legal expertise and recommendations from the European bodies on these amendments, i.e. Venice Commission, in the end, the amendments were adopted before the Venice Commission provided its opinion. In addition, control over the legislative process is weak in Georgia, owing to a misbalance of political forces inside the parliament.²⁰ The Constitutional Court has also failed to establish itself as a strong guarantor of human rights through law.

Modalities for activities in conflict zones

Since the end of 2008 conflict, Georgia has introduced several legislative measures to address the situation in breakaway regions. The Law on Occupied Territories introduced substantial restrictions to activities in these regions, binding for Georgian, foreign or international actors. The law was amended

¹⁷Nothing Personal; Draft Law Which Protects and Makes it Public;
<http://www.humanrights.ge/index.php?a=main&pid=12343&lang=eng>

¹⁸ The amendment envisages authorization to process such data in the public interest. One of the initiators of the draft, representative of the ruling party Mr. Tordia stated that it is in public interest for the kindergarten to know sexual orientation of a teacher or for a hospital to know if a staff member is infected with HIV/AIDs.

¹⁹ Pros and Cons of Draft Legislation on Jury System;
<http://www.humanrights.ge/index.php?a=main&pid=7228&lang=eng>

²⁰ It is often very difficult to draw a line between the policy of the ruling party under the President’s leadership – which holds an absolute majority in the Parliament (enough to change the Constitution, the supreme law of the country) - and the executive branch, again under the President’s leadership.

in February 2010 as a result of wide criticism and recommendations by the Venice Commission. By introducing blanket restrictions for almost all kinds of activities in the abovementioned areas, the Government risked making urgent humanitarian or other necessary activities illegal.

The Georgian government has introduced new modalities for projects related to the occupied territories of Abkhazia and South Ossetia. The new law was adopted in the framework of “Engagement through Cooperation”, the official strategy of the Georgian State in relation to the above-mentioned territories and came into force on October 15, 2010²¹.

According to the new law, all activities carried out in occupied territories or in relation to them must be approved by the government. Modalities cover activities of both local and international actors, as well as joint projects carried out together with civil society organizations within those territories.

While it is understandable that the Georgian government wants to have at least some picture of activities carried out by non-government actors in its breakaway provinces, the law carries the potential to destroy the small amount of trust built between parties on a civil society level. The rationale behind such judgment relies on the perception of the Georgian government in Abkhazia and South Ossetia which is overwhelmingly negative. Therefore, the project approved by central authorities will be viewed with some precaution and mistrust by Abkhazians and Ossetians.

The former Chairman of the Georgian Young Lawyers Association, Mrs. Tamar Khidasheli suggests that there is always the risk of government excessively using their ability to block activities in occupied territories, undermining the peace building process as a result. The Director of the International Center for Conflict and Negotiations, Mr. Giorgi Khutsishvili further asserted that the introduction of these regulations would hinder the real possibility of cooperation between the two sides.²²

The new Tax Code

The new tax code adopted in 2010 entered into force on January 1st 2011. Among other amendments, the tax-rate on salaries for grant-funded activities has been increased. Up until 2011, the salary and other honorary taxes in the framework of grant-funded activities equaled 12%. The new code introduced 20% taxation. 20% represents a general taxation rate and is applied to profit oriented enterprises.

²¹ The document is available at http://www.government.gov.ge/files/225_31228_370287_SMR-Strategy-en.pdf

²² Giorgi Margiani – New regulatory legislation: a threat to peace-building in Georgia.
<http://humanrightshouse.org/Articles/15513.html>

The issue associated with the abovementioned amendment is that non-governmental organizations were planning their long term projects keeping the 12% tax rate in mind. As the amendment came by surprise, there was no possibility to reflect the new disposition in submitted projects in advance.

Therefore the amendment will reduce the ability of non-profit organizations to attract qualified professionals or will lead to the reduction of staff which will negatively affect their work.

Georgian NGOs issued a press-conference and a common statement asking the government to: a) extend the terms of the moratorium agreed to by the Government of Georgia and civil society for three years and b) Increase the tax rate after three years to a rate established through consultations with the civil sector.²³ No response from the side of the government followed.

The Freedom Charter

The Freedom Charter (or the Liberty Charter) represents the legislative initiative of MP Mr. Gia Tortladze and supported by the parliamentary majority of the National Movement. It is a joint legislative document of the draft Law on Lustration and the Patriot Act.

The law will expand the powers of law-enforcement agencies and encourage them to coordinate better on counter-terrorism measures. It will sanction the creation of a single video surveillance system for strategic buildings and shipments. It also provides for a register of individuals who worked for the security services in the old Soviet Union, and place restrictions on the positions they can hold. Finally, it will ban both communist and fascist symbols, road-names and anything else deemed supportive of extremist ideologies.

Tortladze said the law was essential because of the security challenges to Georgia, in particular since Russia has already recognized Abkhazia and South Ossetia as independent states after the 2008 conflict.

The Charter also includes measures to restrict the public display of Soviet and Nazi symbols and restrictions on former Soviet functionaries to hold public office. This will be conducted by the state commission, composed by the president from members nominated by each parliamentary faction. The commission will then make a decision on applying a ban in each individual case.

The alarming regulation, introduced by the Charter obliges commercial banks “to immediately submit information” to the Ministry of Interior concerning transfers of GEL 25, 000 and above from abroad on

²³ http://gyla.ge/index.php?option=com_content&view=article&id=761:statement-by-civil-society-organization-in-georgia-&catid=45:news-eng&Itemid=1&lang=en

the accounts of organizations or individuals in Georgia.²⁴ The clause clearly violates the rights of commercial bank clients, as the confidentiality of their private information is potentially ignored.

Strengthening Internet Control

The amendment to the law on operative-investigative activity was made on 24 September, 2010. The amendment grants investigative authorities access to physical lines of communication, mail servers, data bases and lines of communication.

Obviously, social networks, mail servers and other servers based in Georgia are more accessible to security compared to servers located in other countries. However, the information shared between the internet user and the targeted server is delivered via Georgian communication companies and can be intercepted there. The companies Silknet, ITDC and Caucasus Online stated while talking with Netgazeti, that they will cooperate with the investigation and fulfill any request that complies with the law.²⁵

The abovementioned actions can be carried out by the investigation based on permission issued by a judge. In case of urgent necessity however, the same actions can be conducted without a judge's permission, provided that the investigation can present evidences of such necessity before the court within 24 hours.

Judiciary

The independent judiciary represents a cornerstone of democratic society and the most effective tool in terms of the protection of fundamental rights.

Trends in the judiciary system in Georgia have been the same since the Rose Revolution and did not change in 2010 either. It was previously reported that civil litigation became rather fair where private actors are allowed to compete freely and judges are also free of pressure from executive officials or institutions. As the Chairman of the Georgian Young Lawyer's Association, Ms. Tamar Chugoshvili pointed out during the UN organized seminar in Gudauri, exceptions can only occur in cases where direct state or highly ranked state official's interests are involved.²⁶

²⁴ <http://civil.ge/eng/article.php?id=22794&search=tortladze>

²⁵ <http://www.humanrightsge.org/index.php?a=main&pid=12564&lang=eng>

²⁶ The UN Round Table on Human Rights Issues was organized by the UN House Tbilisi on 13-15th February 2011 and included participants from human rights organizations and media.

It was also reported that courts became more convenient and better furnished, and hearings are carried out in a quieter and more adequate environment. Salaries for judges have been increased from 30 to 1,550 Georgian Lari at minimum and over 4,000 at maximum, effectively eliminating bribery.²⁷

Unfortunately, the disposition is different in administrative and criminal proceedings, where all decisions are usually in line with the request of the prosecution and the infamous state policy of “Zero Tolerance”. Acquittals were almost non-existent: Tbilisi City Court heard 26, 172 criminal cases in 2010 (22% more than in the previous year) and only 3 of them were not guilty which amounts to 0.1 percent for the reporting year.²⁸ Some cases almost contradicted common sense but the prosecution refused to back off and the court simply rubber stamped whatever the prosecutor requested.

Despite illusory independence, judges are subjected to enormous pressure. There is no direct control over their dismissal but they can be dismissed for disciplinary violations. Judges can also be assigned to remote locations without their prior consent which also represents a means of pressure.

2010 was marked by several new regulations in the justice system and this chapter will focus on them, emphasizing issues associated with new legal initiatives and practices.

Pressure On ECHR Applicants

A relatively new trend in Georgian reality is a pressure on applicants to the European Court of Human Rights. The goal seems to be twofold: first, to coerce a person to withdraw a case from the Court if possible and second, to put the applicant under pressure demonstratively to prevent others from applying. The later is more visible in closed facilities where the abovementioned tactic can have a better effect.

Lawyers from the non-government organization, Article 42 of the Constitution have experienced cases of similar character in their work. The former chairman of the organization Manana Kobakhidze pointed out during the round table with the ambassadors and representatives of international missions that prison officials are putting huge pressure on ECHR applicants to make them withdraw their applications. She also stressed that some prisoners, released according to the decision of the ECHR have been returned to prisons by different charges.

²⁷ Human Rights Centre 2010; Vanishing Rights, p. 9. Report available at http://caucasusnetwork.org/admin/editor/uploads/files/reports/bolo_%20vanishing%20right-kdits.pdf

²⁸ <http://www.humanrights.ge/index.php?a=main&pid=12715&lang=eng>

Plea Bargain

The plea bargain agreement is probably the most threatening issue in criminal proceedings. Much like in previous years, it is used as an income source for the budget rather than an implementation of justice. Judicial practice in criminal proceedings shows that criminal cases are not adjudicated properly and that the plea bargain agreement has almost completely taken the whole criminal justice system over. Convicts can always deny the agreement but as the practice shows, in such cases they are doomed to severe sanctions. Additionally, the practice endangers the profession of an attorney as the number of clients depends on the ability of the lawyer to negotiate with the prosecution.

84.3 % of cases out of the above mentioned 26, 172 cases heard in Tbilisi City Court ended with a procedural agreement; the verdict of not guilty was issued in only 3 cases as mentioned, while partially justifying verdicts were issued on 9 cases.

The New Criminal Procedure Code

The new Criminal Procedure Code entered into force on 1st of October 2010. Several new initiatives were incorporated into the code not seen by the Georgian judicial practice before.

The criminal responsibility age has been increased from 12 back to 14 years. The age was reduced in 2007 but the amendment was met with huge criticism.²⁹ As a result, the clause was never used in practice and the government issued a moratorium on implementation of the law before a separate juvenile justice system was created.

According to one of the amendments, the current rule of consecutive sentencing will be changed and a defendant, facing charges on multiple counts, will receive the longest of the separate sentences in full for the gravest offense and half of the sentences for other offenses. The amendment leaves it to the judge's discretion to impose consecutive sentences in full depending on the gravity of other offenses. But it will also be up to the judge to halve sentences for offenses – other than the gravest one – taking into account the mitigating circumstances and a defendant's record.

One of the new initiatives is granting the defendant the right to carry out an independent investigation.³⁰ The lack of such opportunity was widely criticized in past years and it should be only welcoming to have the opportunity with the new code. In practice however, major constraints still occur. Namely, lack of ability of the defendant to perform an examination, caption and other activities, as private organizations

²⁹ <http://www.civil.ge/eng/article.php?id=15287>

³⁰ article 38, part 7 of the new Criminal Procedure Code

like commercial banks and communication companies (mobile operators) are not obliged to provide information to private individuals like they do with the official investigation.

Article 39 seems to solve the issue of access to information for defendants, stipulating that in cases where the defendant is unable to acquire information, he/she can appeal to the court and carry out the same activities by the decision of the court.³¹ The judicial practice observed by Human Rights Centre lawyers however reveals that judges mostly refuse to issue such decisions referring to part 6 of the article 111 of the code which stipulates that the defendant does not have a right of search and caption.

Yet another problematic clause in practice is the obligation of the prosecution and the defense to exchange obtained data during the investigation 5 days prior to the hearings.³² The head of the HRIDC Legal Aid Centre, Ms. Nino Andriashvili points out that the practice shows that the time set for the exchange of obtained materials is not reasonable and usually puts the defendant in a disadvantageous position due to the inability of the later to carry out a wide range of investigative activities and therefore possessing less data.

Jury Trial

The jury trial is an approved method used in many leading states. This method facilitates civic participation in determining the outcome of legal verdicts and has reaped positive results. As the lawyers Irakli Kotetishvili and Tina Khidasheli noted while talking with the magazine *Liberali*, “the jury institution means implementing people’s justice when it is not only the judge deciding the question of individual guilt but ordinary citizens as well. They (the jury) hear the sides of the defense as well as the prosecution, attend and observe the presentation and evaluation of the evidence, and in conclusion, make a decision on whether the defendant is guilty or not based on a majority vote.”

According to transitional provisions, until January 1st of 2011, the jury institution will operate only in the Tbilisi City Court and will hear criminal cases belonging to its territorial jurisdiction envisaged by Article 109 of the Criminal Code (deliberate murder under aggravating circumstances).

The jury is appointed by a random method. 30 people are chosen from a common list of Georgian voters. The list is then screened. Representatives of the police, state departments, those within the spiritual community, as well as psychologists, psychiatrists and others that are not included on the list are prohibited from serving on the jury panel. Those who refuse to participate in the trial after being

³¹ article 39, part 2 of the new Criminal Procedure Code

³² article 83, part 6 of the new Criminal Procedure Code

called upon for jury duty are administered monetary fines. If the jury member is not present at the trial due without a legitimate reason, a fine of 1000-1500 GEL will be imposed.

Human Rights Defenders

2010 turned out to be difficult for human rights defenders. The smear campaign against defenders, launched in the Georgian media in the end of 2009 continued through the first quarter of 2010 as well. Several defenders became victims of threats, defamation or physical abuse, namely:

The founder of the Studio Reporter, member of the South Caucasus Network of Human Rights Defenders, Vakhtang Komakhidze had to leave the country and ask for political asylum in Switzerland because of death threats related to his professional activities.

The founder of the Public Movement – Multinational Georgia, Mr. Arnold Stepanyan was accused in spying for the Russian Federation in printed media and a video report followed soon afterwards on the infamous Real TV, closely associated with the Georgian government.

The coordinator of the HRIDC Gori regional office Mr. Saba Tsitsikashvili was physically abused at the Gori Municipality building when trying to legally obtain public information.

Smear Campaign

The beginning of 2010 was marked by a substantial campaign against human rights defenders. An active media campaign against non-governmental organizations and human rights defenders started in December 10, 2009, the International Day of Human Rights. Government-controlled media outlets released biased telecasts one after another where human rights defenders are declared to be traitors and enemies of the Georgian people; they work against public interests.

Before 2010, the “assault” was carried out on the “Human Rights Priority” (December 10th), “Georgian Young Lawyers Association” (December 12th). Further in 2010 the founder of the “Studio Reporter” Vakhtang Komakhidze, the head of the “Union of Disabled Veterans and Wives of Fallen Soldiers” Manana Mebuke and conflict scientist Paata Zakareishvili (December 17th) also became targets of the campaign. Similarly plotted features were aired by the media later as well.

Council of Europe Commissioner for Human Rights, Thomas Hammarberg and former Public Defender of Georgia, Sozar Subari also became targets of open criticism from the side of Georgian politicians (in the case of Mr. Hammarberg) and from the side of the state-controlled media (in the case of Mr. Subari).³³

Vakhtang Komakhidze

On February 10, 2010, Mr. Vakhtang Komakhidze, a well-known investigative journalist in Georgia and a member of the South Caucasus Network of Human Rights Defenders, reported to have received death threats from the authorities against him and his family members due to his professional activities.³⁴ As reported, the threat comes as the Government's reaction to Mr. Komakhidze's visit to *de facto* South Ossetia in December 2009 and the documentary film concerning the Russia-Georgia war of August 2008, on which Mr. Komakhidze has been working recently.

In December 2009, together with two other representatives of civil society, Mr. Komakhidze met with South Ossetian NGOs, families affected by the war and Mr. Kokoity, the *de facto* leader of South Ossetia. After the visit, Mr. Komakhidze announced publicly that he was working on a documentary about the Russia-Georgia war of 2008, for which he also gathered materials during his visit to South Ossetia.

Mr. Komakhidze highlighted that the documentary would disclose many issues yet unknown to the wide public. For instance, two days before the war, on August 6, the State Minister of Georgia agreed with the de-facto authorities of South Ossetia about the evacuation of the grandmother of Ms. Alana Gagloeva, an employee of the president's press-service. However, at that time, the government was leaving the Georgian population completely unprotected, in the hands of the Russian army.

On December 17, 2009, on the same day when Mr. Komakhidze came back to Tbilisi, high ranking politicians harshly criticized him and his colleagues for this visit.³⁵ Their criticism was broadcasted in news programs by various media outlets. For instance, Mr. Shota Malashkhia, one of the ruling party's leaders, said: *"this is a disease not only for Georgia; such persons always existed during various occupation regimes and their actions have already been responded to by the population after the de-occupation. The same will happen in the case of these people [referring to those who visited Tskhinvali on December 16 as well - for some of them it will be a response through [results] in elections and for*

³³ Human Rights Centre – "Not to Enquire, Not to Record, Not to Expose" p. 12. Report available at <http://caucasusnetwork.org/admin/editor/uploads/files/reports/Not%20To%20Enquire,%20Not%20to%20Record,%20Not%20to%20Expose.pdf>

³⁴ Death Threats Against a Leading Georgian Journalist; http://caucasusnetwork.org/admin/editor/uploads/files/pdf/Komakhidze_FINAL_ENG.pdf

³⁵ Officials Slam Journalist, Politician, and Activist for Meeting With Kokoity; <http://caucasusnetwork.org/index.php?a=main&pid=150&lang=eng>

others from the moral point of view.” The media also referred to them as “traitors”. Several days later, a stranger stopped Mr. Komakhidze and said that he wanted to warn him against his activities, that it would be better for him and his family not to bother Georgian authorities. He added that the only way out for him and his family would be to leave the country and stop filming. On January 28, 2010, as Mr. Komakhidze was about to leave Georgia in order to film and interview representatives of the *de facto* government of South Ossetia outside the country, six to seven persons sat down next to him at the airport. One of them was the chief of the security department. The men started having an aggressive conversation with Mr. Komakhidze, and one of them told him that it was good that he was leaving the country.³⁶ On February 9, 2010, the Georgian TV channel *Real-TV*³⁷ broadcasted a report about Mr. Komakhidze’s private life and professional activities with a clear aim to discredit Mr. Komakhidze and undermine his reputation. The TV report spread incorrect information, saying that in 2004 Mr. Vakhtang Komakhidze worked at the Ministry of Security and had to leave the Ministry because of financial machinations after one year. The fact is Mr. Komakhidze left the Ministry three months after his appointment based on his personal wish. The report also accused Mr. Komakhidze of polygamy and tried to portray him as a bad parent.³⁸

On 13th of February the rally in support of Mr. Komakhidze was held in front of the Swiss embassy in Tbilisi.³⁹

After spending 6 months in the refugee camp, Mr. Komakhidze received political asylum and currently lives in Switzerland.⁴⁰ Later this year his family members were allowed to move to Switzerland as well.

Arnold Stepanian

On 22nd of February, the article was published in the newspaper “Versia” (Version) with the headline – “Who is the agent with the code name “Shvartsika” and what coded messages were published on web-sites”.

According to “Versia”, “the Counter-Intelligence Department started to expose spies working in Georgia. They have already started working in this field and they particularly focus on the spies of Russian Special

³⁶ MIA High Official Denies Pressure Upon Journalist Fled From Georgia;
<http://caucasusnetwork.org/index.php?a=main&pid=148&lang=eng>

³⁷ TV Channel *Real-TV* was established in 2009. It has a record of being involved in defamatory reporting against critical voices, human rights defenders and alternatively-minded people in Georgia. It is also known among the public for its close ties with the Georgian Government.

³⁸ [Statement of the South Caucasus Network of Human Rights Defenders](#)

³⁹ Reported by media.ge

⁴⁰ Reported by media.ge

Forces. The materials are already collected on a spy-network of Russian spies and according to lobby information, law enforcement officers will pay particular attention to the spies comfortably sitting in so-called NGOs. It was the main topic of the session at the Parliamentary Committee of Security and Defense. Givi Targamadze's committee has discussed the increase of funds for intelligence activities.”

After this introduction, the article discusses the founder of the Multinational Georgia Arnold Stepanian; it introduces documents dated the year 1993 on gaining Stepanian over by Security Service of the Russian Federation; the author of the article claims Stepanian had sent so-called coded messages to them.

The source of the document was extremely controversial. It was a post on a Russian internet forum with the attached document with the above mentioned content. Strangely enough, the author of the post registered on the forum the day before and has made only one post since his registration. The impression was that somebody registered in purpose to publish controversial documents on Stepanian and give a push start to a campaign against him.⁴¹

Later the infamous Real TV used the newspaper article in its broadcasted report on Mr. Stepanian. The report had a similar attitude to the one broadcasted on Mr. Komakhidze one month earlier.

The above mentioned case clearly shows how a machine used for defamation can work and how a supposedly deliberately placed, non-credible post on the internet forum can be brought up on the chain of media sources and reach mass media, particularly a TV station.

It must be noted that throughout 2009 Arnold Stepanian complained about governmental oppression on him several times; he said he was threatened with accusing to be a spy of foreign country unless he stopped his activities.

Saba Tsitsikashvili

On January 22, 2010 journalist Saba Tsitsikashvili, a regional correspondent for the Human Rights Center and editor of the regional newspaper “Kartlis Khma” (Voice of Kartli), was subjected to abuse and harassment by regional security guards in Shida Kartli. The guards physically and verbally abused Tsitsikashvili and blocked him from carrying out his professional activities.

The incident occurred when the journalist visited the regional administration office to obtain public information concerning administrative-organizational expenses spent by the regional administration in

⁴¹ Documents were published on politikaonline.ru. By the time of writing the report [the thread](#) has been either deleted or the access has been limited.

<http://forum.politikaonline.ru/index.php?act=Print&client=printer&f=4&t=8192>

2009. The journalist had officially requested the public data several days before in accordance with Georgian legislation.

When he entered the building, a security guard blocked his way. Security guards then assaulted Tsitsikashvili physically and verbally, forcibly kicked him out of the building and obstructed him from carrying out his journalistic activities.⁴² This is punishable under article 154 of Criminal Code of Georgia - illegal obstruction of a journalist's professional activities.⁴³

The journalist relates the incidents to the generally hostile attitude of the Shida Kartli regional administration towards his professional activities and his action of December 15 2009. On this particular day, Shida Kartli Regional Governor Lado Vardzelashvili presented an annual report of the work carried out by the regional administration to foreign ambassadors and NGOs. Ten minutes before the presentation was to start, Tsitsikashvili distributed copies of his article among the guests. The article reported about bonuses and other financial allowances by the regional governor.⁴⁴ This caused a serious dissatisfaction among regional authorities and as Tsitsikashvili believes, resulted in the events of January 22.

This is not the first time that Saba Tsitikashvili has been harassed or assaulted by representatives of regional authorities.⁴⁵ In 2008, after the August Russian-Georgian War, he received several death threats and was physically assaulted by the Deputy Regional Governor of Shida Kartli, Zurab Chinchilakashvili. At the end of 2008, the situation became critical and Tsitsikashvili had to temporarily leave the country with the assistance of the South Caucasus Network of Human Rights Defenders, FIDH and the Human Rights House Network.

Additionally, one of the security guards involved in the January 22 incident was the same person who assaulted Tsistikashvili during the past incidents in 2008.⁴⁶ This is a clear indication that impunity for previous abuses encourages the offender to further commit illegal acts.

For the challenges he encountered during his professional activities, and the courage and commitment he has displayed while facing them, Tsitsikashvili was nominated for the Index on Censorship award by the HRHF in December 2009.

⁴² Security Guard of Shida Kartli Regional Administration Beat Correspondents of the Human Rights Center; <http://humanrights.ge/index.php?a=main&pid=8041&lang=eng>

⁴³ Does Article 154 of Criminal Code of Georgia Protect Journalists?; <http://www.media.ge/en/node/38371>

⁴⁴ The Bonuses for Officials in Shida Kartli Region; <http://humanrights.ge/index.php?a=main&pid=8008&lang=eng>

⁴⁵ Gori-based Journalist Beaten by Representatives of Shida Kartli Administration; <http://www.media.ge/en/node/34821>

⁴⁶ Human Rights Center Protests Physical Abusing of Journalist Saba Tsitsikashvili; <http://www.media.ge/en/node/35881>

Political Prisoners

General Overview

The problem of politically motivated persecutions in Georgia was the subject of continuous discussions for years by active representatives of civil society as well as NGOs working in the field. However no efforts have been carried out in order to effectively advocate the issue on the international level until recently.

Before the “*Rose Revolution*”, allegations concerning political prisoners were related mostly to supporters of Zviad Gamsakhurdia, the former president of the country. Gamsakhurdia’s supporters remained vigorous anti-Shevardnadze activists long after the death of the first president of post-Soviet Georgia. Following the “*Rose Revolution*”, the new government initiated the national reconciliation process. By signing a Declaration on National Accord and Reconciliation in January 2004, Mikheil Saakashvili pardoned all supporters of Zviad Gamsakhurdia arrested in the 90s and the became far less burning issue.⁴⁷

Enjoying major popular support in the first years of its rule, the “*rose government*” managed to overshadow some isolated cases of political persecutions brought to the surface and these cases were eventually ignored by the broad public. The increasing dissatisfaction within the population, culminating in the November 2007 events, combined with the inherited intolerance of the ruling elite over any political opposition or alternatively minded people, resulted in a rising number of politically motivated suppressions in the country.

The picture has worsened since the 2008 August war, when in the light of further rising dissatisfaction and protest within society, the issue of regime survival became increasingly pressing for the Georgian government.

Isolated cases were combined with waves of arrests linked with particular events. For instance, the mass arrest of relatives and other people associated with Emzar Kvitsiani, a former envoy of Eduard Shevardnadze in the Kodori Gorge;⁴⁸ supporters of Igor Giorgadze, the former Minister of State Security,

⁴⁷ <http://civil.ge/eng/article.php?id=6103&search=reconciliation>

⁴⁸ Emzar Kvitsiani was assigned by the former President of Georgia, Eduard Shevardnadze, as his representative in Kodori Gorge, the strategically important geographic location, which penetrates deep into Abkhazian administrative border and remained the only territory in disputed Abkhazia where the official Tbilisi exercised effective control after the first conflict in early 90s. After abolishment of his post, Kvitsiani declared disobedience to Saakashvili but had to flee to Russia following a joint special operation by the MIA and MOD.

who were allegedly planning a violent regime change and were arrested in September 2006.⁴⁹ Participants in the mass protests in spring and summer 2009 were also arrested on political grounds.

Following the violent dispersal of peaceful demonstrations in November 2007, arrests of numbers of opposition activists and supporters took place, giving a push start to claims over political grounds of their detention. In February 2009, the Commission of Georgian NGOs started to research criminal cases of citizens considering themselves political prisoners.

The commission researched all appealed cases, making the decision on the status of a political imprisonment in cases when:

- violations during arrest and pretrial detention procedures were observed;
- guilt was not proved;
- the sentence was irrelevant to the charges; provided that violations were politically motivated.

In 2009, The International Federation for Human Rights (FIDH) together with Human Rights Centre (HRIDC) had carried out the research concerning the matter. The aim of the study was to confirm or disprove the existence of politically motivated imprisonments in the country. Studying 8 pilot cases in their 50 page report FIDH and HRIDC concluded that political prisoners do exist in Georgia.⁵⁰

The actual number of such prisoners is still the matter of international research.⁵¹ Local NGOs and political parties have been studying the phenomenon with varying results but according to our average estimates, the numbers vary from 50 to 60 prisoners by December 2010.

As for today, the repressive machine avoids targeting high profile opposition leaders or activists directly. Victims of such arrests are people mostly associated with opposition activities in the regions, individuals coordinating or assisting opposition campaigns.

New Developments in Vakhtang Maisia's Case

It was previously reported that after being charged with espionage and sentenced to 20 years in prison, political scientist and a military expert Vakhtang Maisia was serving his term in jail #8.⁵²

His sister, Nora was arrested but was accepted as a political prisoner by FIDH in its 2009 report. During the August 2008 war Abkhazian separatists and Russian armed forces retook the Kodori Gorge.

⁴⁹ Giorgadze served as a Minister of State Security in 1993-1995 at the cabinet of President Shevardnadze. He was blamed in participation in the assassination attempt of the president in 1995 and persecuted since then. Giorgadze fled to Russia and resides in Moscow.

⁵⁰ Full FIDH and HRIDC report available at <http://www.fidh.org/After-the-rose-the-thorns-Political-prisoners-in>

⁵¹ Establishment of the actual number of political prisoners was not among the aims of the above mentioned research. It focused purely on confirming or disproving the existence of the phenomenon itself.

On August 17th, he went on a hunger strike demanding the release of political prisoners as well as the removal of the ban on free printing media entry in prisons. The young opposition activist, Melor Vachnadze also went on a hunger strike with the same demands.⁵³

On the 26th of August, the Georgian internet media outlet, interpressnews.ge, relying on the opposition MP Dimitri Lortkipanidze, released the information about Vakhtang Maisaia being severely beaten in prison. According to interpressnews.ge the information was originally provided by Maisaia's advocate, Natia Korkotadze.⁵⁴ According to the lawyer, the beating of her defendant is related to the hunger strike. The suit on this matter is already filed. In his latest letter from prison, Vakhtang Maisaia described his hunger strike and the subsequent beating in details.

The Ministry of the Penitentiary System denied the charge that they beat prisoners and called it absurd.⁵⁵

By the time of writing of this report Vakhtang Maisaia is not on a hunger strike any more.

Media

The lack of media independence in Georgia is still present without significant progress towards more diversity. A small nation-wide channel Maestro represents a sole exception. Major nation-wide TV stations remain under heavy influence while printed media is relatively free from direct pressure or intimidation. Despite a relatively free environment however, printed independent media outlets are mostly exposed to different challenges: In a country where the government exercises huge pressure on businesses and private enterprises, it is almost impossible to attract advertisements while regularly publishing critical content.

Three major nation-wide TV stations, the Public Broadcaster, Imedi TV and Rustavi 2 continue to air rather one sided, biased reports. The lack of transparency of ownership of the last two, registered in offshore zones further strengthens suspicions about their close ties with the ruling party.

A new legal initiative adopted by the parliament introduced a ban on holding shares in media enterprises for companies registered in off-shore zones but it is still unclear whether the initiative

⁵² Human Rights Centre 2010 – Vanishing Rights; p.19

http://caucasusnetwork.org/admin/editor/uploads/files/reports/bolo_%20vanishing%20right-kdits.pdf

⁵³ <http://new.interpressnews.ge/en/justice/19908-melor-vachnadze-and-vakhtang-maisaia-are-on-hunger-strike.html>

⁵⁴ <http://new.interpressnews.ge/en/justice/20077-dimitri-lortkipanidze--vakhtang-maisaia-is-hardly-beaten.html>

⁵⁵ <http://www.humanrights.ge/index.php?a=news&id=8366&lang=en>

will have an actual effect, especially since the issue of financial transparency has not been resolved yet.

Transparency Issues in Media Ownership

Transparency in media ownership has long been a problem in Georgia. Numerous international institutions have criticized it in their annual rankings, but the most recent World Press Freedom Index 2010, published by Reporters Without Borders, renewed calls for changes to legislation regarding media ownership and transparency.⁵⁶

The critics are focusing on two television stations, Imedi TV and Rustavi 2 broadcasting company, both of which are reportedly associated with the government. Official reports show that 90% of shares in Imedi TV are held by an Arab RAAK Georgia Holding, while the other 10% are held by Joseph Kay. As for Rustavi 2, Degson Limited owns 70% of shares while the Georgian Industrial Group owns 30%. Both of these companies are registered in the offshore zone and thus are not traceable.⁵⁷

As a result of this criticism, the Georgian government has vowed to make media ownership fully transparent. On October 26, 2010, Parliamentary Chairperson David Bakradze announced a new legislative initiative.⁵⁸ This new initiative aims to provide comprehensive information on people or groups owning shares in media outlets, as well as to prohibit registration to off-shore zones and monopolization.⁵⁹ In creating this draft law, lawmakers met with media experts and came up with a wide range of initiatives to improve this issue. These include media channels presenting annual reports to the Communications Commission.⁶⁰

Both sides of the parliament worked together on this initiative. After Bakradze's October 26th announcement, Giorgi Targamadze the Parliamentary Minority Leader, announced that he welcomed the government's initiative and that the Christian-Democratic faction would take part in changing the law.⁶¹ However, both sides adamantly claim that the start of this initiative is not in response to Georgia's international rankings, but rather for the development of the country independent of international pressure.⁶²

⁵⁶ <http://www.media.ge/en/node/39098>

⁵⁷ <http://www.media.ge/en/node/39098>

⁵⁸ <http://www.media.ge/en/node/39084>

⁵⁹ <http://humanrights.ge/index.php?a=main&pid=12453&lang=eng>

⁶⁰ <http://www.interpressnews.ge/en/politics/23014-agreement-reached-between-media-experts-and-parliamentary-majority.html>

⁶¹ <http://www.media.ge/en/node/39098>

⁶² <http://www.media.ge/en/node/39098>

On December 3, 2010, Pavle Kubkashvili, a senior ruling party lawmaker, announced that instead of limiting the ownership of offshore firms, the parliament agreed on a full ban. This announcement came after a two hour meeting in which both members of the minority party as well as leading media experts encouraged the ban. The draft also discussed how to put Adjara TV in line with the new regulations. Currently the station is run by the local government in the Adjara Autonomous Region, something that is prohibited by the Georgian government.⁶³ Criticism still remains in regards to financial regulations. It was suggested that the Communications Commission post on their website not only the ownership status, but also the results of financial audits. Critics feel that this is still not enough.⁶⁴

Discussion of the legal measures to address the lack of transparency in media will continue during 2011 parliamentary sessions.

March 2010 Hoax Report

On March 13 2010 one of the biggest nationwide TV stations, Imedi TV has broadcasted the hoax report concerning the renewal of the Russian-Georgian war. The report was an introduction to a weekly TV discussion show. According to authors, the aim of the broadcast was to present the worst case scenario which could occur if mass protests continued in Georgia. Ultimately it was reported that the Russian army had invaded the country once again, that President Saakashvili was killed and part of the Georgian army had surrendered. The broadcast also cited different highly ranked officials, including Ambassadors of France, Great Britain and Czech Republic whose earlier comments on different issues were used with Georgian altered voiceover translation to fit into the context.

Even though the report was false, no notification was placed on the screen (deliberately as it turned out later). The report caused a widespread panic around the country and especially in areas bordering conflict zones. One person, whose son served in the military, died as a result of a heart attack. That night also saw a huge increase in the number of emergency calls around the Gori region.⁶⁵

Diplomats cited in the report that international organizations and international mission accredited in Georgia condemned the broadcast. The EUMM referred to it as “irresponsible programming” which had the potential to deteriorate the situation in the conflict zone and bordering area.⁶⁶ The French Ambassador Mr. Eric Fournier sent a letter to the head of the TV station, Giorgi Arveladze, stating that he was surprised to see his earlier footage, completely unrelated to the topic, used in the hoax report. The

⁶³ <http://civil.ge/eng/article.php?id=22925&search=media%20transparency>

⁶⁴ <http://civil.ge/eng/article.php?id=22925&search=media%20transparency>

⁶⁵ <http://humanrights.ge/index.php?a=main&pid=8138&lang=eng>

⁶⁶ <http://civil.ge/eng/article.php?id=22092&search=imedi%20tv%20report>

ambassador also labeled such behavior as “completely irresponsible”. NATO also reacted on the matter: spokesperson James Appathurai called the footage “unwise” and “unhelpful”.⁶⁷ The President of the European Commission, Jose Manuel Barroso, Ambassadors of Great Britain and U.S., Denis Keefe and John Bass the OSCE Representative on Freedom of Media, Dunja Mijatovic, all expressed their concerns in regards to the report.⁶⁸

The case took an extra twist on March 15th when the taped conversation between two persons speaking about the report was spread over the internet and later into the media. The two people were allegedly the head of the TV station, a former minister and a long time ally of president Saakashvili, Giorgi Arveladze and his deputy in charge of news and political programming, Ms. Eka Tsamalashvili. In the conversation, Tsamalashvili notes that the prepared footage looks very real and can be very convincing if watched without prior warning, on which she answered that that’s exactly the way it should be. Arveladze further elaborates that he had discussed this with “Misha” (shortened version of Mikheil), who also reaffirmed to him not to give any warning in advance.⁶⁹ The tape gave a jump start to speculations over the president being behind the whole thing, although both participants of the conversation denied the authenticity of the tape. Both Arveladze and Tsamalashvili accepted the voices belonged to them but asserted that the tape must have been a compilation made out of various conversations. The president also rejected any connection whatsoever to the abovementioned event.

London-based business intelligence and corporate investigations firm GWP examined the tape, confirmed its authenticity but noted that some parts of the conversation must be missing from the presented material.⁷⁰

Imedi TV apologized on March 20th, obeying the decision of the Georgian National Communications Commission which established that the TV station has violated the Code of Conduct of Broadcasters, the Law on Broadcasting or terms of its license, demanding the public acceptance of the violations from the side of the TV company.

Incident at “Kavkasia TV”

The string of events that led up to a fistfight during a broadcast of Kavkasia TV in May 2010, started in response to a book published by Erekle Deisadze at Ilia State University.⁷¹ On May 3, 2010, radical

⁶⁷ <http://civil.ge/eng/article.php?id=22118&search=hoax>

⁶⁸ <http://civil.ge/eng/article.php?id=22094&search=imedi%20tv%20report>

⁶⁹ <http://civil.ge/eng/article.php?id=22088&search=imedi%20tv%20report>

⁷⁰ <http://civil.ge/eng/article.php?id=22230&search=imedi%20tv%20report>

⁷¹ <http://www.media.ge/en/node/37262>

Christian Orthodox groups held a protest in front of Ilia State University demanding that this particular book be prohibited, the University rector resign, and a prayer corner be opened in the building. The groups protesting included the Union of Orthodox Parents and the Georgian Orthodox Movement.⁷²

On May 4, a counter rally was held at the same place by a group of journalists, writers, artists, and human rights activists demanding free speech and the right to free publishing without censorship. Within a few minutes, members of the Orthodox groups appeared and initiated verbal and physical altercations with the peaceful protesters.⁷³

These tensions culminated in a fight at the Kavkasia TV station during a live broadcast on May 7, 2010. Because of the previous incidents, the television station organized a discussion between several people on both sides of the incident. This included Malkhaz Gulashvili, cofounder of the People's Orthodox Christian Movement; Nana Devdariani, a former public defender; and Levan Chachua, a member of the Union of Orthodox Christian Parents. They debated with Professor Sergo Ratiani, Head Administrator at Ilia State University; Teo Khatishvili, a film critic; and Beka Mindiashvili, a religious rights activist.⁷⁴

The live debate was heated from the beginning with both sides verbally attacking each other. After an hour of debate, Mindiashvili, followed by Khatishvili and Ratiani left the studio in protest, saying there was no reason to continue the discussion with their opponents.⁷⁵ They were met outside by members of the Union of Orthodox Parents who prevented Mindiashvili from getting into his car.⁷⁶ More people from the studio audience joined the fight outside and it spread to the studio.⁷⁷ Many employees of the television station including operators and the head of the company were assaulted.⁷⁸

A total of 18 people were detained, and eight were kept at the police station.⁷⁹ On August 12, 2010, the eight men were found guilty of hooliganism and obstructing a journalist's work, by the Tbilisi City Court and sentenced to four years and six months in prison.⁸⁰ The Union of Orthodox Christian Parents, with which these men were associated, blamed Kavkasia for provocation, and said that these men are already being punished by their faith.⁸¹

⁷² <http://www.media.ge/en/node/37262>

⁷³ <http://www.media.ge/en/node/37262>

⁷⁴ <http://www.civil.ge/eng/article.php?id=22278>

⁷⁵ <http://www.civil.ge/eng/article.php?id=22278>

⁷⁶ <http://www.civil.ge/eng/article.php?id=22278>

⁷⁷ <http://www.interpressnews.ge/en/society/17423-debtes-oe-book-sdumo-sob-incesed-n-fght-on-tv-compny-kks.html>

⁷⁸ <http://www.interpressnews.ge/en/society/17423-debtes-oe-book-sdumo-sob-incesed-n-fght-on-tv-compny-kks.html>

⁷⁹ <http://www.media.ge/en/node/37262>

⁸⁰ <http://civil.ge/eng/article.php?id=22591&search=kavkasia>

⁸¹ <http://civil.ge/eng/article.php?id=22591&search=kavkasia>

Penitentiary

The penitentiary system remained one of the most problematic areas in Georgia through 2010 as well. An ever growing number of prisoners cannot be addressed simply by building new facilities. Lack of adequate preventive measures, medical facilities, medications and care often lead to death. The ill-treatment of prisoners from the side of the prison administration is further encouraged by the syndrome of impunity.

Comprehensive monitoring of the penitentiary system is not possible by existing legislation. Non-government organizations do not have access to closed establishments for monitoring purposes. Lawyers working for civil society organizations only access such institutions when meeting with imprisoned or detained clients. Out of all domestic non-government stakeholders only the Public Defender's office is authorized to conduct monitoring in penal facilities. Therefore this chapter represents a summary of the most important findings provided by the Public Defender as well as international organizations.

Overcrowding

Overcrowding of prison facilities remains one of the most problematic issues, especially in the face of the ever growing prison population. The official standard set by Georgian legislation equals to 2 square meters per prisoner at minimum, however adherence to this specification is often the exception rather than the rule.

The Public Defender underlines the issue and provides statistical data in his report on National Preventive Mechanism.⁸² According to the data, overcrowding was identified in the following facilities: Prison No. 1 – 1,209 prisoners (official capacity - 750); General and Strict Regime Penitentiary Establishment No. 8 – 2,905 prisoners (official capacity – 2,500); Prison No. 4 – 578 prisoners (official capacity – 305); General and Strict Regime Penitentiary Establishment No. 10 – 388 Prisoners (official capacity – 370); General, Strict and Prison Regime Penitentiary Establishment No. 2 – 3082 (official capacity – 2744); Prison No. 8 – 3790 Prisoners (official capacity – 3672); Medical Establishment for Tubercular Convicts – 733 Prisoners (official capacity – 540); General, Strict and Prison Regime Penitentiary Establishment No. 7– 2,731 prisoners (official capacity – 1,600).⁸³

⁸² Public Defender 2010; p. 11. available at <http://ombudsman.ge/files/downloads/en/ottwuksaudxrrwtddppi.pdf>

⁸³ Public Defender 2010; p. 12

The International Centre for Prison Studies has published its research on the prison population around the globe.⁸⁴ The dataset provides numbers of prisoners from 217 countries worldwide. Alongside ordinary numbers, the dataset provides number of prisoners per 100, 000 citizens in every state.

According to the abovementioned source Georgia is ranked number six in the world for 2010 with around 538 prisoners per 100, 000 citizens. The total number of prisoners for 2010 equals 23 864.⁸⁵ The research represents additional value in terms of observing dynamics in the prison population for the past 4 years. According to 2005 data, the total number of prisoners was 7,091 (165 per 100, 000 citizens);⁸⁶ by January 2007, the numbers increased to 11, 731 (276 per 100, 000 citizens)⁸⁷; 2009 saw a further increase of up to 18, 170 (415 per 100, 00 citizens)⁸⁸.

Healthcare

In the beginning it is essential to emphasize that there are no records produced concerning the health condition of the prisoner at the time of their incarceration. The procedure was mandatory but was also void, which created issues not only for healthcare, but also for defenders working on prisoners' rights. As the founder of the non-government organization Former Political Prisoners for Human Rights, Nana Kakabadze pointed out during a round table with representatives of embassies and missions of international organizations, held in Tbilisi, it was easier to spot perpetrators when the mandatory health records were being carried out during the acceptance of the prisoner as it was possible to trace where exactly prisoners were mostly exposed to physical abuse.

Sanitary conditions in medical sections at a number of establishments remain alarming. According to the Public Defender, hygienic and sanitary conditions in the medical section of Zugdidi's prison #4 were deplorable at the time of the monitoring. The linen for patients was dirty, the floor was damaged, the cell was "teeming with ants" and there were also cockroaches and rodents in the ward. Similar conditions can be observed in a number of other establishments as well.⁸⁹

Medical facilities in prisons are also extremely poorly supplied with medications. The data obtained shows that 2.08 Georgian Lari is spent on one prisoner per month on medications. Numbers vary from

⁸⁴ The International Centre for Prison Studies is based at Kings College in London. More information available at <http://www.kcl.ac.uk/schools/law/research/icps/about.html>

⁸⁵ data available at: http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb_country.php?country=122

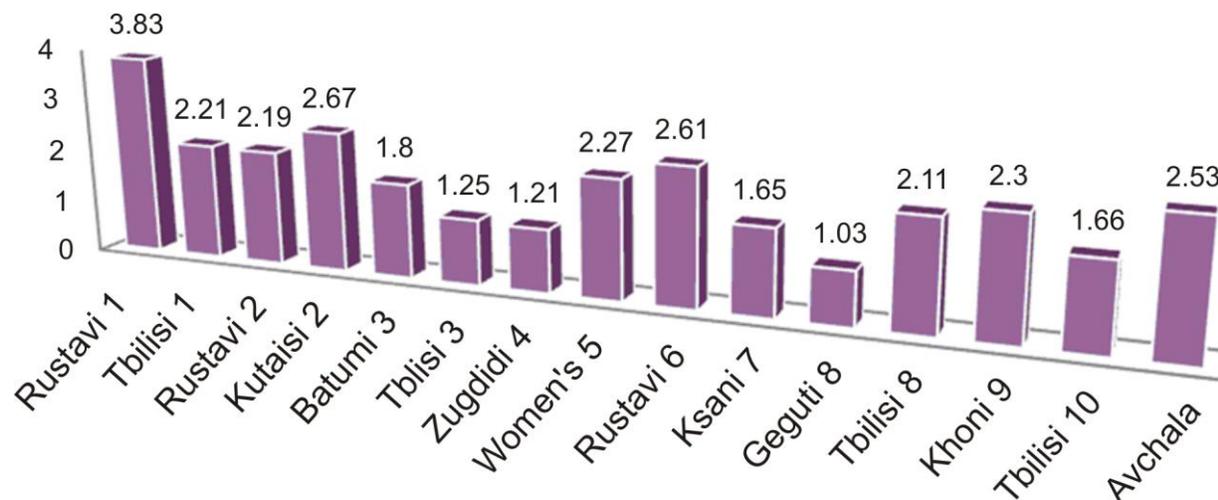
⁸⁶ <http://www.kcl.ac.uk/depsta/law/research/icps/downloads/world-prison-population-list-2005.pdf>

⁸⁷ <http://www.kcl.ac.uk/depsta/law/research/icps/downloads/world-prison-pop-seventh.pdf>

⁸⁸ http://www.kcl.ac.uk/depsta/law/research/icps/downloads/wppi-8th_41.pdf

⁸⁹ Public Defender 2010, p46

1.03 GEL in establishment number 8 in Geguti to 3.83 in Rustavi number 1 establishment. Although some facilities are better supplied, overall it makes no big difference whether its 3 or 1.5 GEL per prisoner per month as supplies will be drastically short and insufficient either way.⁹⁰ The table below represents findings on sums spent on medical supplies provided in the Public Defender’s report on National Preventive Mechanism in 2010.



The lack of adequate healthcare is well reflected in statistics on causes of mortality among prisoners. According to the Public Defender, over 50% of deaths are caused by tuberculosis, a disease for which symptoms are easily traceable from relatively early stages of infection.

Ill-treatment

Verbal and physical abuse in prison facilities has been the issue ever since Georgia gained independence. The Public Defender reported that in 2009 allegations on beatings and other forms of ill-treatment have increased compared to the previous year⁹¹. All of the above mentioned cases were related to the penitentiary establishment #7 in Ksani. The investigation was not launched on ill-treatment, but on abuse of official powers.

Mrs. Eka Kobesashvili, the lawyer of the HRIDC Legal Aid Centre stresses that beatings are widespread in prisons. According to her there are certain patterns together with isolated cases of beatings. Prisoners are always beaten when transferred to the different penal institution. This phenomenon is so inevitable that it is nicknamed the “hospitality gesture” both by inmates and reportedly prison administration.

⁹⁰ Public Defender 2010, p38

⁹¹ Public Defender 2010, p.8

Mrs. Kobesashvili also emphasizes that beatings take place at nights and inmates are unable to sleep as they hear somebody being beaten and tortured. In the penitentiary establishment #18 in Tbilisi, prisoners are reportedly taken to the yard or to the roof where they are lined up and beaten one after the other. It is also difficult to convince them to file the official complaint despite the fact that everybody accepts beatings when talking in person. Mrs. Kobeshashvili states that, roughly only one person in fifty usually agrees to initiate the official procedures.

Freedom of Assembly and Manifestation

The rights to peaceful assembly was strongly restricted in 2009 when the government introduced a package of amendments discussed in the first chapter of the report. Limiting the ability to use public roads, increasing responsibility of organizers and granting the police extended rights in regards to intervention in the process of the assembly had a chilling effect on citizens willing to exercise this right. There were cases when the violation of the so called 20 meter clause was unlawfully imposed on demonstrators, resulting in detention and administrative charges.

Irakli Kakabadze and the Young Poets

Participants of a peaceful flash mob action held on the 14th of August on George W. Bush Street in Tbilisi were arrested by the police and charged. The action was organized by young poets, Irakli Kakabadze, Shota Gagarin and Alex Chigviladze. Participants demanded renaming the street after the name of the famous American poet and humanist, Walt Whitman and read poems by Whitman during the action.

Arrested poets were held in police cars for two and a half hours where they were allegedly subjected to verbal and physical abuse before being transferred to the nearby MIA building on a Kakheti freeway.⁹²

The trial was held on the 15th, as the court had a day off on the 14th and the detainees spent one night in the detention cell. The court hearing was held behind closed doors with no access for media or even

⁹²MIA denies the police mistreatment of activists
<http://www.civil.ge/eng/article.php?id=22606&search=kakabadze>

family members. The poets were charged with the violation of Article 173 of the General Administrative Code of Georgia, implying “willful disobedience to police”. However, the video material and witness statements were confirming that all participants peacefully followed the demands of the policemen. According to the attorney of the defendants, Anna Tsiklauri, the judge refused to view the above mentioned video footage and accept it as evidence. The court fined all three arrested with \$250, one tenth of annual median income in Georgia.

The Public Defender of Georgia, Mr. Giorgi Tugushi recommended that the chief prosecutor look into the cases of activists arrested on Bush Street.⁹³

Crackdown on Veteran’s Action

Restrictions imposed on the freedom of assembly by the legislative amendments in 2009 made it more difficult to fully exercise this right while remaining in the new legal framework. The very first days of 2011 showed however, that even a relatively small action fully fitting into the current restrictive legislative framework can become a target of a violent crackdown.

Veterans of the first Abkhaz war and the 2008 conflict started to protest on Heroes’ Square at the monument to heroes in late December. The demand was for the improvement of social protection for veterans. The action had been ongoing for over a week by the 3rd of January 2011 when police forces attacked the protesters and violently dispersed the demonstration. No violation of law had occurred from the side of the peaceful protesters before the crackdown. A woman was physically assaulted by a policeman during the attack. This fact was recorded on the camera and later the policeman was identified as Otar Gvenetadze. Gvenetadze was dismissed from police several days later.⁹⁴

10 participants of the protest action were arrested. Their trial took place on January 10 at the Tbilisi City Court. No relatives of the detainees, journalists, NGO representatives or other interested individuals were allowed to attend the hearing. The detainees were charged with minor hooliganism and disobedience to the police officers’ lawful requests.

⁹³ Public Defender Tells Chief Prosecutor to Look into 'Bush Street Protester' Case

<http://www.civil.ge/eng/article.php?id=22604&search=kakabadze>

⁹⁴ <http://www.interpressnews.ge/en/justice/23827-otar-gvenetadze-who-physically-abused-eka-matiashvili-on-the-veterans-rally-dismissed.html>

The U.S. Ambassador to Georgia raised concerns regarding the crackdown and the Public Defender Mr. Tugushi issued a special statement, condemning the attack.⁹⁵⁹⁶

On the 4th of January, the support action was organized at the same place but the police were prepared and did not allow participants onto Heroes Square, once again illegally restricting the right to peaceful assembly.

Consequences of the 2008 Armed Conflict

The conflict in August between Georgia and the Russian federation has brought hundreds of civilian casualties, the destruction of civilian property and the displacement of the residents in the conflict zone. These facts have been well documented by national and international NGOs that have done thorough fact finding on the both sides of the border. Based on the findings of the organizations that were involved in the fact finding, both parties of the conflict have committed crimes that can be characterized as war crimes under international law. Some of these crimes are so called crimes of universal jurisdiction, meaning that any state is obliged to carry out prosecution in the presence of the specific evidence that the person(s) has committed such a crime. In addition, the government of Georgia is obliged under the Statute of the International Criminal Court (Rome Statute), ratified in 2003, to carry out the prosecution of any crime taking place within its jurisdiction and within the jurisdiction of the International Criminal Court (ICC).

Possible War Crimes during the 2008 conflict

Several independent international missions investigated the facts and circumstances of the 2008 August conflict, also in relation to war crimes among other issues. Human Rights Watch covered much of these in their 2009 report, Amnesty International analyzed facts in its report “Civilians in the Line of Fire the Georgia-Russia Conflict”.⁹⁷ Finally, the independent EU funded a fact finding mission headed by the Swiss diplomat Heidi Tagliavini. The (IIFMCG) carried out comprehensive research on the conflict and on the circumstances preceding it.

⁹⁵ <http://www.interpressnews.ge/en/politics/23830-us-ambassador-concerned-about-the-crackdown-of-veterans-on-heroes-square.html>

⁹⁶ <http://ombudsman.ge/index.php?page=1001&lang=1&id=1355>

⁹⁷ Civilians on the Line of Fire – the Georgia Russia Conflict, Amnesty International Publication, 2008, <http://www.amnesty.org/en/library/info/EUR04/005/2008/en>

All three reports underscore that rules of International Humanitarian Law were violated by both sides in the conflict. In regards to Georgian side, it is emphasized that although there were no evidences of a deliberate attack on the civilian population or infrastructure, Georgian armed forces failed to discriminate such objects from military during their shelling which resulted in damage to civilian objects and caused casualties.

The disproportionate use of force by the Georgian military was mostly present during their artillery attacks. Specifically, Georgia's use of multiple rocket launching systems, such as BM-21s ("Grads") in civilian populated areas violated international humanitarian law's principle of distinction. These weapons do not have an accurate targeting ability, therefore using them against military targets located close to civilians is considered to be a disproportionate use of force. In this regard it is also essential to mention that the Ossetian side may have violated Article 58(b) of Protocol I to the Geneva Conventions requiring parties to avoid locating military objectives within or near densely populated areas by firing at Georgian forces from locations close to civilian areas prior to their entry into Tskhinvali.

There was an attempt to establish the truth over the August war by creating some kind of truth commission, which at the end worked under a political shadow and issued a rather political statement in the form of a conclusion. The commission was established by the Decree No 292 II s, of the Parliament of Georgia, dated 26 September 2008 for the period of three month. The purpose of the creation of the commission as it was defined by the Decree and the name of it was already political. The Commission was named: "Commission on Enquiry of the Facts of Infringement of the Territorial Integrity, Military Aggression and other Acts Committed by the Russian Federation". The Commission was empowered to examine the facts of infringement of the territorial integrity and military aggression against Georgia by the Russian Federation. The Commission was composed of ten members- four of which were from the ruling party – United National Movement, four from Christian Democrats and two Majoritarian MPs. After interviewing 21 government representatives including the president, the commission looks like an attempt to justify the use of military means by the Georgian side in the beginning of August. There is no balanced assessment of the circumstances of the conflict.

Nearly two years after the August 2008 war over South Ossetia, there has been no accountability for violations of international humanitarian and human rights law committed by all parties to the conflict. This is the chief reason for the continued massive displacement of the ethnic Georgian population.⁹⁸

⁹⁸ Parliamentary Assembly of the Council of Europe (PACE) debate on the state of human rights in Europe, June, 24, 2009 see at <http://www.hrw.org/en/news/2009/06/24/parliamentary-assembly-council-europe-pace-debate-state-human-rights-europe>

ICC Involvement

Several days after the outbreak of the August conflict in 2008, the prosecutor of the International Criminal Court (ICC) confirmed that his office was analyzing information related to alleged crimes committed in Georgia during the Russia-Georgia war that fall under the Court's jurisdiction.⁹⁹ The prosecutor requested information from the governments of Russia and Georgia on 27 August, 2008. Both the Russian and Georgian authorities responded. The office conducted a visit to Georgia in November 2008.

Experts from the ICC visited Tbilisi several times. In June 2010 they held official meetings in the framework of a preliminary analysis of the war. During their visit the ICC experts also met with representatives of civil society organizations, Human Rights Centre among them. The prosecutor of the International Criminal Court also intends to arrive in Georgia. The ICC can potentially take over the investigation if there are no effective measures taken on a national level.

Enforced Disappearances

Detentions on both sides of the de-facto Georgian-Ossetian border have been ongoing ever since August 2008. Ethnic Georgians were mostly detained by the South Ossetians for so called illegal crossing of the boarder. On the other side, allegations by the Ossetian de-fact officials regarding hostages kept by the Georgian side became more truthful within the past two years.

On November 4, 2009 four Georgian teenagers between 14 and 17 years old, Giorgi Romelashvili, Aleko Tsabadze, Levan Khmiadashvili and Viktor Buchukuri, were detained in the vicinity of Tskhinvali, the capital of the *de facto* South Ossetia. They were residents of a Georgian-controlled village near the conflict zone – Tirdznisi.¹⁰⁰ Parties spread controversial information about the reasons of the detention.¹⁰¹ Teenagers were prosecuted on behalf of the law of the Russian Federation and sentenced for “illegal crossing of the South Ossetian border and possession of explosives” by the court of de facto South

⁹⁹ International Criminal Court monitoring events in Georgia, UN News, 20 August 2008 see at <http://www.un.org/apps/news/story.asp?NewsID=27759&Cr=Georgia&Cr1>

¹⁰⁰ A village in the Gori district located roughly five kilometers away from Tskhinvali, under Georgian control

¹⁰¹ According to one of the versions, boys went fishing and had explosives with them. The Head of the Provisional Administrative Entity of South Ossetia, Dimitri Sanakoev, stated the detention of the underage Georgian citizens was illegal, he also denied the allegations about teenagers carrying explosives. The deputy Speaker of Georgian Parliament Mikheil Machavariani stated during the parliamentary session: “These kids have been taken hostage. They have not committed any crime and we are very sorry that we have to talk to the criminal regime about these issues...the Russians and their marionettes are ignoring the international law.”

Ossetia.¹⁰² The release of the teenagers became possible after the intervention of the CoE human rights commissioner Thomas Hammarberg.¹⁰³

Khatuna Charaeva, resident of Akhagori, disappeared in December, 2009. Later on it became known that she was detained by Georgian law enforcement officials. Relatives did not have any information regarding her location or health conditions and her lawyer was not allowed to see her during the first month of the detention.

Charaeva was arrested when she arrived in Tbilisi on December 21. Reportedly, she came to Tbilisi to sell walnuts. She was charged with the possession of fake money. Relatives of the accused and Akhagori residents downplayed these allegations, stating that the charges were fabricated.¹⁰⁴ The de-facto administration of the Akhagori district and most of the local population considered the detention of Charaeva as an act of political persecution.

Charaeva's brother in law, Merab Charaev explained the detention with the fact that children of Charaeva often visited Tskhinvali and the Georgian side did not like this very much. According to Charaev, the Georgian side presumed that they had some politically grounded links with certain people in Tskhinvali. Charaeva called this presumption "nonsense." The case, declared a Griffith Secret, continued to the year's end.

A member of the Ossetian Association in Georgia, Giorgi Khetaguri disappeared for three years. He was detained on October 29, 2006 but law enforcement bodies did not inform anybody about it. Society received complete information only after Giorgi Khetaguri served the complete sentence. Khetaguri, convicted for the purchase and usage of narcotics, said that he was sent to prison on political grounds. Law enforcement officers wanted to compel him to be their informer on the Ossetian side.¹⁰⁵

On October 29, 2006 Khetaguri was searched by law enforcers at the de-facto border checkpoint when traveling back from Eredvi. The officers introduced themselves as Anti-Narcotic Department representatives. Khetaguri was released but not for long. When he went to the store in Tbilisi, he was

¹⁰² News agency "Civil Georgia", 5 November, 2009, "Tskhinvali Detains Four Georgian Teens", see at <http://www.civil.ge/eng/article.php?id=21642&search=disappear> ; The Court in Tskhinvali gave Giorgi Romelashvili and Aleko Tshabadze, both 14 years old, one year conditional sentence and was freed from the courtroom. But two others – Levan Khmiadashvili and Viktor Buchukuri, 17 and 16 years old, respectively - were sentenced to one year prison term.

¹⁰³ Thomas Hammarberg had been holding intensive talks both in Tbilisi and Tskhinvali on release of detainees since November 27, 2009. Aleko Sabadze and Giorgi Romelashvili, each 14 years old, were given conditional sentences and released on December 2, while Levan Kmiadashvili and Viktor Buchukuri were released later on December 19, 2009.

¹⁰⁴ According to them, Charaeva was an honest and hard-working person and it was the police who secretly planted 30 000 USD on Charaeva.

¹⁰⁵ <http://humanrights.ge/index.php?a=main&pid=8333&lang=eng>

blocked by a car. Unknown people made him follow them. He was taken to the office where supposedly an MIA official was trying to convince him to cooperate. He promised to support his organization and fund its projects in case of agreement. Khetaguri refused to cooperate. As a result he was beaten, and then charged without the right to an attorney and imprisoned for three years. He was freed only after serving his term. Khetaguri has requested political asylum in a European country and is waiting for the answer.¹⁰⁶

Internally Displaced Persons (IDPs)

This section reviews the current state of affairs concerning the internally displaced and relies on the work carried out by Human Rights Centre through 2010.¹⁰⁷

According to the official data, 251, 000 internally displaced persons from Abkhazia and South Ossetia were registered to be living in different parts of Georgia. The number accounts for 6% of the total population of the country. Following the 2008 armed conflict, 26, 000 more had to leave their homes without the possibility of return.

Despite several initiatives and positive steps taken from the side of the government to address IDP issues, numerous problems still remain.

Lack of Communication

Communication between IDPs and the relevant ministry remained an issue in 2010 as well. The telephone hotline has been operating at the ministry but with relatively little success.¹⁰⁸ Several IDPs addressed Human Rights Centre in order to clarify the situation concerning their statuses, housing or accommodation. The majority of IDPs had already referred to the ministry before applying to Human Rights Centre but with little to no success. This lack of communication and access to information was

¹⁰⁶ <http://humanrights.ge/index.php?a=main&pid=8333&lang=eng>

¹⁰⁷ A separate report on IDPs in Georgian language was prepared at human rights centre based on work carried out in 2010. The report was prepared by Ms. Shorena Latatia at Human Rights Centre.

¹⁰⁸ The Ministry of Resettlement of Forcefully Displaced Persons from Georgian Occupied Territories is referred as the "Ministry" in the report.

further confirmed by the statistical data derived from the Public Defender's report, which states that 40% of surveyed IDPs are not informed on medical service available to them.¹⁰⁹

Medical Care

The right to healthcare protection is acknowledged by the Georgian constitution as well as international acts.

UN Guidelines on Internally Displaced Persons state that responsible state institutions should provide at least urgent medical assistance and sanitation.¹¹⁰

Since 2009, the state took the responsibility to provide medical assistance on the basis of medical insurance to sufferers of the 2008 armed conflict. Majority are automatically included in the program of assistance to persons beyond the margin of poverty and medical insurances were issued. It must be noted however that IDPs have not been adequately informed on terms of their usage.

IDPs are also dissatisfied with the fact that the insurance policy does not cover preventive medical treatment and can be used only during urgent medical interventions. The policy also does not cover expenses for medication which creates additional problems for persons with chronic diseases.

Compensation Issues

The state offered an alternative to forcefully displaced persons: a cottage in a group of IDP settlements or compensation worth 10, 000 U.S. Dollars in Georgian Lari.

According to the data available, in relation to 2008 August conflict, 1,728 families, consisting of 4,425 individuals in total, have chosen compensation package over a shelter. However, IDPs have been applying to Human Rights Centre all year long, asking for assistance to receive their promised 10, 000 USD.

In order to provide some clarification of the above mentioned situation, Human Rights Centre has officially submitted a written letter, requesting public information from the relevant ministry on the

¹⁰⁹ Public Defender 2010; p.24. Report available at:
<http://ombudsman.ge/files/downloads/en/njyccudreysvwtqszj.pdf>

¹¹⁰ UN Guiding Principles on Internal Displacement – principle 18.2
<http://www.unhcr.org/43ce1cff2.pdf>

following: what was the number of IDPs who have not received a onetime compensation and why have they not received it? Unfortunately, the letter was left without any response.

Although offering a choice between shelter and financial assistance was a positive development, problems encountered by IDPs in receiving the above mentioned assistance casted a shadow on these efforts. This fact also represents a violation of the obligation of the state, to provide shelter for all IDPS.¹¹¹

IDP Status

According to the Georgian Law on Forcefully Displaced Persons, the relevant ministry has to issue the decision concerning granting (or not granting) the IDP status to an applicant within 10 days from applying. Despite this clause, a significant number of internally displaced persons still remain without statuses.

Usually, the Ministry leaves application letters concerning the status unanswered. In phone conversations representatives of the ministry as well as of municipality openly state that IDP status will be granted to a person only after issuing the compensation. The position above does not make sense as the compensation is issued on the grounds of acceptance of a person as internally displaced.

In December 2010, Human Rights Centre had appealed to court on four cases demanding the granting of the IDP status. Currently, court proceeding are ongoing in all these cases.

Evictions

According to Georgian legislation the state has the obligation to provide temporary accommodation for the internally displaced. It is also unacceptable to evict such persons from compact settlements unless a relevant agreement had been made or such persons have been occupying the cottage illegally or when a new space has been issued which is not worsening the living conditions of a particular family.

In line with the state strategy towards IDPS, evictions started in Summer 2010 in order to resettle forcefully displaced persons from temporary to permanent residences. However serious shortcomings have occurred during the eviction process:

¹¹¹ One time compensation implied that forcefully displaced persons would look for accommodation themselves using the sum provided.

1. Lack of information – Guiding principles of the “Process of Provision of Long term Settlements” adopted in the framework of the Supervisory Council, operating within the State Strategy Action Plan Towards Internally Displaced Persons, imply that IDPs must have the ability to take voluntary and “informed” decisions. The principle refers to availability of information concerning places of resettlement and space available. During actual evictions however, IDPs were provided with only vague information concerning households which was limited to their approximate location.
2. Limited time – IDPs were usually warned only five days before evictions. In many cases warnings were made only verbally.
3. Character of evictions – According to IDPs, the eviction process itself was insulting. Cases of mistreatment and verbal abuse were frequent. IDPs have also complained on physical abuse in number of cases.

Following the intervention of local and international organizations, mass evictions were stopped until appropriate procedures were adopted with the active participation of the office of the UN High Commission on Refugees Standard Operational Procedures for Eviction/Resettlement of IDPs for Provision of Permanent Accommodation have been adopted. The document was approved by the Committee on IDPs at the relevant ministry on September 2010.

The second wave of evictions started in December 2010 when IDPs in 20 settlements in Tbilisi were informed in advance that buildings occupied by them did not represent places of their permanent accommodation. Alternative households were offered in villages belonging to Gurjaani, Chkhorotsku, Zugdidi, Khobi and Abasha municipalities.

Unlike the first wave of evictions, the second wave started without procedural violations. However it is important to stress where alternative households were offered. For persons who have already lived in Tbilisi for years now, resettlement to distant locations is equal to another forceful displacement. Therefore, many refuse to accept households offered by the government. The risk exists that many can become homeless.

Protests of IDPs

In August 2010, following mass evictions, IDPs left without households started to protest in front of the Ministry of Forcefully Displaced Persons from Georgian Occupied Territories and Resettlement. Protesters demanded alternative shelters in Tbilisi as they considered moving to provinces as a worsening

of their living conditions.¹¹² 12 protesters went on a hunger strike. No actions followed from the side of the Government.

On October 27, Nana Pipia, a forcefully displaced person from Abkhazia tried to burn herself in front of the ministry using petrol, suffering serious injuries. According to some sources, Pipia was forced to such behavior by her conversation with the Head of the Social Department of the Ministry, Mr. Grigol Tugushi. According to the information obtained from IDPs, Pipia was told by Mr. Tugushi to “eat grass” when she protested the resettlement to Potskhoetseri, the remote location in Samegrelo region and asked Tugushi, what she could do there. The Ministry issued an official statement on this regard where it stated that Nana Pipia was offered a permanent accommodation in one of the provinces which she refused to take it.¹¹³ Pipia’s condition was difficult and she died later in the hospital. The costs of her medical treatment were covered by the state but no investigation was launched on the matter.¹¹⁴

Local Municipal Elections

Local Municipality elections were held in Georgia on 30th of May 2010. The elections were important also due to the fact that the Mayor of Tbilisi was elected for the first time.

A number of international observing missions were monitoring elections together with numerous monitors from Georgian civil society organizations. 100 observers from Human Rights Center were monitoring the voting process in several regions, most actively in Kakheti, in Azeri minority populated villages. Numerous cases of severe violations and deliberate fraud were observed.

The ruling party, The United National Movement won a landslide victory in local elections retaining a majority in all municipalities while the serving mayor from the ruling party, Mr. Gigi Ugulava won in

¹¹² <http://www.humanrights.ge/index.php?a=main&pid=12201&lang=geo>

¹¹³ <http://www.humanrights.ge/index.php?a=main&pid=12458&lang=geo>

¹¹⁴ The statement issued by the ministry states: “Nana Pipia, who tried to burn herself at The Ministry of Resettlement of Forcefully Displaced Persons from Georgian Occupied Territories lived in Zugdidi until 2000, when she moved to Tbilisi to her relatives. The Ministry offered her a permanent household in province again which she refused to take. Unfortunately it is impossible to provide all IDPs with permanent accommodation in Tbilisi, therefore the government is issuing fully refurnished households in property in different regions of the country at this stage.”

Tbilisi by 55.2% with his closest rival, Irakli Alasania receiving only 19.05% of the popular vote.¹¹⁵ Five parties and blocks made it into the Tbilisi City Council, the National Movement enjoying 52.5% of votes and 14 seats out of 25.¹¹⁶

International observation missions regarded the May 30 elections as an overall improvement and a step forward towards meeting international standards.¹¹⁷

Human Rights Centre has revealed trends of irregularities and severe deliberate fraud in a number of observed polling stations, mostly in Azeri minority populated villages in the Kakheti region, in eastern Georgia. In particular:

- Presence of law enforcement authorities in official uniforms (policemen, representatives of the prosecutors' offices) at the polling stations or near them without any legal justification– in Samegrelo that was especially widespread;
- Obstruction of election observers, physical pressure, threats or physical abuse against them, in some cases law enforcement authorities was directly involved in that;
- Presence of unidentifiable people at the polling stations who were freely in contact with commission members, were entering and leaving polling stations freely;
- Ineligible citizens (minors) or without proper documents were allowed to vote;
- Lack of Georgian language skills by voters to effectively exercise their constitutional rights;
- Overcrowding at the polling stations, voters were followed by unidentified people or commission members in the voting cabin, in some cases calling “besh besh” (number 5 – ruling party) to them;
- Procedural violations during voting and counting procedures (not keeping records book in proper order, not sealing documents, etc.);
- Technical problems: special tool for marking often out of order or not attended properly, polling station was opened in a highly inappropriate places (animal farm).

Human Rights Centre mobile teams recorded hours of footage covering the above mentioned violations on cameras. A special press-conference was issued together with the Public Movement – Multinational Georgia where the raw material was presented. Later the material was edited and released as a documentary.¹¹⁸

¹¹⁵ http://www.results.cec.gov.ge/index_eng.html

¹¹⁶ <http://civil.ge/eng/article.php?id=22421&search=elections%20results>

¹¹⁷ <http://civil.ge/eng/article.php?id=22387&search=osce%20elections>

<http://civil.ge/eng/article.php?id=22374&search=osce%20elections>

¹¹⁸ the video is available in Georgian at <http://hridc.tv/index.php?a=view&id=440&lang=eng>

Contact Details:

Human Rights Centre (HRIDC)

3a Kazbegi Ave., Entrance 2, 4th Floor, Apt. 22.

Tbilisi, 0160 Georgia

Tel: (+995 32) 37 69 50, (+995 32) 45 45 33;

Fax: (+995 32) 38 46 50

Email: hridc@hridc.org

Web-Site: www.hridc.org

On-line magazine: www.humanrights.ge