NGO Coalition Report on Georgia's Compliance with the International Covenant on Civil and Political Rights

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Contents

Executive Summary

This report is produced to summarise the work of an NGO coalition[1] that was convened to provide an assessment of Georgia's compliance with the International Covenant on Civil and Political Rights (ICCPR).[2]

In 2007, the Human Rights Committee concluded its last round of assessments of Georgia vis-à-vis the Covenant and provided a set of 'observations', highlighting its key concerns. In 2012 the Government of Georgia provided the Committee with its 4th periodical report on Georgia's conformity with the Covenant. This combined a set of responses to the Committees 2007 observations and a commentary on developments in Georgian society regarding the articles of the Covenant more generally.

The NGO coalition have worked together to offer a response to the 2007 observations, the 2012 Georgian Government 4th periodical report and to the conformity of Georgia with the articles of the Covenant.

The majority of the research and analysis contained in the report is a response to the HRC concluding observations with some consideration of the Georgian Government's 2012 report. However, it is our hope that this analysis may be of interest to analysts outside of the HRC. Therefore, the analysis is broken into four categories that organize all of the material under broad thematic categories. The first section of the analysis looks at problems of discrimination. The second section looks at rights to physical integrity, liberty and security (particularly as they relate to the behavior of the police and the prison service). The third section looks at problems with access to justice. The final section looks at the harassment of journalists as well as the right to free assembly and free elections.

The first section, on discrimination, deals with domestic violence (HRC Concluding Observations, Paragraph 8), protection of the rights of internally displaced people (HRC Concluding Observations, Paragraph 12), religious discrimination (HRC Concluding Observations, Paragraph 15) and obstacles facing minorities (HRC Concluding Observations, Paragraph 17). This is then supplemented with a broader discussion of gender discrimination and discrimination on the basis of disability.

On domestic violence the HRC observation had expressed concerns about the level of domestic violence in the country and the failure of the authorities to prosecute this violence effectively. The NGO coalition concluded that the problem of domestic violence is still severe with one national survey identifying 9% of the population as subject to physical or sexual violence.

There have been some improvements to the legal environment relating to domestic violence. In particular, the law now classifies 'domestic violence' as a particular category of crime. However, this amendment to the law has so far not been used. Furthermore, the government still does not collect and publish specific data on domestic violence and there is strong evidence that the police and the courts are poorly trained to deal with this type of crime.

On protection of the rights of IDPs, the problem has become even more pressing since 2008, when the war with Russia increased the number of IDPs in Georgia. However, the coalition expressed concern that the new law governing IDPs defines the group to only included individuals who previously lived on now-occupied territory. As a result, this may unreasonably exclude IDPs, who used to live outside those regions, but who were nonetheless driven from their homes by conflict, and unable to return.

[1] List of NGO members of the coalition can be found in Appendix 1.

[2] The ICCPR is a multilateral treaty, adopted by the United Nations in 1966 and ratified by Georgia in 1994. It commits the parties to the treaty to respect and protect human rights ensuring equal treatment, rights to physical integrity, liberty and security, rights to legal due process, a set of individual liberties and a set of political rights.

On religious discrimination, the concerns that the committee expressed about the supremacy of Georgian Orthodox Church in Georgian Law persist. In law, there has been an improvement as religious organizations can now register as Legal Entities of Public Law. However, the Government of Georgia has still not returned property that was taken during Soviet times to religious minority groups that owned it. In addition, there is considerable evidence that in a range of broader ways, religious intolerance for minority religions is rife in Georgian society, and the Georgian state needs to make more determined efforts to discourage this discrimination through the education system and better financial/cultural support for minority religions.

On the protection and inclusion of ethnic minorities, the NGO coalition believes that the problems expressed in by the HRC observations in 2007 are generally still present today. In particular, there has been little improvement in the teaching of the Georgian languages to non-ethnic Georgians or the training of non-Georgian language teachers. This threatens the likely inclusion of non-ethnic Georgians in Georgian society and also undermines their cultural autonomy. Finally, ethnic-minority representation remains extremely limited (and far lower than the representation in the country) in government.

In addition to the specific issues brought up by the HRC observations, the NGO coalition also considered the broad issues of gender discrimination and discrimination on the basis of disability in Georgia. On gender discrimination the coalition highlighted that legal protections are in place to protect women. However, women's lower wages and lower levels of managerial responsibilities in the work-place, in spite of their higher level of educational attainment, is clear prima-facie evidence for discrimination or structural biases in society.

Discrimination on the basis of disability is also excluded by Georgian law. However, social exclusion largely emerges, because the state does not provide sufficient resources[3] to ensure that all disabled people can overcome the practical hurdles to social inclusion. This is most obvious in the education system, where as there are too few trained teachers to provide disabled children with the support they need, and poor technical facilities to develop much needed skills. Outside of the educational system there are also limited facilities to support integration or access for disabled people in wider society. In particular, too little effort is made to ensure that Georgia's streets can be navigated by disabled people, or that the public transportation system is accessible.

The second section of the report looks at the issues relating to physical integrity of the person as well as liberty and security. Following from the HRC concluding observations, the report paid particular attention to problems in the police and penitentiary service. This looks at torture and ill treatment during arrest (HRC Concluding Observations, Paragraph 10), excess use of force by police and prison officials (HRC Concluding Observations, Paragraph 9) and poor conditions in prisons (HRC Concluding Observations, Paragraph 11).

On the issue of torture in general, the government of Georgia 4th periodic report argued that they have enacted a number of policies to tackle the problem. Similarly, the government had argued, in their response to the HRC Observations, that there was little evidence of systematic abuse in the prisons.

In the light of videos released prior to the October 2012 Parliamentary election, in addition to various well document instances of violence carried out by the police and penal service before that, these claims by the Georgian Government seem implausible. The only question that seems to remain is the extent to which these abuses were systematic and/or premeditated.

The situation in relation to the prison seems to be improving since the October 2012 Parliamentary Elections brought the new government to power. In particular, the arrest and prosecution of prison guards and the investigation of interior ministry and the police for exceeding their authority in a range of ways, seems to have brought the culture of impunity amongst these groups to an end.

[3] For instance, direct financial support for disabled people has not increased since 2004, even though the overall budget has increased more than 11 fold.

In addition, the prison Amnesty at the end of 2012 has eased the over-crowding. One can take issue with the way the Amnesty was applied, but it certainly helps to correct for Georgia's extremely high level of incarceration.

In addition, this section considers the deficiencies in the criminal procedural code that make pre-trial detention more likely and harder to appeal. In particular, the report highlights that the evidentiary requirements for appeal pre-trial detention are overly restrictive and the practical administrative hurdles that make appeals hard to carry-out.

In the third section, the report considers the judiciary and rule of law. Specifically, this section responds to issues regarding judicial independence (HRC Concluding Observations, Paragraph 13) and judicial education (HRC Concluding Observations, Paragraph 9) before going on to consider the broader issue of the right to a fair trial and juvenile justice. All of these are covered by article 14 of the ICCPR.

Under the discussion of the independence of the judiciary, the report focused considerable attention on the functioning of the High Council of Justice as well as the Disciplinary Collegium. The Government 4th Periodical Report claimed that these developments had produced considerable improvement in judicial independence in Georgia. This report, however, focuses on the membership of the High Council of Justice and the conflict that exists between the High Council of Justice and the Disciplinary Collegium.

The NGO coalition notes that issues of membership have limited the effectiveness of these institutions to achieve their roles. However, the report further suggests that reforms to these institutions that have occurred since October 2012, while still imperfect, might constitute a considerable improvement, as also attested by the Venice Commission.

This section also considers the problems of the remuneration of judges, judicial appointments and the operation of the High School of Justice.

The report also considers the right to a fair trial and highlights the legal and practical hurdles, within the Georgian Criminal Procedural Code, for achieving this goal. In particular, the report highlights the internal conflicts, within the code, that make it difficult for the Georgian court system to become truly adversarial in nature.

On juvenile justice, the government enacted draconian measures in 2007 that reduced the age of criminal responsibility from 14 to 12 years and brought juvenile justice under a so called "zero tolerance" policy. In 2010 the law was changed again, and reversed some of the worst excesses of the 2007 law, particularly returning the age of criminal responsibility to 14.

However, criminal liability in juvenile cases continues to be applied too widely, even in the case of relatively minor crimes. The range of punishments is limited. Probationary sentences are usually only applied if a plea-bargain has been reached and punishments like 'house arrest' do not exist.

In addition, the juvenile justice system suffers from a lack of specialists in the area. No specific training programs for police officers, prosecutors, lawyers, judges and probation officers working with juveniles exist in the country and there is no specialised system of juvenile courts. Finally, the state is unable to effectively educate juveniles who are under state supervision.

The final section of the report considers a range of other infringements to the ICCPR. This considers the issue of harassment of journalists by the authorities (HRC Concluding Observations, Paragraph 16). It also considers the right to assembly and the right to free and fair elections. These were not highlighted by the HRC Observations but did seem particularly important to the NGO Coalition for the period under review.

On the harassment of journalists, the report documents apparent instances where such harassment has occurred but has not been investigated. The report also responds to the Government of Georgia (GoG) 4th Periodic Report, which lists their efforts to improve the media environment generally. Taking each claim of the Georgian Government, point by point, the report concludes that reforms were usually strictly legal in nature and did not lead to a practical pluralisation of the media environment or increased independence of the Public Broadcaster. The media environment did pluralise before the October elections, mainly because of the short-term 'Must Carry, Must Offer' law which required cable providers to carry all of the nationally registered TV stations.

On the right to assembly, the NGO coalition acknowledges the widely publicised instances of the Government breaking up public assemblies. It also highlights that the current law on assemblies and manifestations does not deal well with spontaneous assemblies, making these kinds of over-reactions by the law enforcement agencies more likely.

Finally, the report considers the track record, over the reporting period, of providing free and fair elections. The coalition acknowledges that in the most recent election the decision of the people was reflected in who won a majority of the seats in parliament. However, the report highlights a range of ways in which the electoral environment, and the elections themselves, were flawed in the 2008 Presidential and Parliamentary Elections, the 2010 Local Elections and the 2012 Parliamentary Elections. These flaws can be seen in the biased efforts to create wholesale electoral reform, the operation of the central election commission, biases in the judiciary, the use of administrative resources, and abuses of administrative power. The report concludes that it is essential to fix these failures before the next round of elections, starting with the Presidential Election in October 2013.

1 Discrimination on the basis of gender, ethnicity and disability

Articles 3 and 26 of the ICCPR guarantee protection from discrimination. In addition article 18 offers specific provisions guaranteeing freedom of religion and article 27 assures specific rights to minority groups. In the 2007 Human Rights Committee concluding observations the Committee highlighted specific concerns relating to domestic violence, protections for ethnic minorities and protections for religious minorities. This section will address the HRC observations and the government responses to them, before highlighting broader concerns about gender discrimination and discrimination on the basis of disability more generally.

1.1 HRC Concluding Observations, Paragraph 8: Domestic Violence

In 2007, the HRC committee expressed their concerns about 'the still substantial number of women in Georgia who are subject to violence, in particular to domestic violence, as well as the insufficient measures and services to protect victims'. They also made three recommendations. First, that the Georgian Government should take steps to ensure that data on domestic abuse is properly collected. Second, that the authorities should promptly investigate claims of such abuse. Third, that the government should take responsibility to open and finance shelters for victims of abuse.

Domestic violence continues to be a problem. According to a national study on domestic violence around 9% of women are victims of physical or sexual violence.[4]

[4] Marine Chitashvili, Nino Javakhishvili, Luiza Arutinovi, Lia Tsuladze, Sophio Chachanidze (2010), "National Research on Domestic Violence against Women in Georgia", Tbilisi.
The Research was carried out within a framework of a project entitled, "Combating the Gender-Based Violence in the South Caucasus", co-funded by UNFPA and the Government of Norway.

There have been some developments in the response to this problem. On 2 April 2012, the Parliamentary Council on Gender Equality and Inter-agency Council for the Prevention of Domestic Violence set up a working group to harmonize existing Georgian legislation with Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. Articles 111 and 126 were added to the Criminal Code of Georgia and this recognized domestic violence as a criminal offense and defined the relevant measures of responsibility.[5]

This is clearly a legislative improvement. However, at this time, these changes have not fulfilled the first two recommendations of the Human Rights Committee.

First, data on domestic violence is still not collated and publically available. The GoG 4th periodic report to the HRC highlights improvements on the collection and publication of crime statistics generally.[6] However, there are still no specific statistics released on domestic violence.

While the court hears cases of domestic violence they are usually tried as 'assault' of various kinds. In addition, the courts do not collate statistics about the types of violence that resulted in a charge being brought or the punitive, protective and preventive orders that result.[7] As a result, it is impossible to distinguish domestic violence from other forms of assault.

The HRC's second recommendation, to ensure that complaints of domestic abuse are responded to quickly and appropriately, also does not seem to have occurred in practice. While 'domestic violence' is a recognized crime, it is often considered that one of the main reasons why cases are not brought under this law, is that the police and courts are not aware of how to use it. For this reason, some non-governmental organizations train policemen in certain regions of Georgia on this issue.[8]

Recommendations for the prevention of domestic violence:

1/ Hasten the ratification process of the Council of Europe Convention (Istanbul Convention) on Preventing and Combating Violence against Women and Domestic Violence sponsored legislation.

2/ Allcourts of Georgia shall produce disaggregated data on cases of domestic violence including sex, age, and family relationship of victims and perpetrators.

3/ The state should provide specific training on how to investigate and approach domestic violence cases to policemen and trial court judges across the country.

4/ Apply international instruments, such as Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) iin court practice.

[5]Law of Georgia on Changes and Amendments to the Criminal Code of Georgia.
[6]Government of Georgia (2012), "Fourth Periodic Report of States Parties due in 2011", pp8-9, para. 19.
[7] Inga Beridize (2011), "Gender Analysis of the Georgian Legislation and Court Practice", Tbilisi. The research was undertaken by the Women's Information Center (WIC), in the framework of the project, "Civil Society Consolidated Response to violations of women's rights though monitoring of relevant international standards", with the support of the National Democratic Institute (NDI).
[8] For example, the Association of Women Democrats and the National Anti-Violence Network with financial support of the US Embassy.

1.2 HRC Concluding Observations, Paragraph 12: Protection of the rights of IDPs (Article 12 and 26)

In the HRC Observations, Paragraph 12 highlighted the problem of IDPs in Georgia.About 270.000 Internally Displaces Persons (IDPs) reside in Georgia. The majority of them fled their permanent places of residence due to conflicts in Abkhazia and South Ossetia during 1990s, while a far smaller proportion are the result of the Russian-Georgian War of 2008.

In December 2011, the Parliament of Georgia introduced new amendments to the "Law of Georgia on Forcably Displaced Persons – the "Persecuted"".The new legislation changed the law to only recognize IDPs as people displaced from the occupied territories of Georgia.

Unfortunately, some of the displaced people from the 2008 war lived outside of the occupied zone when circumstance forced them to leave and, while many of them could not return home, for security reasons, they are not considered IDPs under the new law.

Recommendations:

Given the fact that there is no material difference between the internally displaced persons who originated on the occupied territory and those who did not, this provision should be corrected.

1.3 HRC Concluding Observations, Paragraph 15: Religious Discrimination (article 18)

Paragraph 15 of the HRC observations discusses discrimination on the basis of religion. In particular, the committee highlights the fact that only the Georgian Orthodox church can register as an LEPL, and this may lead to discrimination. They also express concern because land that was confiscated by the state in Soviet times, has not been returned by the state to the non-Georgian Orthodox religions that previously owned it.

On the issue of legal status, mentioned by the HRC Observations, the situation has improved. Amendments to the Civil Code of Georgia, allow religious organizations to be registered as legal entities of public law (LEPL) if they have historical ties with Georgia, or if they are recognized as a religion by the member states of the Council of Europe.

However, on their second concern, the religious property of minorities confiscated during the Soviet Union has often still not been restored to its original owners. This is one of the most acute barriers to greater cross-religious harmony. This issue is consistently raised by the Ombudsman as well as local and international human rights organizations.

This is a clear infringement of the cultural rights of religious minorities. In addition, as the original owners do not have control over the assets, there are instances where the interior or the exterior of a disputed religious building is being altered and the buildings can lose their original architectural and religious appearance as the result of the works.

In addition to these two issues, the rights of religious minorities are infringed in a range of other ways. Perhaps most seriously, the religious rights of minorities are regularly attacked, both physically and verbally and religious institutions of minorities are regularly defaced. At times law enforcement agencies do not adequately investigate crimes against religious minorities. Often investigations involving crimes against religious minorities are delayed and/or not treated seriously enough. The recent acts of violence by the adherents of the Georgian Orthodox Church against religious minorities in the villages of Nigvziani and Tsintskaro, are a useful example that the state did not ensure effective protection of the rights of the minority.

There is little concerted effort by the state to combat the ignorance regarding minority religions. The principle of religious neutrality is not ensured in schools. Georgian Law forbids proselytism, indoctrination, display of religious symbols for non-academic purposes and the engagement of children in religious rituals. However, such activities are common-place. For example, there are Georgian Orthodox Church religious buildings and places of worship on school grounds and sometimes religious literature is distributed by them. In addition, the religious interests of certain minority groups are disregarded while setting up a school calendar, scheduling centralized examinations and Olympiads, and when making up missed classes.

The schoolbooks used by secondary schools often fail to reflect the existence of religious and ethnic diversity. Starting on 15 March 2010, publishers of schoolbooks have been required to create anti-discrimination textbooks; however, this requirement was abolished on 25 February 2011.

Perhaps the most obvious sign of the strong inclination of the state in favour of the Georgian Orthodox church, is the budgetary support they provide. The Georgian tax code also favors the Georgian Orthodox Church over other religious groups. The state makes annual allocation for maintenance of cultural heritage. However, religious minorities do not receive enough funding to maintain their place of worship.

Recommendations

1/ The state shall provide proportional funding to all religious institutions;

2/ The Georgian Parliament shall amend tax legislation of Georgia to ensure equal taxation to all religious organizations. This entails:

3/ Free all religious organizations equally from property tax;

4/ Construction, restoration, and interior painting of churches and places of worship carried out on the basis of a contract with any religious organization shall be free from Value Added Tax;

5/ To the extent possible, ensure adequate conditions for religious practices by adherents of various religious organizations in the penitentiary establishments.

6/ Ensure access to prisons for the clergy of all religions.

7/ Law enforcement agencies shall ensure proper qualification and timely and effective investigation of religious crimes. If officers fail to thoroughly investigate religious based crimes, disciplinary action shall be taken.

8/ The Government of Georgia shall expediently restore the requirement of schoolbooks reflecting religious and ethnic diversity.

9/ The state shall identify instances of violation of religious neutrality in public schools and shall implement measures to eradicate such cases. The state shall ensure adequate follow-up to the cases of disciplinary violation as well as to those containing features of crime.

10/ Secondary schools and institutions of higher education shall consider religious interests of their pupils and students when designing an academic calendar.

11/ Within the short period of time the government shall present a detailed action plan on maintenance and return of the so-called disputed religious buildings and places of worship to their historic successors.

12/ The state shall give equal consideration to the needs of maintenance and restoration of religious buildings belonging to all religious organizations. Besides, their interior and exterior shall not be altered in a way that they lose their architectural or religious appearance.

1.4 HRC Concluding Observations, Paragraph 17: Obstacles Facing Minorities (Articles 25 and 26)

Paragraph 17 of the HRC concluding observations, relates to the treatment of national minorities. The Committee express concerns about the ability of national minorities to enjoy their cultural rights, their low level of representation in politics and the possibility that low levels of Georgian language knowledge in certain ethnic groups might amount to marginalisation.

All of these issues continue to be a problem. Although the Ministry of Education and Science of Georgia implements special programs, the committee's concern that large number of national minorities residing in Samtskhe-Javakheti and Kvemo Kartli regions, as well as Azeri minorities densely populated in villages of Kakheti region still cannot communicate in the Georgian language, is correct. An inability to speak Georgian impedes their proper civic integration.

In order to increase the knowledge of Georgian, it is clearly necessary to make high quality Georgian language instruction available to anyone who wants it. However, pre-school Georgian language facilities for non-Georgian speakers are inaccessible and low quality.

In addition to their need to learn Georgian, maintaining their native language is a significant concern facing the national minorities living in Georgia. In accordance with the Law of Georgia on General Education, citizens of Georgia, whose native language is not Georgian have the right to receive full general education in their own ethnic language. In line with this, the Ministry of Education and Science of Georgia implements a Multilingual Instruction Support Program in the public schools, teaching in minority languages.

However, in practice, teaching in non-Georgian language has problems with materials and teachers. In minority areas, during bi-lingual instruction, bi-lingual school-books are used. However, these text-books are notoriously difficult for students and teachers to understand. In addition, very few teachers at Georgian public schools know both Georgian and a non-Georgian ethnic language well enough to teach in both languages.

Georgian Universities do not provide higher education for school teachers in minority languages. The activities of Zurab Zhvania School of Public Administration is one notable exception as it provides three month long Georgian language training programs for teachers and employees of administrations from schools located in the regions densely populated by national minorities.

Outside of school there has been some effort to provide non-Georgian language access to ethnic minority groups. Throughout 2012, news broadcasters aired segments in minority languages. The news programs in minority languages discussed major developments in the country and in the world. The programs, however, did not discuss local issues that are important to residents, such as economic development or local elections. Furthermore, there is not adequate use of public radio in minority areas.

As the committee commented in 2007, the level of participation of national minorities in political or civic life across the country continues to be too limited. National minorities are not sufficiently represented in executive branch of government, political parties, or in civil society groups. In addition over the last few years the state administration in regions populated by minorities has created hurdles to the political participation of national minorities in political and civic life. The Ministry of Internal Affairs and other law enforcement agencies regularly interfered in decision-making on various issues. There have been allegations that

representatives of national minorities were summoned to the territorial offices of state security agencies and were forced to act in ways that suited the interest of the Ministry of Internal Affairs.

There is also an increasing trend of using hate-speech against ethnic, religious, or other minority groups at almost all levels of Georgian society. It is especially worrying that some high level government officials use discriminatory language in daily speeches.

In addition to the language and integration issues facing the large ethnic Azeri and ethnic Armenian groups, it is important to give some attention to the smaller ethnic groups. For example, 1,500 Roma reside on the territory of Georgia. The problems of Roma integration into Georgian society are complicated and multifaceted. Every sphere of life, including education, healthcare, civic integration, preservation of culture and traditions and employment is problematic for the Roma community.

Although many Roma residing in Georgia live in extreme poverty, few of them receive social support. The primary reason for them not receiving benefits is that Roma often do not have documents. For the same reason, the great majority of Roma do not receive pensions and other types of social assistance. Furthermore, the Roma rarely apply for medical services.

Recommendations:

1/The state shall ensure access to high quality pre-school education for minorities.

2/The state shall reinforce programs for teaching the Georgian language to all the minority groups who want to learn it.

3/ The state shall put in place a strategy for promoting and encouraging the training of school teachers in minority languages.

4/ The state shall ensure teaching and preservation of minority languages. Minorities shall have access to general education in full in their native language (including teaching of the official language).

5/ThePublic Broadcaster shall tailor its broadcasting to the interests and needs of the minorities.

6/The state shall implement actions that would encourage participation of national minorities in public policy. Minorities shall be authorized to use their own language in local self-governance.

7/ The Government of Georgia should strengthen national policy aimed at fighting hate speech and usage of discriminatory language. It is recommended to set up a special agency working to eliminate vitriolic rhetoric against minorities. The new organization can work under the Public Defender's Office or with the Ministry of Reintegration.

8/ Minority groups could receive relevant funding from the state budget to implement active awareness campaigns, work with various target groups of the society, and develop relevant policy proposals for the Parliament.

9/The state shall design a strategy for systemically addressing problems of the Roma community.

1.5 Broader issues of Discrimination

In addition to the HRC concluding observations on discrimination a range of other issues related to discrimination were considered important by the NGO team.

1.5.1 Gender Discrimination

As stated by the Georgian Government in its 4th Periodic Report, Georgia has various legal acts that recognize the equality of men and women. In addition, the Law on Gender Equality, adopted by the Parliament of Georgia in March 2010, explicitly prohibits gender based discrimination and obliges the government to create the conditions for equal opportunity in a wide range of areas.

Nonetheless, one can identify inequality in a range of areas, where more effective action on the part of government may help to ameliorate the current situation. Below we discuss the problem of education, labor relations, national minority women and convicted women.

Education

While women are well represented in school and university, gender bias in the education system can be seen in the extremely low level of women's representation at the senior level of educational management. Despite the fact that 85% of school teachers are women, most school administrators are men.[9]

There is a similar managerial disparity in higher education. In Georgian institutions of higher education, there are more female students than male students and more female assistant professors than male. However, in the senior positions of associate professor and full professor, there are twice as many men as women.[10] The positions of University Rectors or Deans are as a rule occupied by men. This not only reflects biases in recruitment and promotion but also reinforces gender stereotypes.

In addition, there is little effort to develop gender sensitivity within the educational system. Teachers and text-books may perpetuate gender stereotypes, as neither teacher training, nor text-book development gives consideration to these issues.

More broadly within the social service provision, the government does not utilise gender budgeting, so it is not in a position to know the gendered implications of its spending in healthcare, education and the full range of government social services.

Labor Relations

Discrimination against women in the workforce is one of the most serious challenges for the Georgian state. Although 55 percent of students in higher education institutions are female, in the workplace they occupy lower paying positions and have half the average monthly salaries of men.[11] This is the result of both horizontal and vertical biases. Vertically, women are far less likely than men to have senior positions in business. This may result from the demands of child-rearing and the failure of the state to provide adequate child-care, but it undoubtedly also results from the prejudices regarding the appropriate roles of women.

In addition, women are more likely to be employed in the less well remunerated sectors like education and healthcare. State remuneration for women is especially low in these fields. Teachers earn a basic monthly

[9] National Statistics Office of Georgia, Education, www.geostat.ge/index.php?action=page&p_id=205&lang=geo.
[10] Nana Berekashvili (March 4, 2013), "Education Policy and Gender Equality", Tbilisi, Thematic discussion.
[11] Ricardo Hausmann, Laura D. Tyson, Saadia Zahidi (2012), "The Global Gender Gap Report", World Economic Forum, Geneva, p.184, http://www.weforum.org/reports/global-gender-gap-report-2012.

salary of GEL 311 (USD 188). This is 35% of the national average salaried income. In health and social services the average salary is GEL 459, which is 50% of the national average.[12]

There have been recent improvements. Early this year, the new Government of Georgia revised the labor code. Special consideration was given to issues pertaining to women's role in the work place, such as maternity leave, conditions for female employees, and dismissal of pregnant women.

Convicted Women
The Imprisonment Code allows family and long-term visist for women prisoners. In practice, however, these rights were restricted due to lack of relevant facilities and/or because the prison authorities want to avoid the possibility of inmates becoming pregnant.

Since the 2012 parliamentary elections, the new government has been working to improve prison infrastructure so can have family visits.

Recommendations:
1/ More consideration should be given to the promotion of gender equality while developing and selecting text-books.

2/ The Ministry of Education and Science should provide training in gender equality for public school and kindergarten teachers.

3/The state should implement gender budgeting to ensure equality between programmers and state expenditures for men and women.

4/ The state should pay particular attention to the promotion of awareness of gender equality within minority households.

5/In order to increase public awareness on the role of men and women in the society and in the family and their equality, it is important to intensify work with various stakeholders, such as journalists, NGOs, religious groups and national minorities to ensure a healthy discussion about gender issues.

1.5.2 Discrimination on the Basis of Disability

According to the data of the Ministry of Labor, Health, and Social Affairs of Georgia there are 141,000 people currently receiving disability benefits in Georgia. People of disabilities represent one of the most marginalized groups of society.

Access to Education for Persons with Disabilities
Given the large number of disabled children, of different kinds, there are relatively few schools that specialise in providing education for children with particular disabilities. There are no blind children at the schools of inclusive education andonly a few hearing impaired children are involved in the education process. There is only one specialized school for visually impaired children located in Tbilisi and two schools for deaf children located in Tbilisi and in Kutaisi. There are 230 pupils enrolled in the special school for deaf children and 44 in the only school for blind children[13]. Therefore, the majority of deaf and blind children are left with no primary education.

[12] Ch. Jashi (2011), "Gender Paradoxes in the Field of Healthcare", Tbilisi
[13] The information was collected from Tbilisi and Kutaisi Special School administration and Tbilisi Blind School Administration by the NGO "Coalition for Independent Living"

There are only two adapted manuals in Georgian language and mathematics for 1st and 2nd graders with hearing impairments[14]. For children with visual impairments a manual for teaching how to read and write in Georgian has been published in Braille script, however, there are few if any books written in Braille. Due to the unavailability of books written in Braille, the only way to educate children with visual impairment is listening to course material read by their parents, teachers, and caregivers.

In addition to only having limited school options, teachers lack adequate training and there are extremely limited technologies available to aid student with disabilities. For example, teachers who work for the special school for blind children do not know how to use assistive technologies when working with blind or visually impaired children and use no special methodologies with them.

Lack of qualified professionals at special and inclusive schools is a significant obstacle to literacy and the primary education of blind and hearing-impaired children. Additionally, there are no educational programs aimed at teaching parents how to use assistive technologies.

Extremely Low Levels of Financial Support for Persons with Disabilities

In July 2006, the government initiated a nationwide program of registration of families living below the poverty line and offered them financial and healthcare assistance. However, for persons with disabilities that were not found to be under the poverty line, the state merely provides a disability pension of EUR 33 per month.

The failure to expand financial support for the disabled is reflected in the state budget. While the overall national budget has increased from GEL 600 million in 2004 to GEL 7 billion in 2011, the budget allocation for the social integration of persons with disabilities has remained unchanged at GEL 4 million.

In addition, there is extremely limited effort to make public spaces accessible for the disabled. Wheel-chair ramps, for example, are often so steep as to be practically useless. In addition, there is an almost total absence of public transport that is accessible to people with disabilities[15]. Together, this dramatically limits the mobility and social inclusion of disabled people.

Recommendations – the government should:

1/ Make every efforts to ensure access to education of persons with disabilities.

2/ Publish specially adapted manuals for children with hearing and visual impairments.

3/ Increase the qualifications of teachers for children with hearing and visual impairments.

4/ Increased financial assistance to persons with disabilities.

5/ Proved accessible infrastructure and public transport.

6/ Include organizations representing persons with disabilities in the preparation of programs for the disabled persons.

[14] According to the information provided by the Ministry of Education and Science of Georgia, http://www.mes.gov.ge/

[15] Monitoring results conducted by the non-governmental organizations working on disability issues

2 The police, the procedure for arrest, prisons and the pre-trial detention

In this section of the analysis, the NGO coalition research is looking at the HRC Observations on the police and the use of force, torture and ill treatment during arrest and poor conditions in the prisons

2.1 HRC Concluding Observations, Paragraph 10: torture and ill treatment during arrest (relating to articles 2, 7, 9)

Paragraph 10 of the HRC Observations expressed concern about the 'persistence of reports of acts of ill-treatment by the police, especially during the arrest of suspects'. The committee recommends that the state should ensure investigation of complaints, reparation for victims, establish an effective mechanism for the avoidance of torture and continue to carry out an anti-torture action plan, taking into account the recommendations of the UN Special Rapporteur on Torture.

The NGO coalition reporting period was characterised by cases of dispersal of demonstrations[16]and by the use of excessive force against the participants.[17] The most notable incidence of police brutality occurred on May 26, 2011, when a police crackdown of demonstrators resulted in the death of several persons.[18]The investigations into the facts of alleged ill-treatment are delayed and are still ongoing.[19]

In its 4th periodic report, the Government of Georgia (paragraph 24-28), highlights a range of efforts to combat this problem. In particular, they notes that abusive tactics by policemen in temporary detention centres is no longer a systematic problem. They also highlight the establishment of an Inter-Agency Coordination Council against torture and cruel, inhuman, degrading treatment.

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[16] Bakar Jikia (2012), "Monitoring Freedom of Peaceful Assembly in Georgia - Legislation and Practice", Human Rights Center (HRIDC), Tbilisi.
Demonstration of November 7, 2007, Demonstrations of May 6 and June 15, 2009, Demonstrations of January 3 and May 26, 2011. http://humanrights.ge/admin/editor/uploads/pdf/02%20English_final.pdf.

[17] Declaration of the Georgian Young Lawyers' Association (GYLA) about raiding the demonstration on June 15, 2009. Case of Levan Asatiani, Ilia Chighoshvili, Malkhaz Topuria, Amur Revishvili, Shota Zghudadze, Zaza Germanozashvili, Shota Iamanidze, Valerian Dzebisashvili, Teimuraz Elisashvili and Elguja Chkhaidze vs.Georgia; Case of Murman Dumbadze, Besik Tabatadze, Zaza Sanikiani and Andrei Gora vs. Georgia, http://gyla.ge/eng/news?info=994.

[18] Georgian Young Lawyers' Association (GYLA) (2011), "Report 26 May - Analysis of Human Rights Violations during and related to the Dispersal of the May 26 Assembly", Tbilisi,
http://gyla.ge/uploads/publications/2011/26_maisi_eng.pdf

[19]Georgian Young Lawyers' Association (GYLA) (2012), "Legal Analysis of Cases of Criminal and Administrative Offences with Alleged Political Motive", Tbilisi. Case of Murman Dumbadze,
http://gyla.ge/uploads/publications/2012/legal_analysis_of_cases_of_criminal_and_administrative_offences_with_alleged_political_motive.pdf;
Letters of the Georgian Young Lawyers' Association (GYLA) to the Prosecutor's Office about investigation into the use of disproportional force against demonstrators on January 3, 2011;
Letter of the Georgian Young Lawyers' Association (GYLA) of March 10, 2011 #G-01/57-11;
Letter of the Georgian Young Lawyers' Association (GYLA) of April 26, 2011 #G-01/87-11;
Letter of the Georgian Young Lawyers' Association (GYLA) of April 13, 2011 #G-01/77-11;
Letter of the Georgian Young Lawyers' Association (GYLA) of June 6, 2011 #G-01/104-11;
Letter of the Georgian Young Lawyers' Association (GYLA) of June 28, 2011 #G-01/110-11;
Letters of the Georgian Young Lawyers' Association (GYLA) to the Prosecutor's Office about investigation into use of disproportional force against demonstrators on May 26, 2011;
Letter of the Georgian Young Lawyers' Association (GYLA) of July 26, 2011 #G-01/120-11;
Letter of the Georgian Young Lawyers' Association (GYLA) of November 28, 2011 #G-01/190-11;

In 2011, however, the National Preventive Mechanism Report noted that a number of people who had been placed in temporary detention had visible traces of injuries inflicted during their detentions. The incidences of prisoner abuse are also under-reported because a majority of victims refrain from filing a complaint.[20] Prisoners often fear repercussions from whistle-blowing on police officers' abusive punishments.

The establishment of an Inter-Agency Coordination Council against torture and cruel, inhuman, degrading treatment is a positive step. Its ability to ameliorate systemic government abuse, however, is hampered due to excessive bureaucracy. For example, it was extremely difficult to setup meetings between the Council and non-governmental organizations for the purposes of this report.

In addition to responding to the HRC observations, the GoG also offers several more general observations on the way in which changes since the 2005 HRC observations have improved the situation vis-a-vis torture. In particular, they highlight changes to the criminal procedural code.

However, in spite of these reforms, legislation aimed at ameliorating systematic torture within the penitentiary system has been ineffective. The current legislation fails to deter and prevent torture for the following reasons:

1/ Articles of the Criminal Code on torture and other cruel, inhuman, or degrading treatment fail to include death under the list of aggravating circumstances. As a result, death from torture would be merely classified as 'murder', whereas 'death from torture' would normally be considered a worse crime.

2/ The investigative authority is not accountable to the victims. The victim does not have the right to request information about investigations or to participate in the process of investigations.

3/ The legislation fails to charge the body or a public official reviewing the complaint with assessing the safety of an alleged victim. Thus, the overseeing body does not take responsibility for ensuring the victims' safety. This issue was especially critical during the reporting period, because under existing protocols, alleged victims did not have proper mechanisms to report abuse until they were transferred to another establishment. Often, when a victim was able to submit a complaint, obtaining permission to transfer to another institutionfor personal safety was problematic.[21]

4/ The Criminal Procedure Code outlines circumstances when prosecutors and the investigators cannot participate in the criminal proceedings. The list of circumstances, however, does not try to promote impartiality of investigation of cases of ill-treatment.

5/ According to the Criminal Procedure Code, the role of a judge in preventing abuse is marginal. The judges' role in this regard is limited to providing explanation to the accusedof his or her rights.[22] There were cases where the judge failed to adequately explain, or did not explain at all, the right of victims on submitting a complaint.[23] Moreover, the Criminal Procedure Code does not contain a procedure that would enable a judge to effectively react to alleged violation of rights.

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[20] Public Defender of Georgia, Georgian Young Lawyers' Association (GYLA) (2012), "Ill-treatment in Penitentiary Establishments and Temporary Detention Isolators in Eastern Georgia", Tbilisi, http://gyla.ge/uploads/publications/2012/prevenciis_erovnuli_meqanizmi_eng.pdf.

[21] Public Defender's of Georgia (2011), "Special Report on the Monitoring of the Penitentiary Establishments and Temporary Detention Isolators of Georgia, First half of 2011", http://www.ombudsman.ge/files/downloads/en/wlkxwtamrxzqzvysxoyk.pdf.

[22]Criminal Procedure Code, Art. 197.

[23]Georgian Young Lawyers' Association (GYLA) (2013), "Monitoring Report of Criminal Cases of Tbilisi and Kutaisi City Courts", Tbilisi, http://gyla.ge/uploads/tbilisidakutaisi_ge.pdf.

6/ The current legislation does not provide victims with doctors or health-care professionals for treatment. This is problematic for two reasons. First, it prevents victims from receiving crucial care. Second, not providing health care to alleged victims prevents doctors from examining the victims' injuries for evidence.

In paragraph 70-71 of its 4th Periodic Report, the GoG highlights the importance of establishing a Human Rights Departments at the Ministry of Corrections and Legal Assistance of Georgia and at the Prosecutor's Office of Georgia. Establishing this department is superficially a positive step. However, there is insufficient information at the current time to evaluate the effectiveness of the department. Anecdotal evidence indicates the department is ineffective.

2.2 HRC Concluding Observations, Paragraph 9: Excess use of force by police and prison officials (relating to article 6)

2.3 HRC Observations Paragraph 11: Poor conditions in prisons (relating to article 10)

In paragraph 9 of the HRC concluding observations, the committee highlighted the concern about the alleged excessive use of force in the conflict that occurred at Tbilisi Prison no.5 during which 7 prisoners died. The committee calls for the government to initiation clear investigations of the event, to initiate criminal proceedings against perpetrators, to provide compensation for the victims and their families and to initiate training to ensure that such events don't happen again.

In paragraph 11, the HRC concluding observations highlight the poor conditions facing prisoners, and recommend that the government does all it can to apply UN minimum rules for the treatment of prisoners, including the removal of overcrowding

Abuse in prisons
In response to these concerns, the GoG, in its 4th periodic reportdenied the existence of prisoner abuse within the penitentiary system. However, in September of 2012, videos were released that show physical abuse, including rape, as a violent and systematic practice carried out by prison guards.

While the graphic nature of the abuses taking place was shocking, they were not hugely surprising to many people working in this area. The Public Defender and NGOs had continually discussed the issue with the GoG. The Public Defender and NGOs cited the Ksani establishment N15, Gldani prison N8 and the medical establishment[24] as the most egregious practitioners of abuse and torture.

Prisoners discussed the use of psychological and physical violence as forms of punishment. Although the practice of abuse was widely known, prisoners refused to identify themselves or withdrew complaints later for fear of retaliation.[25] Sometimes after filing a complaint, a prisoner would be kept in the same penitentiary establishment; leading to more forceful forms of intimidation.[26] Furthermore, in some cases the

[24]Sentenced as well as remanded prisoners are placed in the Penitentiary Establishment No 8 in Gldani. The Gldani prison was known for its strict regime, illegal punishment measures and the prevailing syndrome of fear among prisoners.
[25]Public Defender of Georgia (2011), "The Situation of Human Rights and Freedoms in Georgia", http://ombudsman.ge/files/downloads/en/hcqkqyhblwldxcayqiwg.pdf; Public Defender of Georgia, Georgian Young Lawyers' Association (GYLA), (2012) "Ill-treatment in Penitentiary Establishments and Temporary Detention Isolators in Eastern Georgia", Tbilisi, http://gyla.ge/uploads/publications/2012/prevenciis_erovnuli_meqanizmi_eng.pdf.
[26] Georgian Young Lawyers' Association (GYLA) Condemns Repeated Fact of Pressure Exerted against Convicted K. Baratashvili.

administration tried to coerce or discourage prisoners from filing a complaint. Thus, the GoG's assertion that prisoners' ability to report abuse deterred guards from carrying out excessive punishments was untrue.

Two of the main reasons why the systemic ill-treatment had emerged were the inefficient investigations of cases of torture and a culture of impunity within the penitentiary system. Often, investigations were delayed. Even when investigations were initiated they were often ineffective. Furthermore, investigations often fell under charges of abuse of power or exceeding official duties, instead of the Criminal Code article on torture and ill-treatment. The former allegations carried lighter sentences.

Lastly, the abolition of public oversight over penitentiary establishments played a negative role in the escalation of widespread abuse. Despite numerous attempts by civil society organizations, only the representatives of the National Preventive Mechanism are authorized to monitor prisons.

It is essential to note, the GoG does not administer rehabilitation programmes for inmates who were subjected to torture until late-2012. This was partly due to the government not recognising torture as a systematic problem in the penitentiary system. It is the position of this paper that it is crucial for the government to take meaningful steps for addressing this problem and to implement state owned rehabilitation programmes.

Overcrowding

As the result of draconian criminal policies, by 2011, there were 24,114 people in prison in Georgia.[27] This gave Georgia the one of the highest prison populations in the world, in proportion to their population. The increase in the number of prisoners resulted in overcrowding of prisons.

In its 4th Periodic report, the GoG notes that new penitentiary establishments have been built and some of the existing facilities have been refurbished. However, the problem of overcrowding remained. The Public Defender and a plethora of NGOs noted the unbearable and deplorable living conditions of certain prisons[28].

Neither legislation, nor actual conditions complied with the standard of minimum space for each prisoner. In May 2012, regulations setting capacity limits for prisons were increased. This increased the number of prisoners without increasing the infrastructure.[29] The overcrowding of prisons was also caused by an inefficient early release program that made it hard for prisoners to secure early release.

Although the GoG's 4th Periodic report states that their criminal policy was made more lenient in 2010, the new policies were never implemented.

Additionally, legislation allowing the postponement of sentence due to health condition wereproblematic. In the majority of cases, the Commission that determined the postponement of trials for health related reasons never set deadlines to review applications. Sometimes this resulted in the Commission failing to postpone a trail before the prisoner died. The existing situation was alarming due to both, the erroneous practice of the Commission and the legislative framework.

Social Services and Health

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[27] Georgian Department of Statistics (GeoStat), Criminal Justice Statistics, http://www.geostat.ge/index.php?action=page&p_id=602&lang=eng.

[28] Public Defender of Georgia (2004-2011), "State of Human Rights in Georgia", http://www.ombudsman.ge/index.php?page=21&lang=1;
Public Defender of Georgia and Georgian Young Lawyers' Association (GYLA), (2012) "Ill-treatment in Penitentiary Establishments and Temporary Detention Isolators in Eastern Georgia", Tbilisi, http://gyla.ge/uploads/publications/2012/prevenciis_erovnuli_meqanizmi_eng.pdf.

[29] "Order N184 of the Minister of Corrections and Legal Assistance of Georgia", 27 December, 2010.

In 2011, the infrastructure of some penitentiaries were not suitable for long-term visits. Moreover, female prisons were not adequately set up for visitors.

Legislation passed in 2011, designed to ameliorate the problem contained several deficiencies. The current legislation does not entitle inmates serving their sentences in a closed penitentiary establishment to long-term visits, except for those with life imprisonment. Also, the number of prisoners entitled to long-term visits is more limited than the number of prisoners entitled to short-term visits. It is the position of this paper, that the right to long-term visits should be granted to all prisoners.

Healthcare was also a prominent concern for the penitentiary system and was consistently raised as an issue by NGOs.[30] NGOs noted that a majority of convicts contracted diseases, especially tuberculosis, after their placement in the penitentiary establishment.

Exacerbating the healthcare problem is that prisoners often have to wait long period of time to visit a doctor. Moreover, follow-up evaluations are rarely carried out.

An additional healthcare problem in prisons is dealing with mental health patients. Prison guards torturing inmates combined with post-traumatic stress has made mental health problems a primary concern of prisons. Research on mental health in Georgian prisons revealed that treatment methods chosen to address this problem were to routinely prescribe excessive consumption of psychotropic and analgesic drugs. Not only was this inadequate for addressing patients' mental health, in some cases, medicating prisoners exacerbated the problem by creating dependencies on drugs which worsened prisoners' symptoms.

In addition to not having access to care, prisoners often have to pay for their own care, despite the state guaranteeing healthcare for inmates. Accordingly, it would be advisable to directly note that a prisoner shall be provided with medical services, which shall be fully funded by the state.

According to Article 24, in case of a reasonable request and with the permission of the Chairman of the Department, a defendant /convict is authorized to invite a personal doctor at his/her own expenses.

According to Article 8 of the law on "Rights of a Patient", a patient has the right to choose and change the doctor; respectively, no special and additional procedures (the permission of the Chairman of the Department) shall be required for having access to a personal doctor. The procedure of filing a reasonable request and obtaining a permission of the Chairman of the Department is often delayed, and this inadequately restricts prisoners' rights. As for the restriction of this right in general, it shall be possible to restrict it in exceptional circumstances by the prison administration on the basis of a written justification, if the application of this right endangers the functioning and safety of the establishment.

According to the same Article 24.2, it is obligatory to carry out a medical examination of a person upon his/her placement in a penitentiary establishment. In practice, the medical examination is limited to visual observation and is rather superficial.

In order to reach the objective of the law, it is important to ensure that prisoners undergo a complete and thorough medical examination upon entering the establishment, and once every 6 months after that.

Changes since 2012

The revelations that preceded the October 2012 parliamentary election, and the new government that election brought to power, have caused significant changes in some elements of the penitentiary system. Most important, the prosecution and conviction of prison guards, implicated in torture of prisoners has largely

[30]Georgian Young Lawyers' Association (GYLA) (2011 and 2012), Annual Reports, Tbilisi http://gyla.ge/eng/publications?category=14.

brought the culture of impunity to an end. Also, the large scale amnesty, enacted by the new government, while problematic in its particulars, has dramatically improved the over-crowding problem.

Under the former government, the authorities seem to have operated in an atmosphere of impunity. The new government, in contrast, have attempted to investigate and prosecute cases of abuse. In particular, 17 persons accused of torture and ill-treatment of prisoners were convicted by court in June 2013.

However, 8 of these 17 defendants pleaded guilty, some of them got their sentence reduced and others were sentenced to 9 months that they had already spent in prisons as remand prisoners, and were subsequently released. The two offenders with the longest prison term were sentenced to 6 years and 9 months, while the rest were sentenced to up to 4 years of imprisonment.

The NGO Coalition considers this penalty inadequate, since according to article 144[1] of the Criminal Code, torture shall entail a prison sentence of 7 to 10 years. The same offence committed carries a 9-15 year sentence if it is carried out by a) a public official, b) by using official powers, c) repeatedly, d) against two or more persons, e) in a group.

By the end of 2012the early release policy started being implemented by the new government. Unfortunately, early release decisions were often unjustified. The grading system used to evaluate a prisoner's release was unclear. Most startling, the current regulation does not allow the inmate to attend the review process.

By the end of 2012, the joint Commission on the postponement of trials for health reasons was also fundamentally reformed. However, it is currently too soon to say whether this new commission will prove effective.

2.4 Broader issues on unlawful imprisonment

In addition to the HRC Observations on weaknesses of the Georgian police and penitentiary system for ensuring appropriate protection of rights of security and liberty, the NGO coalition also wanted to highlight on-going weaknesses of the Georgian Criminal Procedural Code (CPC). Since 2007, the CPC of Georgia underwent multiple changes. In 2010, Georgia adopted a completely new CPC. However, the new CPC still offers insufficient protections from unlawful imprisonment (article 9). There are deficiencies in the CPC in both legislation and practical application.

2.4.1 Deficiencies in the Legislation

The established procedure for appealing pre-trial detention, a coercive measure, is one of the legislative shortcomings concerning the right to liberty and security.

Admissibility of an appeal

The CPC currently in force establishes criteria for the admissibility of an appeal against the application of coercive measures to the defendant. One of the criteria for the admissibility of complaint is the obligation of the party to present a new essential circumstance that was unknown during the pre-trial hearing at the trial court (Criminal Procedure Code, art.207). The Court of Appeal rejects and refuses to review an appeal if the defendant fails to present a new essential circumstance.

The obligation of presenting a new circumstance undermines the existing mechanism of one-time appeal against the application of a detention as a coercive measure in the higher court. Furthermore, it significantly violates the right to liberty and security of a person. The defendant is deprived of the possibility to have the facts and arguments presented at the trial court reviewed by the Court of Appeals. The existence of this criterion of admissibility strips the defendant of his right to have the grounds, the expediency, and proportionality of his or her detention reviewed by a higher court.

The Appellate Courts in most cases reject appeals against coercive measures because of the lack of a new essential circumstance.

Filing of an Appeal
The CPC legislation imposes an arduous requirement for appealing against a coercive measure. Thus, the CPC legislation significantly hinders the process of filing an appeal by the defence. According to article 204 of the CPC, the defence lawyer is not allowed to file an appeal without the consent of a defendant. Therefore, the defendant shall sign an appeal to make it legitimate. Because of the internal regulations, it takes a long period of time to enter the penitentiary establishments. This makes it difficult to obtain the defendant's signature. The process of filing an appeal, on the other hand, is restricted in time and strictly defined[31]. Thus, deadlines are often missed, which significantly limits the interest of the defendant to have his or her coercive measure appealed.

2.4.2 Deficiencies in Practice

There have been significant deficiencies in the administration of criminal proceedings, resulting in the arbitrary detention or arrest of a person for number of years.

Arrest
As currently enforced, the CPC requires a probable cause for carrying out investigative measures, such as search and seizure against a person.[32] Search and seizure are important in the context of an arrest. In the case of illegal possession of drugs or weapons the grounds for search and seizure become the grounds for the arrest. Thus, if caught with illegal drugs or weapons a person can be immediately arrested.

According to the widespread practice, search and seizure are carried out on the basis of anonymous operational information supplied to law enforcement officers. Therefore, the supplied information is not subject to verification. Operational information is laid out in a report of a law enforcement officer, stating that a person might be in possession of an illegal item. Moreover, law enforcement officers do not corroborate this information with further evidence. Thus, this kind of operational information does not create a basis for a probable cause and fails to meet the legally established standard for carrying out searches and seizures of a person.[33] More troubling to Georgia's legal system is that operational information is not verified on even during the time of trial.

Carrying out a search and seizure on the basis of operational information, followed by the arrest, is most frequent in cases of illegal purchase and possession of drugs or weapons. In most cases, searches and seizures are carried out under the conditions of urgency on the basis of the report of the law enforcement officer containing operational information and are followed by the arrest of a person.

Carrying out search and seizure on the basis of operational information has become a fallacious practice. Police officers circumvent court approval for search and seizure by citing the argument of urgency. Thus, anybody can become a wrongful victim of search and seizure. The practice of arresting anti-government protestors, opposition activists, and people of opposing views, on the charges of illegal purchase or possession of drugs or weapons was actively applied to suppress dissenting views.

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[31] According to Art. 207 of the Criminal Procedural Code, the appeal against the court ruling on application of a coercive measure shall be submitted within 48 hours after the ruling is made.
[32] See Criminal Procedural Code (CPC) 1998, Art. 316-317, CPC current edition Art. 119.
[33] Georgian Young Lawyers' Association (GYLA) (2011), "Analysis of Criminal and Administrative Cases with Alleged Political Motive, Part 1", Tbilisi, p. 7; Georgian Young Lawyers' Association (GYLA) (2012), "Analysis of Criminal and Administrative Cases with Alleged Political Motive, Part 2", Tbilisi, p. 77.

Detention

According to CPC legislation, detention is the strictest form of coercive measure. Detention can only be used in exceptional cases, when other, less strict coercive measures fail to fulfil its purpose.[34] From 2007 to the first half of 2012, pre-trial detention was applied without proper justification.[35] The use of unjustified and so-called "template" decisions on the application of pre-trial detention by the courts, was revealed *inter alia* during the analyses of criminal cases by the new government. It is alleged that pre-trail detention was often politically motivated.[36]

According to statistical data from October to December 2011, out of 55 analysed court cases, prosecutors requested the use of a pre-trial detention as a coercive measure. Of the 55 cases, the courts granted pre-trail detention for all of them.[37] The subject was studied again from January to March 2012. Out of the 31 new cases studied, the court, again, granted every pre-trial detention request of the prosecution.[38] In July 2012, the court decided to set more rigorous standards for pre-trail detention. Out of the 49 cases studied during the July to December 2012 period, the court refused to grant 13 pre-trail detention motions.[39]

Recommendations

1/ While applying pre-trial detention the court shall consider overall circumstances around the case, assess, and justify whether the formal and factual grounds for the application of coercive measure against a defendant are present. The court shall also consider whether the application of the strictest form of coercive measure – the pre-trial detention is necessary.

2/ The criteria for appealing the decision on application of coercive measure shall be reconsidered; the criteria of 'a new essential circumstance' shall be reformulated and the requirement of the defendant's written agreement to an appeal, when a defendant has a legal representative, shall be abolished.

3/ The law enforcement bodies shall always corroborate information obtained from operational sources with other data in order to comply with a standard of probable cause when taking investigative measures against a person, including the detention.

4/ Adopt legislative changes that ensure the possibility for the supervising prosecutor, as well as for the court to verify the operational information.

3 The Judiciary and rule of Law

The HRC Concluding Observations offered two separate concerns/criticisms for the Georgian Judicial system. Both of these related to article 14 of the ICCPR, on the right to a fair trial.

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[34] Criminal Procedure Code, 1998: Art. 151.1; Criminal Procedure Code, Art. 198.1.

[35] Nino Khaindrava, Besarion Bokhashvili, Tinatin Khidasheli (2010), "The Analysis of Human Rights Law concerning the application of pre-trial detention", p. 96.

[36] Georgian Young Lawyers' Association (GYLA) (2011), "Analysis of Criminal and Administrative Cases with Alleged Political Motive: Part I", Tbilisi;
Georgian Young Lawyers' Association (GYLA) (2012), "Part II: Analysis of Individual Cases", Tbilisi.

[37]Georgian Young Lawyers' Association (GYLA) (2012), "The Monitoring Report on Criminal Cases at the Tbilisi and Kutaisi City Courts", Tbilisi;
Eka Khutsishvili, Tinatin Avaliani (2012), "Monitoring Report №1", Tbilisi, p. 10.

[38]Georgian Young Lawyers' Association (GYLA) (2012) "The Monitoring Report on Criminal Cases at the Tbilisi and Kutaisi City Courts", Tbilisi;
Eka Khutsishvili, Tinatin Avaliani (2012), "Monitoring Report №2", Tbilisi, p. 16.

[39]Georgian Young Lawyers' Association (GYLA) (2012) "The Monitoring Report on Criminal Cases at the Tbilisi and Kutaisi City Courts", Tbilisi
Eka Khutsishvili, Tinatin Avaliani (2012), "Monitoring Report №2", Tbilisi, p. 14.

3.1 HRC Concluding Observations Paragraph 13 Judicial independence (Article 14) and HRC Observations Paragraph 14 Poor education of judges (Article 14)

Paragraph 13 of the HRC concluding observations expresses the Committees continued concerns about the independence of the judiciary, and suggests that the state needs to ensure independence of the judiciary and prosecute judges if the shown to have behaved inappropriately.

Paragraph14 of the HRC concluding observations relates to the poor education of judges and expresses particular concern about their lack of training in international human rights law.

The High Council of Justice

In response to the concerns expressed by the Human Rights Committee, the GoG 4th periodic report highlights a range of reforms that have been undertaken, particularly with respect to reforms to the High Council of Justice (HCOJ) and the functioning of a disciplinary collegium. Both the HCOJ and the disciplinary collegiums are crucial as they can provide mechanisms for ensuring independence, but at the same time, if poorly organised, they can be one of the key structures through which that independence is undermined.

The GoG 4th periodic report stresses that as a result of the December 2007 Constitutional amendments, the High Council of Justice transformed into an independent structural unit within the judiciary. Despite this positive change, the issues concerning the staffing[40] of the Council and its mandate have been persistently problematic.

According to the Law on General Courts of Georgia, the High Council of Justice is a body responsible for the appointment, promotion and dismissal of judges. Accordingly, the main levers of administration are concentrated in the hands of HCOJ, violating the principle[41] of the balance of powers within the system.Before the amendments introduced to the Law on General Court in June, 2013, the Council was composed of four members of the Parliament, two representatives of the President and nine judges elected by the Judicial Conference.

Under the abovementioned law, the Administrative Committee of the Judicial Conference, composed of nine judges, was created with the aim to assist the Judicial Conference to carry out the functions prescribed by the law. However, members of the Administrative Committee, nominated exclusively by the Chairperson of the Supreme Court and elected through the open voting by the Judicial Conference, could not be said to be representing the interests of the judges.

The Administrative Committee of the Conference, along with the Conference of Judges, was authorised to elect judge-members to the Council. Against the background mentioned above, electing the members of the High Council of Justice by the Administrative Committee had a low degree of legitimacy. Only the Chairman of the Supreme Court was authorised to nominate judges to be elected in the Council to the Conference of Judges and to the Administrative Committee.[42] From 2007 until the conduct of the Conference of Judges in

[40] According to Art. 47 of the organic law on General Courts (version in force at the time of drafting the report), the Council consisted of 15 members of whom 9 were judges, 4 were the members of Parliament and 2 were appointed by the President.

[41] Coalition for an Independent and Transparent Judiciary, (2012), "The Judicial System in Georgia", Tbilisi, p. 5.

[42] Coalition for an Independent and Transparent Judiciary, (2012), "The Judicial System in Georgia", Tbilisi, p. 8-10.

2011, five out of the eight representatives of the judiciary in the HCOJ were elected by the Administrative Committee.[43]

Prior to legislative amendments of 2012, the provisions regulating the composition of the Council did not prohibit the appointment of a representative of a political organization to the Council. The Council could veto a decision on the appointment of judges.[44] These deficiencies were partially corrected in 2012 through amendments to legislation following an active dialogue and consultations between the judiciary and civil society organizations.[45]

After the Parliamentary Elections in 2012, the government offered new initiatives aimed at changing the regulations on appointments to the Council. The new government also tried to make the appointment process more democratic. As a result of these changes, the Venice Commission on 8 March 2013[46] lauded the reformed judiciary regulations. The judiciary also changed how the Council was staffed. Instead of the two members appointed by the President and members of parliament, the council will have six members elected from politically neutral parts of civil society. The Conference of Judges will have an exclusive power to elect judge-members of the Council by a secret vote. Additionally, any judge, not just the Chairman of the Supreme Court, will be able to nominate candidates.[47]

Disciplinary Proceedings

As noted in the GoG 4th Periodic report, on the issue of disciplinary proceedings (paragraph 117), following legislative amendments of 2006, a Disciplinary Collegium was set up within the High Council of Justice. The Disciplinary Collegium made primary decisions on cases that could be appealed to the Disciplinary Chamber of the Supreme Court.[48]

The provisions regulating the collegiums contained numerous deficiencies. For example, the legislation allowed for complete secrecy of the disciplinary proceedings, maintained a low-level of transparency, used unreasonably strict grounds for disciplinary proceedings, and failed to address the issue of staffing the collegium within the Council.[49] Although the legislation underwent several changes in 27 March 2012,[50] the majority of reforms only focused on ameliorating the lack of transparency in confidential disciplinary proceedings. Some of the less notable changes were the removal of "flagrant violation of the law by a judge" and "the breach of internal regulations" from the grounds for administrative proceedings.

The regulations on composition of the Disciplinary Collegium also underwent changes. However, this change failed to resolve the main problem related to the conflict of interest of the members of the Disciplinary Collegium. Namely, upon the adoption of the amendment the Disciplinary Collegiums was staffed by five members, out of whom three are judges-members elected to the High Council of Justice by the Conference

[43] Coalition for an Independent and Transparent Judiciary, (2012), "The Judicial System in Georgia", Tbilisi, p. 10.
[44] Coalition for an Independent and Transparent Judiciary, (2012), "The Judicial System in Georgia", Tbilisi, p. 12-20.
[45] See the Art. 1.3.d of the Law on Changes and Amendments to the Organic Law of Georgia on the Courts of General Jurisdiction.
[46] European Commission for Democracy Through Law (Venice Commission), (March 2013), "Opinion on the Draft Amendments to the Organic Law on Courts of General Jurisdiction of Georgia", Strasbourg (http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2013)007-e).
[47] Draft Law on Changes and Amendments to the Organic Law of Georgia on the Courts of General Jurisdiction, the version of April 5, 2013.
[48] See paragraph 6 of Art. 19 of the Organic Law of Georgia on General Courts; also, Art. 24 of the Law on Disciplinary Responsibility of Judges of General Courts and Disciplinary Proceedings, the edition of April 4, 2013.
[49] Coalition for an Independent and Transparent Judiciary, (2012), "The Judicial System in Georgia", Tbilisi, p. 12-15; Georgian Young Lawyers Association (GYLA), Transparency International Georgia (2012), "The High Council of Justice Monitoring Report", Tbilisi, p. 15-21.
[50] The Law on Changes and Amendments to the Law on Disciplinary Responsibility and Disciplinary Proceedings against the Judges of the Courts of General Jurisdiction of Georgia, Art. 1, Para. 3 and 30.

of Judges, and two are non-judge members elected by the High Council of Justice from within its members. Moreover, the High Council of Justice was responsible for initiating decisions on subjecting a judge to disciplinary responsibility or suspending the disciplinary proceedings.[51] Obviously, the rule of subjecting a judge to disciplinary proceedings by the HCOJ and reviewing the case by the members of a same body failed to meet the requirement of objectivity and impartiality of disciplinary proceedings. The provisions concerning the staffing of the Disciplinary Board failed to ensure the freedom of the members of the Council from conflict of interest.

If the 2012 amendments are effectively implemented, the Disciplinary Collegium will transform into the independent body and the issue of conflict of interest shall be resolved.[52]

The High School of Justice and the Competition for Judicial Positions

Obviously, to ensure judicial independence and a high quality of judiciary, the selection and training of future judges is paramount. The High School of Justice was established in 2006. The school has dual goals. First, it attempts to improve the qualifications of sitting judges. Second, it acts as a school for judges who wish to be appointed.[53]

The school has three main weaknesses. First, there is a low degree of transparency in the process of admission of new students. Second, there is an unreasonably short period of time for the competition for admission to the school. Third, the remarks made by the members of the High Council of Justice are inaccessible to the students.[54]

Remuneration of Judges

Remuneration is also essential for increasing judicial independence and quality. Remuneration has been lauded as a successful judicial reform in some quarters. However, the issuance of salaries and salary supplements has been problematic. The problem is caused by inadequate legal framework and by a rather obscure practice, which in principle questions the reasonableness of the salary supplements in general. The law sets neither minimum nor maximum amounts for the salary supplements, which allows the authorised body, the Council, to make an unjustified decision, thus endangering the independence of judges.[55]

Appointing Judges for Life

After the 2013 presidential election, the Constitutional amendments will come into effect and judges in Georgia will be appointed for life. However, the Constitution contains a note stating that, prior to the permanent appointment, judges may be appointed for probation period for 3 years.[56] This provision was negatively assessed by civil society[57] and was considered inadmissible by the Venice Commission[58] that reviewed the Constitutional amendment.

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[51] The Law on Disciplinary Responsibility and Disciplinary Proceedings against the Judges of the Courts of General Jurisdiction of Georgia, Art. 15.2; 17 and 24; as of April 4, 2013.

[52] The draft law on changes and amendments to the Law on Disciplinary Responsibility and Disciplinary Proceedings against the Judges of the Courts of General Jurisdiction of Georgia, Para. 5, as of April 5, 2013;

[53] The law of Georgia on the High School of Justice, Art. 1.

[54] Georgian Young Lawyers Association (GYLA), Transparency International Georgia (2013), "The High Council of Justice Monitoring Report", Tbilisi, p. 5-11.

[55] Coalition for an Independent and Transparent Judiciary, (2012), "The Judicial System in Georgia", Tbilisi, p. 24-26.

[56] Constitution of Georgia, Art. 86.2.

[57] Letter of the Georgian Young Lawyers' Association (GYLA) of October 7, 2010 #G-01/20-10, The analysis on the amendments to the Constitution: http://qartuli.net/gyla.ge/legislature/upload/docs/daskvna%20konstituciuri%20kanonis%20proeqtze.pdf.

[58] European Commission for Democracy Through Law (Venice Commission) (2010), "Draft Opinion on the Draft Constitutional Law on Amendments and Changes to the Constitution of Georgia", Strasbourg http://www.venice.coe.int/webforms/documents/?pdf=CDL(2010)062-e.

Recommendations:

Transparency and Publicity of the Judiciary

1/ Consistent with the improvement of transparency of court proceedings, it is crucial to improve the transparency of the High Council of Justice.

2/ Organisation of periodic public events, proactive public relations and participation in the public debates related to the judiciary should become strategic objectives of the judiciary. It is also important to increase the possibilities of communication with judges of courts of all levels.

Strengthening self-governance and independence of Judges

3/ Establish a principle of electing Chairpersons of Courts, in order to limit the subjective decisions by the Council and to ensure healthy relations between the chairman and other judges of the court.

4/ Promotion and appraisal of judges remains to be one of the most acute and unresolved issues, thus it is important to detach the function of appraisal and promotion of judges form the competencies of the High Council of Justice. For this purpose a separate body responsible for career development of judges shall be set up by the Conference of Judges.

Appointment of Judges

5/ The provision of the Constitution of Georgia concerning probationary period of three years for judges prior to their appointment of life time should not be applied. It is important to promptly start a discussion and to establish a clear procedure for transition to appointment of judges for life.

6/ The procedures for appointment of judges and admission of students to the High School of Justice shall become transparent. Minimum requirements for justification of decisions made in this process by the HCOJ shall be established.

3.2 General Problems with the Right to a Fair Trial (article 14)

When considering article 14 of the ICCPR, on the right to a fair trial, the HRC focused on problems with the judiciary. However, in addition to discussing the judiciary, it is worth considering practical problems related to the operation of the courts and the Criminal Procedural Code. Several such problems were revealed between 2007 and 2013, both legislative and practical.

The new CPC that came into force in 2010,is based on the pure adversarial system of justice. However, there are deficiencies in the code that contradict this principle and prevent the defendant from effectively exercising her/his right to fair trial.

The new CPC establishes that the outcome of the case should depend entirely on the performance of the parties (defence and the prosecution), who will present evidence in the court on equal grounds (Criminal Procedure Code, Art. 9). Despite this legal provision, the rights of the defence are essentially limited in the process of collecting evidence.

The defence party has no right to carry out a search and/or seizure in order to collect evidence relevant to its case, nor can it address the court with a motion to order the investigative body to carry out search and/or seizure.[59]

The rules for summoning and questioning witnesses which represent essential investigative actions do not provide a level field for the parties to criminal proceedings. According to Article 332 of the transitional

[59] Ministry of Justice of Georgia has drafted a package of legislative amendments to the Criminal Procedure Code. The amendment aims to address this shortcoming, but the draft is under revision.

provisions of the CPC, until 1 September 2013 the questioning of witness during the investigation shall be carried out on the basis of the regulations of the old CPC. According to the old Code the witness was only obliged to testify before the investigative body.[60] The defence party has no mechanism to make the witness testify.

To ensure adversarial proceedings the defence must have full access to the case materials of the prosecution. According to current legislation, the prosecution has no obligation to provide the defence with all evidence. Even if requested, the prosecution is not required to give exculpatory evidence to the defence.[61] In addition, government agencies, such as the Ministry of Internal Affairs, have a practice of not disclosing the recordings of video cameras installed at public places to the defence, in spite of the fact that the Ministry obviously has this information.[62]

The right to invite someone to be in attendance as a witness, while the state carried out restrictive investigative measure, such as search and seizure, was an essential guarantee for the defendant under the old code. The new code, however, included the institute of inviting an attendee only for the transitional period. Thus the application of this norm has ceased to function on 1 October 2012.[63] Currently, law enforcement officers participate in carrying out search and seizure, and thus they are the only witnesses to the investigative actions.

The CPC does not do enough to protect the jury from external influence. This is important to ensurethat the verdict is based only on the evidence examined at the trial and not on the public opinion. This is only emphasized in Article 236.1 of the CPC. Article 236.1 refers to the warning of a jury by a judge not to search information about the case under consideration beyond the trial. It is important to try to prevent juries from making a decision before hearing the evidence at trial.[64]

The system lacks an adequate appeals mechanism for plaintiff. According to Article 266 of the CPC, only a verdict of guilt can be appealed and only concerning the legal issues. Factual circumstances of the case however, cannot be a subject of an appeal. While making a judgement, the jury is limited to two choices: guilty verdict or acquittal. According to the European Court of Human Rights, the verdict of a jury is considered justified, only when they answered questions about factual circumstances or when the defence has an opportunity to appeal the verdict on the ground of its being ungrounded,[65] that they considered unfounded. The CPC currently in force does not consider any of the above alternatives.

Recommendations:

To Improve the Criminal Procedure Legislation

1/ The Parliament of Georgia shall promptly review and adopt amendments to the CPC initiated by the Ministry of Justice of Georgia.

2/ The right for an investigated individual to have a witness present during search and seizure operations should be reinstated.

3/ The CPC should include broader provisions for protecting jury against external influence

[60] See Criminal Procedure Code, Art. 94.1, edition of 1998.

[61] Georgian Young Lawyers' Association (GYLA) (2012), "Legal Analysis of Cases of Criminal and Administrative Offences with Alleged Political Motive, Part II", Tbilisi, p. 22

[62] Georgian Young Lawyers' Association (GYLA) (2012), "Legal Analysis of Cases of Criminal and Administrative Offences with Alleged Political Motive, Part II", Tbilisi, p. 98-99.

[63] See the Criminal Procedure Code, Art. 333.3.

[64] Eka Khutsishvili, SophoVerdzeuli (2012), "Deficiencies and Recommendations in the Criminal Justice", Georgian Young Lawyers' Association (GYLA), Tbilisi, p. 62-70.

[65] Eka Khutsishvili, SophoVerdzeuli (2012), "Deficiencies and Recommendations in the Criminal Justice", Georgian Young Lawyers' Association (GYLA), Tbilisi, p. 70-72.

4/ The Government of Georgia should revise legislation for improving jury trial provisions. In particular, the rules for appealing a jury verdict should be revisited and the possibility of asking questions on factual circumstances to the jury shall be defined.

3.3 Juvenile Justice

In accordance with article 14 of the Covenant on Civil and Political Rights, "the due process for juvenile offender proceedings should be conducted with consideration for offender's age and desirability of their re-education."

In 2007 the Government of Georgia passed draconian laws relating to the treatment of juveniles. In particular, they lowered the age of criminal responsibility from 14 to 12 years and brought juvenile justice proceeding under a so called "zero tolerance" policy. These reforms were adopted despite the fact that they contradicted with international conventions and treaties that mandate standard minimal protections for minors.

In 2010, the Government started making the policies more lenient.[66]Although the 2010 law removed some of the harsher provisions of 2007, most notably returning the age of criminal responsibility from 14 to 12,[67] many limitations of the previous law remained in place.

In particular, criminal liability continues to be applied too widely, even in the case of relatively minor crimes. In addition, the range of punishment is limited. Probationary sentences are usually only applied if a plea-bargain has been reached and punishments like 'house arrest' do not exist.

Judges have limited discretionary powers and are forced to imposed mandatory minimum sentences regardless of circumstances. They also lack the power to determine the length and nature of community service that should be imposed.

One weakness is that under the previous legislation the exemption from criminal liability was possible in the case of less serious crimes and first time offences through reconciliation with the victim, at the discretion of the court.[68] The 2010 legislation removes that provision. At the same time, the criminal procedural code has adopted the principle of restorative justice which allows for diversion and mediation, through which the same outcome can be achieved.

However, under the current law, diversion and mediation is an exclusive prerogative of a criminal prosecutor. This is in direct conflict with Standards of the Council of Europe which requires equal rights to the Prosecutor's Office as well as to the courts (courts of the first instance, courts of appeal, and courts of cassation). Another complication is that issues of juvenile criminal responsibility are also regulated through by-laws such as the decree of Minister of Justice. This complicates compliance with criminal procedure codes.

In addition to these legislative problems there are also a range of practical problems with the government's efforts to apply the concept of restorative justice in juvenile justice cases. First, the system of restorative justice began with the implementation of several projects in five cities. Equal treatment, however, required a full-scale implementation of the projects throughout the entire country, thus protecting every juvenile offender who has committed less serious offences.

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[66] Strategy of the Criminal Justice Reform; Law on the Amendment of the Criminal Code of Georgia, p. 16 (Feb. 23, 2010).

[67] Strategy of the Criminal Justice Reform; Adopted by the Presidential Decree #591, 2009.

[68] The Law on Making Amendments and Supplements to the Administrative Procedure Code of Georgia, adopted on September 24, 2010. Provision of Art. 89 on exemption of the juvenile from criminal liability through the reconciliation with the victim.

Another problem is that the implementation of the pilot programs regarding juvenile justice have been initiated without proper training of personal working in this field. In Georgia, no certified mediators exist. Even the number of mediators who are not properly certified is insufficient for the implementation of diversion and mediation projects across Georgia.

More broadly, the juvenile justice system suffers from a lack of specialists in the area. No specific training programs for police officers, prosecutors, lawyers, judges and probation officers working with juveniles exist in the country and there is no specialised system of juvenile courts. Finally, the state is unable to effectively educate and prepare for employment juveniles who are under state supervision.

In addition, there is no publically available data on levels of juvenile crime and detention. This makes analysis of the situation, debate and the development of public policy extremely difficult.

Phase II and III plans for juvenile justice reform are being prepared for implementation. In phase II, the government plans to extend the diversion program throughout the country. In phase III, the program shall be extended to juvenile perpetrators of more grave crimes.[69]

Recommendations

1/ To liberalize the juvenile criminal justice legislation, the maximum and minimum statutory penalties envisaged in special part of criminal code must be reduced.

2/ The regulation of issues of juvenile criminal responsibility through bylaws (decree of Minister of Justice) complicates the compliance with criminal procedure codes from the point of view of legislative interpretation. Therefore, it is deemed appropriate to provide detailed regulations of juvenile justice in criminal code (substantive) and criminal procedure code.

3/ The judge should be given wider discretionary powers in juvenile cases

a/ they should be able to apply sentences below statutory minimum in the presence of mitigating circumstances of special nature.

b/ Judges should be given discretion to determine the length and type of community service of juvenile perpetrators' sentences.

4/ The court must retrieve the statutory tool for alleviation of punishment in cases where a juvenile defendant submits him or herself to the police, confesses the crime, and contributes to the investigation of the crime.

5/ Criminal liability should be abolished for perpetration of minor crimes. At the same time, for inchoate offences, such as the preparation or attempt of a crime, a provision should be enacted which enables the judges to give lighter penalties. In other words, the rule of calculation of maximum penalty for attempt and preparation should be specified.

6/ Probation should be extended and applicable to juveniles even without plea bargaining in cases specified by law (maximum penalty, to which probation may be applied can be specified).

7/ The list of punishment enumerated in the code (main as well as complementary punishments) should be diversified. New punishments, such as house arrest, should be introduced.

8/ A procedure for calculating monetary fines should be introduced. Furthermore, the maximum amount of a fine should be established by law.

[69] Interagency Coordination Council (2012), "Juvenile Justice Reform Strategy", Tbilisi.

9/ The power of the prosecutor to use mediation and diversion with a juvenile charged with the commission of grave and particularly grave crimes should be reconsidered and the restorative justice should become the competence of the court. The court should have possibility to apply restorative measures to juveniles charged with less grave, grave, and particularly grave crimes in every stage of administration of justice.

10/ The Georgian legal system should codify a penitentiary judge reserved for juvenile offenders. Additionally, courts should be established that focus exclusively on juvenile trials.

11/ The diversion and mediation pilot programs should be expanded across the country.

12/ Social workers should be trained to better handle juvenile offenders.

13/ There should be greater access to training for mediators involved in juvenile justice.

4 Other Infringements of the ICCPR

In addition to issues of discrimination, liberty and security, and the judiciary and the courts, the HRC concluding observations, the GoG's4th periodical report and the NGO coalition looked at a number of other issues covered by the ICCPR. In this final section of the analysis, we will consider, the harassment of journalists, the rights to assemble and the right to free and fair elections

4.1 HRC Concluding Observations, Paragraph 16 Investigation of harassment of journalists (19)

Paragraph 16 of the HRC observations highlights concerns of the committee about continued reports of the harassment of journalists. The government's 4th periodic report responds to these concerns (paragraph 40) by highlighting the government's criminal investigations into charges of harassment.

However, not only was there widespread evidence of harassment of journalists, but offences against journalists remained unpunished for many years. For example, it is still unknown to the public if law enforcement officers responsible for attacks against journalists during the forceful dispersal of peaceful rallies on 15 June 2009 and 26 May 2011 were held accountable. A number of incidences of physical and verbal abuse of journalists were also revealed during the 2012 pre-election period. The results of investigation of these incidents are still not known to the public.[70]

More broadly, the government's 4th periodic report highlights a range of improvements in the media environment. In paragraph 144, they highlight the plurality of media/new media licenses, paragraph 146 claims improvements in the independence of the public broadcaster, paragraph 147 elaborates the importance of the code of conduct adopted by the Georgian National Communication Commission, paragraph 148 looks at changes to the law to ensure financial transparency.

However, while each of these paragraphs is factually true, they often misrepresent the overall situation and give an entirely inaccurate picture of media independence prior to the 2012 election campaign. Until the implementation of the 'must carry, must offer' rule, during the 2012 election campaign, the listed legal

[70] The Centre of Protection of the Rights of Media of the Georgian Young Lawyers' Association (GYLA) submitted information concerning 38 cases to the Chief Prosecutor's office of Georgia on 6 December 2012. The cases concerned illegal acts against representatives of media carried out during 2010-2012. The results of investigation on any of the above cases are not yet made public.

amendments rarely had much of an impact on media pluralism and independence and, at the beginning of 2012, the Georgian media landscape was extremely restricted and biased in favour of the government.

To deal with each of the government comments, paragraph 144 highlight the plurality of media/new media licenses issued in 2011. However, it is important to note that the issuance of licenses to TV and radio broadcasters was completely suspended from May 2008 to April 2011 because the National Communication Commission had failed to set its bi-annual priorities. As a result, the licenses to TV and Radio Broadcasting companies referred to in the Government's report were issued only in the period after April 2011. The loss of three years, during which time licenses were not issued had a profoundly negative impact on the Georgian media environment.

With regard to the legislative amendments referred to in paragraph 146 of the Government's Report, there is little reason to believe that these changes enhanced the independence of the public broadcaster.Civil society organizations submitted a draft bill to the Parliament of Georgia proposing changes to the rules of formation of the Board of Trustees of the LEPL "Public Broadcasting." The Board of Trustees established through current procedures does not ensure fulfillment of its duties.[71]

The adoption of the Code of Conduct for broadcasters by the National Communication Commission, highlighted in paragraph 147 was positive. According to the Code, the broadcasters of Georgia shall set up an effective self-regulating mechanism. However, the statistical data obtained from the National Communication Commission[72] and lack of enforcement of the decisions made by self-regulating mechanisms in a number of cases, attest to inefficiency of these mechanisms.

Paragraph 148 of the Government's report refers to amendments to the Georgian Law on Broadcasting, that were intended to ensure transparency of media. However, these measures are insufficient as it is clearly demonstrated by the events that have unfolded with regard to Imedi TV.[73] Civil society representatives have submitted a legislative initiative to the Parliament of Georgia aimed at addressing the remaining legislative gaps, particularly as it relates to the financial transparency of the public broadcaster through legislative regulations[74].

In addition to these weaknesses in the comments of the Georgian government assessment of media freedom there are also several other issues. In spite of the prohibition of setting up a state television by the Georgian Law on Broadcasting Art. 37 (Government's report of 25 June 2012, Para. 145) the status of the State Television of Adjara Autonomous Republic remains a serious concern. Regardless of the prohibition by the law, according to the ruling #58 of the government of the Autonomous Republic of 5 October 2004,

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[71] According to the letter of the National Communication Commission issued in 2012, 45 complaints were filed with self-regulating mechanisms of 5 broadcasters during 2010-2011. From these complaints 4 were fully granted, 5 were partially granted, 2 were settled, 15 complainants were refused to review their complaints, 17 were rejected and one complaint was being considered at the time of issuing this letter. See draft amendments to the Law on Broadcasting: http://parliament.ge/files/Draft_Bills/13.03.13/mauckebllob3.69.pdf

[72] Channel one of LEPL Public Broadcaster failed to implement the decision of the Supervisory Council about granting the complaint of Iuri Vazagashvili and Tsiala Shanava; see Statement of the Georgian Young Lawyers' Association (GYLA) at: http://gyla.ge/geo/news?info=715.

[72] Channel one of LEPL Public Broadcaster failed to implement the decision of the Supervisory Council about granting the complaint of Iuri Vazagashvili and Tsiala Shanava; see Statement of the Georgian Young Lawyers' Association (GYLA) at: http://gyla.ge/geo/news?info=715.

[73] Since November 7, 2007 the TV Company 'Imedi' did not belong to its owner – Badri Patarkatsishvili's family and the issue was a subject to various judicial disputes. Following the elections of October 1, 2012, the television company was returned to the family of its owner for a symbolic price of 3 GEL These proceedings have never been transparent for public.

[74] See draft amendments to the Law on Broadcasting http://parliament.ge/files/Draft_Bills/13.03.13/mauckebllob3.69.pdf.

Government of the Autonomous Republic of Adjara still retains the management function of the Adjara TV-Radio Broadcasting Department while representing an administrative body[75].

Finally, legislation does not anticipate the permanent application of the 'must carry, must offer' laws that were so useful in levelling the media playing-field in the election of 2012. Therefore, cable providers will have discretion in selecting which stations to carry. The problems of this discretion are effectively illustrated by the 2012 parliamentary elections. The ability of certain carriers to exclude certain stations had created a government bias in nationwide coverage. As a result, the Election Code of Georgia was amended, and on the basis of the principles of 'must offer' and 'must carry' cable providers became obliged to include in their service package all the broadcasters holding general broadcasting licenses[76]for the pre-election period[77].

Recommendations

1/ Timely and Effective investigation of attacks against journalists shall become a priority for the state. The numerous cases of violence and offenses against journalists committed throughout the years shall be fully investigated and perpetrators shall be punished.

2/ National Communication Commission shall perform its duties timely and in accordance with the rules established by the law to prevent any impediments to functioning of media outlets.

3/ National Communication Commission shall monitor the functioning of self-regulating commissions.

4/ Georgian Parliament shall timely review and adopt the law that would bring the status of the Adjara Autonomous Republic in compliance with the law.

5/ Parliament shall reconsider the rules of formation of the Supervisory Board of the Public Broadcaster in order to make it more balanced and ensure participation of civil society in its work.

6/ Legislative amendments shall be made to ensure permanent application of provisions on "must offer" and "must carry."

4.2 Right to Peaceful Assembly (article 21)

The right to assemply is regulated by several provisions of theConstitution of Georgia, the Law on Assembly and Manifestation,the Law on Police and the Administrative Violations Code of Georgia.

Since the adoption of the Law on Assembly and Manifestation[78] it has been modified six times by the Parliament[79].It is this latest amendment that is referred to in paragraphs 151-155 of Georgian Government's 4th periodic report states that, with these amendments, the Georgian government took into consideration the recommendations of the Council of Europe Venice Commission and ensured compliance of regulations with international standards.

Nevertheless, the Venice Commission, and local civil society organizations, and the Office of the Public Defender have all criticized the amendments in the law against assembling spontaneously.[80]

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[75] See statement by the Georgian Young Lawyers' Association (GYLA): http://gyla.ge/uploads/1547_-.pdf.
[76] Broadcasting of television and radio programs with two or more themes, including news and public-political programs, Law of Georgia on Broadcasting, Art. 2(s).
[77] Election Code of Georgia, Art. 51, para. 17-21 enforced since July 16, 2012: https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=1700719&lang=ge.
[78] Adopted on 12 June 1997.
[79] Amendments were made on 05/15/98 N1392; 02/24/2004 N3401; 12/29/2006 N4266; 07/17/2009 N1502; 03/09/2010 N2724 and 14/07/2011 N110714026.
[80] Venice Commission (14-15 October 2011), "Final Opinion On The Amendments To The Law On Assembly And

The practical implementation of the standards enshrined in the legislation is also still problematic. There have been number of assemblies held since October 2007 and in key instances, the law enforcement services applied disproportional force to disperse demonstrators.

Serious and grave violations of the freedom of assembly occurred during the demonstrations of 7 November 2007, 15 June 2009, 3 January 2010[81], 7 May 2011[82], 25 March 2011, 5 June 2011[83], 26 May 2011 and 15 September 2011[84]. In the course of dispersal of demonstration on 26 May 2011, five people – including one policeman - lost their lives.[85]

Recommendations

1/ Local legislation shall be revised in line with recommendations of the Venice Commission, local NGOs, and the Office of the Public Defender.

2/ The legality of forceful dispersal of demonstrations of 7 November 2007, 15 June 2009, 3 January 2011, 25 March 2011 and 26 May 2011 and cases of violence against peaceful demonstrators shall be investigated and perpetrators shall be held responsible.

Manifestations Of Georgia", Adoped at 88th Plenary Session, Venice – Opinion no.547/2009, CDL AD(2011)029 – 17October, 2011, Strasbourg; Public Defender of Georgia (2011), "Human Rights Report", Tbilisi, p.68; the Georgian Young Lawyers' Association (GYLA) (2011), "Opinion of the Georgian Young Lawyers Association Concerning the Amendments to the Law of Georgia on Assembly and Manifestation", 07/18-11, 20.06.2011.

[81] Nino Tsagareishvi (2012), "Taking Liberties, Misusing Power", Human Rights Center (HRIDC), Tbilisi, p. 24, http://www.csogeorgia.org/uploads/Annual/42.pdf; see also, statement of the Public defender http://ombudsman.ge/index.php?page=1001&lang=1&n=0&id=1355.

[82] On May 7th of 2011 the youth activist group "Ara" ("No") associated with the opposition group Public Assembly was protesting in front of the house of the head of Rustavi police department. According to the monitors from Human Rights Center who witnessed the action, at one moment an unidentified person physically assaulted a female police officer and ran away. In response the policemen arrested twelve demonstrators while suspiciously letting the initial offender get away. Three activists, including the organizers, Levan Chitadze and Vasil Balakhadze, were sentenced to administrative detention for thirty days; see: Nino Tsagareishvi (2012), "Taking Liberties, Misusing Power", Human Rights Center (HRIDC), Tbilisi, p. 27 http://www.csogeorgia.org/uploads/Annual/42.pdf

[83] On June 5th of 2011 the Hollywood movie "Five Days of August" about the Russia-Georgia 2008 August war. premiered in Rustaveli cinema in Tbilisi. Georgian opposition activist Lasha Chkhartishvili together with family members of opposition leader Irakli Batiashvili, who at the time was missing following the May 26 protests, decided to hold a protest action and deliver a message on the lack of democracy in Georgia to arriving guests. All four demonstrators – Lasha Chkhartishvili, Teona Kardava, Irina Batiashvili and Maia Batiashvili were arrested by police. According to monitors from Human Rights Center, the demonstrators were not violent, did not hinder traffic movement or violate other norms of the Law on Assemblies and Manifestations; see: Nino Tsagareishvi (2012), "Taking Liberties, Misusing Power", Human Rights Center (HRIDC), Tbilisi, p. 26, http://www.csogeorgia.org/uploads/Annual/42.pdf.

[84] Another case when the police exceeded its authority was strike of factory workers in the city of Kutaisi on September 15th of 2011 where four metallurgists had been on hunger strike for several days requesting improvement of working conditions and the restoration of 17 dismissed workers to their jobs. Even though protesters acted in accordance with Georgian law, the police broke up the demonstration detaining several strikers. Upon release, some strikers alleged that police had made them sign agreements not to protest again. Overall, 40 protestors were detained. Lawyers and family members were not informed on where the detainees were taken and had to search for them in various police departments and detention cells throughout the night following their arrest; see: Nino Tsagareishvi (2012), "Taking Liberties, Misusing Power", Human Rights Center (HRIDC), Tbilisi, p. 26, http://www.csogeorgia.org/uploads/Annual/42.pdf.

[85] Georgian Young Lawyers Association (GYLA) (2011), "Analysis of Human Rights Violations During and Related to the Dispersal of the May 26 Assembly", http://gyla.ge/uploads/publications/2011/26_maisi_eng.pdf or www.nplg.gov.ge/dlibrary/collect/0001/001047/full_en.pdf.

4.3 Freedom of elections (Article 25)

In the period since the 2007 HRC concluding observations there has been extraordinary presidential and parliamentary elections, called in 2008 and a local election in 2010. Since the Georgian Government 4th Periodical Report was submitted, there has also been a Parliamentary election in October 2012.

Paragraphs 169-176 of the Georgian Government's 4th Periodical report, highlights the improvements that have been made in relation to elections. The section discusses the activities of the inter-party electoral working group (paragraph 170 and 175), the Central Election Commission (171) as well as the Inter-Agency Task-Force for Free and Fair Elections (173).

However, in spite of these revisions, the NGO coalition believe that it is clear that a wide range of electoral violations continued under the former government.

Working group on electoral reforms

As highlighted in paragraph 170 of the government report, in February 2009, an inter-party working group on electoral reform was set up. The Working Group, composed of 11 political organizations, was asked to establish an Election Code for the 2010 local elections. The group was made up of the representatives of the ruling party and parliamentary and non-parliamentary opposition members. The ruling party was the primary decision maker in the group and rejected proposals that would reform the primary process. The group, however, managed to reach a consensus on non-fundamental electoral changes.

Central Election Commission

In paragraph 171 of the government report they highlight the rules that govern the selection of members for the Central Election Commission. However, the rules governing the formation of election administration are still highly contested issues in Georgia and do not ensure the political neutrality of its members. For example, the Chairman of the current CEC was elected by the Parliament of Georgia on 15 January 2010. However, the opposition parties abstained from the election as they objected to the short-list provided by the President.[86]

The rule establishing appointment of representatives of opposition parties as secretaries to precinct election commissions should, however, be seen as a positive development.[87]This rule was first applied during local elections of 2010. Until that time, all management positions in the electoral administration were in the hands of the ruling party.[88]

In paragraph 173, the government report highlights the role of the Interagency Task Force for Free and Fair Elections, which was established for the 2008 presidential elections. The Task Force coordinated activities between state agencies responsible for various issues linked with elections. It was composed of high-ranking officials, ministers and deputy ministers. Despite the fact that the task force was set up for the 2008 elections, its legal framework was established in 2011. The work of the Interagency Task Force in the run-up to 2012 elections shall be assessed as relatively positive. Unlike other institutions, the task force was more inclined to react to and prevent violations identified during the pre-election period.

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[86] Please see an article at: http://civil.ge/geo/article.php?id=22233.

[87] International Society for Fair Elections and Democracy (ISFED), "Review of Legislative Framework", p. 12-16, http://isfed.ge/pdf/isfed_monitoring_report_on_local_self_government_elections_geo.pdf (dead link).

[88] In spite of this provision in the Election Code, during the by-term elections after 2012 Parliamentary elections the CEC interpreted the rule of appointment of a secretary to a precinct electoral administration in such a way that the representatives of the United National Movement were not given opportunity to be appointed as secretaries of precinct election commission. Despite the fact that the United National Movement did not obtain best results in the elections and represents a parliamentary opposition. This interpretation of the Election Code by the CEC contradicts with the spirits and aims of the law.

Mayoral Elections
The adoption of amendments to the electoral legislation on direct election of the Mayor of Tbilisi should also be assessed as positive. However, despite the President's declaration at the UN General Assembly, on 4 November 2009, that mayoral elections across the country would become direct elections, only Tbilisi has direct elections. The other four self-governing cities are appointed mayors.

Later electoral regulation of the mayoral elections became a disputed issue between the ruling party and the opposition. The ruling party and the parliamentary opposition were in favor of establishing 30 percent barrier for the election of Tbilisi Mayor, while non-parliamentary opposition demanded the threshold to be set at 45 To 50 percent. The inter-party working group was dissolved in October 2009 due to inability to reach consensus on this point.

Voter list
Prior to 2010 local elections 100 thousand GEL were allocated to each of 12 political parties from the state budget to provide them with the resources to verify the voter list. The work carried out by parties appeared to be insufficiently effective regardless of significant financial and material resources. Notable errors were identified in the voting list on the day of elections.

Problems of the Different Elections (2007-2012)
Pre-term presidential elections were held on the 5 January 2008. These elections were problematic in a range of ways. The rules governing pre-election campaigning were not consistent with international standards. Voter lists were inaccurate. Independent and impartial observers found incidences of voter intimidation. Additionally, biased courts were in charge of reviewing electoral complaints.[89]

The ignorance of the election administration vis-à-vis principles of local and international legislation represented a special concern. Throughout the elections, every level of the election administration was politicized and suffered from a lack of impartiality.[90]

The faults identified during the pre-election period for the Parliamentary Elections of the 21 May 2008 had significant impacts on the final results. Of particular concern is the intimidation of civil servants and teachers, who were forbidden to be active supporters of the opposition parties. If they chose to participate, they risked the threat of dismissal.[91]

In addition, representatives of election observation missions often had no opportunity to write and submit complaints to the precinct election commissions. When they attempted to do so, they were threatened, intimidated and/or expelled from polling stations.[92]

Despite the fact that election code procedures for filing complaints and appeals have been simplified, the CEC and the courts did not appropriately review complaints and appeals. Their bias in favor of the ruling party and public servants was noticeable. Election administrations and the courts frequently refused to examine witnesses and other evidence.

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[89] International Society for Fair Elections and Democracy (ISFED) (2008), "Report on Pre-term Presidential Elections", Tbilisi, http://isfed.ge/elections/reports/isfed_electionreport_2008_geo.pdf (dead link).
[90] Society for Fair Elections and Democracy (ISFED) (2008), "Report on Pre-term Presidential Elections", Tbilisi, p. 15:http://isfed.ge/elections/reports/isfed_electionreport_2008_geo.pdf (dead link).
[91] Organization for Security and Co-operation in Europe (OSCE) (2008), "OSCE/ODIHR Election Observation Mission Final Report", Warsaw, http://www.osce.org/odihr/elections/georgia/33301.
[92] Organization for Security and Co-operation in Europe (OSCE) (2008), "OSCE/ODIHR Election Observation Mission Final Report", Warsaw, p. 8:http://www.osce.org/odihr/elections/georgia/33301.

The coverage of pre-election campaigns by the media was problematic. National broadcasters provided mainly favorable coverage of activities of the ruling party.[93] It was difficult to draw lines between governmental programs and party campaign.

In addition to threatening voters, opposition party members were intimidated and threated. The threat of violence was used to try to get the candidates to withdraw during the pre-election period. In some cases, candidates' campaign materials had been destroyed and campaign had been interrupted.

In the period prior to the 2012 Parliamentary Elections, the campaign was characterised by numerous cases of hate speech and violence.During this period there were many documented cases of dismissal from work on political grounds, illegal use of administrative resources, violence and physical attacks on political grounds.

The amendments to the Law of Georgia on "Political Unions of Citizens" were particularly problematic. The amendments posed a threat to the freedom of expression and the right to property. It created a restriction on civil and political activities. Additionally, it gave the ruling party advantages in the election. The restrictions imposed by the law were often unreasonable and the monetary sanctions were disproportionate.

On election day, voting as well as the process of counting ballots, was carried out properly in the majority of precincts throughout the entire country. The process of revision of complaints was handled in a transparent manner. The interested party had an opportunity to be present and participate in the Commission/Court session reviewing the complaint. Nevertheless, the decisions of the election commissions on rejecting the complaints were often insufficiently justified. In addition, the courts were not always impartial and failed to comprehensively and fully examine the evidence when deciding on violation cases. Despite cases of fraud, the citizens of Georgia expressed their will which was reflected in by the polling results.[94]

Recommendations:

1/ The past elections have shown that the election system and the electoral legislation of Georgia requires a fundamental reform. Fragmented and superficial revisions to the Election Code do not result in substantial improvement of the electoral environment. The fundamental reforms shall touch upon issues, such as electoral system, formation of the election administration, registration of voters, voting, the procedures for counting the votes, and rules regulating the use of administrative resources.

2/ These reforms need to be carried out in a timely manner, in advance of the 2014 Presidential elections.

[93] Organization for Security and Co-operation in Europe (OSCE) (2010), "OSCE/ODIHR Election Observation Mission Final Report, Municipal Elections", p. 2, http://www.osce.org/odihr/elections/71280.

[94] International Society for Fair Elections and Democracy (ISFED) (2012), "Final Report", p. 42-43, http://www.isfed.ge/pdf/2012_Final_Rep.pdf.

Appendix 1: List of NGO Coalition Members

Article 42 of the Constitution

Analytical Centre for Interethnic Cooperation and Consultation

Coalition for Independent Living

Former Political Prisoners for Human Rights

GCRT (Psychological and Medical Rehabilitation Centre of Victims of Torture)

Georgian Young Lawyers' Association (GYLA)

International Society for Fair Elections and Democracy (ISFED)

Human Rights Center (HRIDC)

Penal Reform International (PRI)

Research Centre on Juvenile Justice Issues

Women Information Centre

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