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GEORGIA IN TRANSITION

*Report on the human rights dimension:
background, steps taken and remaining challenges*

Assessment and recommendations by Thomas Hammarberg
in his capacity as EU Special Adviser on Constitutional and Legal Reform
and Human Rights in Georgia

*A report addressed to High Representative and Vice-President Catherine Ashton
and Commissioner Stefan Füle*

September 2013

FOREWORD

Since January 2013 I have visited Georgia several times in order to assess the status and development of human rights. Though I had some earlier knowledge since my term as Council of Europe Commissioner for Human Rights 2006-2012, I obviously had to update my impressions on developments after the October 2012 elections.

I have listened carefully and been involved in a number of discussions on how to remedy problems of the past and to lay the ground for a future genuine human rights culture. When relevant, I have conveyed my concerns and criticism to the new office-holders in the Georgian Government, including to Prime Minister Ivanishvili. These talks were generally very constructive and my interlocutors always frank and open.

When accepting the assignment as a temporary EU Special Adviser I stressed that I would aim to be politically impartial and that I would try to see not only Ministers and other high level officials in the Government, but also representatives of the opposition, the judiciary, the Public Defender, non-governmental organisations, think-tanks, trade unions and employers, international organisations, the diplomatic community and individuals who had suffered human rights violations.

Such meetings were held and were mostly both open and informative. This was also the case when I met President Saakashvili, the Parliamentary Speaker Usupashvili and the Minority Leader Bakradze. The two meetings with the Patriarch of the Orthodox Church became particularly relevant in view of some specific developments.

In all this work I was greatly helped by Eva Pastrana, the human rights officer at the EU delegation in Tbilisi. Other staff members of the EU office were also very helpful. My access to the Prime Minister and other Ministers was effectively facilitated by Tamar Chugoshvili who has also been a brilliant adviser. Another of my key advisers has been Sabrina Buechler from the Swiss Federal Department of Foreign Affairs, who has given me great help in the work on this report - without her it would not have been produced.

Furthermore, I had the fortune to get advice also from a group of independent human rights experts rooted in civil society: Emil Adelkhanov, Giorgi Chkheidze, Eka Gigauri; Giorgi Gogia, Tamar Kaldani, Nino Lomjaria and Giorgi Tugushi.

The Introduction of the report gives brief summaries of my main concerns and reflections. The body of the report goes deeper into seven key areas in relation to human rights: judiciary, penitentiary, law enforcement, minority rights, political participation, freedom of expression, assembly and association and, finally, social justice. The key recommendations in these chapters are presented in bold letters.

The report is being addressed to EU High Representative/Vice-President Ashton and Commissioner Füle who have agreed that I could make it public in order to encourage further discussion on the important human rights issues. However, the responsibility for the text – including possible mistakes - is only mine.

Thomas Hammarberg
September 2013

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INTRODUCTION

Georgia is going through the second transition process since its independence. The first such basic change started with the Revolution of Roses in November 2003 with its definite break with Communist traditions and with ambitions of a genuinely democratic transformation. The ongoing change process started with the parliamentary election in October 2012.

The Government which was established after the revolution aimed at radical reforms of the Georgian society. It took steps to introduce a liberal market economy, to combat organised crime and stamp out corruption. It dismissed previous judges and introduced more rational methodology and structures in the judicial system. The High Council of Justice was moved from being under presidential subordination to being a formally more independent institution. The endemic corruption in the judiciary was addressed. A new Criminal Procedure Code was adopted. Steps were also taken against corruption within the police and, in particular, the patrol police became more professional.

Among other positive steps was the adoption of a National Concept for Tolerance and Civic Integration and an Action Plan aiming at promoting tolerance in society towards minorities and possibilities for them to participate in public life. This resulted, for instance, in the building of schools and some other infrastructural developments in minority areas.

However, all was not perfect. Especially during the last years, serious problems began to emerge, some of them contributing to the result in the 2012 election. The consequences of the disastrous 2008 war had certainly an impact as well.

International human rights observers, the Public Defender (ombudsman) and local NGOs noted that the system of justice was flawed on key aspects relating to, for instance, the lack of balance of power between prosecution and defence undermining fairness and also resulting in very few acquittals; the misuse of the plea bargaining approach which resulted in grossly unfair options for those under investigation; and grim conditions and ill-treatment and even torture in the overcrowded prisons.

The governing party, the United National Movement (UNM), controlled the Parliament as well as the central and local administration. The separation between the State and the party tended to become blurred. Land and other property were confiscated with little or no possibility for appeal; properties were also “donated” to the State under pressure and threat. There were complaints about “elite corruption”.

Opposition rallies were on occasion met with brutal force. An extensive surveillance system was developed, the extent of which has become clear more recently.

Though the overall economic policy, at least until the 2008 war, was seen as successful, agricultural development was lacking and vulnerable groups were not given sufficient protection. The child mortality rate was high, child poverty wide-spread and the standard of primary and secondary education low, while little was done to address these deep problems.

The Georgian Dream (GD) party and its coalition partners pledged to remedy these problems in their election messages 2012. They promised, among other things, to de-politicize the justice system; to release those unfairly imprisoned; to punish those responsible for abuse of power; to encourage a genuine multi-party system; to ensure a more balanced media reality; and to introduce and support agricultural reforms.

Almost one year has passed. A new law was adopted on the court system and the High Council of Justice which was seen as a good step towards protection of the independence of the judiciary. The Criminal Code and the Criminal Procedure Code have been reviewed and new amendments are still being proposed to the Parliament. Half of the prisoners have been released through a parliamentary amnesty, legal changes and pardons granted by the President; steps have been taken to improve prison conditions. Surveillance activities are under scrutiny after the discovery that a great number of illegal recordings had been made on targeted individuals, including on their private life; an Inspector on Personal Data Protection has been appointed.

The Labour Code was thoroughly amended in consultation with the international expert body, ILO, and now protects the right of employees to organise and bargain collectively. The Prime Minister has signalled to the administration that more priority must be given to protect the rights of children, in particular those most vulnerable. Other positive steps are outlined in the body of this report.

However, mistakes have also been made and a number of issues still remain to be addressed or addressed more effectively.¹ Among them the urgent need to take determined action against islamophobic tendencies. Also, some unfortunate statements have been made to media, not least some which have reflected a lack of respect for the principle of presumption of innocence. On the other hand, the Special Adviser has appreciated the transparent attitude of Ministers and other officials and their willingness to accept criticism and correct mistakes.

One problem, which has delayed and complicated reform work has been the political polarisation in society, illustrated by the tension between the President and the Government. Fortunately, the atmosphere in the Parliament has been somewhat better and the assembly has in fact adopted a number of important bills, some of them in unity between the blocs. One example was a major amendment to the Constitution.

The Georgian Government is now faced with two major challenges, apart from ensuring economic development. One is a wise and rights-based review of the past; and the other is the development of effective, impartial institutions to meet the needs and concerns of all people in the country.

Dealing with the past

Thousands of complaints from individuals were filed with the Prosecutor's Office after the October 2012 election. Other complaints were handed in to the Parliament and others again to the Public Defender. Some frustrated citizens addressed all these institutions.

The complaints were, for instance, about unlawful or otherwise unjustified deprivation of liberty as well as in prison. Misuse of the plea bargain system was raised by many. Others dealt with the pressure to "donate" property to the State or other heavy-handed behaviour of prosecutors or other officials. Among the many complaints there may well be those with unsubstantiated facts, but it is still imperative that all of them be considered and replied to. This has started within the Prosecutor's Office but the procedures needs to be further systematised and a full report on this review – and the responses – should be made public.

The political intention appears to have been to charge the ones most responsible for serious crimes – including those related to human rights violations and abuse of power – and give some form of "amnesty" to those who only followed order.

The GD coalition gave a pledge prior to the 2012 parliamentary elections to "restore justice". Whilst on the one hand it is important to fight impunity not least in relation to crimes committed by public officials, it is on the other hand necessary to ensure absolutely transparent and fair proceedings free from political interference.

The Prosecutor's Office has initiated investigations against a number of office-holders in the previous administration. Prosecutors have questioned 6 156 persons, most of them UNM party activists, as witnesses in the framework of investigations into different suspected crimes, including misuse of the State funds and money laundering. The opposition party considers this questioning to be a politically motivated attack on the opposition. Currently, 35 former central officials are charged of whom 14 are in pre-trial detention, 14 have been released on bail, one is released without restrictive measure, one has been pardoned by the President after conviction and five have left the country. Other former civil servants have also being charged or were convicted.²

One of those charged and held in pre-trial detention is Vano Merabishvili who is not only a former Prime Minister and former Minister of Internal Affairs but was also Secretary General of UNM at the time of arrest. The UNM has consistently and vehemently been challenging the necessity of applying this measure of restraint. The case has

¹The NGO Georgian Democracy Initiative, founded by George Tugushi, a former Public Defender and UNM Minister for Corrections and Legal Assistance, has published a report on the performance of the Government during the first half of 2013 which lists a number of shortcomings. Some of them are also referred to in the body of this report.

² According to UNM more than one hundred persons working for the previous Government are also either being prosecuted or under investigation.

raised deep concerns in relation to the forthcoming presidential election - as one of the key organisers of the opposition became prevented from contributing to the campaign.

His trial, but also other processes against politicians and former high level officials will be followed carefully by international observers and domestic non-governmental representatives. The compliance with the requirements of fair, impartial and transparent judicial proceedings will be scrutinised with critical eyes.

There are signs that the courts are more independent than earlier in relation to requests from the prosecutors. For instance, there was an acquittal in a case against another former Minister, and the request for pre-trial detention was refused in another case against a leading UNM politician.

There have been discussions on how to handle complaints of injustice caused in the judicial proceedings, not least the unfair plea bargain decisions. The European Commission for Democracy through Law (Venice Commission) was consulted on the idea of establishing a Commission which would review complaints on alleged miscarriage of justice cases and give recommendations whether a case should be reopened in court or not. No conclusion has yet been reached. However, one point has been made clear: any reopening of a court case must be decided by the judiciary itself – other bodies can only propose.

Also, no final proposal has been brought to the Parliament in regard to protecting those actors from charges who only obeyed orders and became used as instruments in acts which abused power or violated the law. It has been recognised that such an “amnesty” law would be extremely complicated to draft without undermining basic legal principles. For the moment, it is left to the prosecutors to decide on what and against whom to start an investigation.

The response to the complaints regarding confiscation or other transfers of property will be particularly delicate, not only in the sense of assessing the true facts. Even when it would be established that property rights were indeed violated, the land or the building may have been put to other use, a situation which might be very difficult to undo. Financial compensation may be a fair solution but such measures are estimated to be extremely costly for the State budget.

This is not only a matter of law and legal procedures; the political dimension is obvious. The disappointment with the performance by the previous Government was demonstrated through the election result in 2012 and has been manifested in opinion polls thereafter. It is obvious that many people were deeply angry and wanted abusers to be punished. The demonstrations by GD supporters outside city halls in several municipalities appeared to reflect precisely these feelings. Though the October election was only parliamentary (local elections are planned for May 2014), pressure was exerted on UNM members of local assemblies and staff members dismissed. These are unacceptable developments.

The GD alliance is faced with several challenges in this context:

- **to respond in the true spirit of justice to all those who have filed complaints;**
- **to ensure absolutely correct procedures in the cases against former high officials suspected of crime – no politicisation or “selective justice”;**
- **to put the focus on cases in which impunity would undermine the sense of justice in society - but spare those in the less serious cases who only obeyed orders or were squeezed into cooperation in wrongful activities;**
- **to convince the majority supporters to avoid any undemocratic moves against the UNM party, including any disturbances of its campaign meetings – and take effective action against those who undermine the freedom of expression and assembly.**

Lessons should be learned from past mistakes. This requires a comprehensive description of what really happened in the past which is factually correct, relevant and related to the true circumstances at the time as well as presented in an objective and credible manner. Experience has told us that such assessments and reports are better done by impartial experts than by committees with party political interests.

However, when facts are established, it would be important to initiate discussions in the Parliament (as well as outside) on measures to be taken to avoid similar problems in the future. In this particular case it is relevant that UNM representatives, including the minority leader Bakradze, have suggested parliamentary involvement in a “lessons learned” exercise relating to the previous use of torture.

It is important that steps are taken to close the chapter of the past – and in a way that sets an example for the future in the sense of justice, fairness and transparency. This will hopefully release political energy to look more actively towards the future.

Building institutions for the future

Democratic institutions should be further developed. Ad hoc-ism and focus on crisis responses have to be replaced by stronger established - and agreed - procedures and improved or new institutions. Below are preliminary thoughts based on impressions of the Special Adviser.

Some important steps have certainly already been taken in this area. Since several years there is an ombudsman, the Public Defender, whose office does important work in the promotion and defense of human rights. It has considerable resources and support from EU and other international actors. With changes now being made, there is a need to clarify more distinctly the role of this office.

The forthcoming law on the prevention and sanction of acts of discrimination against minorities and others would require the establishment of a mechanism to promote the implementation of the law. In structural terms, it would make sense that this office work very closely with the Public Defender.

Further institutional and legal reforms are needed to protect freedom of religion for all and to prevent any tendency of marginalisation of minority populations. Dealing with them mainly through the security prism must be avoided.

The Centre for Children’s Rights in the Public Defender’s Office has done an impressive work, but in view of the huge problems in this area, not least in relation to social rights, it is important that this program is further strengthened.

A Personal Data Protection Inspector has just been appointed. Though appointed by the Government, the intention is that this office should act in an independent manner. It has been given resources to recruit staff and should be allowed to develop its structure and role further.

The continued reforms within the judiciary are now largely in the hands of its internal structures, primarily the High Council of Justice. Even here there are lessons to be learned, including of fostering a spirit of individual responsibility of each judge in the system. It is crucial that the competence and professionalism are ensured. Some amendments to the existing legislation may underpin such efforts.

Complaints against the police and prosecutors will require a professional, separate mechanism for credible response. It has to be built on understanding of policing and prosecutorial realities – but stay independent from these structures and act as an impartial representative of the public (similar to an ombudsman). Procedures to handle complaints by detainees on prison conditions or against guards or other staff may also be revisited in this context.

The new Labour Code needs to be underpinned by new institutions and procedures for resolving industrial disputes and developing a negotiation culture. The establishment of a mediation center which could facilitate solutions of industrial disputes would be a step in the right direction. Also, Georgia would benefit from a mechanism for serious inspection of working conditions in the spirit of the new law and ILO standards. The Tripartite Commission should be activated.

The development of a national education policy – which would include steps to improve quality of teaching in primary and secondary education and to promote a universal pre-school system – would require institutional and budgetary backing.

There is a need to strengthen the existing body for countering corruption, the State Audit Office (SAO) and to develop a team of specialist prosecutors on such cases. The auditing of the budgetary

management within the ministries and other authorities appears to be well established; it is important that this function continues to be alert and absolutely non-corrupt. The development of an impartial and service-oriented civil service on both national and local level will take time, but must be a crucial ambition. There should be a clear distinction between posts for political appointees and those for non-political civil servants.

A discussion about a major decentralisation of the administration has been initiated; the intention is positive but the process of devolving power to the local level cannot be done without a deeper consideration of the complexities involved and may have to be a gradual process.

The new Government did, understandably, not have much governing experience and in some cases little political or management background. After one year in office, it would be natural to review decision making procedures and communications and a number of other aspects of the Government administration and its relationship to other relevant structures in society – and abroad.

The implementation of the recommendations outlined in this report requires a strong political will and serious efforts, including financial and human resources. Georgia's commitment to develop and adopt a national Human Rights Strategy and Action Plan is to be welcomed. Hopefully, this report constitutes a meaningful contribution for it.

1 Judiciary

The Georgian constitution and other legislation are very clear: the judiciary must be independent and free from any political or other undue influence. In practice, however, this crucial principle has not been fully respected. Courts have been subject to direct or indirect political pressure and have not always been able to protect their integrity. The intention to separate the executive branch from the judicial was declared but not genuinely implemented.

The Chief Prosecutor was part of the executive branch and prosecutors in general have had an influence which tended to undermine the principle of "equality of arms". Acquittals in the trials were extremely rare. Judges generally took the same position as prosecutors and court decisions were inadequately substantiated. International observers and non-Governmental organizations noted that the system of plea bargaining was open for misuse.

The problems observed in the justice system as a whole were reflected in a judgment of the European Court of Human Rights (ECtHR) in 2011 in the case of *Enukidze and Girgvliani v. Georgia*:

"Indeed, the Court is struck by how the different branches of State power – the Ministry of the Interior, as regards the initial shortcomings of the investigation, the Prosecutor's Office, as regards the remaining omissions of the investigation, the Prisons Department, as regards the unlawful placement of the convicts in the same cell, the domestic courts, as regards the deficient trial and the convicts' early release, the President of Georgia, as regards the unreasonable leniency towards the convicts, and so on – all acted in concert in preventing justice from being done in this gruesome homicide case".³

It should be added that the previous Government did take steps to address several of the problems in the justice system. The structure of the justice system was overhauled; the High Council of Justice (HCJ) moved from presidential subordination to a formally independent institution; and a new criminal procedure law was adopted. Corruption within the judiciary was successfully tackled and equipment and administration of the courts considerably improved. However, several other challenges remained.

After the parliamentary elections in October 2012 an important further phase of judicial reform was initiated by the new Government in dialogue with representatives of the judiciary. The Prime Minister and the Chairman of the Supreme Court played an important role in creating a constructive atmosphere of mutual respect which in turn contributed to a healthy environment for the reform process.

³ ECtHR, [Enukidze and Girgvliani v. Georgia](#), Judgment of 26 April 2011, §§ 246-249, 258.

Georgia now has a unique opportunity to establish not only an independent but also an effective justice system, where integrity and individual responsibility of judges should be enhanced. The EU expert Justice Renate Winter has recently presented a number of concrete proposals for steps which could be taken by the judiciary itself in this direction.

The Ministry of Justice has recently drafted amendments to the Law on Common Courts with the declared aim of enhancing the judicial independence and self-governance. It proposed some clarifications on rule of disciplinary procedure and the operations of the High School of Justice. Also, the HCJ has presented suggestions, for instance on life-long tenure for judges.

According to official data of the Supreme Court⁴, significant changes are observed already: a major decrease in concordance between the opinions of prosecutors and judges is observed and more and more citizens win cases against the State. Also in administrative processes State institutions are now more frequently losing cases.

Also in sensitive cases relating to former high officials, courts have turned down requests by prosecutors. One example was the recent acquittal in one case against former Defence Minister Bacho Akhalaia. While this may have shocked some sectors of society, the ruling can be interpreted as an encouraging sign of judicial independence.

In fact, the Government has repeatedly expressed its political commitment not to interfere with the justice system and the work of courts. It is imperative that this essential commitment be ensured in future practice. Both the executive and the Parliament should actively promote respect of judges' integrity and decisions.

1.1 Reform of the High Council of Justice

NGOs and international monitoring bodies have reported that the independence of the judiciary was undermined by a lack of checks and balances. They noted a concentration of power within the judiciary itself - particularly to the High Council of Justice (HCJ) and its Chairman.⁵ NGOs also cited continuing problems of transparency in the selection, appointment, and disciplining of judges and found that the selection criteria were not sufficiently based on merit.⁶

Based on NGO recommendations⁷ and in consultation with the Venice Commission, the new Government initiated and adopted reforms to improve the independence of judges and ensure the transparency of the judiciary and its procedures.⁸ A law was adopted in the Parliament to this effect.

In accordance with the new law, judges elected seven new judge members to the HCJ during the Conference of Judges on June 9, 2013. A week later, members of the disciplinary collegium were elected as well. According to the new regulations every judge had the right to nominate the candidates and the election process went through secret voting. Both Conference meetings were attended by numerous local and international observers. The election process was assessed as free and fair.

Later, Parliament elected four additional members of the HCJ out of candidates nominated by civil society and legal faculties of universities. Two seats at the HCJ remain vacant as none of the nominees managed to collect the necessary two thirds of the parliamentary votes.

⁴ <http://www.supremecourt.ge/2013-year-statistic/>

⁵ The Supreme Court Chairman, who is appointed by the president, chairs the High Council and according to the previously acting law nominated 8 of its 15 members. The Supreme Court Chairman also nominated members of the Disciplinary Collegium, which initiates and adjudicates disciplinary charges.

⁶ US Department of State, [Report on Human Rights in Georgia](#), 2012.

⁷ Coalition for an Independent and Transparent Judiciary (www.coalition.org.ge).

⁸ The new law enables judges to nominate their representatives to the High Council of Justice. To depoliticise the Supreme Council of Justice to the maximal extent possible, members of the parliament cannot be members, while the president's right to appoint members of the council was abolished. Instead, the parliament is called to nominate professional lawyers, unbiased and competent representatives of NGOs and academic circles. Previously the HCJ was both initiating and deciding the disciplinary sentence. The new law separated these two functions, transferring the right to decide on disciplinary action against judge to the independent disciplinary council. The reform opens courtrooms (previously closed since 2007) to the media, enabling society to criticize the sometimes weak performance of prosecutors.

In spite of the transparency of this process, it did not evolve without controversies and tensions. The failure of the Parliament to elect all six non-judge members of the HCJ is a reflection of such mistrust. New attempts to fill the remaining vacancies in the HJC have now been initiated. These should succeed, not least in the interest of building trust.

Further steps are required to further strengthen the independence of the individual judges; for instance, to reform the High School of Justice; and to develop the rules of appointment and promotion of judges. The process has to continue to be transparent and inclusive, with active participation of the judiciary itself.

1.2 Criminal justice policy

An ambitious criminal justice reform process began in 2005, and the relevant legislative framework was revised. International assistance has substantively accompanied this process, particularly from EU, US, CoE, UN and Norway. A new Criminal Procedure Code was adopted in 2009, introducing adversarial processes. There were, however, continued concerns about unequal opportunities for the sides, putting the prosecution in a much better position than the defence.

The new Government has given priority to humanising criminal policies and has pursued the process of “liberalisation” of the criminal policy initiated a few years ago. **This requires further amendments to the Criminal Code and the Criminal Procedure Code but also steps to facilitate genuine adversarial proceedings, to decrease the use of custodial measures and to limit the use of pre-trial detention.**

The reform of the criminal justice system should continue, taking into account the best practices and internationally established standards, ensuring genuine equality between the parties in the criminal process. Further competence development of both prosecutors and defence lawyers is needed.

A further matter of criticism has been the legal provision on cumulative sentencing, which deprived judges of flexibility when applying sanctions. According to NGO and Public Defender’s reports, this approach served as basis for unreasonably high sanctions and contributed to prison overcrowding, an issue addressed in detail in the chapter on prisons. Following an initiative by the Minister of Justice, in April 2013 the Parliament amended the Criminal Code to stop the mandatory practice of cumulative sentencing.

Jury trials were previously introduced in Georgia in the courts in a few selected cities. The intention is to extend this procedure to the whole country in relation to certain violent crimes. **Such a change would require further efforts to ensure adequate adversarial procedures, to guarantee impartial selection of jury members and to minimise any attempt of intimidation of jury members (an obvious risk, particularly in small societies).**

When amendments to the Code of Criminal Procedure were discussed recently in the Parliament, it was decided to postpone until September 2014 a provision giving the right of the defence to request the possibility of obtaining evidentiary material. **However, with the system now in place in Georgia, and with the past experience of manipulated evidence in some cases, such a right should be established without such long delay.**

Free legal aid is an important prerequisite for a fair defence possibility in many cases. Georgia has that provision. It is now decided that the management of the Legal Aid Service will be moved next year from the prison ministry to a separate and independent institutional setting. This is positive and will increase the credibility of the system.

1.3 Administrative detention

Georgia’s Code of Administrative Offenses, adopted as long back as in 1984, governs misdemeanour offenses: minor public order offenses that do not accrue a criminal record. Penalties for administrative offenses range from a fine to imprisonment of up to 90 days.⁹ Administrative imprisonment is intended for misdemeanours that cannot be qualified as criminal offense. In practice, however, these punishments amount by their severity to something very similar to a criminal sanction.

⁹ In no other country among those which still foresees deprivation of liberty for such offenses one can be imprisoned for so long.

According to Human Rights Watch, courts ordered in 2010 alone administrative imprisonment for 3 097 offenders. A source from the Ministry of Interior (MIA) indicated that about 20 to 25 people were sentenced to the full 90 days of imprisonment each year, and the average period of imprisonment imposed for administrative offenses varies from 15 to 20 days.¹⁰

Local and international NGOs, as well as other international observers, have widely criticised the use of administrative detention. Human Rights Watch states in its 2012 report that “Georgian authorities have also used the Code of Administrative Offenses to fine or lock up individual political activists”.¹¹

The regulation of administrative imprisonment remains a problem. The law fails to observe key requirements of human rights, including the right to defence. The law does not mention at all the notions of legal and illegal evidence and it does not explain the standard of proof on which a judge must base his/her decision, thus opening the way to judges to rely on motions and explanations of police officers alone. In addition, the right to appeal may be infringed by the fact that admissibility criteria are not established.

Although there have not been reports about the undue or politically motivated use of administrative detention after October 2012, the Code remains problematic and leaves room for future abuse. **The Government should consider abolishing imprisonment as a penalty for administrative offenses altogether.**

1.4 Use of pre-trial measures

There have been major concerns over the use of pre-trial measures. According to an NGO report, the courts have for years systematically applied pre-trial detention or bail in pre-trial hearings rather than less severe measures foreseen by the criminal code.¹² This has been the practice even in cases involving mere petty crimes. The same report noted that in the absolute majority of the cases, the decisions repeated the text of the prosecutor’s motion word by word.

Pre-trial detention is still used in a number of cases. However, there have also been judge decisions not to approve such restriction in some cases and individualised reasoning has been recently observed in some of the decisions to impose this measure.

It is also important to note that the largest pre-trial detention center in Georgia - Prison No.8 in Gldani - has been known for ill-treatment and even torture of inmates. NGOs and independent legal experts have concluded that the reputation of this establishment, compounded with the overwhelming use of pre-trial custody have contributed to the high number of defendants who accepted to enter a plea bargain.

The Prosecutor’s Office has started imposing a less rigid approach, decreasing somewhat the number of requests for imprisonment as a restrictive measure. In the first half of 2013, the Prosecutor’s Office proposed detention as a restrictive measure in nine per cent fewer cases than in the same period last year. **This trend needs to be enhanced.**

The current Chief Prosecutor proposed in July 2013 that pre-trial detention should be avoided in cases of white collar crimes.¹³

The rate of approval by judges of the restrictive measures requested by prosecutors went down during the same time period from 100 per cent to 76 per cent. This trend is confirmed by statistics published by the Supreme Court.¹⁴ These are positive developments considering that judges in the past used to approve prosecutors motions without exception.

¹⁰ In an official response to an information request by the Georgian Young Lawyers’ Association (GYLA), the Ministry of Interior noted that in 2011, 31 individuals were sentenced to 90 days, 132 people to 60 days and 343 people to 30 days of administrative imprisonment.

¹¹ Human Rights Watch, [Administrative Error: Georgia’s Flawed System for Administrative Detention](#), 2012.

¹² GYLA and Article 42 of the Constitution of Georgia, *Application of Preventive Measures in Criminal Proceedings: Legislation and Practice*, December 2012.

¹³ <http://www.tabula.ge/en/story/72950-chief-prosecutor-detention-for-white-collar-crime-not-recommended>

¹⁴ In the first half of 2012, pre-trial detention was used in 42.4 per cent of all cases. In the first half of 2013, however, pre-trial detention was used only in 26.7 per cent of cases, while in 57.6 per cent non-custodial measures were applied. See <http://www.supremecourt.ge/2013-year-statistic/>

This matter is a crucial aspect of justice relating to the principle of presumption of innocence: until guilt is proven in due process the suspect must be regarded as innocent. Agreed international standards stipulate that detention and similar restrictive measures should only be used when necessary in order to avoid the suspect absconding, influencing witnesses or otherwise tampering with evidence.

Despite the several positive developments in criminal justice procedures after October 2012, there have been individual cases raising critical questions (some of those relating to high officials are mentioned in other chapters). Detentions linked to the case of the tractor tender by the Ministry of Agriculture caused concerns regarding possible lack of strong reasons for having applied pre-detention measures as well as using intimidation during questioning. In the end, those detained were released before or during the opening of the trial.

Further steps should be taken to ensure that pre-trial detention will be considered as an exceptional measure, used only in accordance with the law and only when necessary. Considering the frequency with which prosecutors are still demanding pre-trial detention to be imposed, training for the prosecutors are needed as well.

1.5 Plea-bargaining

The system of resolving criminal cases through plea-bargaining has been an increasing and dominant aspect of Georgian criminal justice ever since 2004. It has been regarded as an effective, time-saving and non-bureaucratic method which could off-load the court system and also offer good solutions to suspects. Official data indicate that plea agreements are applied in around 90 per cent of all criminal cases. This trend continues more or less on the same level today.

Safeguards are necessary to protect against blackmailing and other misuse of the plea bargain system. Courts are legally obliged to certify that an agreement has been reached without use of violence, intimidation, deception, or illegal promise, and that the defendant has had an opportunity to obtain legal assistance.

However, it has been reported for several years that judges failed to exercise this proper oversight. Both domestic and international observers have expressed strong concerns about the potential lack of fairness and transparency in the implementation of the system of plea-bargaining.

NGOs reported that many judges failed to apprise defendants of important rights and legal protections. According to the US State Department 2012 Human Rights Report, credible sources reported that in cases when defendants complained of ill-treatment and directly or indirectly maintained that their guilty plea had been made under pressure, judges took no action to either investigate or reject the plea agreement.

The UN Working Group on Arbitrary Detention reported in 2011 that detainees effectively relinquished their right to fair trial because they felt pressured to enter plea bargains, believing a fair and impartial trial was not possible. Detainees reportedly believed their chance for acquittal was small and they risked a lengthy prison sentence in the penitentiary system notorious for inmate abuse.

After the October 2012 elections and the formation of a new Government thousands of citizens applied to the Prosecutor's Office, claiming that they had been subject to pressure, forced to plea-bargain. Due to the scope of the complaints¹⁵, the Ministry of Justice started considering the idea of establishing a State Commission on Miscarriages of Justice. A draft law was prepared in cooperation with the civil society and was submitted to the Venice Commission for its opinion. The reply from the Commission and the Council of Europe did not express any view of the need for such a mechanism but stated that if established it should not duplicate the existing court structure.¹⁶

¹⁵ In general, over 20 000 complaints were filed at the Prosecutor's office in the first months after 2012 elections, including around 4 000 by inmates or victims of alleged torture/ill-treatment. Around 1 000 complaints were made against 322 out of the 333 active prosecutors (the latter mainly related to wrongdoings in property cases during the past administration). Complaints to the Ombudsman and the Parliamentary Committee on Human Rights also increased considerably.

¹⁶ Joint [Opinion](#) of the Venice Commission and the Directorate for Justice and Human Dignity of the Directorate General of Human Rights and Rule of Law of the Council of Europe on the Draft Law on the Temporary State Commission on Miscarriages of Justice of Georgia, June 2013.

The draft law has not been sent to the Parliament yet. **Regardless of the final model adopted, redress to victims of injustices should be guaranteed while making sure that no parallel system of justice is created and that final decisions are taken by the Courts.**

Currently, the US Department of Justice is helping the Georgian Government to reform the plea-bargain system in compliance with international standards. The Ministry of Justice has prepared a package of amendments to the relevant laws. **It is important to impose changes both in legislation and practice, increase the role of the judge and ensure free expression of will.**

1.6 Prosecutor's Office

The Prosecutor's Office, which is still a part of the Ministry of Justice, holds a dominant position in the criminal justice system in Georgia. As discussed above, excessive influence of the prosecutors over the judiciary has continuously been a matter of concern.

For the last several years NGOs and international observers have criticized prosecutors for being selective in the application of justice by not investigating complaints about ill-treatment cases, cases of excessive use of force by police, cases of misuse of power by the officials and other important mal-practices, thus promoting an environment of impunity for officials and police officers.¹⁷

After the 2012 October election, several thousand citizens filed complaints. More than 1 000 persons claimed that prosecutors had played a central role in the illegal seizure of their property, forcing them to "donate" their real estate to the State. From 2004 till 2012, around 9 500 private properties were according to the Prosecutor's Office handed over to the State for free, causing ground for concern about possible coercion having been exerted against those who purportedly donated their properties "voluntarily".

In the spring of 2013 the Parliament amended the Law on Prosecutor's Office, limiting the power of the Minister of Justice in criminal investigation. Previously the Law allowed the Minister to intervene directly in the criminal process. **Though it is positive that the influence of a political office-holder is diminished, there is still a need to identify the final and proper constitutional setting for the Prosecutor's Office – and to make sure that effective oversight on prosecutors' work is in place. These are urgently needed measures to restore public confidence in the Prosecutor's Office.**

The line is blurred between the functions of the Prosecutor's Office and the investigative bodies of other law enforcement agencies when there are complaints about misconduct of their officers. Also, the investigation unit inside the Prosecutor's Office lacks credibility when investigating reports of misconduct by prosecutors. **This is one more argument in favour of the creation of an independent investigatory agency, whose functions could include investigation of alleged misconduct by prosecutors (see the chapter on Law enforcement).**

The professionalism of prosecution is key for a well-functioning system of justice. More needs to be done in this regard in Georgia. The structure needs to be reviewed and specialised education and training of prosecutors promoted. For instance, competence on investigative techniques must be developed – also to counteract the excessive reliance on "confessions" as the main evidence. In order to further develop the justice system in Georgia, the Government has to ensure the establishment of a truly professional Prosecution that would be fully independent from political party or other undue influence.

2 Penitentiary system

The clamp-down on crime by the previous Government did have an impact. Official statistics indicated that the country became safer, particularly in terms of petty crime. However, there was also a downside to the manner in which the stringent policy of "zero tolerance" was pursued: a massive increase in the prison population. At its

¹⁷ Among others, US Department of State, [Report on Human Rights in Georgia](#), 2011; [Report](#) by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Georgia from 18 to 20 April 2011; ENP Action Plan Progress Reports; etc.

peak the number surpassed 24 000 detainees (and more than 33 000 probationers), leading Georgia to have a per capita prison population of roughly 540 per 100 000 inhabitants¹⁸, among the highest worldwide.

The penitentiary infrastructure was insufficient to deal with this high number of prisoners. Prison conditions deteriorated despite efforts of improving them through rehabilitating or constructing new establishments. Alongside the high incarceration rate, one of the most problematic aspects, which made the ECtHR to sanction Georgia, was the disastrous healthcare provision system in the prisons.

The national complaints and protection system turned out to be ineffective. Alarm signals issued by the National Preventive Mechanism (NPM), civil society organisations and international bodies such as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) were repeatedly ignored.

With the new Government and Parliament half of the prison population was released within a couple of months.¹⁹ The Parliament adopted an amnesty law. It also decided on the release of named prisoners. The procedure was rightly criticised by the Venice Commission, other international observers and domestic NGOs. At the same time it was recognised that among those released through this process there were a great number who were in prison as a consequence of wrongful and in several cases politically tainted prosecution. The President contributed to reducing the number of prisoners through granting pardons.

By and large, these steps have been appreciated though there have also been expressions of worries that these releases might lead to a higher crime rate. The MIA has stated that this has not happened.²⁰

For a number of years the prisons had been largely controlled by persons connected to organised crime, the so-called “thieves in law”, which in Georgia may have been even more powerful than in other parts of the former Soviet Union. The previous authorities considered the eradication of this system made of extortion, violence and threats to be an utmost priority – and progress was made in this respect. However, already in 2006 non-Governmental organisations noted that this success came at a high price: “a policy of quick resort to severe physical force, including lethal force, to maintain control over the prisons”.²¹

A major incident occurred in a Tbilisi prison in March 2006, leaving seven inmates dead. Special Forces had entered the building to suppress an alleged riot organised by “thieves in law”. The brutal and systematic ill-treatment in prisons which came to light in September 2012 may also be a reflection of an atmosphere in which almost everything was allowed in order to control hard core criminals in the jails.

Radical changes in prison management policies were introduced, aimed at rendering the system more humane. Concerns have been raised that this may lead to a renewed empowerment of the “thieves in law”. The Ministry for Corrections and Legal Assistance (MCLA) has declared that it has taken concrete measures aimed at hindering any influence of the so called criminal authorities in prisons. **It is important that this problem be given sufficient attention also in future.**

2.1 Prison conditions

The overcrowding contributed to detention conditions in Georgian prisons well below European and international standards. The main response was to build new establishments. Whilst this is welcome for improving the appalling conditions in certain older prisons, it did not solve the root cause of the problem. The European Committee for the Prevention of Torture (CPT) and others have repeatedly urged the Georgian Government to reduce overcrowding by applying alternatives to detention and thus reducing the number of persons sent to prison in the first place.

¹⁸ According to Penal Reform International and based on official statistics, there were 24 244 inmates in November 2011 (with an incarceration rate around 540 per 100 000 inhabitants considering that the general population of Georgians amounted at 4 497 600 in the beginning of 2012 according to official figures). The number of probationers peaked at 33 947 in August 2012.

¹⁹ Resulting from the Law on Amnesty adopted in January 2013 and the work of the parole board as well as the joint commission of the Ministry of Corrections and Ministry of Health, the prison population decreased from 21 420 in October 2012 to 9 349 in early July 2013.

²⁰ In a statement issued on 19 August 2013, the MIA refers to its already published January-July 2013 statistics, according to which, in comparison with the same period in 2012, crime decreased by 4 126 cases, while the case-solving index doubled reaching 53,3 per cent.

²¹ Human Rights Watch, [Undue Punishment: Abuses against Prisoners in Georgia](#), 2006.

The NPM came to the conclusion that in certain establishments the conditions in which the detainees had to live were so bad as to amount to inhuman and degrading treatment. For instance, there were times when each prisoner did not have a separate bed. In fact, Georgia still remains below the existing standards of minimum living space for each and every prisoner. In its response to the CPT report published in July 2013 the Georgian Government undertook to improve the situation.²² **The living space per prisoner in all establishments should not be below the minimal four square meters set out in the European Prison Rules.**

Parallel to the many releases, the Ministry has closed down prisons with the most unacceptable conditions - in Zugdidi, Batumi and Tbilisi. At the same time, projects are developing to build new facilities and to improve existing infrastructures.

This will require significant resources for some time. It is essential that these resources are made available to ensure that a process which very much appears to be on the right track can fully succeed.

The MCLA has acknowledged that it is difficult to recruit competent personnel to work within the penitentiary system. **The more important it is that no effort is spared to render employment within the penitentiary interesting to potential candidates.** Salaries have been increased which certainly is one important step. Professional training and support in career planning might be other useful measures.

No doubt, employment in Georgian prisons has suffered serious image damage following the publication of the ill-treatment videos in September 2012. **The MCLA should develop a public information strategy aimed at attracting new personnel and, most importantly, at rehabilitating the many honest and hard-working people operating within Georgia's prison system.**

2.2 Provision of healthcare services in prisons

The healthcare situation in prisons was a major problem. Shortage of staff and resources and the consequent inadequacy of facilities to deal with the huge prison population had serious consequences. A high number of prisoners did pass away in prison during the past years²³ – not only of old-age; in average they were in their mid-40s. A number of these deaths were likely due to the fact that timely quality healthcare was not available.²⁴ The ECtHR delivered several judgments in which it found that Georgia had violated Articles 2 and 3 of the ECHR for its inability to provide effective treatment to prisoners suffering both from physical and psychiatric conditions.²⁵ In 2012 the previous Government reacted on this and took some measures which initiated a development towards improvement.

The MCLA has presented an ambitious reform plan for the penitentiary healthcare system. Reportedly, the 2013 per capita health expenditure is more than four times higher than the previous year. According to the Government's response to the latest CPT report, more than 6 000 prisoners have undergone diagnostics or treatment in civilian hospitals since December 2012, also treatment of Hepatitis C is now available.

The mortality rate in prisons has gone down considerably. To this has contributed the release of a number of persons because of their age or because they suffered from serious illnesses.

The expectations of inmates towards the prison administration, and in particular towards healthcare personnel, have massively increased since the September 2012 developments. The Public Defender reports that small incidents in the form of insults have become more frequent. **The respect for and security of healthcare staff in prisons are essential and prison administration must adequately ensure them.**

²² In their reply to the July 2013 CPT report the Georgian authorities have stated that the standard living space in semi-open type establishment per inmate should not be less than 3 sq.mt, 3.5 for the closed-type or high security establishments. Not less than 4 sq.mt for juveniles and 4.5 sq.mt for women.

²³ The average rate was about one hundred per year. The MCLA reported that 806 prisoners died during 2004-2012.

²⁴ According to the Public Defender's reports, 142 inmates, 56 per cent more than in 2009, died in 2010 mainly because of inadequate healthcare system in the penitentiary. About 70 per cent of inmates, who died in 2010, were in the age between 21 and 50. Those cases who sustained injuries were not properly investigated. In 2011, 140 inmates died while in 2012, 67 inmates died in correctional establishments, with an average age of 44. From December 2012 until July 2013, 79 inmates were released on compassionate grounds by the revived relevant Commission, in the previous years not one terminally ill inmate had been released on these grounds.

²⁵ ECtHR, [Jeladze v. Georgia](#), Judgment of 18 December 2012 or ECtHR, [Jashi v. Georgia](#), Judgment of 8 January 2013.

More doctors and nurses are now being recruited. Also, salaries have been raised considerably. The intention is that the healthcare personnel will be provided with regular and adequate training, not only pertaining to the medical aspect of their profession but also to the specifics of operating in the challenging reality of penitentiary settings. **Adequate and effective complaints and debriefing structures should also be put in place.** These efforts underway to render the penitentiary system more attractive for professional health personnel are encouraging.

2.3 Ill-treatment and torture in prisons

For years, Georgia's NPM, the CPT and other actors²⁶ had drawn attention to reports of ill-treatment of detainees. In his 2012 Parliamentary Report, covering 2011, the Public Defender concludes that "the Georgian Government has not taken any proper and adequate measures for elimination of this problem" and that "full negligence towards the identified systemic violations became a trend" which is seen as having generated a syndrome of impunity. No doubt, the lack of effective investigations into the complaints has been an important contributing factor in concealing, for a long time, the extent and gravity of the violations committed. In its most recent report the CPT noted that "reportedly, the purpose of this ill-treatment was to obtain prisoners' obedience to the prison's administration and to secure their co-operation, as well as to destroy any possible influence of informal prisoner power structures".²⁷

The Georgian authorities have to redress the wrongdoings of the past and build a system aimed at effectively preventing violations from occurring. Such a system should guarantee a timely, thorough and effective investigation of any allegations. These are major challenges that need to be addressed without delay. More than anything else, they are a matter of political will.

The Public Defender rightly stated in April 2012: "Tackling the problem of maltreatment in the penitentiary system requires a corresponding will and desire. That is not a problem the solving of which requires expenditure and budget. It can be solved by strict control of employees and through eradication of the syndrome of impunity, which, first of all, must come from the head [of the penitentiary system]. Georgia has made an apparent breakthrough in the police system in terms of eradication of torture, and that was achieved as a result of proper reaction. Without that, no success can be realized in the penitentiary system as well."

Criticism has been raised from different sides that the ongoing investigations into past complaints of ill-treatment have been slow. It is understood that these investigations are complex, that evidence, especially of forensic nature, may not be available and that the Prosecutors' Office has been submerged with complaints in the past months.

Nevertheless, an approach aimed at rehabilitating and, within the available State resources, compensating the victims, who may have suffered major trauma, needs to be adopted. Those responsible for the very grave human rights violations that have been committed should be brought to justice, and, as mentioned above, guarantees for non-recurrence must be put in place. For instance, the longstanding practice of qualifying acts of torture, degrading or inhuman treatment only as excess of power must be terminated.

The NPM has noticed that at times the injuries are already no longer visible when the expertise is conducted.²⁸ **In the presence of a suspicion of ill-treatment, forensic medical expertise should be conducted without delay.**

Important is also to prevent any violence between prisoners. When episodes of inter-prisoner violence occur, the root cause of these incidents should always be clearly identified. The May 2013 death of an inmate as a result of a beating by other detainees must remain an isolated incident. In this case investigations started against responsible persons and prison officials were dismissed and charged for neglect of official duties and forging evidence. It must be clear prison guards have an obligation to protect inmates who risk harassment or violence

²⁶ Including EU ENP Progress Reports, particularly since 2010, and US Department of State Reports on Human Rights.

²⁷ CPT, [Report on Georgia](#), 2013

²⁸ Public Defender, [The situation of human rights and freedoms in Georgia – 2011](#), April 2012

from other inmates and to take action to prevent such tendencies. Giving encouragement to prisoners to abuse a fellow detainee is a serious crime.

Concerns have been expressed that one possible consequence of the recently introduced more humane prison management style may be an increase in inter-prisoner violence, including under the influence of the so-called “thieves in law”. **The criminal liability of all persons involved in such tragic incidents needs to be investigated to the fullest extent. As the CPT stressed, staff control within penitentiary establishments should never be eased to the point that the security of detainees is put at risk.**

A negative signal came recently when the Chief Prosecutor decided release from criminal responsibility someone who had been participating in torture but had then served as source of information about this crime.²⁹ Acts of torture cannot be a subject for plea bargaining, even if – as in this case – the culprit regrets his participation and exposes the criminal act. In this case, the Prime Minister in fact made that point publicly.

The CPT has on several occasions emphasized the role that should be played by prison health-care services in the prevention of ill-treatment.³⁰ During its autumn 2012 visit particular attention was paid to this issue. The intention of the MCLA of increasing the professional independence of doctors and nurses operating within the prison system and of improving the level of training, whilst in parallel increasing the monitoring of the situation in detention facilities, is to be welcomed.

Further recommendations addressed by the CPT to the MCLA include the conduct of all medical examinations out of the hearing and sight of non-medical staff, strict observation of the confidentiality of medical documentation as well as additional training and instructions on the drawing up of medical records. The systematic referral to the prosecutor in case of injuries that may be indicative of ill-treatment, even in absence of allegations by the potential victim, is another important recommendation of the CPT which requires a follow through.

The Public Defender’s Office has enjoyed public trust for years. Its independent monitoring of prison conditions since 2009, when the Public Defender’s Office was entrusted as the NPM, has been crucial in detecting and denouncing violations. Unfortunately, the previous authorities did not pay attention to these denunciations until the release of videos in September 2012. They then took urgent measures such as the appointment of the then Public Defender as Minister of Corrections and the temporary deployment of police officers to stop abuses and restore order in prisons. The recent expansion and renewal of the roster of NPM experts is aimed at more effectively preventing ill-treatment and abuses in prisons. For instance, it now includes a gender expert in consideration to the fact that LGBT inmates may be a vulnerable group in prison.

2.4 Development of alternatives to detention and reintegration into society

Until recently, all aspects of the Georgian criminal justice policy and penitentiary system were putting a great emphasis on the need for punishment but gave very little priority to the resocialisation of those convicted. This was reflected, for instance, in the principle of cumulative sentencing applied in the criminal justice policy and included in relevant legislation. It was also apparent in the way the penitentiary establishments were organised with a complete alienation of the detainee from the outside world. As result of domestic and international discontent, a revision of the Criminal Code towards a “liberalisation” of the “zero tolerance” policy was launched in 2010, including measures to increase resocialisation and the use of alternatives to imprisonment.

A particular problem is the provision of real life-term sentences. The situation of prisoners with that punishment (around 80 inmates) is of humanitarian concern, even considering that they have the right to parole after 25 years.

In his 2012 report, the Public Defender has commended some other quick steps taken in the past year, including allowing TV sets and newspapers in closed establishments and easing the rules relating to the content of parcels which detainees are allowed to receive. Plans are underway to increase the number and lengths of family visits as well as to improve the environment in which such visits take place, including by guaranteeing the full privacy of those meeting. **As the CPT repeatedly emphasised, all sentenced prisoners should have the opportunity to maintain their relationships with their family and friends, including those subject to disciplinary**

²⁹ <http://www.civil.ge/eng/article.php?id=26255>

³⁰ CPT, [Report on Georgia](#), 2007 and CPT, [Report on Georgia](#), September 2010.

measures. This essential component of any detainee's resocialisation and social rehabilitation should now be ensured.

Another area where the MCLA will have to work very hard to implement its commitments relates to activities offered in prisons. Workplaces for detainees, well beyond the few existing pilot initiatives, need to be created. Education and vocational training opportunities do exist in some prisons and should be made standard throughout the system. Provision of such opportunities is demanding both in terms of time and resources, but has a proven positive impact in terms of resocialisation and social rehabilitation.

Probationers should be equipped to return fully to society. For years and in spite of the large number of probationers (peaking at 34 000 in August 2012), probation services focused on the development of its enforcement mechanism, with resocialisation schemes rarely resourced by the State. Efforts by international partners (particularly the EU and Norway) and NGOs in raising awareness and providing some services led in recent years to the development of the methodology of individual sentence planning, measures of diversion from criminal responsibility (particularly for juveniles) and plans to extend community services.

Thousands of probationers benefited from the January 2012 amnesty, and some inmates turned into probationers. Their reintegration into society was not well planned and turned difficult for some, particularly those without family ties, without job opportunities and for those affected by serious diseases or harmful dependencies. Among other initiatives, like the establishment of the Crime Prevention Center or the increase in the number of social workers and psychologists in penitentiary establishments, the expected creation of an open-type prison or "half-way house" offers hope – even within its capacity limits – to be the right platform to prepare inmates for release. Resocialisation and prevention of re-offending is key, particularly for young probationers, as well as public awareness to ease their return into society.

The authorities should pursue the progress made so far towards alternative sentencing and increase awareness among judges that cumulative sentencing practices are no longer correct. Pre-trial detention should only be applied as a measure of last resort in line with established principles in this domain.³¹

It is time for Georgia to move away from policies aimed at retributive justice, in favour of approaches based on human-rights and restorative justice. The steps taken so far in this direction (and presented in more detail in the chapter on the judiciary of this report) are welcomed.

2.5 Juvenile offenders

In 2010 the minimum age of criminal responsibility was reinstated back to 14 years from 12 years, as a result of intensive lobbying by domestic and international actors.³² The Strategy and Action plan on Juvenile Justice, introduced by the previous authorities in 2009 as part of the general criminal justice reform (for instance, more lenient sentences, better detention conditions), has yielded some visible results, including an important reduction in the number of prosecutions as well as major improvements of the material conditions in detention facilities where juveniles are held.

The serious commitment to this issue of the previous administration – with, for instance, the approach of discretionary prosecution - should be pursued by the current authorities. **The use of diversion and mediation should be increased.** The current political move to set up a separate juvenile system is a crucial step forward which will be appreciated by all who have lobbied for more child sensitive approaches. **One necessary reform is to keep all children on remand strictly separated from adult detainees, according to international standards.**

At this stage, continued efforts are needed to ensure the durability of a juvenile justice system focused on prevention³³, resocialisation and rehabilitation of young offenders. Whenever possible the non-

³¹ Recommendation [Rec\(2006\)13](#) of the Committee of Ministers to member states on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse.

³² Criminal legislation only differentiates between juveniles (age group of 14-17) and adult offenders, with the law mentioning the exception of keeping in establishments for juveniles young adults until the age of 20 for educational and other purposes. The concept of young offender or probationer (up to the age of 25) is still to be introduced.

³³ Concerning prevention, and since the abolition at the end of 2006 as part of police reform of the special police units called Inspections of Minors or IOMs, charged with preventive work with children, there was little focus on the development of

custodial options foreseen in the relevant legislation, including mediation, diversion and community service should be applied. In addition to literacy and numeracy courses, juveniles who want to continue their education should be supported with university entrance exams preparation. Psycho-social rehabilitation should be reinforced.

Training adapted to the specific needs of juveniles should regularly and repeatedly be delivered to all persons coming in contact with the young offenders at all stages of the proceedings. Work with the family and local communities will not only contribute to prevent reoffending but will also ease resocialisation of juveniles. As in the case of adults, individual risk assessment and sentence planning is crucial.

3 Law enforcement

Law enforcement structures in Georgia have been criticised in the past decades.³⁴ Problems were reported in relation to lack of transparency and accountability, to methods of investigation and to deprivation of liberty without respect for procedural standards, as well as to episodes of ill-treatment of persons in custody. At the same time, after the Rose Revolution remarkable progress has been achieved in relation to the patrol police with the almost complete elimination of petty corruption. **Patrol police enjoys today a high level of trust by the public, an achievement which must be protected.**

The Ministry of Internal Affairs (MIA) of Georgia is a big structure, encompassing a wide area of responsibilities. With up to 40 000 employees, it is by far the biggest Ministry within the administration. No doubt it has had and still has a lot of power.

In recent times some operations conducted by the fiscal police under the Ministry of Finance have been heavily criticised as unprofessional and unnecessarily brutal.³⁵ **These complaints should be carefully followed up.** In general, the need to increase the accountability and democratic oversight of law enforcement agencies and to implement structural reforms to prevent future abuse is self-evident and has largely been recognised by the current authorities. In fact, some concrete steps have been taken to reform and depoliticise the MIA, including the abolition of the notorious Constitutional Security and Special Operative Departments.³⁶

3.1 Questionable methods of investigation

The Public Defender and NGOs have in the past analysed some cases in which methods of investigation and apprehension were manifestly marred by procedural violations. The case law of the Strasbourg Court is important in this regard.³⁷ Such violations included the following: conduct of searches without warrants; pressure on apprehended persons to confess a crime or incriminate someone else; allegations regarding the planting of weapons and drugs by police officers who then appeared as the sole witnesses against the defendant in trials; absence of witnesses during the conduct of searches; and no forensic examinations on the alleged object of the crime.

Serious problems were also reported relating to the exercise of the right of defence, including on timely access to lawyers or forensic experts, on access to a doctor if needed, and on granting the defence full access to case materials or informing the relatives about the detention.

preventive services in Georgia until the setting up of community prosecution schemes by past Government in pilot areas to promote public safety and prevent offending.

³⁴ The European Neighbourhood Programme (ENP) progress report issued in May 2012 and covering the previous year stated that "Further progress is needed to increase the performance and accountability of law enforcement agencies. Concern over the use of excessive force during apprehension and detention, mistreatment by prison staff, and doubts over the uniformity of the application of the law remain. The CPT and Public Defender have criticised protracted investigations, insufficient disciplinary measures, and incorrect qualification of facts leading to less severe punishments, and has recommended that the authorities deliver a strong message of "zero tolerance against ill-treatment".

³⁵ <http://www.civil.ge/eng/article.php?id=26222>, or <http://www.civil.ge/eng/article.php?id=26386>

³⁶ The functions of the Special Operative Departments have been transferred to the Central Criminal Police Department.

³⁷ ECtHR, [Enukidze and Girgvliani v. Georgia](#), Judgment of 26 April 2011 or ECtHR, [Danelia v. Georgia](#), Judgment of 17 October 2006.

A new draft Law on Police has been prepared by the MIA. It was drafted in consultation with civil society and international experts and is expected to be adopted by Parliament during this autumn. The old Law on Police dates from 1993 and its complete revision had been recommended for a long time. The new draft focuses on preventive measure with the ultimate goal of protecting the rights and ensuring the security of the population. **A new law in this field would mark a significant progress, but its effective implementation will require major sustained efforts in order to achieve a real change of mindset within the police force.**

NGOs and legal professionals have also regularly expressed concern at the fact that investigations were often launched only on the basis of operative information, which would lead to urgent investigative action not subject to judicial oversight. **There is an urgent need to amend the Law on Operative and Investigative Activities to bring it in line with human rights standards and in particular the protection of privacy rights. Initial reflections advanced by the Ministry of Justice on this important subject go in the right direction.**

3.2 Illegal surveillance

Up to the end of August 2013 the MIA identified in its own premises and in different other locations approximately 24 000 video and audio tapes which were recorded without Court authorisation. The sheer number of the tapes indicated that illegal surveillance was a systematic practice in violation of Article 8 of the ECHR.

A large amount of the recordings appeared to have been obtained for a political purpose. Among individuals targeted are politicians who were in opposition at the time, journalists and activists in civil society bodies. A number of videos showing intimate sexual situations were also found; the purpose of which appears to have been to be used as tools in black mailing.

The Deputy Minister of Internal Affairs in the new Government published one of these videos, obviously to harm a critical journalist who was depicted in that particular video. The Deputy Minister was dismissed and charged, but the case illustrated the danger of these recordings to the personal integrity of those targeted.

The Government set up a Special Commission to guide the authorities in the handling of these illegal recordings and monitor the implementation of its recommendations. As making such recordings must be seen as serious crimes there was a need to review the files for the purpose of preparing possible indictments of those responsible. However, another absolutely central concern was that the integrity and privacy of those who have been recorded were protected. The recordings had to be destroyed and strong measures taken to collect those recordings which may have come into private hands. The illegal videos recording private life situation have now been destroyed.³⁸ Steps have also been taken to ensure that possession of such material be criminalised.

The newly appointed Data Protection Inspector is member of the Commission and she will generally have an important role to represent the interest on the broader public in the face of privacy threats. **It is important that the office of the Inspector get broad support and necessary resources.**

All technical and physical surveillance activities need to be regulated. No surveillance activities directed against individuals should be decided or conducted by the prosecutor, MIA or other parts of the executive without proper involvement of the judiciary and based on law.

The continued presence of surveillance equipment in the premises of telecommunication operators, giving the MIA automatic access to all communications via the private providers, is another concern which must be addressed. The possibility of some access to inter-personal communications could be essential in the fight against organised crime and terrorism. **However, the risk for misuse means that there is a need of legal regulations and democratic and judicial control over all activities in this domain.**

³⁸ On September 5 the Special Commission destroyed 110 CDs containing in total of 144 episodes of hidden-camera footage of intimate life (total size: 181 hours and 32 minutes). Members of the media were invited to attend and witness the destruction of materials.

3.3 Ill-treatment, torture and excessive use of force

Starting from 2007, the CPT noted that the situation as regards the treatment of persons detained by the police had considerably improved over time.³⁹ Nevertheless, there were allegations of ill-treatment by police officers and these were generally not investigated. On the rare occasions when they were, prosecution focused on potential “abuse of authority” rather than on the provisions of the criminal code relating to “torture” or “other serious physical assaults”. This was repeatedly denounced by the Ombudsman, NGOs and international actors.

The lack of effective investigations conducted in relation to alleged excessive use of force by police officers in the context of the dispersal of demonstrations, such as in November 2007, in spring 2009 and in May 2011, has contributed to a climate of impunity.⁴⁰ If possible, the investigations on these incidents should be revitalised and those responsible for abuses should be prosecuted. This would help the restoration of justice in individual cases, but would also help society as a whole to come to terms with painful episodes of the past.

In the past, NGOs had also expressed the need for a revision of the regulations on the use of force by law enforcement officials in the Law on Police by bringing them in line with the legitimate grounds listed in Article 2 of the ECHR.⁴¹

Abusive behaviour by police officers is more difficult to counter when a culture prevails in which means justify the end and confession continues to be considered as the “queen of evidence”, regardless of the context of its extraction. Investigation skills and professionalism of detectives and investigators have to be developed.

Apart from videos showing torture scenes in a prison setting which were published in September 2012, other videos were discovered, including in a location controlled by the MIA in Western Georgia.⁴² The latter give the impression of involvement of persons other than prison staff.

According to the current Chief Prosecutor and Minister of Interior, one purpose of producing these videos appears to have been to use them in order to frighten other prisoners, including pre-trial detainees, on what treatment they might expect if not cooperating with interrogators. Georgian legislation, in line with international standards, criminalises the threat of ill-treatment or torture.

This situation puts a particularly heavy responsibility on the current leadership. On the one hand, those responsible for these recordings and for the brutal violations shown in them should be prosecuted in fair procedures – including the protection of their identity before guilt is proven – whilst utmost attention should be paid to the protection of the privacy of the victims (an aspect which was not fully respected when videos were shown in presentations of evidence).

On the other hand, every possible step needs to be taken to prevent abusive behaviour in the future and it must be made clear that any threat of ill-treatment or torture constitutes a serious crime according to Article 144§2 of the Georgian Criminal Code and that confessions extracted by such means are absolutely worthless in criminal proceedings. Equipping police officers with cameras with which they are obliged to film ‘stop and search’ actions as well as arrests is a good step in the right direction.

3.4 Establishment of an independent and effective complaint system

In light of the above listed problems, and notwithstanding the positive achievements in relation to patrol police, an independent and effective police complaints system needs to be established. Such a mechanism should take into account the five principles of independence, adequacy, promptness, public scrutiny and victim involvement developed by the ECtHR in its jurisprudence on Articles 2 and 3 of the ECHR.⁴³

³⁹ CPT, [Report on Georgia](#), 2007 and CPT, [Report on Georgia](#), September 2010.

⁴⁰ The ENP Progress report issued in May 2012 reported that “The performance and the accountability of Georgian law enforcement agencies came under scrutiny after the violent dispersal of protests in May [2011]. Cases of excessive use of force by law enforcement agencies were not brought to justice.”

⁴¹ [UPR submission by NGOs](#), July 2010.

⁴² The video in question was seemingly recorded back in 2007.

⁴³ [Opinion](#) of the Commissioner for Human Rights concerning Independent and Effective Determination of Complaints against the Police, 12 March 2009

Reports about ineffective and protracted investigations when it comes to crimes in which police officers or other law enforcement officers may have been involved have been frequent over the past years. In its 2011 judgment on *Enukidze and Girgvliani v. Georgia*, the ECtHR found that there had been “very serious misgivings about the integrity and efficiency” of the investigation and in particular that the investigation conducted by the Ministry of the Interior [...] “manifestly lacked the requisite independence and impartiality”.⁴⁴ For many Georgians, this case is exemplary. It has recently been reopened and charges have been brought against several former officials. **Whilst it is important that such cases be reviewed, the process should be fully transparent and respect procedural standards and guarantees and give no raise to suspicions of retribution or vengeance.**

A good precedent was the dismissal and ongoing prosecution of the former Deputy Minister of Interior who had made public a video under his custody that had been illegally recorded by the previous administration. It is of fundamental importance that past practices in this domain be discontinued. In this regard, the alleged deliberate destruction of evidence relating to an incident involving a high ranking police officer in Adjara did not set a good record for the current authorities.⁴⁵

As part of the ongoing structural reforms, time has come for Georgia to decide, without delay and in the light of a history of past systematic abuses, on the best way to conduct independent and impartial investigations of violations of human rights whenever there is a suspicion that law enforcement agents may be involved. By doing so, decision-makers should try to minimise the pernicious consequences of “colleagues investigating colleagues”. It has been previously recommended that Georgia seriously consider introducing an independent investigatory agency to investigate all ill-treatment or torture related complaints.⁴⁶ Once again, considering the country’s recent past and the urgent need to build trust between the population and law enforcement, the introduction of a fully independent investigatory body appears to be necessary.

3.5 Need for training in ethical standards and human rights

Whilst the establishment of a full-fledged complaint mechanism should be a priority, it is as such not sufficient to eradicate the root causes of abusive behaviour by law enforcement officers. Experience has proven that the provision of comprehensive training of law enforcement officers on ethical standards and human rights has a major preventive effect. The plans on education and training outlined by the MIA as well as the adoption, in early 2013, of a Code of Ethics and Rules of Conduct for different categories of police officers are commendable steps. Experience in other countries shows that in order to have a durable effects training and awareness-rising relating to ethics and human rights have to be repeated on a very regular basis and adapted to the concrete challenges that police officers encounter in their day to day work.

4 Rights of minorities

Some representatives of the GD coalition have made islamophobic and homophobic statements, both during the 2012 parliamentary election campaign and afterwards. The more important it is that the Prime Minister has made principled statements for the rights of minorities. It seems necessary that political leaders continue to condemn every instance of hate speech. The idea advanced by some NGOs of creating a civil society platform that would effectively monitor hate speech deserves to be pursued.⁴⁷

A high price has been paid for wrong decisions taken in the past decades with regard to the treatment of minorities. Authorities have appeared to have doubts about the loyalty of some minorities to the Georgian statehood and dealt with them principally through the security prism rather than making them feel integrated and part of the multiethnic Georgian nation. This contributed to conflicts and tensions and did also generate concern among those minorities not directly targeted. The very recent developments related to the removal of a minaret in a village in the Samtskhe-Javakheti region seem to indicate that the security perspective is still the prevailing element in decision-making related to minorities, in spite of official justifications about the lack of a building permit.

⁴⁴ ECtHR, [Enukidze and Girgvliani v. Georgia](#), Judgment of 26 April 2011.

⁴⁵ <http://civil.ge/eng/article.php?id=25919>

⁴⁶ Jim Murdoch, Country report on Georgia: Combating ill-treatment and impunity and effective investigation of ill-treatment, Council of Europe, 2010 (*unpublished*).

⁴⁷ <http://qdi.ge/?p=317&lang=en>

4.1 Legislation and policy on minority rights

Georgia's legislative framework to fight against discrimination is not comprehensive. The Constitution and a number of laws contain anti-discrimination provisions. Furthermore, discrimination was made an aggravating circumstance in the Criminal Code in 2012.⁴⁸ Georgia has accepted international treaties on minority protection and elimination of discrimination and ratified the Convention on the Elimination of all Forms of Racial Discrimination and the Framework Convention on National Minorities (FCNM). Georgia's commitment to ratify the European Charter for Regional or Minority languages is still pending.

Based on a proposal advanced by the Ministry of Justice, the adoption of a full-fledged anti-discrimination law is currently being discussed. The text envisages anti-discrimination measures in the areas of prevention, awareness raising and the elimination of existing forms of discrimination. It includes the concept of multiple discrimination and protection of pregnant women and mothers. Most importantly, it introduces a new institution, an Equality Protection Inspector, who will have the power to take legally binding decisions and impose fines. During the consultation process concerns were raised as to the institutional relationship between this Inspector, the Public Defender and the other bodies dealing with situations of potential discrimination.⁴⁹

Since 2009, the policies with respect to minorities have been guided by The National Concept for Tolerance and Civic Integration and its Action Plan. The aim of these documents is to create an environment of tolerance and respect in the country, to promote equal opportunities for all, to ensure the effective participation of ethnic minorities in all areas and to create the necessary conditions for the preservation and development of their culture and identity. They have brought some tangible results, particularly in areas populated by Armenian and Azeri minorities, and mainly concerning education and the development of infrastructure (roads, schools).

An assessment of previous policy and practice is now initiated in the Office of the State Minister for Reintegration in consultation with NGOs and individual experts and representatives of minority groups. A report is expected at the end of the year.

This assessment should be a good basis for a future Strategy together with a concrete Plan of Action. During this process there ought also to be a serious policy discussion on the merits of the ratification of the above mentioned European Charter for Regional or Minority Languages.

4.2 Ethnic minorities

According to the last census conducted in 2002, ethnic minorities make up around 16 per cent of the Georgian population.⁵⁰ When it comes to the treatment of minorities, the detailed recommendations expressed by the Council on National Minorities⁵¹ and those addressed to Georgia by international bodies such as the Advisory Committee to the FCNM, the European Commission against Racism and Intolerance (ECRI) and the Committee for Elimination of Racial Discrimination, should be implemented without delay. These include, but are not limited to:

- **Continuing the commendable efforts undertaken so far to improve the Georgian language skills of minorities.⁵² It is understood that this is a complex issue that requires major resources, but to ensure the sustainability of the successful measures taken to date, it has to remain a priority. As the Advisory Committee to the FCNM noted, it is important that the policy of promoting the**

⁴⁸ "Committing a crime on the grounds of intolerance of race, skin colour, language, sex, sexual orientation and gender identity, age, religion, political and other views, disabilities, national, ethnic or social belonging, origin, economic status or position, place of residence or other discriminatory ground is an aggravating factor for all relevant crimes addressed in this code."

⁴⁹ Tolerance Centre, Council of Ethnic Minorities and Council of Religions

⁵⁰ Whereby Azeris represent around 6.5 per cent and Armenians 5.7 per cent, mainly settled in the Kvemo Kartli and Samtskhe-Javakheti regions. Other ethnic minorities include Russians, Ossetians, Yezidis and Kurds, Greeks, Ukrainians, Abkhazians, Assyrians and Jews.

⁵¹ Council of National Minorities under the auspices of the Public Defender, [Monitoring results of implementation of the National Concept and Action Plan on Tolerance and Civil Integration 2010-2011](#), 2012.

⁵² According to the Constitution, Georgian is the State language, alongside Abkhazian in the region of Abkhazia.

Georgian language is not pursued to the detriment of the linguistic rights of persons belonging to national minorities.⁵³

- Taking further steps to favour the participation of minorities in the social, economic, political and cultural life of the country. Such participation is still limited by both legal and practical obstacles. The representation of minorities in elected bodies and in public service needs to be further encouraged, as well as their activism in political life.
- Stepping up efforts to ensure access to information to minorities, in particular in the field of media. After the Russian-language channel PIK TV went off air in October 2012, local officials in Armenian inhabited areas expressed concern at the fact that no further news program about Georgia was available in languages understood by minorities.⁵⁴
- Further developing the activities aimed at teaching tolerance and respect for minorities to the majority population⁵⁵, keeping in mind that one of the most important parameters in ensuring the effective integration of minorities is the readiness of the majority to do so.
- In the same spirit, continuing to review educational materials to make sure that any misconceptions about ethnic and religious minorities are eliminated⁵⁶, as well as raising awareness of the media about stereotypes and prejudice and encouraging positive reporting.

A process to which the authorities should pay increased attention is the repatriation of the population living in the region of Meskhetia (now Samtskhe-Javakheti) prior to their deportation by Stalin in 1944. Although it is natural that the arrival of the returnees may create a degree of tension, no effort should be spared to simplify and swiftly advance the cumbersome bureaucratic proceedings⁵⁷ and to accompany returnees with adequate social, economic and cultural integration programs.

Beyond the positive impact that the return obviously has on the individuals concerned, this process is of great symbolic importance. **The Georgian authorities should use the repatriation of the Meskhetian population to set an example and to prove that they are capable and willing of redressing, to the extent possible, violations of the past, no matter in which context they occurred. State funds should be also added to the on-going international/EU funding.**

Belonging to an ethnic minority is in many cases a major contributing factor to poverty and marginalisation. **It is therefore essential that social policies pay particular attention to these particularly vulnerable groups, who in practice often end up being the victims of multiple forms of discrimination. Roma are clearly one such group.**⁵⁸

An important aspect of Georgia's great richness as a nation is its ethnic and religious diversity. To keep it, it is important to make sure that integration is never confused with assimilation and that all minority groups are allowed to maintain and further develop their specificities. This requires their full participation in the development and implementation of all policies that concern them. **The new Georgian authorities have the unique opportunity to address some wrongdoings of the past in this field. They should take this opportunity and reach out also to the Abkhazian and Ossetian people. Significant and tangible steps should be adopted to build confidence, including through strengthening cultural, economic or other ties.**

4.3 Religious minorities

The efforts undertaken by the previous authorities to combat religious intolerance and to pursue a meaningful dialogue with religious minorities are commendable. In a country where officially 83 per cent of the people

⁵³ Advisory Committee on the FCNM, [Opinion on Georgia](#), March 2009.

⁵⁴ US Department of State, [Report on Human Rights in Georgia](#), 2012.

⁵⁵ See recommendations developed by the Council of Religious Minorities.

⁵⁶ ECRI [Report on Georgia](#), June 2010.

⁵⁷ By August 2013, 1 058 repatriation statuses and seven citizenships have been granted. In practice repatriates face administrative obstacles.

⁵⁸ According to the [European Center for Minority Issues](#) Roma in Georgia face extreme poverty, unemployment, lack of education and healthcare, and isolation from larger society as a result of widespread prejudice against them. They are estimated to be around 1 500 with no more than 300 in one location.

recognise themselves as members of the Georgian Orthodox Church, the adoption in 2011 of legislation allowing the registration of religious churches or groups as Legal Entities of Public Law rather than mere “NGOs” was a significant and commendable development. A pending issue is the restitution of churches confiscated in the Soviet period and handed to the Georgian Orthodox Church in the 1990s. To date, both the Armenian Dioceses and the Catholics have failed to regain them. This is a complex issue which requires further talks, with implications not only in terms of property rights but also regarding preservation of cultural heritage.

These days, the repeated episodes of intolerance and violence against religious minorities are of utmost concern. When it comes to religious intolerance, the reaction of the current authorities, both at political level and in terms of interventions by law enforcement, has been generally unsatisfactory.⁵⁹ One of the most unfortunate episodes occurred in the village of Chela in the Samtskhe-Javakheti region, when in August the local authorities ostensibly removed a minaret on licence grounds, sparking unnecessarily violence.⁶⁰ **Immediate and decisive State intervention is crucial to enforce the State obligation to protect freedom of religion or belief for all.**

The Public Defender and civil society organisations have repeatedly expressed their concern at acts of intolerance and violence directed against Muslims at the hand of non-Muslim fellow villagers. The dialogue efforts undertaken by the State Ministry for Reintegration are commendable and should enjoy full support. **The frequent episodes of religious intolerance should be analysed with the aim to prevent the radicalisation of nationalistic feelings. Not only the authorities but also the Georgian Orthodox Church has to play a bridge-building role in this process.**

The reaction of the local authorities in these situations has been inadequate. The perception of implicit complicity between the aggressors and the authorities, including the law enforcement, may have contributed to repetition and expansion to other villages of such incidents. This is unacceptable. **Central and local Government should make it clear that harassment, threats and violence on religious grounds are not acceptable and will be punished to the full extent of the law. Members of the Parliament should play a key role in terms of awareness. The attitude of the Public Defender in this regard has been exemplary.⁶¹ Georgia's Reintegration Minister's presence during Friday prayers has served as a reminder to local authorities of their responsibility towards diffusing tensions among neighbours of different faiths.⁶²**

4.4 Sexual minorities

Attempts by LGBT activists to peacefully mark the International Day against Homophobia and Transphobia in 2012 and 2013 failed. On 17 May 2013 Georgia hit the international headlines when an authorised and absolutely peaceful gathering against homophobia was violently disrupted by a massive counter-demonstration of thousands during which also Georgian Orthodox clerics played an active role. The preparedness of the police forces was insufficient and they did not manage to contain the angry mob of counter-demonstrators.⁶³ Top officials including the Prime Minister promptly condemned the violence and intolerance shown on Tbilisi streets; and they were joined by international representatives.⁶⁴

Whilst it was generally accepted that the police, as the situation developed, did well to create a protective corridor and evacuate the LGBT activists to safety, there are deeper concerns about the reaction of the judiciary afterwards. To date the latter has been slow to prosecute, despite the existence of evidence against at least some of the violent protesters. The counter-demonstration had been a result of a misinformation campaign about the planned anti-homophobia event. Trials against the suspected homophobia activists should be accompanied by attempts to explain to the wider public the need for a more respectful attitude towards sexual minorities. It should be made clear that while views may differ, violence is never acceptable.

⁵⁹ An exception was the immediate reaction in April 2013 by the Minister of Defence who dismissed some military police officers after a serious verbal and physical confrontation with local residents in the village of Tsikhisdziri, in Adjara, a region bordering Turkey where Muslim Georgians live.

⁶⁰ <http://www.civil.ge/eng/article.php?id=26386>

⁶¹ He issued several [statements](#) calling for prompt and positive reaction from authorities after repeated attempts by majority Orthodox Christians to prevent Muslims from gathering in their prayer places in places like Samtatskaro, a the border with Azerbaijan populated by ethnic Georgians who migrated from Adjara in the 1970's.

⁶² http://www.forum18.org/archive.php?article_id=1854

⁶³ <http://www.civil.ge/eng/article.php?id=26073>

⁶⁴ www.civil.ge/eng/article.php?id=26081, www.civil.ge/eng/article.php?id=26084, or www.civil.ge/eng/article.php?id=26067

Some other countries which until recently have experienced a very homophobic environment have in fact made remarkable progress in combating homophobia within a very short period of time.⁶⁵ What is needed above all is a determination at the highest echelons of political power to tackle the problem. At the same time, the Georgian Orthodox Church must make absolutely clear that it opposes any form of violence against LGBT persons or those defending the rights of these groups.

The need for developing understanding and raising awareness about the situation of LGBT persons goes well beyond the violence which marked the International Day against Homophobia. It should be understood that the issue is not about so-called propaganda for a certain lifestyle but about ensuring basic rights to all human beings.

There are reports from NGOs that victims of discrimination and violence avoid reporting to police not only because of the homophobic attitudes that they fear from police officers but also because they are worried that their – real or perceived – sexual orientation may be revealed to their family. This is an indicator about how deep-rooted and complex the tackling of this issue may be. However, this cannot be an excuse for not addressing it at all.

5 Right to take part in public affairs

The October 2012 parliamentary elections led to the first peaceful, democratic transfer of power in the country's post-Soviet history. OSCE observers found that the elections “marked an important step in consolidating the conduct of democratic elections in line with OSCE and Council of Europe commitments, although certain key issues remain to be addressed”.⁶⁶

Among the issues to be addressed were concerns and allegations about vote-buying, illegal financial contributions or misuse of administrative resources. OSCE⁶⁷ and NGO observers stated that the work of State agencies in preparation of the elections had not been politically impartial.

The US State Department Report on Human Rights Practices for 2011 mentioned that “members of some opposition parties reported threatening calls warning them to refrain from party participation and surveillance by local police from unmarked cars. An NGO reported being filmed while entering a hotel conference room to meet with an opposition party. Opposition party members also alleged teacher dismissals due to party affiliation”.⁶⁸

Some of these complaints may be tainted by party-political interests. However, the scope of political surveillance activities was demonstrated with the discovery that the majority of the video and audio files that were illegally obtained by the previous authorities concerned political and business activities, approximately 17 000 of the about 24 000 recordings.

After Bidzina Ivanishvili announced, in early October 2011, that he intended to establish a political party to compete in the 2012 parliamentary elections, the then Government stripped him and his wife of their Georgian citizenship, after they had acknowledged possessing also French citizenship. In April 2012 the Civil Registry denied Ivanishvili's request for naturalisation. A month later, possibly as a result of domestic and international criticism, Parliament adopted ad hoc legislation that in practice would have allowed Ivanishvili to run for parliament, which he eventually refused to do.

The fairness of the campaign for presidential election in late October will be carefully monitored. With this respect, the role of the Central Election Commission, which in the past years operated efficiently despite the challenging environment, will again be crucial.

⁶⁵ See for example Montenegro's 2013-2018 Strategy to improve the Life of LGBT Persons and its Action Plan.

⁶⁶ OSCE/ODIHR Election Observation Mission Final [Report](#) on the Parliamentary Elections of 1 October 2012 in Georgia, December 2012.

⁶⁷ The OSCE deemed that the work by the Inter-Agency Task Force for Free and Fair elections (IATF) – tasked to prevent and deal with electoral-related violations - at times exceeded its mandate. OSCE also accused the State Audit Office of wide discretionary power in the implementation on the Law on Political Unions, targeting mainly the opposition.

⁶⁸ US Department of State, [Report on Human Rights in Georgia](#), 2012.

5.1 Public campaigning

According to the OSCE's election reports since 2008, freedom of association, assembly, and expression were mostly respected during pre-election periods, although instances of harassment and intimidation of party activists occurred during public campaigning.

In the 2012 pre-election period most of the mass gatherings of the opposition took place without any incidents, although several violent attacks were observed during smaller campaigning visits in different villages. In those cases the police was inactive or not present.⁶⁹

In the next nine months Georgia will go through two further elections. Right now the campaign in view of the presidential elections is on-going. The general environment is presently calmer as compared to the previous elections, although several incidents have occurred.

UNM held primaries in six stages in various parts of the country. On 20 July 2013 an angry mob attacked UNM members prior to a campaigning event in Zugdidi. The police organised safe corridors for the UNM activists to avoid injuries or disruption of the party conference. Twelve assailants were arrested and legal proceedings were initiated against them.⁷⁰

The following party conference held as part of the primaries in the city of Batumi on July 21 was also disrupted by anti-UNM protests, which led to two persons being arrested.⁷¹ A police corridor had to be organised as well for the final primary meeting held in Tbilisi. Again, two persons were placed under arrest. The Courts fined all those arrested 100 GEL. According to the opposition this measure is not effective enough to prevent violent attacks in the future. The Government maintains that the sanction has been determined by a judge and that it cannot interfere in that.

The International Society for Fair Elections and Democracy (ISFED) reported the following: "Acts of violence have been witnessed during the UNM primaries, perpetrated by former political prisoners and groups of radical opponents of the former ruling party. Despite the aggression, the Ministry of Internal Affairs was able to ensure safety for representatives of the UNM participating in the primaries".⁷²

It is unacceptable that some people, no matter how angry they are and how badly they may have been affected by actions undertaken by the previous authorities, resort to intimidation and violence to impede the freedom of speech and of assembly of others. Those who consider that they have been the victim of a crime or injustice should turn to the judiciary to seek justice. The main responsibility in terms of disciplining members and supporters lies with the leadership of the respective political party. Among the persons fined in the Zugdidi incident, there were some members of the GD party who were expelled after the incident.

Another major issue affecting the work of the opposition is the arrest of the Secretary General of UNM, Vano Merabishvili, who is currently in pre-trial detention. He faces several charges, ranging from embezzlement to obstructing the investigation of the murder of Sandro Girgvliani.

Whilst the prosecution has advanced its reasons to justify its request for detention, its application just ahead of an electoral period has caused international concern. EU High Representative/Vice-President Catherine Ashton and Commissioner Stefan Füle made a joint statement demanding strict adherence to principles of fairness and due process. Any political motivation for arrest and prosecution would be absolutely unacceptable.

Against this background, it is obvious that the trial of Mr. Merabishvili – as well as those of other high officials - will be closely and carefully monitored.

⁶⁹ For instance, on 10 July 2012, when Government supporters in Karaleti village threw stones and swore at opposition supporters campaigning, 13 people, including 10 journalists, were injured and hospitalised. Reportedly, the police did not interfere to stop the assaulters, although at a later stage it arrested six persons, including four opposition members. See Human Rights Watch, World Report 2013: [Georgia](#).

⁷⁰ <http://www.france24.com/en/20130720-georgia-arrests-12-opposition-leaders-assaulted>

⁷¹ <http://www.civil.ge/eng/article.php?id=26294>

⁷² <http://www.isfed.ge/main/422/eng/>

Recently, the Prime Minister addressed the Chief Prosecutor's Office and the police with the request to abstain from detaining or otherwise lawfully limiting the rights of those suspects, who actively participate in the election campaigns of presidential candidates, unless a well-substantiated extreme necessity arises.⁷³

Since the new Government came to power, prosecutors have questioned 6 156 persons, most of them UNM party activists, as witnesses in the framework of investigations concerning a number of different crimes, including misuse of State funds and money laundering. UNM gives considerably higher figures (over 10 000 individuals, party members and local government employees) and considers this questioning to be a politically motivated attack on the opposition. According to official information, 35 former officials have currently been charged of which 14 are in pre-trial detention, 14 have been released on bail, one is released without restrictive measure, one has been pardoned by the President after conviction and five have left the country. Dozens of other former civil servants have also being charged or were convicted.

One of the most important electoral promises that the GD coalition made prior to the 2012 parliamentary elections referred to "restoring justice". **Whilst on the one hand it is important to fight real or perceived impunity when it comes to crimes committed by public officials, it is on the other hand necessary to ensure absolutely transparent and fair proceedings free from political interference.**

5.2 Local governance

Local elections are foreseen for spring 2014. However, the results of the 2012 parliamentary elections triggered changes at the municipality level. Mayors (*gamgebelis*) and Chairs and other members of local assemblies (*sakrebulo*) resigned or changed side. There were demonstrations in several municipalities by supporters of the GD coalition against the local administration. UNM protested against this and other pressure put on their representatives.

According to the local NGO ISFED 50 mayors have resigned throughout Georgia, including 48 who resigned themselves and two following a decision by the municipal assembly. During the same time, 25 *sakrebulo* Chairs have resigned, including 21 who decided themselves and four who left following a decision by the assembly.

There were also a number of dismissals of ordinary employees at local level, many apparently for political reasons. ISFED has also examined these developments. According to official reports in response to the ISFED inquiry, a total of 1877 employees⁷⁴ were dismissed between 1 October 2012 and 28 February 2013. Most of them submitted a letter of resignation. In many cases dozens of employees submitted resignation letters the same day, which raises serious doubts about whether they resigned willingly or were forced to do so.

In some cases the dismissed public servants confirm that they resigned under pressure from their supervisors. However, most of them have been reluctant to publicly acknowledge the fact. Some have explained that they acted in consideration of the political situation and the change of power.⁷⁵

Hiring of new employees based on party affiliation has been reported in 18 municipalities. Competitions for positions were announced in six municipalities only. Those appointed on the basis of their political affiliation mostly included activists and supporters of the GD coalition. Some of those who were removed reported they were forced to leave or would otherwise have faced investigation from the financial police.

Dismissing local officials or pushing them to resign simply because there has been a change in the central Government is unacceptable. If there are reasonable grounds to believe that some persons have committed a crime, this should be addressed by the justice system and not through private acts of revenge. Whilst a degree of fluctuation following a change of power is natural, the numbers advanced in the Georgian context are excessively high. The central Government refrained initially from interfering but a liaison office was later established in the Prime Minister's Office to monitor events and ensure that political messages were passed from the top aiming at redressing these problems.

⁷³ http://Government.gov.ge/index.php?lang_id=ENG&sec_id=270&info_id=37574

⁷⁴ The total number of persons employed at municipality level is estimated at about 40 000.

⁷⁵ ISFED, [Political Processes, Dismissals, Protest Rallies and Legal Prosecutions in Local Self-Governments](#), April 2013.

Persons who have been arbitrarily dismissed or pushed into involuntary resignation should have a means of redress. The previous lack of an enabling legal framework has in the meantime been partly addressed through the adoption of an improved Labour Code. An adequate Civil Service Law is still missing, though consultations have been initiated with the aim of filling this gap.

Equally, the appointment of a high number of supporters of the GD coalition at local level, without proper competition, is a matter of serious concern. These developments shows a serious lack of political culture in the country that the authorities at all levels should address without any further delay; awareness raising initiatives and other appropriate measures should be taken.

There were also numerous instances where GD activists blocked local municipal buildings and the police failed to arrest blockaders and/or provide protection to UNM municipal assembly members. The anger against members of the previous party in power is no excuse for harassment and violence against UNM. It is a duty of the police to provide security in such circumstances. **At the same time the new majority also bears a responsibility for advancing political culture in Georgia, including by explaining to their supporters that public acts of intimidation, harassment and violence are unacceptable. If they have complaints these should be lodged with the Prosecutor's Office.**

The opposition alleges that these actions were orchestrated attempts to change the leadership at the local level. The Government denied this. Nevertheless, NGOs considered the auditing by the financial police of municipal budgets as a sign of the GD coalition's desire to consolidate its political base in the regions. Based on the past records of misuse of administrative resources and suspicions about elite corruption, the new central authorities may have a legitimate interest in knowing more about the budgets in specific municipalities. Nevertheless, such actions may be perceived as intimidating and do not facilitate the healthy development of local self-governance.

5.3 Participation of women and minorities

There are 18 women in the 150-seat Parliament elected on 1 October 2012. The number doubled as compared to the previous Parliament but remains low. One of the five Vice-Speakers is a woman, as are the Chairpersons of the Parliament's Human Rights and Procedural committees. There are four women in the 19-member cabinet and three women in the 14-member Supreme Court.

While the election code provided financial incentives for parties to increase the number of women on their candidate lists, neither the UNM nor the GD met the voluntary quota required for increased Government funding, although several smaller parties did. Recently the Parliament adopted a new Law on Political Party Financing which foresees increased incentives to promote women in the party lists through additional funding. A political party will receive an additional 30 per cent of Government funding if its party-list includes at least three women per 10 positions.

Several parties and blocs included members of national minorities in their lists and as majoritarian candidates, nominating them in districts where minorities formed substantial parts of the population. There are three ethnic Armenians, three ethnic Azeris and one ethnic Ossetian in the new Parliament, but no minority members in the cabinet, Supreme Court, or Constitutional Court.

As noted as well in the chapters on minorities and in the subchapter on women's rights and gender equality, the participation of minorities and women in political life can by no means be considered as sufficient and satisfactory. **The authorities, at all levels, but of course also the different political forces must step up their efforts to improve their record in terms of inclusion. The local elections foreseen in spring 2014 will be an important test in this regard.**

5.4 Abuse of State resources

A major characteristic of Georgia's political reality prior to the October 2012 elections was the blurred distinction between the Government and the party in power. The perception of this state of affairs fed numerous allegations which included, inter alia, abuse of legal resources of the State for political and election purposes; selective enforcement of law; spending of State funds for election purposes; and use of institutional resources of the State for political and election purposes.

The upcoming presidential elections in October 2013 have the longest official pre-election period in the history of Georgia - 120 days. A longer pre-election period means earlier enactment of the restrictions on the use of administrative resources.⁷⁶ The candidate of the ruling GD coalition stepped down from his post as Vice-Premier and Minister of Education and Science.⁷⁷

In the light of the past abuses committed in the area of public campaigning, the new ruling party bears a heavy responsibility and has a historic opportunity to ensure a durable change in practice and in overcoming the major problems created by a lack of clear distinction between the State and the party in power. This will require intensive awareness raising and civic education efforts at all levels and throughout the country, in particular also in view of the 2014 local elections.

The Inter-Agency Task Force (IATF) is mandated to consider complaints concerning alleged campaign violations. According to the OSCE it is a useful forum to review stakeholders' concerns. Its non-binding recommendations were implemented in a timely manner by the relevant authorities. The Secretary of the Security Council was chairing the IATF, until chairmanship was recently moved to the Minister of Justice. The Government claims that this will benefit the effectiveness of the work of IATF.

Under its new chairmanship, the IATF must make sure that all the political groups are welcome to present their concerns and make sure that State institutions properly react upon possible violations of law.

5.5 Political party funding

The Law on Political Unions of Citizens (Law on Political Unions) was drafted in an effort to create a comprehensive legal framework regulating party and campaign finance. However, the law contains gaps, ambiguities and disproportional sanctions affecting its implementation negatively. Despite the substantial amendments of the law shortly before the October 2012 elections, these concerns were only partly addressed.

Ahead of the 2012 parliamentary elections, the State Audit Office (SAO) was tasked with the implementation of the law related to party and campaign finance. The SAO enjoyed wide discretionary powers, but failed overall to apply the Law in a transparent, independent, impartial and consistent manner, targeting mainly the opposition. In this regard, questions were raised about proper procedures.

A US Department of State report on 2012 mentioned the SAO investigations at the time: "In what many NGOs alleged was political intimidation, the SAO opened an aggressive investigation of alleged campaign finance violations [...], summoning at least 260 individuals for questioning. Most of those summoned were linked to opposition parties. Interviews lasted up to six hours, attorneys in some cases were reportedly barred from the interrogation, and some individuals reportedly were required to strip to their underwear for "security searches".⁷⁸

There are several important human rights aspects to consider in this context. **While transparency and accountability of political finance must be ensured, citizens should not be discouraged from political participation, including from making donations to a party or candidate of their choice.**

6 Freedom of expression, assembly and association

The Constitution and other laws provide for freedom of speech and of media. However, a number of observers noted in recent years that these freedoms were not fully respected and ensured. For instance, Transparency International stated in 2011 that, while "the country has mostly progressive and liberal laws governing the

⁷⁶ The 2012 parliamentary elections were preceded by an official 60-day campaign period, but NGOs repeatedly criticised the fact that the unofficial campaign had started several months earlier.

⁷⁷ The GD presidential candidate attended an event funded from the State budget, where he was presented as a presidential candidate and made a public speech.

⁷⁸ US Department of State, [Report on Human Rights in Georgia](#), 2012.

establishment and operation of media entities, in practice the media remain less transparent, accountable, and independent”.⁷⁹

Pressure on journalists was reported. Tendencies of self-censorship developed also as a result of the lack of employment guarantees under the previous Labour Code and the risks associated to deviating from rigid editorial policies marked by the media owners who in several cases promoted a pro-government position.

There have recently been some positive developments in regard to the transparency of media ownership. In general, it is demonstrated in daily practice that different opinions can be voiced through the media. Within the media themselves there is room for developing professionalism and investigative journalism standards.

The Constitution and the law provide for freedom of assembly. The 2012 amendments to the Law on Assembly and Manifestations marked an improvement and corrected the problems created by the swift legislative amendments after the 2009 spring protests⁸⁰ which had increased police powers (for instance, to use of rubber bullets⁸¹ and “stop & frisk” search) and lengthened the provision for administrative detention from 30 to 90 days.

On February 8, 2013, the President planned to hold his annual State of the Nation address in the Tbilisi National Library. Hundreds of protesters gathered in front of the building. When members of the parliamentary minority (UNM) and the Mayor of Tbilisi arrived at the building and they were verbally insulted and physically abused by the protesters. According to the Public Defender, the MIA had precise information on the number, demands and attitude of the protesters gathered in front of the Public Library and should have taken preventive measures to ensure the safety of persons affiliated to the former ruling party.

The right to assembly was brutally undermined on 17 May this year when a peaceful demonstration against homophobia was attacked by thousands of counter-demonstrators (see chapter on minorities).

6.1 Freedom of media

Georgia is ranked 100th out of 178 countries in the latest Reporters Without Borders 2013 press freedom index, better than in previous editions (120th position), which took into account the killing of four journalists in the framework of the 2008 conflict.

Television is the main source of news for almost 90 per cent of the population.⁸² According to a survey published in 2012, the main TV stations - Rustavi 2; Imedi TV and Public Broadcaster (GPB) Channel 1 – were then the only ones with national coverage and they had an editorial policy perceived as pro-governmental.⁸³

Media ownership was unknown or turbulent for years. The 2011 law banning ownership by off-shore companies was a good step, though there are still difficulties in its implementation. For instance, Imedi TV had been pro-opposition before 2007, until the Government took it over on 7 November 2007 (after the October 2012 elections, ownership was returned to the widow of the main original owner). Rustavi 2 officially changed owners more than 20 times after the Rose Revolution. For the last several years owners of both Rustavi 2 and Imedi TV have been registered in offshore zones and managed, reportedly, by persons who were close to the previous Government.

Transparency International noted that the Government was “generally understood to have established control over the country’s most influential television stations through their acquisition by Government-friendly businessmen, forcing journalists employed by these stations to practice self-censorship”.⁸⁴ Stations largely perceived as pro-opposition- Kavkasia, Maestro and Channel 9⁸⁵- expressed views critical of the Government, but their audience was limited to Tbilisi because they had not been granted licenses to broadcast beyond. In July 2012, the cable network provider Global Contact Consulting (GCC) and Maestro TV unsuccessfully attempted to

⁷⁹ TI Georgia National Integrity System Assessment for 2011.

⁸⁰ The law amended in 2009 prohibits blocking streets “artificially” and “deliberately”, either by protesters themselves or with various types of constructions and/or objects.

⁸¹ The amended Law on Police adds non-lethal projectiles to the list of special equipment that can be used by police, including for riot control purposes.

⁸² According to the [survey](#) carried out by Caucasus Research Resource Centre in 2012.

⁸³ In contrast with previous years, the Georgian Public Broadcaster offered a more balanced coverage of the May 2010 elections and the 2012 pre-electoral campaign.

⁸⁴ Transparency International Georgia’s National Integrity System Assessment for 2011.

⁸⁵ TV 9 was launched in May by supporters of then opposition leader and billionaire Bidzina Ivanishvili.

increase their penetration by distributing satellite receivers. The authorities seized their satellite dishes and returned them only after the elections, despite heavy criticism by civil society.

In response to civil society campaigning, the previous Parliament amended in 2012 the relevant media law and introduced “must carry-must offer” regulations (obligation for cable companies to transmit TV channels with news programs beyond the pre-election period), which helped small TV stations to enlarge their audience, even if only in the period of the pre-election campaign.

Print media has been assessed as relatively free, though less influential.

During the spring session 2013 the Parliament adopted important amendments to the media laws. The initiative was coming from the civil society Coalition for Media Advocacy and was supported by OSCE experts.⁸⁶ The new law envisages a reformed and more democratic composition of the Board of the Public Broadcaster; measures for more financial transparency of television companies; and the expansion of the mandatory “must-carry-must-offer” principle from only pre-election period to permanent action.

In August 2013, the Prime Minister announced the closure of the Channel 9 owned by his family after unsuccessful attempts to sell it. He stated that the TV station “was creating an unhealthy environment especially during the pre-election period”, which was indeed a matter of criticism.

Notwithstanding the problems mentioned, Georgian society enjoys currently a comparatively free and pluralistic media environment. **In order to promote a rights-based media policy for the future it will be important to react against undue pressure on individual journalists; to encourage effective self-regulation among the media on ethical aspects; to ensure in practice the fullest transparency of media ownership and financing; and to offer from the authorities an easier access to public information.**

A free and balanced media coverage of the ongoing presidential election campaign and the upcoming local elections is crucial for the democratic atmosphere of the country. In general, the impartiality and credibility of the public broadcaster should be protected.

6.2 Violence and harassment against journalists

Throughout years, the Georgian authorities faced criticism from media rights organisations for not doing enough to protect journalists from violence and obstruction, in particular during - but not only⁸⁷ - electoral periods or mass rallies. Threats or blackmailing attempts against journalists to silence their voices have been reported until very recently.⁸⁸

Journalists considered to be pro-opposition claimed that they had unequal access to governmental buildings, that they were receiving anonymous telephone threats, and that they were experiencing surveillance by unknown people.⁸⁹

According to information provided by GYLA, 24 journalists were injured at the hands of law enforcement during the dispersal of the May 26, 2011 protest. The Public Defender stated that rubber bullets were used against them, and that they were verbally insulted and physically abused, including after they had identified themselves as working for the press.

Journalists alleged that the authorities seized and damaged their equipment, and destroyed or erased photographic, video, and audio material. The Tbilisi City Court later ordered the MIA to reimburse journalists and media organizations 2 302 GEL (1 370 USD) for lost or damaged camcorders and medical treatment for injuries sustained during the May 26 protest.

In July 2011, four photographers - including the personal photographer of the President - were arrested for espionage for Russia. Surprisingly, considering the seriousness of the charges, they were given suspended

⁸⁶ <http://dfwatch.net/osce-supports-reform-of-public-broadcaster-33277>

⁸⁷ A telling example was the [blackmail attempt](#) against an investigative journalist of a Batumi-based newspaper in late 2009.

⁸⁸ As proven by the disclosure in January 2013 of an illegally recorded video allegedly showing the intimate life of a journalist.

⁸⁹ US Department of State, [Report on Human Rights in Georgia](#), 2012.

sentences in a plea bargain. NGOs and a number of colleagues of those concerned questioned many aspects of this case, including the fact that the MIA and the Prosecutor's Office never presented credible evidence to the public. The Government stated that the level of cooperation provided by the accused in identifying other persons engaged in espionage justified the lenient sentence. The journalists themselves later complained that they had been intimidated and threatened.

The existence of a press which freely reflects the full diversity of views of the society is an essential element of any democracy. **Journalists who have suffered abuses should be able to obtain redress and any interference with journalistic activities should be avoided in the future.**

6.3 Government control over private communications

The extent of Government control over private communications has become clear only this year. Apart from the scandal of the illegal recordings, including of the private life of certain citizens, it became clear that all telecom companies operating in Georgia have had to accept a system by which there was a direct link between their servers and the MIA. Through this system the Ministry has had, and still has, access to all telephone calls, emails, SMS and other electronic communications.

Such "Big Brother" tendencies are unfortunately spread globally. In several countries the right to privacy has been neglected in the perceived interest of security and counter-terrorism policies. The personal integrity of the individual citizens has suffered and people at large have become suspicious. Part of the problem is that the responsible politicians have not explained the policy in this area and the reasons for it.

The handling of electronic communications should be clearly regulated and monitored under democratic and judicial control. Georgia has now established an office of a special Inspector for Data Protection. She will have an important role in the efforts to protect personal privacy.

6.4 Violent dispersals of demonstrations

The forceful and violent dispersals of political rallies and demonstrations in November 2007, in the spring 2009 and in May 2011 have created much dispute and agony.

The demonstrations which took place in Tbilisi in 2007 deeply marked Georgian society. After five days of peaceful protests, several confrontations between the police and protesters took place on November 7. According to Human Rights Watch, "the use of force included physical assaults with truncheons and wooden sticks as well as punches and kicks on unarmed demonstrators, many or most of whom were attempting to disperse, as well as shooting rubber bullets at close range into the backs of demonstrators, many of whom were also attempting to disperse. The use of force in this manner strongly suggests that law enforcement personnel were seeking not only to disperse demonstrators, but also possibly to punish them for their participation in the rallies".⁹⁰ Almost 600 persons were reportedly treated in hospital for injuries or side effects from the tear gas.

In 2009, the non-parliamentary opposition held a sustained protest from April 9 to July 24. NGOs and the Public Defender's Office reported dozens of cases of attacks on individuals leaving these protests, by unknown assailants wearing masks and carrying blunt instruments. Human Rights Watch stated that "In most cases [...], law enforcement agencies took victims' reports but to the best of our knowledge took no other action". The Public Defender's Office and others tracked many of these alleged acts of violence including the beating of protesters by unknown assailants. Officially, the MIA had not performed any arrests in any of these incidents.

The relative calm which prevailed during 2010 was abruptly disturbed in 2011 by the police break-up of war veteran's protest in January and the violent dispersal of opposition protests in May. Five days of protests turned violent on May 26, when police forcefully dispersed approximately 1 000 protesters in front of the parliament building after the authorisation for the manifestation had expired. Police beat, arrested, and shot protesters and journalists in the vicinity with rubber bullets. Several persons lost their lives: a protester and a police officer were killed by the vehicles of the protest leaders leaving at high speed, and two other protesters reportedly died of

⁹⁰ Human Rights Watch, [Crossing the Line: Georgia's Violent Dispersal of Protestors and Raid on Imedi Television](#), December 2007

electrocution and were found on a nearby rooftop. Observers noted that the Government had a legal right to clear the protest while agreeing that certain law enforcement officials, mainly from special force units, employed disproportionate force.

Overall, the excessive use of force by police, including attacks on journalists and rally participants, had a dampening effect on freedom of assembly, which is one reason why **it is important that such incidents are thoroughly investigated.**

6.5 Safety and rights of demonstrators

Under the new administration several incidents have taken place as well. Mostly police has had to protect right of freedom of assembly when two conflicting groups were gathering at the same time at the same place. Large law enforcement forces have been mobilised during such counter-demonstrations. However, this was not the case when the assault on lawmakers on 8 February occurred, as mentioned in the introduction of this chapter. **Creating an enabling environment for the opposition to campaign without obstacles for the presidential as well as for the 2014 local elections is crucial.**

On May 17, the international day against homophobia, police had the obligation to ensure the right of freedom to assembly and the safety of the participants, while over twenty thousand aggressive and violent counter demonstrators – including representatives of the Church – tried every way to physically assault a small of group of LGBT rights advocates. Though police failed to contain the counter demonstrating crowd, which was violent and nearly uncontrollable, the MIA and the police ensured safe evacuation of the LGBT activists. None of the representatives of this group suffered any harm during the rally.

A number of strong political statements have been made by the Prime Minister⁹¹, the Speaker of the Parliament, the Minister of Justice and other senior officials - as well as by the spokespersons of the opposition – emphasising that the right to freedom of peaceful assembly and association is ensured by the Constitution and that the State will make an all-out effort to duly fulfil its obligations, both positive and negative.

In order to properly implement the positive obligation of the State to protect the freedom of assembly and association it is important to improve preparedness and expand training of law enforcement forces on crowd control in line with international standards and human rights.

6.6 Right to association

The environment for registering civil society organisations has been generally positive in the past years and this aspect of freedom of association has been respected. However, government officials and certain media criticised human rights activists heavily after the 2008 conflict, and in particular those which had submitted cases against Georgia to the ECtHR.

Problems were reported in relation to freedom to association, and in particular the freedom to organise by trade unions. The harassment or unfair dismissals of some unionists, and even teachers, has been reported until the 2012 elections. Pressure on trade unions also appears to have by and large stopped from then on.

The Law on Political Unions - which became highly controversial during the 2012 pre-election campaign - was improved before the elections through amendments adopted after NGO criticism.⁹²

7 Social justice

The previous Government gave high priority to a business-friendly policy which would encourage economic growth. It reduced taxes and simplified procedures for getting licenses and other permits to start a business in the

⁹¹ See the statement of the Prime Minister at http://Government.gov.ge/index.php?lang_id=GEO&sec_id=269&info_id=37032

⁹² http://www.messenger.com.ge/issues/2634_june_22_2012/2634_gvanca.html

country. However, another aspect of the policy was the steps taken which limited the rights of employees. The Labour Code which was adopted in 2006 fell short of meeting minimum ILO standards.

The 2013 Human Development Report, which combines life expectancy, education and income, ranks Georgia as 72nd out of 187 countries or territories.⁹³ It shows that 15.3 per cent of the population is living below the international poverty line of 1.25 USD a day.⁹⁴ UNICEF estimates that 77 000 children live in extreme poverty and the child mortality rate in Georgia is the highest in Europe.

The neglect of the agricultural sector has worsened the socio-economic situation of many living in rural areas to the point that barter practices are a regular occurrence. It also triggered emigration towards the capital city and abroad.

To date Georgia has not delivered its Third periodic report on the implementation of the International Covenant on Economic, Social and Cultural Rights, which was due in 2007. This may be indicative of low priority given to these issues. In fact, Georgia has so far failed to protect economic and social rights of its citizens. This challenge is one of the biggest facing the Government and the Parliament.

To date, the Government has transferred one billion GEL from other parts of the budget to the social sector. It states that the plan is to reform the health and education systems and to support the agricultural development.

Other key priorities should be to promote gender equality and women's rights, implement effectively the new Labour Code as well as ensure the respect for property rights and whenever possible redress the injustices in the past in this domain.

7.1 Labour rights

The previous labour legislation contained provisions infringing on workers' rights. Even where rights were formally granted, these were frequently not respected. In ILO terms the gaps were particularly obvious in relation to two of the core Conventions: No. 87 on the right to organise and No. 98 on the right to collective bargaining.

In December 2011, the Supreme Court ruled that trade union activists were not protected by the then Labour Code. Minor amendments to labour laws in June 2012 did not address this concern, nor did they establish the right to collective bargaining. Meaningful social dialogue was in fact not taking place and trade union leaders and members regularly alleged that they were being intimidated by the authorities.

The financial situation of the trade unions remained critical, and leadership of the main teachers union was not recognised by the authorities and challenged in Court. Almost all independent unions reported suffering from Government interference in their activities, from intimidation and threats to unfair dismissals, often masked as "voluntary resignation" malpractices. A US Department of State report 2012 noted that ILO and others believed that the Government's actions reflected "a deliberate effort to deny workers the right to freely associate, organize, and collectively bargain in both the private and public sectors".⁹⁵

The new Prime Minister stated in his first cabinet meeting the need to reform the Labour Code. After some difficult negotiations, a new Labour Code in line with ILO minimum standards was adopted in June 2013. This had been a longstanding request by different international actors, including the EU, to ensure smooth progress in EU-Georgia negotiations on upcoming agreements, including the Association Agreement and the DCFTA (Deep and Comprehensive Free Trade Agreement).

Whilst the Code represents clear progress as compared to the previous situation, it still leaves scope for improvement. It is crucial that the authorities and other actors involved do their utmost to ensure the effective implementation of the new Code. Improvements in terms of social dialogue have been observed and this has to be pursued. It is important that the Tripartite Commission deepens its dialogue in a meaningful way and without delay.

⁹³ <http://hdrstats.undp.org/images/explanations/GEO.pdf>

⁹⁴ Since 2010, Georgia is progressing towards macro-economic stability, fiscal consolidation, and improvement of the economic and business environment. Poverty, nevertheless, particularly amongst the rural population, remains a major concern.

⁹⁵ US Department of State, [Report on Human Rights in Georgia](#), 2012

Furthermore, it is necessary to develop a couple of new institutions, including a labour inspectorate and a mediation institute to solve disputes to prevent the escalation of domestic labour conflicts (including in cases when the Government is employer). Consideration should be given to dividing the Ministry of Labour, Health and Social Affairs (MoLHSA) in order to allow labour issues to receive higher priority.

7.2 Women's rights and gender equality

In relation to gender equality, according to the UN Index, Georgia ranks 81st out of 148 countries. The index reflects inequalities in the three dimensions of reproductive health, political influence and economic activity.⁹⁶

Georgia has ratified the Convention on the Elimination of All Forms of Discrimination against Women and has adopted a Law on the Elimination of Domestic Violence in 2006 and a Law on Gender Equality in 2010. The latter includes provisions to improve women's security and equality in the labour market, and to strengthen women's political participation. The law was supplemented by a National Action Plan 2011-2013 for Ensuring Gender Equality. The parliamentary Council for Gender Equality Issues has been instrumental in the development of these instruments. Recently, the Council of Europe's Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) was also ratified.

Georgia is a country in which women constitute a truly driving social and economic force, but nevertheless still suffer significant discrimination in many areas. For instance, although improvements have been noted in the last years, discrimination at the workplace seems to be a regular occurrence which is significantly underreported, not least because it is difficult to obtain redress.

Experience elsewhere shows that strong institutions are needed to advance gender equality. The appointment of a gender advisor to the Prime Minister is a commendable step. So was the creation of an interagency working group in April 2012 aimed at harmonizing national legislation with the Istanbul Convention on preventing and combating violence against women. **In order to effectively implement the National Action Plan for Ensuring Gender Equality and concretely advance the promotion and protection of women's rights there is a need to establish a coordination mechanism between the different institutions of the executive branch.**

The draft new Anti-discrimination Law, not yet in the Parliament, proposes powerful provisions to protect women, including an equality body mandated to deal with all forms of discrimination. Hopefully these provisions, together with those contained in other legislative and policy documents, will allow tangible progress to be reached. **It is essential that Georgia's equality body, once established, be given sufficient financial and human resources to effectively tackle discrimination based on gender.**

Domestic violence is a recurrent problem. **The legislation is good on paper, but its implementation lags behind. The authorities need to undertake serious efforts to strengthen the implementation of relevant law, including awareness-raising of both of the general population and of specific professional groups, such as the police, and in particular in rural and minority areas. It is a State responsibility to ensure that victims of violence have access to counselling structures and shelters, which must be adequately resourced. At the same time, due attention needs to be paid to the elimination of the root causes of violence against women such as poverty, unemployment and other difficult socio-economic conditions but also to patriarchal structures and conflict-related traumas. Social policies have to be designed accordingly.**

The number of women who die from pregnancy related causes in Georgia is extremely worrisome. In fact, it is considerably higher than the maternal mortality ratio in comparable countries in Europe and Central Asia. Women from certain minorities are particularly vulnerable, and affected by issues like early marriage and limited access to education.

As everywhere, Georgian women are victims of sexual harassment. Legislation does not contain a specific provision prohibiting such acts. In addition, women are discouraged from reporting incidents for a variety of reasons, including the fact that complaints rarely end up being investigated by police. **This means that efforts to**

⁹⁶ <http://hdrstats.undp.org/images/explanations/GEO.pdf>

train the police and prosecution about gender specific human rights violations and societal awakening for prompt reaction and reporting need to be stepped up.

7.3 Rights of the child

The situation of children in Georgia is alarming, in terms of poverty and particularly regarding the high mortality index below the age of five (20.5 of every 1000 children); 11 per cent stunting of children under five (which leads to a loss of economic productivity of 19 per cent); and the low pre-school net enrolment (46 per cent).⁹⁷

Moreover, the right to education is not fully realised. The countries' performance in terms of granting access to quality education to its children is very poor.⁹⁸ Investing in primary and secondary education is key for every child to have a future and for the country to develop further. It is of utmost importance that the Government give highest priority to the reform of primary and secondary education. Due consideration should also be given to granting universal access to pre-school education.

The State de-institutionalisation programme is to be concluded at the end of 2013. Children are to be put in alternative care, primarily in foster care or in homes for smaller groups of children. This is a process which must be pursued with caution and care in the best interest of the child. A pending concern is the number of children in the non-state institutions, including those linked to the Georgian Orthodox Church, which also require independent, child rights-based supervision.

It is obvious that the Government must give a considerably higher priority to the situation of vulnerable children. The status of the work for children should be enhanced within the Government structure, with an effective inter-ministerial coordination. The constructive cooperation with the UNICEF office should be continued and the Public Defender's Office equipped to undertake further ombudswork for children and to monitor the situation in relevant institutions. The planned National Human Rights Action Plan should prominently include child rights.

One issue requiring more discussion is how children can be protected against all forms of violence, including corporal punishment⁹⁹.

7.4 Vulnerable groups of persons

As mentioned above, poverty, including extreme poverty, remains a serious issue. Whilst official statistics indicate an unemployment rate around 16 per cent, the real proportion is more likely to be close to 40 per cent; especially if one includes self-employed persons in rural areas who survive thanks to subsistence agriculture.¹⁰⁰ The number of unemployed is reported to have increased as compared to last year.¹⁰¹

Internally displaced persons (IDPs), persons with disabilities, the so-called eco-migrants, persons living in remote rural areas or close to the conflict zones and in some cases those belonging to minorities are among the most vulnerable.

In 2008 the then Government committed to the local integration of the approximately 250 000 IDPs. The new Government has confirmed this commitment. So far, State efforts, with international support, have been mostly concentrated on providing durable housing to those concerned.¹⁰² Such efforts are commendable, but not all of those who are eligible have been touched by the process, which seems to have reached a financial deadlock, being largely funded through donors' money that followed the 2008 conflict.

⁹⁷ UNICEF data provided in June 2013.

⁹⁸ Georgia figures at the very bottom of the PISA ranking for Europe.

⁹⁹ According to UNICEF estimates 60 per cent of the parents believe in corporal punishment as an educational tool.

¹⁰⁰ The unemployment rate was calculated at 16.5 per cent in 2011, the highest in the region, although this underestimates the real rate, since approximately 53 per cent of the working age population are classified as self-employed agricultural workers. Subsistence farming constitutes a social safety net in the absence of a comprehensive system of social insurance.

¹⁰¹ Official statistics showed 527 828 employed by the end of 2012 and 503 456 by mid 2013. The only area where employment increased is agriculture; experts explain this through the programme implemented by the Government.

¹⁰² 2012 saw the rapid resettlement of IDP families to new durable housing solutions (DHS) and a dramatic upsurge in handing over private ownership of DHS to IDPs. While international standards were generally followed during resettlements, more forward planning and transparent selection of beneficiaries would increase efficiency and legitimacy.

Other aspects of local integration, such as generating increased income and employment opportunities, still have to be addressed. Problems are also reported when it comes to security of tenure. At this stage, it is important that - despite the gradual reduction of international support - the relevant authorities continue to seriously address the problems of IDPs.

In June 2012 the then Government adopted the IDP Action Plan 2012-2014 for the implementation of the State Strategy on IDPs. The Plan is in line with international standards and donors' suggestions and includes a more needs-based approach. The relevant Ministry was more open to include privately accommodated IDPs (around half of the total number). A new recount of IDPs is also planned. **However, if the Georgian Government is to tackle the persisting problem of socio-economic integration of IDP communities effectively, a more strategic approach and action as regards livelihood will be needed. In parallel, the longstanding discussion of moving from a status-based to a needs-based approach when supporting IDPs should be concluded.**

The recent increase of the minimum pensions is a positive development. Pension levels should periodically be revisited and adjusted as needed.¹⁰³

7.5 Rights of persons with disabilities

The Georgian Constitution contains a good provision prohibiting the discrimination of persons with disabilities, but effective implementation lags behind. As elsewhere, persons with disabilities run a particularly high risk of being excluded. In Georgia they continue to face serious physical barriers in terms of access to health and education.

In the framework of the 2010-2012 National Action Plan for the Integration of Persons with Disabilities, starting from 2011 the Georgian authorities have taken some tangible measures to protect the rights of persons with disabilities.¹⁰⁴ In the past years, significant progress was also reached in terms of awareness-raising within the society, a process in which the media played a largely positive role. The general de-institutionalisation process touched also a number of children with disabilities.

The efforts undertaken so far should not be relented. An important signal with this respect would be the swift ratification of the UN Convention on the Rights of Persons with Disabilities, whose implementation, it is understood, would be gradual, but would provide the country with a comprehensive framework from action.

7.6 Right to health

Over the past two decades many people in Georgia have been affected by a vicious circle of health problems leading to increased poverty which in turn has damaged their health condition further. Many have eventually lost their property or have been obliged to take loans to meet healthcare related needs.

Past policies introduced market-based principles to healthcare management. At this stage, 95 per cent of all healthcare providers are private actors, independent of the State. In 2007 Georgia adopted a Law on Public Health. Under the previous Government the National Health Care Strategy 2011-2015 was adopted. Among its main objectives is the reduction of inequalities in access to medical care, in particular in terms of equal financial and geographic access, and the improvement of the quality of the medical services provided – and here the new authorities have stressed the need of introducing a quality management system.

The new Georgian authorities seem to be generally committed to social priorities, including the pressing question of healthcare provision. The healthcare budget has been doubled and measures towards the provision of universal healthcare have been taken. A large-scale program of universal healthcare insurance was introduced in February 2013.

¹⁰³ As of September 2013, age pensioners will get minimum 150 GEL (roughly 85 EUR). In total, pension increases of all categories benefit over 1 270 000 people.

¹⁰⁴ Public Defender of Georgia, [The Situation of Human Rights and Freedoms in Georgia in 2011, 2012](#).

One of the most dramatic illustrations of the problems in the area of healthcare is its provision in prisons. Serious efforts to improve the system that had collapsed as a result of its unsuccessful privatisation, which had largely underestimated the healthcare needs of prisoners, were already launched by the previous authorities. However, tangible results were only achieved with the reduction of prison overcrowding since early 2013 and the treatment of numerous prisoners in civil healthcare facilities. This topic is addressed in detail in the chapter on the situation in prisons.

Georgians rely on private health insurance schemes, the cost of which is covered by the MoLHSA in the case of persons living below the national poverty line. Reportedly, the purchased health insurance schemes often do not cover even the most basic needs and exclude chronic diseases. In practice, out-of-pocket payments are still the principal source of funding for the health system. This leads to a reduced access to services for big parts of the population, in particular in terms of access to medicines, which are simply not affordable for many people.

The implementation of healthcare policies – like that of other social policies - requires significant economic and human resources and careful *ex ante* analysis in order to avoid wasting resources in the longer run. It is essential that within the Government and the Parliament there be an understanding that the needed budget support be provided. It has also to be ensured that the very high privatisation rate of healthcare facilities does not result in a reduction of available services in the medium term. Georgia has a long way to go to ensure the realisation of the right to health for all, but further measures to make sure that the healthcare policies are made available to the most vulnerable need to be taken without delay.

7.7 Property and land rights

Among the complaints filed with the Prosecutors Office against the previous authorities, those concerning property rights figure prominently. That large scale violation of property and land rights did take place was also reported previously by the Public Defender and domestic NGOs. Land in which touristic infrastructure was developed appears to have been particularly affected, as well as areas of economic interest in and around the capital city.

NGOs reported about property rights infringements throughout the country, in form of transfers to the State, abandonment of property or re-registration by the State of property that already belonged to someone.¹⁰⁵ Reports indicated that property was generally being donated or abandoned after the owners had been summoned to the Prosecutor's Office. Also, in certain mountainous regions of Georgia, where land was traditionally being passed on from generation to generation without formal registration, owners attempting to register their land started facing insurmountable obstacles in doing so when their interests happen to collide with those of the State.¹⁰⁶ In other cases, certificates nullifying ownership were simply issued to the owners.¹⁰⁷ To date, the Prosecutor's Office has received 1 289 complaints related to alleged violations of property rights.

Clearly, if court proceedings confirm that mass violations of property rights have occurred, it will be very difficult, probably impossible, for the State to fully compensate the victims. Nevertheless, the Georgian authorities, in close cooperation with civil society, have to develop a mechanism to deal with these cases. The vulnerability of the victims, who in certain instances have reportedly lost everything they had, will be a factor that must be taken into account. Where restitution is feasible, it should be done without delay. In general, violations linked to property rights have to be part of Georgia's strategy to deal with its recent past. It may also be necessary to review the existing legislation on this matter.

¹⁰⁵ http://transparency.ge/sites/default/files/post_attachments/StrippedPropertyRights_April2012_Eng_0.pdf

¹⁰⁶ [http://www.osgf.ge/files/publications/2011/Report_Mestia\(Final-1\).pdf](http://www.osgf.ge/files/publications/2011/Report_Mestia(Final-1).pdf)

¹⁰⁷ http://www.osgf.ge/files/publications/2011/Gonio_GEO_WEB.pdf

CONCLUDING REMARKS

In spite of the obstacles created by political polarisation in Georgia, it has been possible in recent months to tackle quite a number of outstanding and deep-rooted problems, including those relating to the functioning of the system of justice. Some forces in the Parliament have been particularly constructive in these endeavours. As always the voices of civil society have been invaluable.

A key advice in this report is that the new Government and Parliament should pay much attention to closing their review of the past in a spirit of strict adherence to principles of justice, fairness and proportionality: no impunity for serious crimes and also no undue politicisation or selective justice. This would help the necessary healing process.

At the same time, it is crucial that the political attention more and more be given to building the future. The report suggests a major review of the needs in terms of developing the democratic institutions. Part of the process of separating the State and the governing political bloc is to introduce effective systems and mechanisms of checks and balances. This will make democracy in Georgia stronger.

The international community has a role in all this. Georgian people and their organisations are extraordinarily open-minded to a dialogue with outsiders. This puts a particular responsibility on those in position to relate from abroad to Georgia. It is prudent to listen carefully and to avoid rushed conclusions. It is important to avoid to be politically instrumentalised by one side or the other on the local scene.

It is also in Europe's obvious interest that Georgia's democracy is developed and further strengthened. A well informed dialogue - based on mutual respect, constructive criticism and sharing of experiences - would be most welcome by this great people.

List of abbreviations

DCFTA	Deep and Comprehensive Free Trade Agreement
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
ECRI	European Commission against Racism and Intolerance
FCNM	Framework Convention on National Minorities
GPB	Georgian Public Broadcaster
GD	Georgian Dream
GYLA	Georgian Young Lawyers' Association
HCJ	High Council of Justice
IATF	Interagency Task Force
IDP	Internally Displaced Person
ILO	International Labour Organisation
ISFED	International Society for Fair Elections and Democracy
LGBT	Lesbian, Gay, Bisexual and Transsexual
MCLA	Ministry for Corrections and Legal Assistance
MIA	Ministry of Internal Affairs
MoLHSA	Ministry of Labour, Health and Social Affairs
NGO	Non-Governmental Organisation
NPM	National Preventive Mechanism
OSCE	Organisation for Security and Cooperation in Europe
SAO	State Audit Office
UNICEF	United Nations Children Fund
UNM	United National Movement