

Human Rights Center (HRIDC)

# Monitoring Freedom of Peaceful Assembly in Georgia

## Legislation and Practice



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**Written by:** **Bakar Jikia**

**Edited By:**

Omer Fisher

Neil Jarman

Ucha Nanuashvili

**Acknowledgements:**

Tamta Mikeladze

Irina Putkaradze

Murman Patariaia

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The report is prepared within the framework of the OSCE/ODIHR project

### **Capacity building for human rights defenders on monitoring freedom of assembly in Georgia**

The report covers the monitoring period from January 1 2011 to June 30 2011. It represents analysis of key freedom of assembly related legislative and empirical issues as well as trends currently present in the country.

The project was carried out by Human Rights Centre (HRIDC). HRIDC is a Tbilisi-based non-government organization working on protection and promotion of human rights, rule of law and peace in Georgia. Human Rights Centre is free of any political and religious affiliation.

The report is predominantly based on the empirical data provided by 25 monitors from 5 cities and regional centers in the country. Monitors were trained by the OSCE/ODIHR and the Council of Europe experts on freedom of assembly.

The data is provided in 131 monitoring reports consisting of the monitoring form and a narrative part. A total of 75 different assemblies were monitored for the reporting period.

### **Acknowledgements**

Human Rights Centre is grateful to Mr. Omer Fisher, Mr. Neil Jarman, Mr James Sweeney for their assistance in training, monitoring, drafting and publishing stages of the project.

Human Rights Centre is also grateful to all monitors participating in the project. Their dedication, commitment and hard work resulted in hundreds of pages of empirical data required for this report.

Human Rights Centre is grateful to partner organizations: Georgian Young Lawyers Association, NGO "Public Advocacy", Public Movement – Multinational Georgia, "Article 42 of the Constitution" for their assistance during different stages of the project.

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## **Project Summary**

This report presents the results of the monitoring of practical implementation of the freedom of assembly in Georgia. The monitoring was carried out by the Human Rights Centre (HRDIC) in the framework of the project “Capacity building for human rights defenders on monitoring freedom of assembly in Georgia” supported by the Office for Democratic Institutions and Human Rights of the Organisation for Security and Co-operation in Europe (OSCE/ODIHR) and by the Council of Europe.

The aim of the project was to support human rights defenders in Georgia by increasing their monitoring skills in the area of freedom of peaceful assembly. The project was implemented by Mr. Ucha Nanuashvili and Mr. Bakar Jikia, HRDIC staff members, with support from Mr. Omer Fisher from OSCE/ODIHR.

Twenty-five assembly monitors were selected, by open call, for training. The project implementation team carried out the selection ensuring equal opportunities for candidates of both genders. In the monitoring team 20, out of 25 monitors, were women.

The training for monitors was delivered by experts in freedom of assembly from OSCE/ODIHR, the Council of Europe and the Human Rights Centre, in particular Mr. Neil Jarman (Member of the OSCE/ODIHR Panel of Experts on the Freedom of Assembly), Mr. James Sweeney, Mr. Ucha Nanuashvili. The theoretical part of the training course included a review of international instruments, the European Court of Human Rights (ECHR) case law and Georgian legislation on freedom of assembly. It also covered monitoring techniques and practical aspects. A Code of Conduct was also agreed during the training and all monitors were provided with identification badges indicating their identity and status.

The project also involved the translation of the OSCE/ODIHR Guidelines of Freedom of Peaceful Assembly, which were translated into Georgian by ODIHR and distributed to monitors.

Human Rights Centre (HRDIC) is grateful to Mr. Omer Fisher, Mr. Neil Jarman, Mr. James Sweeney for their efforts, advice and supervision at the training, monitoring and

drafting stages. The HRD/C is also grateful to Ms. Irina Putkaradze, Ms. Tamta Mikeladze, Mr. Murman Pataraiia, expert group members, representatives of Georgian NGOs, who worked on recommendations and assisted the drafting process by providing a review of international standards on freedom of peaceful assembly. The HRIDC is also grateful to the Tbilisi City Hall for providing statistical data for the report.

## **Methodology**

The methodology for the report was selected according to its goal, to provide general overview of the freedom of assembly in Georgia on both legal and practical aspects and present analysis of trends and concrete cases which affect the implementation of the aforementioned freedom in the country. Likewise the report is free from any academic intent, it is not aimed at testing assumptions or theories but at providing information and assessment.

## ***Monitoring***

In order to better organize the monitoring process in the country, the project implementation team used the capacity of Human Rights Centre regional offices in Gori (Shida Kartli region), Zugdidi (Samegrelo region), Batumi (Adjara autonomous republic) and Gurjaani (Kakheti region). Regional branches were essential for obtaining information on planned assemblies, selection of local monitors and organization of monitoring on the ground.

The monitoring process lasted 6 months between January 1<sup>st</sup> and June 30<sup>th</sup> 2011. A total of 131 individual reports were submitted and 75 assemblies were monitored. Out of these 75 monitored only 11 were held outside of Tbilisi. Monitors were required to submit individual reports within 24 hours after the end of the assembly. All reports were submitted in timely manner.

The monitoring was planned in following cities: Tbilisi, Rustavi, Gori. Monitors based in Regional offices in Gurjaani, Batumi and Zugdidi were covering Kakheti, Adjara and Samegrelo regions respectively.

For better coordination and communication a closed group was created on a Facebook social network. Information concerning planned assemblies, best practices in monitoring and reporting was shared between monitors and the project management team.

Individual reports were collected in a common dataset using Microsoft Excel for quick access to obtained data, basic information on each monitoring mission and monitors.

## ***Data***

Sources of data can be divided into two groups, in particular data sources for legislation analysis and data sources for case studies and assessment of other developments.

Following sources were used for analysis of the practical paradigm:

Individual reports represent the main source of information. They are the first hand data acquired by project monitors and therefore accurate and reliable. Both quantitative and qualitative data were extracted from individual reports. A total of 131 individual reports were submitted by monitors during the 6 month period.

Information was requested from public authorities. Specifically, Tbilisi City Hall, the Ministry of Internal Affairs and the Tbilisi City Court

Internet Media was used as an alternative source of information to individual reports. Reliable Georgian internet media outlets were selected. These are Interpressnews, Civil.ge, Media.ge, Humanrights.ge. Websites of public authorities, as well as of Public Defender were used as well.

## ***Analysis***

Taking the objectives of the report and resources available from the project into consideration, the following methodology was used for analysis:

Statistical analysis uses data provided by state authorities and extracted from individual reports to deliver a quantitative overview of the general state of affairs for the reporting period. Descriptive statistics are used in forms of bars and charts.

Comparative analysis is used for comparing Georgian legislation to international standards. It is also used to reinforce specific arguments related to trends in implementation of legal provisions on freedom of assembly into practice.

For comparing Georgian legislation to international standards, the Georgian Constitution, Georgian Law on Assembly and Manifestation, Georgian Law on Police, European Convention on Human Rights, ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, International Covenant on Civil and Political Rights were used.

Case study is used for detailed analysis of the most important developments in the field. Particularly, cases of the May 26 crackdown on the demonstration in front of the Parliament and arrests of peacefully protesting veterans on Heroes Square in January 2011 will be reviewed together with other cases.

### **Structure**

The specific structure was chosen for the report to endow a better overview of the state of affairs in the field of the freedom of assembly. After reviewing the history of large-scale assemblies in Georgia briefly, the paper presents an issue-specific division. It covers the administration of prior notifications, restrictions imposed on the use of public thoroughfare, responsibility of the organizers, policing of assemblies, monitor's interaction with police and demonstrators and the description of the May 26 events and preceding events.

## **1. The Role of Assemblies in Post-Soviet Georgia**

Assemblies are an indivisible part of the Georgian political life. The nature of these assemblies is mostly political and they represent protests against existing governing methods, particular policies or the government as a whole. Large-scale protests with very specific social demands are less frequent. On the contrary, the protest charge accumulates from particular social or political dissatisfactions and habitually bursts out once in several years.

Protest demonstrations have triggered or have been used as a mechanism for regime change in both decades of post-Soviet life. Witnessing a hundred thousand strong demonstration in Tbilisi is not something unbelievable either. 20 years after regaining independence the country has its third elected president without the experience of a democratic regime change.

Zviad Gamsakurdia's government, which was elected in 1991 brought mass dissatisfaction and encouraged separatism in Abkhazia and South Ossetia. Tensions started to rise in September 1991 when the police dispersed a large protest rally in Tbilisi, arresting several opposition members on the way. After casualties during clashes on 22<sup>nd</sup>, the state of emergency was declared on September 24. As a result of a split within armed forces and paramilitary groups, heavy fighting started in the center of Tbilisi. Gamsakhurdia's government fled the country on January 6, 1992.



The former Leader of the Georgian Soviet Republic and the former USSR Minister of International Affairs, Eduard Shevardnadze returned from Moscow and chaired the Parliament afterwards. He was elected as president in 1995 and again in 2000 without any significant opposition. Despite of bringing some stability to the country, Shevardnadze's Soviet-Style government was characterized by absolutely uncontrolled corruption at all levels; the country was living in the state of a shadow economy. A harsh socioeconomic situation combined with the lack of any significant progress in relation to breakaway regions resulted in a complete loss of popular support for his power.

The group of young leaders led by Mikhail Saakashvili, Zurab Zvania and Nino Burjanadze, the former highly ranked officials in Shevardnadze's government, turned critical of the regime, accusing it of widespread corruption and inability to achieve progress. The new opposition group, united in two parties took advantage of the controversial November 2003 parliamentary elections. With the support of many local entrepreneurs and international society they managed to obtain popular support in their fight against fraudulent elections. Techniques similar to the Serbian peaceful revolution were used and on November 23 the demonstrators invaded the Parliament building, interrupting the first session of the newly elected legislative body, which they claimed was illegal. President Shevardnadze had to flee with his bodyguards. He announced a state of emergency but later resigned after consultations with opposition leaders and the Russian minister of foreign affairs Igor Ivanov.

The Georgian political environment has been changing ever since. Despite many successful efforts to modernize the country, the ruling party was pushing political life towards more authoritarianism and the space for opposition was rapidly disappearing. The closing of the political life for alternative opinion combined with pressing social issues have taken politics from its more traditional places (Parliament, local municipalities) back to the streets.

The opposition managed to unite again in 2007. Popular support relied upon unresolved social problems and accusations of elite corruption. They were further reinforced in September 2007 when the earlier dismissed Minister of Defense, Irakli Okruashvili, made scandalous statements on Saakashvilis' personal expenses and his involvement in Prime Minister Zvania's death.

Mass demonstrations started on November 2, 2007. Over several days the number of demonstrators in front of the parliament was reaching 100 000. Fearing the reiteration of the case scenario which helped to oust Shevardnadze, the government cracked down on a large-scale assembly on November 7, which was provoked by a relatively minor early morning incident between a small number of demonstrators and the police.

Special riot police squads used rubber truncheons, tear gas, and other means. Unidentified people in civilian clothing and masks were also involved in the dispersal. Opposition political leaders, journalists and the public defender himself became victims of the attack.<sup>1</sup>

Demonstrators gathered some two kilometers away from the parliament at the so called "Rike" area. The police again attacked them there from two sides. Allegations on use of fire arms and presence of snipers were also voiced.<sup>2</sup>

Government officials labeled the events as an attempt to overthrow the constitutional order and blamed Russia for investing and supporting it.

The next political crisis was also reflected in mass protests. Stories of tens of cases of attacks and harassment of peaceful demonstrators started to emerge in the course of spring-summer demonstrations in 2009, which at first sight were well-handled by the authorities. The political opposition and a large part of society accused President Saakashvili of authoritarian rule and of dragging Georgia into war with Russia the year before. To symbolize the lack of freedom in the country some protesters settled down in the tents in the middle of a central avenue in Tbilisi subsequently blocking Tbilisi's main street throughout the summer.

Several days before April 9, which had been announced as a starting point for mass demonstrations, different opposition party members were detained on contested charges in resistance to police and minor hooliganism and sentenced to deprivation of liberty. On April 9 the central highways in the regions of Georgia were blocked to obstruct demonstrators from travelling to Tbilisi. Arbitrary deprivation of drivers licenses were also reported to obstruct mini-buses drivers transporting people to the capital.<sup>3</sup>

Dozens of attacks and harassment of demonstrators committed by unidentified people have been documented in the course of demonstrations from April until July 2009. Such cases were taking place almost every day. These cases had similar patterns with a group of men, sometimes in masks, attacking participants of rallies, not immediately on the protest venues, but on the nearby streets, during the night time as a rule.

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<sup>1</sup> <http://www.hrw.org/news/2007/11/07/georgia-riot-police-violently-disperse-peaceful-protesters>

<sup>2</sup> Testimony by Vakhtang Inasaridze in *Assessment of the November Events in Georgia, 2007*. (HRIDC 2007; p5).

<sup>3</sup> HumanRights.Ge , 16 April, 2009 <http://www.humanrights.ge/index.php?a=article&id=3684&lang=en>

All attacks seem to follow the same pattern, to target specifically figures from the opposition or activists. Testimonies point to the lack of reaction from the police, who in some cases were accused of turning a blind eye to the attacks.

The exceptions from covert tactics were attacks on May 9 and June 15. Both these incidents seemed to represent rather spontaneous responses than planned suppressions by the special riot police squads.

On May 6, 2009 while allegedly establishing public order, police used plastic and rubber bullets against demonstrators, use of which was not allowed by the Georgian legislation at that time. Reportedly police also used stones, debris of bricks and sticks.

According to the official information, a total of 29 people including one journalist and six policemen asked for treatment at hospitals. Among those injured were several leaders and opposition supporters: Gia Maisashvili, Davit Gamkrelidze, Shalva Ogbaidze, Levan Gachechiladze and Gia Gachechiladze [Utsnobi], as well as a correspondent of the Public Broadcasting- Salome Kokiashvili, a camera-man of the TV Company "Kavkasia"-Zaza Shukvani, a cameraman of the Rustavi 2 - Levan Kalandia; Nino Komakhidze – a journalist of the newspaper "Versia" and Ana Khavtasi – a photo-reporter. A Ministry of Internal Affairs investigation into allegations regarding the use of force by police officers concluded that police acted in accordance with the law. No one has been held accountable for use of prohibited weapons.<sup>4</sup>

On June 15, 2009 police, some in plain clothes and in masks, armed with truncheons attacked dozens of protesters from the youth pro-opposition groups, which were rallying peacefully outside the Tbilisi police headquarters. Dozens of peaceful demonstrators were severely beaten despite not resisting to police or showing any signs of aggression. Furthermore, several journalists and cameramen were injured and their equipment was seized (but was later returned). 39 people were arrested, five activists from the pro-opposition youth group were arrested and sent to prison for a month, others were fined and released. The representative of the Public Defender's Office, Vakhtang Menabdzze, was beaten by police despite wearing a special uniform with the "Public Defender" designation on it.<sup>5</sup>

There were some smaller-scale incidents in 2010. Specifically, participants of a peaceful flash mob held on the 14th of August on George W. Bush Street in Tbilisi were arrested

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<sup>4</sup> Human Rights Centre annual report for 2009: Vanishing Rights. Available at [http://caucasusnetwork.org/admin/editor/uploads/files/reports/bolo\\_%20vanishing%20right-kdits.pdf](http://caucasusnetwork.org/admin/editor/uploads/files/reports/bolo_%20vanishing%20right-kdits.pdf)

<sup>5</sup> Human Rights Centre annual report for 2009: Vanishing Rights. Available at [http://caucasusnetwork.org/admin/editor/uploads/files/reports/bolo\\_%20vanishing%20right-kdits.pdf](http://caucasusnetwork.org/admin/editor/uploads/files/reports/bolo_%20vanishing%20right-kdits.pdf)

by the police. The flash-mob was organized by a former human rights activist and two young poets. Participants demanded the renaming of the street after the famous American poet and humanist, Walt Whitman and read poems by Whitman during the action. The poets were arrested and charged with “willful disobedience to police”. However, the video material and witness statements confirmed that all participants peacefully followed the demands of the policemen.<sup>6</sup> All detainees were sentenced to fines for administrative offenses and released.

## **2. Legislative process on Freedom of Assembly in Georgia**

The freedom of peaceful assembly is guaranteed by the Article 25 of the Georgian Constitution and further regulated in detail by the Law on Assembly and Manifestation adopted in 1997 (hereinafter “the law”).

The Georgian Law on Assembly and Manifestation, adopted in 1997 was amended several times with the most significant changes introduced in 2009 as an answer to mass protests and the political crisis in the country. The Parliament voted for amendments without waiting for the requested opinion from the Venice Commission, but made a commitment to make further changes in line with recommendations provided by the commission.

The comprehensive analysis of the draft law including amendments was carried out by the Venice Commission in October 2009.<sup>7</sup> The opinion was highly critical of then already adopted draft, criticizing it for unnecessary restriction on the possibility to block roads during assemblies,

A new revised draft was submitted to the Commission in March 2010, being reconsidered in light of the recommendations provided in October 2009. Several key issues have been addressed, most notably a clearer and more fair burden of responsibility was defined for the organizers. The Venice Commission reassessed the draft, publishing the opinion again in March 2010.<sup>8</sup> The new output contained fewer objections but remained critical of the basically unchanged restrictive rule on the ability of using public roads during assemblies. The Georgian Parliament did not vote for the draft immediately but adopted it without further changes in 2011.

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<sup>6</sup> For the detailed information on the case see Human Rights Centre 2010 annual report “Restricted Rights” available at

<http://www.humanrights.ge/admin/editor/uploads/files/RESTRICTED%20RIGHTS%20-%20HRIDC%202011.pdf>

<sup>7</sup> Venice Commission CDL(2009)152 issued on October 1 2009.

<sup>8</sup> Venice Commission CDL-AD(2010)009 issued on March 15 2010

In April 2011 the Constitutional Court of Georgia issued the decision on the joint constitutional appeal submitted by the Public Defender's Office, the Georgian Young Lawyers Association, the Georgian Conservative Party and young human rights activists – Jaba Jishkariani and Dachi Tsaguria. The Court satisfied the constitutional complaint partially and deemed several clauses unconstitutional, most notably a ban on assembling within 20 meters from a large number of public administration buildings listed in the law.<sup>9</sup>

Further amendments were introduced following the May protests and the May 26 crackdown in June 2011, after the end of the monitoring process, which have further clarified the responsibility of the organizers and the ability of the state to intervene into the course of assemblies. Some of these amendments were in accordance with previous recommendations of the Venice Commission but the new initiative also reintroduced some of the norms abolished by the Constitutional Court in a less restrictive manner.

### **3. Prior Notification Procedure**

Article 2 of the Georgian Law on Assembly and Manifestation guarantees the right to peaceful public assembly (indoor or outdoor) without the requirement to obtain any permission.

According to international standards it is essential to have the procedure in the form of a notification, not permission. The OSCE Guidelines refer to the European Court of Human Rights (ECHR) ruling on the case 'Balcik and others versus Turkey' when stating that 'any legal provisions concerning advance notification should require the organizers to submit a notice of the intent to hold an assembly, but not a request for permission'.

In this regard Georgian legislation shares the liberal approach set in international standards by defining the procedure of notification. The law further follows the aforementioned norms by liberating smaller assemblies from the prior notification requirement.

Specifically, spontaneous or organized events do not require prior notice if they are not using a public thoroughfare. In reference to Article 5 of the law on assembly and manifestation, prior notification is only required in cases when assemblies are held in

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<sup>9</sup> The decision of the court is available only in Georgian at [http://www.constcourt.ge/act\\_files/382.383,387,502.doc](http://www.constcourt.ge/act_files/382.383,387,502.doc)

*“areas of movement of traffic or people”*.<sup>10</sup> The notification must be submitted to the relevant city administration no later than 5 days prior to the scheduled event.<sup>11</sup> No permission for the submitted notification is needed but the administration can reject it if the procedural requirements are not met.<sup>12</sup> It can also be rejected if the notified assembly will coincide with another event for which the notification was received earlier; or the planned assembly will threaten public safety, order or rights and freedoms of others.<sup>13</sup>

It is noteworthy that the law also introduces the definition of “discussion of the alternative place for the assembly” with almost identical motivation to rejection of the notification. The relevant administration is eligible to discuss an alternative place together with the organizers within 3 days after the submission of the notification. The alternative place can be discussed if it is necessary for the maintenance of the public order, normal operation of industries and institutions, organizations and transport. It can also be discussed if another assembly is scheduled at the same time on the same location.<sup>14</sup>

### **In Practice:**

Prior notification procedure proved to be one of the less problematic areas both in law and in practice. The rather liberal approach of the law discussed in the first part of the chapter enabled demonstrators to assemble without prior notice in overwhelming majority of cases for the reporting period.

Human Rights Centre requested public information from the Tbilisi City Hall concerning the number of submitted prior notifications and their further processing. The received information confirmed preliminary expectations concerning the liberal approach of the authorities at this particular stage.

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<sup>10</sup> Article 5 paragraph 1 of the Georgian law on assembly and manifestation.

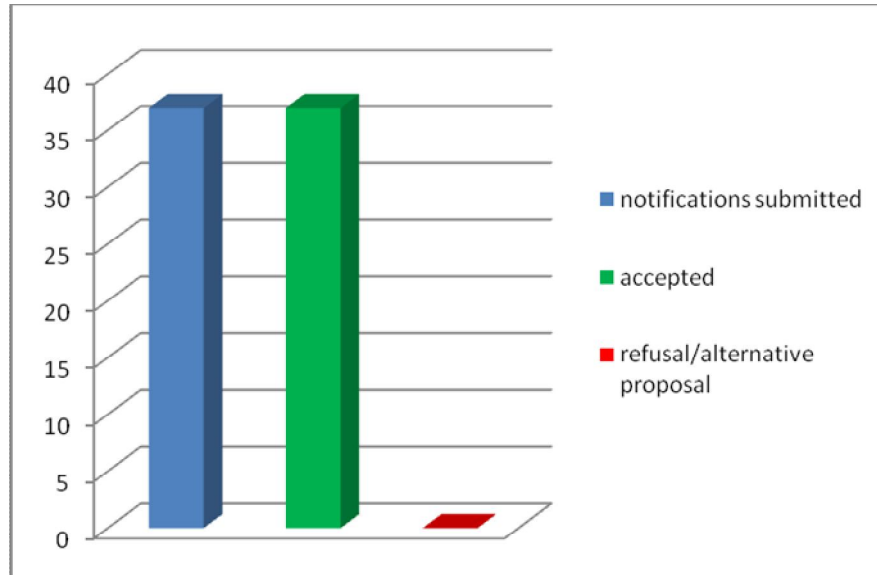
<sup>11</sup> Article 8 paragraph 1 of the Georgian law on assembly and manifestation; See annex 1 (Georgian Law on Assembly and Manifestation) article 8 para 2 for the full list of requirements for the prior notification.

<sup>12</sup> See procedural requirements for the prior notification in annex 1 – article 8.

<sup>13</sup> Georgian Law on Assembly and Manifestation - Article 8 para 5.

<sup>14</sup> Georgian Law on Assembly and Manifestation – Article 10.

### Number of prior notifications submitted to the Tbilisi City Hall for the reporting period



Only **37** prior notifications were submitted from December 2010 to June 2011. None of them were refused and no alternative locations were proposed by the authorities.<sup>15</sup> In practice there was a case of the alternative offer before the May 26 crackdown when the Tbilisi City Hall proposed an alternative location for the Public Assembly supporters. This fact still cannot be considered as a deliberate misinformation by the city administration as the May 26 case was not related to the prior notification acceptance procedure. The prior notification was duly administered by the City Hall and the alternative location was suggested only after the expiration of the term of the submitted notice.

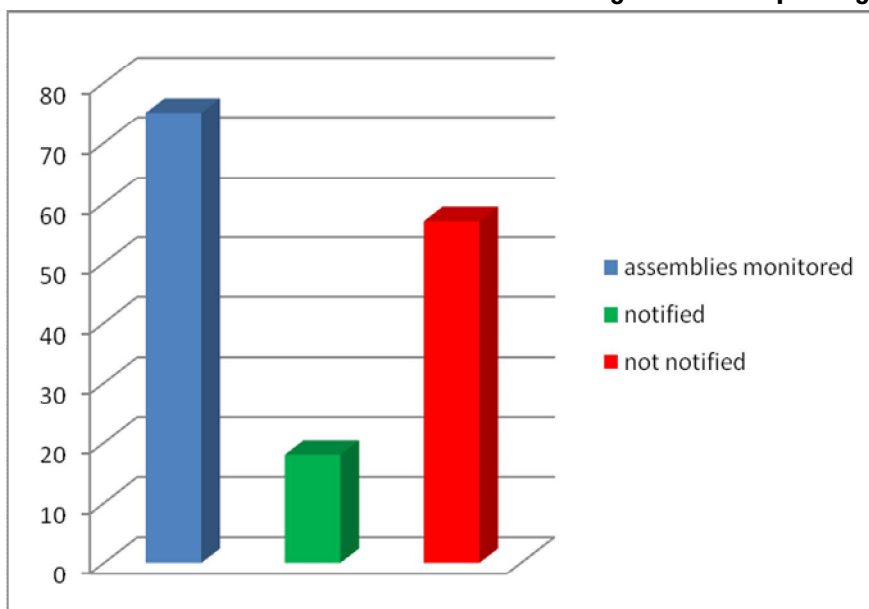
Human Rights Centre also addressed the Tbilisi City Court to obtain the information in regards to appeals submitted by the organizers concerning the handling of the prior notification by the Tbilisi City Hall for the reporting period. Unfortunately the information was not provided by the court but in light of the lack of refusals or alternative location proposals the information proved to be of lesser value.

It is impossible to statistically calculate the share of prior notified assemblies based on the information provided by authorities. According to Georgian legislation the

<sup>15</sup> Letter from the Tbilisi City Hall 11/120680-7; dated 17/10/2011

organizers are not obliged to inform the relevant authority about the planned assembly if it is not falling under conditions requiring prior notification (using space of movement of traffic). Therefore the information on the number of assemblies available to the Tbilisi City Hall in this particular case will be limited to prior notified assemblies. In the framework of the project however, the monitors were encouraged to obtain information from the organizers directly. By the digitalization of monitoring questionnaires and narrative reports it became possible to approximately identify the share of notified assemblies.

**The share of notified assemblies from 5 cities in Georgia for the reporting period**



A total of **75** assemblies were monitored within the reporting period. According to the data obtained, the organizers submitted the prior notification only in **18** cases. The other **57** assemblies did not require prior notice for not falling under the Article 5 of the Georgian Law on Assembly and Manifestation.<sup>16</sup>

Problems occurred with further treatment of the prior notified assemblies from participants. In some cases the rights granted by the prior notification were interpreted wrongly by the organizers of the demonstration.

The wrong interpretation occurred on March 25 when the opposition group was rallying in front of the Ministry of Penitentiary, Probation and Legal Aid.<sup>17</sup> The statements by

<sup>16</sup> Chapter 2, paragraph 2 of this report.

<sup>17</sup> for the full review of the case see chapter 6



organizers during the demonstration implied that the blocking of the street was permitted to them since the prior notification procedures were followed. However, prior notification is not a legal ground for intentional blocking of the road according to the Georgian legislation.<sup>18</sup> Regardless whether notified or not, the assembly can only use the traffic space if it is caused by the number of demonstrators making it unable to fit in surrounding areas.

#### **4. Restrictions on the use of public thoroughfare**

According to the OSCE Guidelines on Freedom of Peaceful Assembly, assemblies are as legitimate uses of public space as commercial activity or the movement of vehicular and pedestrian traffic. The Guidelines encourage legislators to incorporate this approach in when considering the necessity of any restrictions in their legal acts.<sup>19</sup>

The definition interpreted in the European Court of Human Rights (ECtHR) rulings explicitly state that “Any demonstration in a public place may cause a certain level of disruption to ordinary life, including disruption of traffic and, where demonstrators do not engage in acts of violence, it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the ECHR is not to be deprived of all substance.”<sup>20</sup>

When regulating the use of a public thoroughfare during assemblies the Georgian law mainly concerns “place of movement of traffic and people”.<sup>21</sup> Originally it was allowed to use streets for assembling if the prior notification procedure rules were followed. Consequently the clause in the original law implied that in case of prior notification (which did not require permission) assemblies could be held at any venue, including the use of the traffic road without restrictions. According to the only prohibition included in Article 11 of the original law the “deliberate blocking of the public transport” was disallowed.

After the 2009 crisis, when the opposition kept streets blocked for months, set up cages on a central avenue and lived there, an amendment package was launched, allegedly to

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<sup>18</sup> Article 5 of the Georgian Law on Assembly and Manifestation

<sup>19</sup> OSCE Guidelines on Freedom of Peaceful Assembly: p18 3.2

<sup>20</sup> *Balcik v. Turkey* (2007), paragraph 52 and *Ashughyan v. Armenia* (2008), paragraph 90

<sup>21</sup> Georgian Law on Assembly and Manifestation - Article 5; paragraph 1

prevent a similar scenario in future and provide legal grounds for intervention in analogous circumstances.<sup>22</sup>

The rules adopted in 2009 have altered the previously existing conditions. They allowed the use of the public road only in case of the necessity caused by the number of participants and the road had to be freed as soon as the number of demonstrators again allowed.<sup>23</sup>

The constitutional lawsuit, mentioned in paragraph 2 of the report did not satisfy the claims in this part and left Article 11.1 intact.

The Venice Commission criticized the clause by making reference to the ODIHR/Venice Commission Guidelines, stating that *“the participants in public assemblies have as much a claim to use such sites for a reasonable period as everyone else”*.<sup>24</sup>

The new amendments to the law, submitted to the Commission on the 1st of March 2010 and adopted in July 2011, after the end of the monitoring phase contain the reformulated Article 11' which allows the use of public thoroughfare but leaves the authorities the right to *“restore transport movement if the assembly can be held otherwise due to the number of people”*. Therefore according to the latest version of the article the decision on restoring the movement of traffic will be made on case-by-case basis and only when the number of demonstrators is small enough to free traffic area again.<sup>25</sup> The last edition can be considered a step forward compared to 2009 version of the article (which was itself a significant step backwards) in relation to the OSCE Guidelines as it removes a blanket ban and leaves space for more flexible approach in handling of the issue.

There is a blanket prohibition on holding assemblies inside, or within a 20 meter radius from entrances to the prosecutor's offices, police headquarters, detention and imprisonment facilities or law enforcement agency buildings as well as airports, sea ports and railway stations. It is also prohibited to block entrances of buildings, block highways and railways during the assembly. A larger, one hundred meter radius is defined for entrances of military units.<sup>26</sup>

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<sup>22</sup> On 2009 crisis see Human Rights Centre Annual Report available at:

[http://caucasusnetwork.org/admin/editor/uploads/files/reports/bolo\\_%20vanishing%20right-kdits.pdf](http://caucasusnetwork.org/admin/editor/uploads/files/reports/bolo_%20vanishing%20right-kdits.pdf)

<sup>23</sup> This edition was in force for the whole monitoring period. The last package of amendments was adopted on 01 July 2011, the day after the end of monitoring.

<sup>24</sup> Venice Commission CDL(2009)152, paragraph 28

<sup>25</sup> Georgian Law on Assembly and Manifestation - Article 11'; paragraphs 1 and 2

<sup>26</sup> Georgian Law on Assembly and Manifestation – article 9; paragraphs 1, 2 and 3

Originally this blanket prohibition was formulated differently. The twenty meter ban was applied to a larger number of government buildings including the Presidential administration, local municipalities and diplomatic missions.<sup>27</sup> The Constitutional Court decision of April 18 2011 however, annulled the general provision prohibiting assemblies within 20 meters of the entrances of buildings listed in Article 9. The current version of article 9 was adopted within July 2011 amendments.

Furthermore the administrative authority in front of which the assembly is held is eligible to arbitrarily define further restrictions. Specifically, the authority can ban assemblies within no more than 20 meters from the entire building. The decision can be motivated by efforts to prevent the blockage or restrain of the activity of the institution. A similar decision can be issued by the court in the surrounding area of which the assembly is held on an additional ground which is *"guaranteeing the independence and impartiality of the court"*.<sup>28</sup>

Article 11" which was adopted during recent amendments in July 2011 obliges relevant local governance institutions to maintain a balance between freedom of assembly and the rights of persons who live or work, in places where the assembly or manifestation is being held. The article stipulates that these persons must not be restrained from carrying out their activities. In this regard, clauses of Article 2, paragraph 3 can be applied but not in cases when the assembly or manifestation is restricting the abovementioned persons' rights *"for a short period of time"*.<sup>29</sup> The law however does not specifically define how the definition of the short period of time should be interpreted.

### ***Restrictions in practice:***

The experience in this field is diverse. Generally there were not many cases of restrictions however the police were not consistent in applying them. Restrictions by other state officials were not observed. Only the Special State Protection Service was protecting entrances to buildings in compliance with their professional duties.

The chart below is based on the monitoring data and illustrates the number of cases with restrictions from the side of the police. The chart does not include cases with dispersals and crackdowns or isolated arrests during manifestations; it only focuses on restrictions imposed on the use of particular space for the demonstration.

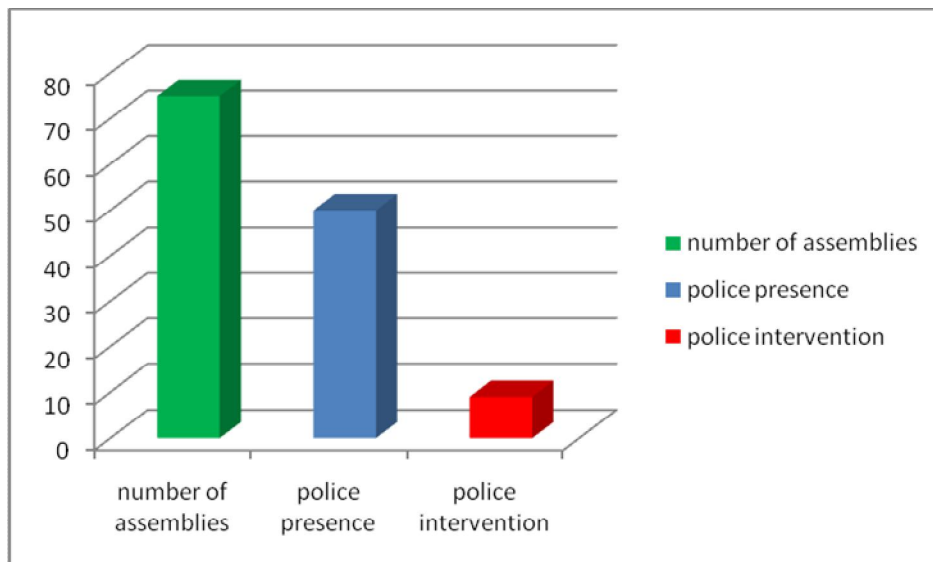
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<sup>27</sup> Georgian Law on Assembly and Manifestation, 17/07/2009 amendments – article 9, paragraph 1

<sup>28</sup> Georgian Law on Assembly and Manifestation - article 9; paragraphs 4 and 5

<sup>29</sup> Article 2 paragraph 3 implies the suggestion of an alternative place for holding the assembly

### The police presence and imposed restriction ratio in relation to number of assemblies



As the above chart demonstrates different police forces were present in **50** out of **75** assemblies. Restrictions on the use of space were imposed by them in **9** instances. The definition of restriction in this regard implies verbal or physical efforts (successful or unsuccessful) to restrict the assembly in any fashion, or restrict the access to particular areas.

In some cases the demonstrators were free to use public roads and the police officers intervened lawfully, in order to bring the assembly back into the legal framework. In other instances the law enforcement officials illegally restricted the right of demonstrators to peaceful protest and restricted access to particular locations. There were also cases when the police officers did not take any measures when they were legally obliged to.

#### **4.1 Restrictions in front of the Ministry of Penitentiary, Correction and Legal Aid in comparison to Georgian Party's protest in Batumi**

On March 25, 2011 the opposition group the Resistance Movement was organizing a protest in front of the Ministry of Penitentiary, Corrections and Legal Aid. The Assembly was organized in the framework of a larger campaign associated with the former Chairman of the Parliament, Ms. Nino Burjanadze and then newly formed Public

Assembly.<sup>30</sup> The aim of the demonstration was to protest against hazardous conditions in prisons and to demand from the minister to meet prisoners' parents.

The prior notification was submitted in a timely manner, 5 days before the scheduled event. This circumstance was also emphasized by the statements by organizers at the beginning of the assembly, specifically by Ms. Irma Inashvili and Mr. David Tarkhan Mouravi.

Around 500 people gathered at the Ministry at around 16:00, the announced time of the assembly.<sup>31</sup> The organizers called the participants to block the street in order to express their protest better resulting in a traffic blockage. The police arrived in just several minutes. According to our monitor, these were around 50 regular patrol police officers in their service uniforms and equipment. They started to suppress the demonstrators in an organized manner forcing them towards the pavement.

A violent clash occurred between police officers and protesters resulting in damage to property and seven arrested demonstrators. One of the detained was actor Gia Burjanadze, a member of the governing body of the Public Assembly.<sup>32</sup> It was difficult for monitors to identify the exact circumstances of arrest of the demonstrators in the surrounding chaos, particularly if there was any resistance or other unlawful conduct from their side. After the police succeeded in forcing the demonstrators back to the pavement they stopped and formed a wall to resist a repetitive blockage of the road.

The individual report submitted by the monitor also states that the demonstrators were referring to the "permission to hold the assembly". According to conclusions drawn from the monitoring report the participants and organizers did not interpret the rights granted by the prior notification correctly. In reference to Article 11 of the Georgian Law on Assembly and Manifestation the use of public road during a rally is only allowed when there is no possibility to hold it otherwise due to the number of participants.

In this regard the coordination team consulted with the monitor to obtain additional information concerning the number of participants and the space available for the demonstration. According to our monitor the number of demonstrators allowed the organizers to hold the assembly on the pavement and their effort to block the street

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<sup>30</sup> Pubic Assembly was formed under the leadership of the former chairman of the Parliament Nino Burjanadze with the aim to change the government of Georgia. The Public Assembly views large scale demonstrations as a regime change method similar to 2003 Rose Revolution. More information on the Public Assembly is available on their website: <http://www.kreba.info/?lang=en-GB>

<sup>31</sup> Monitoring report – 25/03/11

<sup>32</sup> <http://civil.ge/eng/article.php?id=23279>

was rather deliberate. Therefore it is safe to conclude that the organizers at least did not know how to interpret the rights granted by the prior notification properly.

However it must be noted that the older edition of the Article 11 of the Georgian Law on Assembly and Manifestation (in force for the whole monitoring period) was not in compliance with international standards on the use of public thoroughfare as reviewed in the first part of the chapter. Hence the legality of restrictions imposed could also be questioned in light of OSCE Guidelines and the ECHR case law despite being fully in accordance with the Georgian legislation.<sup>33</sup>

In regards to shortcomings from the side of the law enforcers it must be emphasized that the warning towards the demonstrators concerning the illegal character of their action was not delivered accordingly. The initial warning was made but the protesters were not given at least minimum time to eradicate shortcomings as the restrictions were applied straight after. Our monitor also reported that one unidentified person trying to record the clash on the video was ill-treated by the patrol officer.<sup>34</sup>

In this regard the OSCE Guidelines explicitly state that the police should operate in accordance with the principle of “no surprises”. Paragraph 150 defines that ‘law-enforcement officers should allow time for people in a crowd to respond as individuals to the situation they face, including any warnings or directions given to them’. After additional consultations with the monitor it was clarified that the police intervention started almost instantaneously after the issued warning which is not in line with the instructions provided by the Guidelines.

There was a different outcome to a similar situation on May 14 in Batumi where the organizers also decided to block the street. A protest rally with a political background was organized by the Georgian Party.<sup>35</sup> Around 1000 demonstrators gathered in front of the Batumi Drama Theatre, some of them being brought on buses from Tbilisi. The organizers tried to park cars and buses at the theatre in a way which would cause a blockage of the traffic road. The police officers approached the organizer, Mr. Sozar Subari and explained that the road could be legally occupied only if the number of

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<sup>33</sup> See paragraphs 1 and 2 of the same chapter.

<sup>34</sup> Additional consultations with the monitor were carried out during the drafting process to better clarify the circumstances surrounding the event.

<sup>35</sup> Georgian Party was one of the new opposition political parties under the leadership of the former Public Defender Mr. Sozar Subari, a former Rustavi 2 TV owner Mr. Erosi Kitsmarishvili and several other political activists. The main goal of the party was a regime change with the use of large-scale assemblies. It formed a short rivalry with Burjanadze’s Public Assembly over the leadership of a relatively radical opposition calling for mass demonstrations but both somewhat faded away after the May 26 events.

demonstrators made it impossible to hold the assembly otherwise.<sup>36</sup> The organizers followed officers' instructions, the road was initially cleared and a possible violent intervention was prevented.

In this regard it must be noted that actions of the policemen negotiating with the organizers of the demonstration is welcomed and is fully in line with the OSCE Guidelines section B paragraph 155 which states that 'powers to intervene should not always be used'. Paragraph 157 further clarifies that whenever 'a stand-off or dispute arises during the course of an assembly, negotiation or mediated dialogue may be an appropriate means of trying to reach an acceptable resolution.'<sup>37</sup> As noted in paragraph 142, such interventions can significantly help avert the occurrence of violence.

On the opposite note there was an unlawful restriction and arbitrariness imposed on demonstrators in January 2011 when a planned protest was not allowed to assemble at Heroes' Square.

#### **4.2 Preventive restrictions on Heroes' Square in comparison to the reported lack of response at the Tbilisi City Hall**

On the 4<sup>th</sup> of January, a protest demonstration was planned at the Heroes' Memorial. It was a rather spontaneous response against the suppression of the veterans' hunger strike the previous day at the same location. The demonstration was planned overnight by activists using social networks. It was not a prior notified event due to its spontaneous character and the inability to convey the 5 day prior notification rule required for the aforementioned procedure according to the Georgian law.

The assembly could not be properly held however due to restrictions imposed by the police in advance, prohibiting the access to the Heroes' Memorial.

The demonstration was planned at 15:00 but minutes before the announced time the police officers forced a small number of still-gathering protesters out of the area towards the Varazi Ascend and stood in line to prevent them from occupying the area again.<sup>38</sup> Human Rights Centre had two monitors deployed at the location and no further justification or explanations made by the law enforcers in regards to the imposed restrictions were reported. The demonstrators dully obey without any resistance and assembled at the nearby area on Varazi Ascend.

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<sup>36</sup> Monitoring report – 14/05/2011.

<sup>37</sup> OSCE Guidelines on Freedom of Peaceful Assembly: p78 paragraph 157.

<sup>38</sup> Monitoring report – 03/01/2011



Heroes' Memorial at Heroes' Square

The selected location does not interfere with the traffic area or even a sidewalk. The space in front of the memorial and the surrounding area can accommodate around 1000 demonstrators without the need of the use of public thoroughfare. Hence the location of the assembly, its scale and non-violent nature (further confirmed by demonstrators' subsequent peaceful reaction) was not providing grounds for such restrictions especially without offering reasonable alternatives and providing strong justification.

The administered restriction is not justified by the Georgian legislation which grants rights to spontaneous assemblies in any case when public thoroughfare, safety issues or restrictions of others' rights are not involved.

The restriction also fails to comply with circumstances provided in the OSCE Guidelines, specifically naming public order, public safety, protection of health, protection of morals, protection of rights and freedoms of others, national security, legislative measures to fight terrorism and wartime derogations as legitimate grounds for imposing



restrictions.<sup>39</sup> None of these circumstances, explicitly clarified in the Guidelines occurred on January 4.

On a dissimilar note there were allegations of police turning a blind eye towards restrictions imposed illegally by other officials. Human Rights Centre did not monitor the event and relied on open sources in relation to the incident.

On July 25 a rally was held in front of the Tbilisi City Hall where demonstrators were protesting against the increased price for minibus service in the city. The organizers of the demonstration entered the City Hall reception freely to demand a meeting with Mr. Ugulava, the Mayor of the city. A group of journalists tried to follow the protesters inside the reception where the entrance is free for citizens. The guards at the entrance imposed a restriction selectively on particular reporters and did not let them into the building.<sup>40</sup> The journalists called the patrol operator to call the police and restore their rights but the operator called back and said that the officers would not come as the area was under the authority of the security guards.<sup>41</sup>

## 5. Responsibility of the organizers

According to the OSCE Guidelines on Freedom of Peaceful Assembly organizers of assemblies should not be held liable for failure to perform their responsibilities if they have made reasonable efforts to do so. The organizers should not be liable for the actions of individual participants or for the actions of non-participants or *agents provocateurs*. Instead, there should be individual liability for any individual who personally commits an offence or fails to carry out the lawful directions of law-enforcement officials.<sup>42</sup>

The Georgian law defines the status of persons involved in organization of the assembly identifying them as trusting person, trustee, organizer, and responsible persons.<sup>43</sup> Identification of all responsible persons is associated with assemblies falling under Article 5 paragraph 1 of the law, hence requiring prior notice.

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<sup>39</sup> OSCE Guidelines on Freedom of Peaceful Assembly – Section B; paragraphs 69-93

<sup>40</sup> All reporters denied of right to enter were the representatives of independent media outlets not associated with strong government influence. These were: Interpressnews, Radio Palitra, Palitra-TV, TV Maestro, Caucasia, Trialeti, Radio Freedom, Alia.

<sup>41</sup> <http://www.interpressnews.ge/en/politics/30399-patrol-police-didnt-arrive-at-tbilisi-city-hall.html?ar=A>

<sup>42</sup> OSCE Guidelines on Freedom of Peaceful Assembly. Paragraph 5.7.

<sup>43</sup> Georgian Law on Assembly and Manifestation – article 3, para 3.

Article 5 paragraph 3 notes that citizens of foreign countries or Georgian citizens under 18 cannot serve as “responsible persons for organizing and holding the assembly”. This restriction is associated with assemblies requiring prior notification hence using traffic road and does not include non-citizens permanently living in Georgia.<sup>44</sup> Therefore foreign citizens temporarily residing in Georgia or persons under 18 are legally allowed to participate in organization of assemblies and no measures can be taken by the authorities against them.

The same article restricted the right to be a responsible person to a wider range of persons prior to last amendments. According to the previous version, non-citizens of Georgia were also banned from organization of assemblies however the constitutional court banned the “non-Georgian citizens” formulation.

The responsibility of the organizers is regulated by the Article 13 paragraph 1 of the law. In reference to the article, the assembly has to be terminated immediately upon the request of the authorized representative of the state if mass breaching of Article 11 is observed. Particularly in cases when there are calls for violence, threats to constitutional order or other threats envisaged in Article 11 paragraph 1, or the presence of arms, explosives, chemicals or other threat-containing substances envisaged in subparagraphs “a” and “c”, paragraph 2 of the same article.

In cases when the violations of the aforementioned articles are not wide scale, alcoholic substances are present (Article 11, para2, subparagraph “d”) or monuments of cultural significance (Article 11, paragraph 3) are blocked or damaged, the state representative notifies the organizer who is obliged to address the participants and take all reasonable measures within 15 minutes to try to eradicate shortcomings. The same procedure is applicable in cases of deliberate blockage of traffic road or its occupation when the number of demonstrators allows holding the assembly in the surrounding area.

The law imposes responsibility for organizers separately from individual participants of the assembly. Organizers will be held responsible if they do not comply with state representative’s notification and take measures to eradicate violations. The law does not clarify however whether the state representative should be a police officer or a local municipality employee.

Before the amendments the same article obliged the organizers not only to break up the assembly but also to *“take measures to drive the participants away”*.<sup>45</sup> It was not further

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<sup>44</sup> The chairman of the Legal Committee at the Georgian parliament, Mr. Pavle Kublashvili’s interpretation during the public review of draft amendments held at the committee.

<sup>45</sup> Article 13 paragraph 2 of the Georgian Law on Assembly and Manifestation – 2009 version.

clarified what measures the organizers should take. It was unclear whether it implied only calling for the breaking up the assembly or doing something else in addition. The clause left some space for interpretation in terms of holding the organizers responsible should the manifestation become illegal. The article in its 2009 edition became the subject of the aforementioned appeal in the Constitutional Court. The Court declared that the rule was disproportionate as it called for the immediate termination of the assembly without providing the possibility to bring it back within the legal framework.

### ***In practice***

Organizers were held responsible in several occasions throughout the reporting period. Much like in other areas the approach of the police was not consistent. The monitoring revealed that the law enforcers were in many cases adequate towards neutralization of offenders and restrained from a full scale crackdown when it was not necessary. However, there were other instances during the monitoring period when arbitrariness and unjustified arrests have occurred. The arrest of protesters at a youth activist group rally in Rustavi represents one such case.

#### ***5.1 Arrest of demonstrators on May 7 in Rustavi***

On May 7 the youth activist group “Ara” (No), also associated with the Public Assembly opposition union, was protesting in front of the house of the Head of the Rustavi #1 police department, Mr. Valeri Dughashvili, who they alleged was involved in the November 2007 suppressions. It was a rather small-scale event and as the rally was ending the police started to surround it. At one moment an unidentified person physically assaulted a female police officer and ran away. In response the law enforcers started to arrest the demonstrators, while suspiciously letting the initial offender get away. Later the same day twelve detainees were found guilty of hooliganism and disobedience to police. Eight of them were jailed, others were fined and released. Three activists including the organizers, Mr. Levan Chitadze and Mr. Vasil Balakhadze were sentenced to 30 days administrative detention; two were sentenced to 15 days and three others for 7 days. The identity of the initial offender remains unknown. The activists claim that he did not belong to their group and was a provocateur.<sup>46</sup> The organizers even tried to explain this to police officers and called on participants to end the assembly after the incident.<sup>47</sup> Video footage from the event also confirmed that the

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<sup>46</sup> <http://civil.ge/eng/article.php?id=23420&search=>

<sup>47</sup> Video footage by Maestro TV depicting the incident:  
[http://www.youtube.com/watch?v=YtetDBA0gtE&feature=player\\_embedded](http://www.youtube.com/watch?v=YtetDBA0gtE&feature=player_embedded)

rally was peaceful and no aggressive behavior was observed from the side of the demonstrators. Participants of the protest rally followed the police officers into patrol cars without resistance.<sup>48</sup>

The OSCE Guidelines on Freedom of Peaceful Assembly state that the law enforcers should differentiate between peaceful and non-peaceful demonstrators. Paragraph 159 further elaborates: 'neither isolated incidents of sporadic violence nor the violent acts of some participants in the course of a demonstration are themselves sufficient grounds to impose sweeping restrictions on peaceful participants in an assembly. Law-enforcement officials should not, therefore, treat a crowd as homogenous in detaining participants or (as a last resort) forcefully dispersing an assembly.'

Furthermore, the fact that the initial offender was not pursued by the police evokes suspicion that the incident was indeed a provocation aimed at punishing organizers and activists. Moreover, the timing of the crackdown in correlation with the sentence used against the organizers, Mr. Chitadze and Mr. Balakhadze reinforces existing concerns. Both activists were associated with the Public Assembly opposition union planning mass protests from May 21 onwards. The administrative detention of the aforementioned opposition youth leaders for 30 days effectively eliminated them from the scheduled events undermining the capacity of the Public Assembly to mobilize youth support during the protest day.

## **6. Policing of Assemblies**

International standards define norms in variety of areas concerning policing of assemblies, including the scale of police presence, grounds for the use of force, arrests and dispersals. However the main goal of the police in regards to assemblies is the protection of a peaceful exercise of the right.<sup>49</sup>

International norms oblige states to limit the scale of police presence to a minimum required for achieving particular goals. Numbers should be assessed in accordance with tasks and risks associated with them. Relevant state institutions must also ensure that the scale of police presence itself is not restricting the right to peaceful assembly. Law enforcement officials involved in policing of assemblies should have necessary skills, training and knowledge of adequate reaction to circumstances emerging during such

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<sup>48</sup> Video footage by Maestro TV showing the arrest of organizers and demonstrators:

[http://www.youtube.com/watch?v=eZWmpyP6kQ0&feature=player\\_embedded](http://www.youtube.com/watch?v=eZWmpyP6kQ0&feature=player_embedded)

<sup>49</sup> OSCE Guidelines on Freedom of Peaceful Assembly: paragraph 29.

events.<sup>50</sup> The OSCE Guidelines on Freedom of Peaceful Assembly encourages officers to use mediation and negotiation if a contested situation in regards to legality of the assembly or particular actions emerges.

In reference to use of force, the Guidelines state that the law enforcers should differentiate between violent and non-violent demonstrators; use force adequately and do not suppress the whole of the assembly.<sup>51</sup> The standard set by the European Court on Human Rights in reference to dispersals states that the operation should be planned and organized in a way which minimizes risks to health of persons in concern.<sup>52</sup>

The main article in the Georgian Law on Assembly and Manifestation providing grounds for state intervention into assemblies is paragraph 1 of Article 13. Paragraph 6 in addition states that if the organizer does not comply with his obligations under Article 13, paragraphs 2 and 3;<sup>53</sup> or complies but fails to eradicate violations in a reasonable time, the law enforcement institutions will use means in accordance with international standards and Georgian legislation. Paragraphs 2 and 3 of Article 13 do not set restrictions themselves but refer to prohibitions and limitations defined in previous articles of the law.

The right to assembly can be also affected by other laws indirectly associated with the implementation of this right. These are the Law on Police and the Law on Administrative Offences. In general these laws are not directly linked to demonstrations, however they have proved to affect the right to peaceful assembly in practice.

The Law on Police incorporated the list of special means which can be used to maintain public order within the 2009 amendment package. "Specifically these are non-lethal weapons (including a non-lethal grenade), rubber batons, pepper gas, tear gas, special sonic devise, sonic device with psychological impact (siren), a special device for destroying barricades and for forceful stoppage of transport, water cannons, armored vehicle and other special transportation means, special paint, service dog and horses, electroshock devices".

It is also worth mentioning that the Law on Administrative Offences was also amended in 2009. The maximum period of administrative detention was increased from 30 to 90

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<sup>50</sup> The Guidebook on Democratic Policing – article 72

<sup>51</sup> OSCE Guidelines on Freedom of Peaceful Assembly: paragraph 159

<sup>52</sup> Muradova v. Azerbaijan, application #22684/05, April 2 2009; §113

<sup>53</sup> Clauses 2 and 3 of the article 13 make larger reference to different prohibitions set in previous articles of the law. See chapter 5, Responsibility of the Organizers for additional information.

days.<sup>54</sup> The use of relatively long-term administrative detention in relation to participants of demonstrations in some cases proved to undermine their right to assembling within the framework of scheduled events.<sup>55</sup>

### ***Policing In practice***

The police were present at the majority of assemblies including all mid or large-scale events. After the review of all monitoring reports the following types of law enforcement presence was identified:

- a) Security Police – are usually located at the entrances of government, public buildings or other buildings under a contract. They can be identified with black uniforms and relevant abbreviations on them. The security police are obliged to protect government buildings and were not involved in any operations or policing actions during our observation. Their presence at assemblies is only related to the fact that the event is organized at the building where they serve. Cases of non-violent interaction between demonstrators and security police officers were observed but they were related to efforts by demonstrators to enter buildings.
- b) Patrol police in patrol cars or pedestrian officers – are regular police force wearing easily identifiable uniforms. They were frequently present on assemblies. Patrol police proved to be the main emergency force for quick intervention into demonstrations when they were becoming unlawful or when other form of quick response was needed like during March 25 protest rally or veterans' protest of January 2. They can be mobilized in advance or join the already present police forces later.
- c) Policemen in civilian clothing – are covert operatives. They can be located either in the surrounding area or merge with the assembly. There is not a hundred percent certainty when identifying them but according to our monitors it is easier after some practice of monitoring. In many cases they stand by regular

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<sup>54</sup> The term seems disproportionate especially considering that the maximum pre-trial detention term according to the criminal code is 60 days. Members of the South Caucasus Network of Human Rights Defenders carried out a lobbying mission to Geneva prior to the Universal Periodic Review of Georgia in UN. As a result the Austrian mission recommended Georgia to reduce the term of administrative detention. The recommendation however was rejected by Georgia. See the report of the working group on the Universal Periodic Review (UN 2011 p.24) <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/118/21/PDF/G1111821.pdf?OpenElement>

<sup>55</sup> Administrative detention of Public Assembly activists prior to scheduled protest demonstrations is covered in chapter 5.1 of the report.

police officers and interact with them. “Civilians” usually do not intervene independently and supposedly are present to acquire information or assist during the emergency. However, at least one case of arrest of demonstrators by them was monitored for the reporting period.<sup>56</sup> When present during police interventions, “civilians” act together with regular police. Video material referred to in the report also contains the footage of “civilians” assisting in the arrest of protesting veterans and also beating them. Article 8, paragraph ‘n’ of the Georgian Law on Police obliges the officers to wear uniforms. This puts legality of intervention of plain-clothed operatives under suspicion.

These officers can also appear in non-police cars usually observing assemblies from a distance without getting out of vehicles. Most frequently these are Skoda Octavia cars. These law enforcers are generally referred to as representatives of the Special Operative and Constitutional Security departments at the Ministry of Internal Affairs but may also represent other departments or institutions.



Law enforcement agency representatives watching after the assembly from a non-patrol car

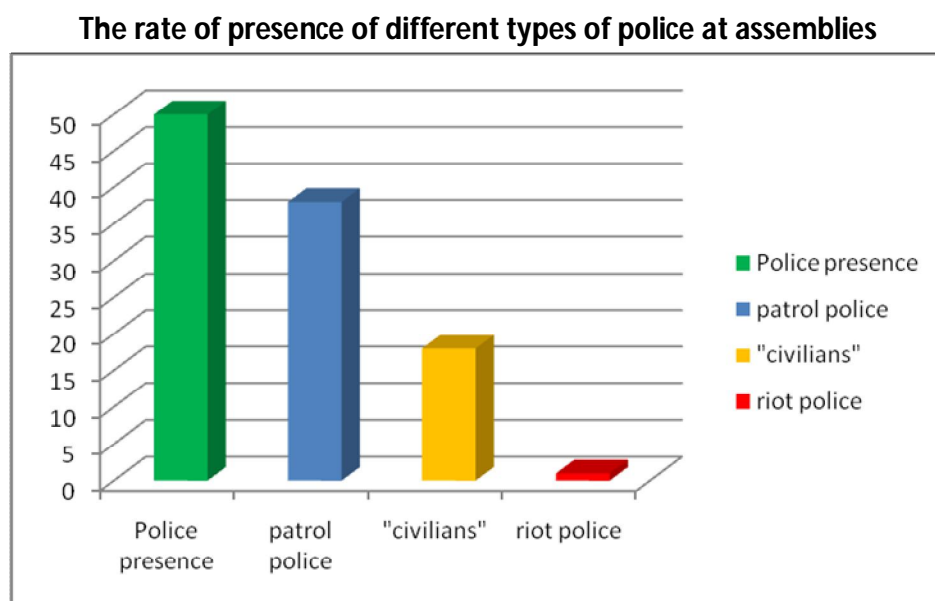
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<sup>56</sup> The case of arrest carried out by officers in civilian clothing is covered in chapter 6.1 of the report.



- d) Riot police – are heavily armored and armed units. They wear black armor and helmets with protective visors. Arms include predominantly rubber truncheons and shields. Some are armed with rubber bullet loaded shotguns and gas grenade launchers. Riot police squads concerned in this report are formed of persons hired for purely riot squad as well as re-trained officers and operate under the command of the Ministry of Internal Affairs. The riot police appear rarely, only during mass violations at large-scale assemblies and solely for dispersal. The riot squad operations can be supported by special sonic devices with psychological impact and fire trucks with water cannons.

Below are the statistics on the presence of the aforementioned police forces in monitored assemblies



Patrol police officers were present most frequently, on **39** occasions. Civilians were identified with relatively high probability on **18** instances. Riot police appeared only **once**.

The table concerns all cases of police presence from just observation to direct intervention. The bars display the rate of presence of different police forces. The sum of bars two, three and four will not equal bar 1 as there was more than one type of police present at most assemblies. The riot police actually intervened only once throughout the whole reporting period, during the May 26 events. The number of cases with the presence of policemen in civilian clothes might not be accurate as they are not always easy to identify leading to potentially underrated statistics. Patrol police implies officers



not only on patrol cars but also pedestrian officers and other identifiable policemen in uniforms apart from riot squads.

There were also cases when no police was mobilized in advance due to the small size of the assembly and generally low awareness on it in advance. During these instances the patrolling officers inquired into the events to varying extent.

On March 3 the youth activist group Ara (No) organized a small assembly in Gori, a city in Shida Kartli region some 70 kilometers from Tbilisi. The event was planned as an act of support to regional opposition TV channel Trialeti TV. The demonstration was held in front of the regional administration building and counted only 10 participants. An accidentally passing patrol police officers on a pickup truck stopped some 30-40 meters from the demonstrators and observed them for several minutes.<sup>57</sup>

A more active interest of the police was generated by the Human Rights House Tbilisi organized flash mob on June 26. The flash mob was held in relation to the International Day in Support of Victims of Torture in 9<sup>th</sup> April Square.

The patrolling officer approached the assembly asking about the identity of the organizer and purpose of the event. After receiving the information the policeman made notes and left the scene.<sup>58</sup>

These undercover officers were most likely involved in order to obtain information or observe covertly where no open police presence was wanted by the law enforcement agencies.

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<sup>57</sup> Monitoring report – 03/03/2011

<sup>58</sup> Monitoring report – 26/06/2011



Policeman in uniform together with operatives in civilian clothing inquiring into the Human Rights Centre-organized Flash-mob

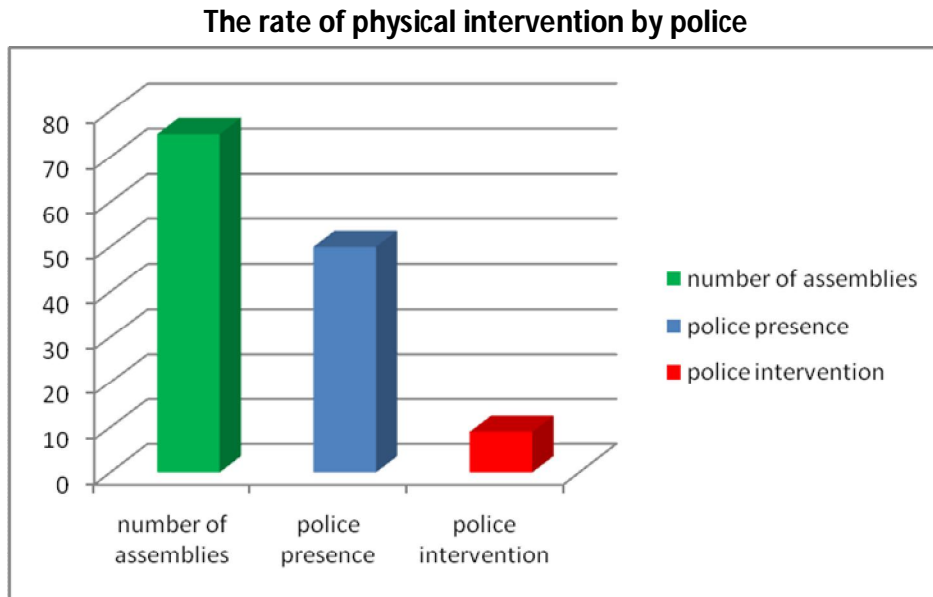
There were number of cases when the undercover officers were observing activities of critical non-government organizations. The flash-mob by Human Rights House Tbilisi discussed above moved from 9<sup>th</sup> April Square to the Rustaveli Avenue where it was followed by three unidentified people. When one of the participants tried to take photos of them, they replied aggressively: "why are you photographing us, are you ill-mannered or something?"<sup>59</sup>

The rate of police intervention is presented in the table below. The definition of intervention in this regard implies only physical involvement of the police into the course of assembly in order to restrict demonstrators' behavior, arrest perpetrators or

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<sup>59</sup> Monitoring report – 26/06/2011

disperse the assembly totally. The chart below represents the data on the rate of police intervention in relation to the monitored assemblies and police presence.



Out of 50 assemblies policed for the monitoring period, 9 cases of the use of force were monitored. Among these a direct dispersal of the manifestation has occurred in two instances.<sup>60</sup>

According to the chart, interventions by police were not frequent, however they were not always consistent and in line with the law. This resulted in a seemingly inadequate suppression in one instance and an inappropriate response in the other.

### **6.1 'Five days of August' premiere: The prevented demonstration**

As monitoring has revealed, the "civilians" can also carry out arrests independently in urgent situations or circumstances requiring minimum public attention. This was observed on June 5, the day of the premiere of the Hollywood movie "Five Days of August" in Rustaveli Cinema.

Several Hollywood stars including Andy Garcia, Sharon Stone and the director Renny Harlin were attending the premiere. In this regard, one of the most known Georgian activists Mr. Lasha Chkhartishvili, decided to deliver a message concerning the lack of freedom and democracy in the country to arriving guests. The assembly was planned together with the family members of the opposition leader, Irakli Batiashvili, who was

<sup>60</sup> Cases of full dispersal include the veteran's hunger strike in January and the Public Assembly demonstration on May 26. Both cases are included in the report.

then in disappearance in relation to May 26 events. The demonstrators were intending to do so by holding posters with messages right next to fences around the red carpet.

Three monitors were dispatched to report on the assembly. The police had blocked the surrounding area in advance, every single street was blocked. Our monitors counted around 20 patrol crews on cars, 300 policemen in blue uniforms, two buses full of government security service members and 10 cars, plus 30 guards from the private company TOR.

At 17:30 two of our monitors witnessed ten policemen in civilian clothing dragging two women across the Rustaveli Avenue, less than 100 meters from the cinema, and into the police car. After they were dragged in, the car left the scene at high speed. The incident occurred so swiftly that the monitors struggled to realize its content instantly. "This group of men then started to walk towards the cinema. First we thought they also were the demonstrators as they were holding folded posters but later realized that these were policemen because they approached the Tbilisi police chief Mr. Gegechkori (also in civilian clothing) shook hands with him and gave the posters".<sup>61</sup>

Monitors could not identify those arrested as it was impossible to see their faces but later that day it was revealed that four were detained in relation to the aforementioned events. These were: Mr. Lasha Chkhartishvili, Ms. Teona Kardava, Ms. Irina Batiashvili, Ms. Maia Batiashvili. Chkhartishvili was sentenced to ten days of administrative detention due to charges in hooliganism and disobedience to police. Female participants were fined 400 Lari due to same accusations and released from the court.<sup>62</sup>

After additional consultation with monitors we have established that the people actually conducting the arrest were not identifiable as policemen and were not acting together with police officers during the initial phase of detention. Furthermore, no legal grounds for the detention of the demonstrators in accordance with the Georgian Law on Assembly and Manifestation were present. The detained citizens were not violent, did not block or hinder traffic (there was no traffic on Rustaveli Avenue at the moment as the street was closed due to the scheduled premiere) or violate any other norms according to observations. It is also difficult to associate the detention with the violation of assembly-related regulations due to a small number of demonstrators and the fact that the plan on holding a protest demonstration has not even been put into effect by the time of detention.

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<sup>61</sup> Monitoring report – 05/06/2011

<sup>62</sup> <http://www.humanrights.ge/index.php?a=main&pid=13455&lang=eng>

Even with legal grounds for intervention present, the fact of arrest in the aforementioned circumstances raises doubts in light of several main principles on police behavior. Specifically paragraph 150 of the OSCE Guidelines implies that the law enforcement agencies should behave in accordance with the principle of 'no surprises' when conducting their operations. This proved to be very less likely during the aforementioned incident.

## ***6.2 Deprivation of property during assemblies and inconsistency in approaches***

In some cases, the law enforcement authorities were intervening in order to deprive the demonstrators of particular property. This was the case at the hunger strike held by the lawyers in front of the Parliament on Rustaveli Avenue. The protest was organized by the lawyer Mr. Shalva Khachapuridze supported by mostly practicing lawyers on May 17. Since the hunger strike was intended for 5 days the demonstrators had pillows, blankets, mineral water and packs of cigarettes.

At around 16:45, one and a half hours after the start of the assembly a large group of policemen advanced towards the demonstration. The police surrounded the protesters and took away everything including cigarettes, water and equipment for loudspeakers.<sup>63</sup> No resistance was observed from the side of the protesters.<sup>64</sup>

A similar incident occurred on May 31 in front of the UNHCR office in Tbilisi when two Iranian citizens, asylum seeker, Mr. Omid Ismaili Zadeh and a refugee waiting for resettlement Mr. Ismail Pashabaigh started to demonstrate, demanding improved conditions for refugees worldwide. The protesters put up a tent where they were intending to sleep during the night as their assembly was planned to last for weeks.

Several minutes after the monitor's arrival two patrol officers appeared. After observing the demonstrators from the distance the officers approached them, demanded the tent be removed and threatened to destroy it themselves. The demonstrators refused to disassemble the tent.

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<sup>63</sup> The incident was recorded by Palitra TV. The video is available on the following link:  
<http://www.palitratv.ge/akhali-ambebi/politika/4594-parlamenttan-mimdinare-aqciis-monatsileebi-darbies.html>

<sup>64</sup> Monitoring report – 17/05/2011

In half an hour about 20 policemen including one in civilian clothing approached the scene. They were addressing the protesters rudely and referring to their nationality, also making other racist/nationalist comments.<sup>65</sup>

After issuing several other warnings the policemen started to act: They dragged the protesters out of the tent, disassembled it and took away. As Omid Ismaili Zadeh put another blanket on the ground and lay on it, one policeman returned, threw him away and took the blanket.<sup>66</sup>

In contrast to the previous examples, in a number of similar cases the police refrained from any form of intervention.

On May 24 the demonstration in the framework of the Public Assembly's large scale assembly planning to bring the regime change was ongoing in front of the Public Broadcaster TV. According to our monitors' reports several tents were assembled by the demonstrators on the opposite side of the Public Broadcaster building. Moreover, the area was occupied by the unidentified people representing the Public Assembly, wearing masks and holding sticks. The police did not intervene although its officers were on the spot all day long.<sup>67</sup>

In reference to legal norms it must be noted that the Georgian Law on Assembly and Manifestation does not imply restrictions on presence of tents, blankets or other objects required for night stay unless they disturb traffic or public life. The Public Defender referred to the issue of tents in particular in his 2010 annual report which states that presence of such objects cannot serve as grounds for restrictions since they are 'not blocking the road and impeding the transport'.<sup>68</sup>

### ***6.3 Cases of police idleness and patience***

In some cases officers showed reasonable patience and restrained from acting. Specifically, on April 18 a prominent Georgian journalist Mr. Shalva Ramishvili co-organized a demonstration on Tsinarmdzgvishvili Street, Tbilisi in front of a private cable TV company Silknet to protest against the exclusion of the opposition channel Maestro TV from the Silknet's service package.

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<sup>65</sup> "Iranians took so much land away from us and now they are further demanding something" – stated one policeman.

<sup>66</sup> Monitoring report - 31/05/2011

<sup>67</sup> Monitoring report – 24/05/2011.

<sup>68</sup> Public Defender 2011; p175. Report available at:  
<http://ombudsman.ge/files/downloads/en/rthhchgdjhxcwxayjhpx.pdf>

Half an hour into the assembly Mr. Ramishvili crossed the street and approached the policemen observing the assembly from the distance. According to our monitor's report Mr. Ramishvili was trying to provoke the officers. "I came here to check you out" – Ramishvili was reported saying loudly in a provocative tone. "Which one of you is Zaza Begashvili's brother?"<sup>69</sup> Then he approached two other men standing nearby allegedly also policemen, but in civilian clothing and asked them about their whereabouts. Ramishvili was trying to inquire whether they were representing the police or not and if yes, why they were not wearing uniforms. The men started to leave the scene in a hurry but Ramishvili followed them, continuing with questions.<sup>70</sup>

The police reaction was very calm as the officers did not respond in any way towards Ramishvili's actions. They did not try to somehow restrict his behavior nor intervene into the course of the assembly as a whole. As a result, Ramishvili returned to the demonstrators after few minutes and a potential incident was avoided.

It must be noted that Mr. Ramishvili did not violate the law. He used a legal right to approach the officers in a non-violent manner. What is important however is the patience displayed by the officers, trying to avoid confrontation, which is welcomed. The case of concern in this case is the inconsistency in regards to demonstrators' actions at different events. The above mentioned case can be put in contrast with the case of arrests on May 7 in Rustavi discussed above and veterans' demonstration. Human Rights Centre has reacted on arrests of demonstrators in far less provocative circumstances in the past.<sup>71</sup>

#### ***6.4 Suppression of Veterans' hunger strike on Heroes' Square***

The case of veterans' hunger strike was the first assembly during the monitoring period and consequently the first major incident of the year. Human Rights Centre monitors were not at the spot during the incident, therefore the analysis relies on video material available from the incident, statements of eyewitnesses and information requested from the authorities.

Veterans of the first war in Abkhazia and the 2008 armed conflict with Russia started to protest on Heroes' Square at the monument of heroes in late December. The demand was the improvement of social protection for veterans. The action had been ongoing for

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<sup>69</sup> Zaza Begashvili is the member of the ruling party the United National Movement and the former chairman of the Tbilisi City Council.

<sup>70</sup> Monitoring report - 18/04/11

<sup>71</sup> The South Caucasus Network of Human Rights Defenders issued a statement on the arrest of the participants of a peaceful flash mob in Tbilisi. <http://caucasusnetwork.org/index.php?a=main&pid=224&lang=eng>

over a week by the 3<sup>rd</sup> of January 2011 when police forces approached and tried to coerce the demonstrators sitting at the monument to leave the area. The detentions started after they refused to leave, answering that they were not intimidating anyone by demonstrating.<sup>72</sup>

The law enforcement units present at the venue included pedestrian officers, patrol officers on patrol cars and a large number of officers in civilian clothing. Arrests were carried out by regular officers supported by 'civilians' who were also restricting the access to the area for other persons.

There were two main concerns in regards to law enforcer's actions on January 3: Firstly the intervention in form of arrests was not justified by international standards and Georgian legislation; second, even if the intervention would have been justified, the use of force was clearly disproportionate as the video footage from the event shows detained demonstrators being further ill-treated by police in civilian clothes.<sup>73</sup>

A woman was also ill-treated by the irregular policeman during the attack. This fact was recorded on the camera and later the policeman was identified as Otar Gvenetadze.<sup>74</sup> Gvenetadze was dismissed from police several days later.

A total of 10 participants of the hunger strike were arrested. Their trial took place on January 10 at the Tbilisi City Court. No relatives of the detainees, journalists, NGO representatives or other interested parties were allowed to attend the hearing. The detainees were charged with minor hooliganism and disobedience to the police officers' lawful orders.

Possible restrictions to the right of peaceful assembly envisaged in the OSCE Guidelines can be imposed based on several key grounds. These are public space, content based, sight and sound and time, place and manner based restrictions.<sup>75</sup> Considering the fact that the demonstration at Freedom Square was not using public space, was peaceful with pre-announced end date, only time, place and manner based restrictions could be used. This disposition enables the authorities to impose restriction during the course of the assembly but requires strong grounds and the offer of reasonable alternatives which were not provided.

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<sup>72</sup> Video material from the incident: <http://www.palitratv.ge/akhali-ambebi/shemthkhveva/605-policiam-moshimshile-veteranebis-aqcia-dashala-akhali-masala.html>

<sup>73</sup> Video footage showing irregulars (civilians) beating detained veterans: <http://www.youtube.com/watch?v=FQnlfJ2miFI&feature=related>

<sup>74</sup> The video shows Gvenetadze hitting a woman: <http://www.youtube.com/watch?v=gk7n3Qz50YY&feature=related>

<sup>75</sup> OSCE Guidelines on Freedom of Peaceful Assembly: Section A; chapter 3.



Human Rights Centre requested public information from the Tbilisi City Hall in regards to the veterans' case. According to the information provided, the City Hall, responsible for administration of assemblies in Tbilisi, had not submitted any requests to the Ministry of Internal Affairs asking for intervention into the veterans' protest.<sup>76</sup> The identity of the decision maker or the decision making body in regards to the aforementioned events remains unknown as the Georgian Law on Assembly and Manifestation refers to not only relevant municipalities but also Georgian government when decision making on intervention is concerned. The reasoning behind the aforementioned intervention is further unclear considering that the hunger strike by veterans was already ongoing for several days without any changes to its location, capacity or nature.

## **7. Public Assembly's May 2011 protests**

### ***7.1 The public Assembly***

The former chairman of the Parliament, Ms. Nino Burjanadze, quit the United National Movement (the ruling party) and joined the opposition early in 2008. The Public Assembly under her leadership was formed with the main goal: play a key role in the regime change in the country. Throughout its existence the Public Assembly was joined by former government officials, youth activist groups and distinguished representatives of the Georgian society including sportsmen and culture figures.

The Public Assembly held a long lasting preparation for the scheduled regime change, "warm up" smaller scale protests were held in Tbilisi and regions, Public Assemblies representatives in provinces and cities were prepared to mobilize citizens on the D day.

It was announced by Burjanadze that the decisive demonstration would start on May 21 and conclude in ousting of the National Movement from the government.<sup>77</sup> It was assumed by many that the May events would be a last stand for the former chairman of the Parliament.<sup>78</sup>

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<sup>76</sup> Response from Tbilisi City Hall 11/120680-7; dated 17/10/2011

<sup>77</sup> <http://www.civil.ge/eng/article.php?id=23399>

<sup>78</sup> [http://www.messenger.com.ge/issues/2361\\_may\\_23\\_2011/2361\\_edit.html](http://www.messenger.com.ge/issues/2361_may_23_2011/2361_edit.html)

## 7.2 May 21

“The decisive struggle” for the regime change, as announced by the Public Assembly was scheduled for May 21. The organizers were planning to hold smaller assemblies at 5 locations close to the final destination, Freedom Square, and unite them later during the day.<sup>79</sup> Monitors were dispatched to all starting rally points with the instructions to follow the demonstrators to their final destination. The approximate number of demonstrators at these locations was low. The numbers ranged from 60 (at a so called Stella Square) to around 1000 (at the Avlabari metro station).

All demonstrations started to relocate towards Freedom Square in the afternoon. A large number of demonstrators was anticipated there as the citizens were seeking to join the assembly in its decisive phase. As a result, between 20 000 and 25 000 demonstrators gathered at Freedom Square according to our monitors’ reports.<sup>80</sup> The distinctive attributes of activists were flags with thick plastic handles, shirts with slogans and anti-government posters on wooden shields.

There were numerous allegations on massive preventive groundless arrests of activists outside of the assembly on May 21. The leader of the Public Assembly, Ms. Burjanadze, referred to these facts in her statement as well.

Georgian Young Lawyers’ Association (GYLA) inquired into the facts of ‘preventive’ arrests in its report dedicated to May 26 and circumstances related to the event. GYLA obtained testimonies from seven members and supporters of the Public Assembly involved in organizing of the scheduled events at different extent. All interviewed citizens were arrested outside of the demonstration during their daily activities on seemingly groundless allegations.<sup>81</sup>

Furthermore, open sources were reporting on mini busses and other transport usually traveling from regions to Tbilisi being put on hold.<sup>82</sup> Stories of repressions and arrests from May 21 morning were shared between the demonstrators on Freedom Square as they were referring to cases in their conversations as well.

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<sup>79</sup> The locations were: The Rose square, Avlabari metro station, Stella Square, Freedom Square, Philharmonia Building (Rustaveli Avenue).

<sup>80</sup> Monitoring reports – 21/05/2011.

<sup>81</sup> Georgian Young Lawyers’ Association – May 26: chapter 1.3, p14. Report available at:

[http://gyla.ge/attachments/1166\\_angarishi%2026%20maisi%20ENG.pdf](http://gyla.ge/attachments/1166_angarishi%2026%20maisi%20ENG.pdf)

<sup>82</sup> <http://civil.ge/eng/article.php?id=23476&search=>

Specifically, at 16:30 a woman approached the HRIDC monitor and asked for help with her son's situation who was dragged into the police car and there was no information about his whereabouts.<sup>83</sup>

Initially the police presence at the preliminary rally points was low. There was no special mobilization observed, the only officers present were patrol police who were regulating traffic flow where necessary. Other than that there were only a dozen policemen including the Tbilisi Police Chief, Mr. Gegechkori, spotted standing aside from the demonstration in front of the "Youth Palace", a building some 200 meters from Freedom Square. Five "civilians" were also standing with them, most probably also policemen. A noteworthy fact is that the civilian clothed officers were holding plastic sticks from demonstrators' flags, it is unknown how they acquired these items without taking them away from the protesters.



Part of the Public Assembly marching on the Rustaveli Avenue on May 21

At 18:00 the organizers called to rally towards the Public Broadcaster building, the public TV channel with headquarters located several kilometers from the place of assembly.<sup>84</sup> Subsequently one of our monitors headed directly to the Public Broadcaster building to observe the preparation process there. At around 18:00 people started to gather in front of the building but their number topped only 200 before the arrival of the rally from Freedom Square. "At the same time groups of unidentified suspicious young men started to lurk around and it was difficult to identify whether they were the

<sup>83</sup> Monitoring report - 21/05/2011.

Public Broadcaster is funded from the state budget and hence becomes the first target of the opposition whenever the concerns over the independence and impartiality of the media are concerned.

<sup>84</sup> <http://civil.ge/eng/article.php?id=23478&search=>

supporters of the Public Assembly or the policemen in civilian uniforms".<sup>85</sup> At the same time echelons of irregular police forces started to arrive and occupy the building of the Public Broadcaster entering it from the back door.<sup>86</sup> At the same time their equipment, mostly truncheons and shields were also supplied.

The rally from Freedom Square arrived at 18:50. The demonstration counted around 15-18 000 people. At around 19:45 the leader of the Public Assembly, Ms. Birjanadze, requested the airtime to address the nation. The management of the Public Broadcaster satisfied the demand unlike similar situations in previous years and granted the airtime to the protesting opposition.

There were two important observations during May 21.

First, monitors observed several snipers on the roof of the Public Broadcaster. In this regard it must be noted that the legality of presence of armed law enforcers, especially snipers observing the assembly from the roofs can be put under doubt according to international standards. The OSCE Guidelines clearly define that the demonstrators should have a feeling of safety at the assembly and the law enforcement officials should ensure that their actions are not directed towards frightening of the assembling group.

A second important finding was a confession made by one of the young activists who communicated with our monitor. The activist stated that they had a preliminary plan to invade the Public Broadcaster building but the organizers restrained from giving a green light by the time of the arrival.<sup>87</sup>

### ***7.3 May 21 in Batumi and clash with police***

The Adjara branch of the Public Assembly organized a simultaneous assembly at the so called "Era Square" in Batumi. The assembly started at around 16:00, one hour later than planned and counted 4000 participants at its peak.<sup>88</sup> The organizer, Mr. Tsotne Ananidze, related the delay to facts of preventive suppression of activists and deprivation of vehicles carried out by the law enforcement agencies. Human Rights Centre monitors received allegation from the demonstrators concerning different

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<sup>85</sup> Monitoring report - 21/05/2011

<sup>86</sup> Police forces mobilized to defend the Public Broadcaster were no ordinary patrol police officers. These were men dressed in black uniforms and sometimes cloth masks different from the riot police. They are generally referred as "Spetsnaz", the special force of the police without any information of their composition.

<sup>87</sup> Monitoring report – 05/2011.

<sup>88</sup> Monitoring report – 21/05/2011.

constraints experienced by the participants of the rally when traveling to the scheduled place of assembly.

Minibus driver Mr. Zaza Gelashvili was one of the victims. Talking to our monitor, Mr. Gelashvili stated that he was driving to the location in his own minibus, license number LLS 298, when the police stopped him in Kobuleti, one of the regional centers of the Adjara Autonomous Republic. The police accused him of speeding but could not explain where exactly did he do so, or who witnessed the fact of speeding.

About 30 policemen were waiting behind the building of the Adjarian government, with 3 more police cars constantly patrolling the nearby areas. Our monitor also recognized highly ranked officials of the Adjarian law enforcement agencies present and watching the demonstration from the distance.

The decision to continue the rally in front of the Adjara office of the Public Broadcaster was announced on 18:20. It is noteworthy that the similar decision was made in Tbilisi at 18:00 which leads to credible assumption that the relocation was the part of a coordinated plan.

By this time however the demonstration was diminishing. The number of participants had already reduced from 4000 to roughly 1000.

The rally from Era Square to the Public Broadcaster located on nearby Abashidze Street was peaceful and short as there are only some 200 meters to cover. The demand of the demonstrators at that point was the live coverage of the assembly by the broadcaster. One of the organizers, Mr. Murman Dumbadze, gave the TV management 15 minutes to open the door and accept their requests in written form; otherwise they threatened to unlock the door by their own force. As the group was counting, the police forces started to attack.<sup>89</sup> The attack came as an answer to several stones being thrown towards entrance of the Public Broadcaster building by an isolated group of men, counting around 15 people.<sup>90</sup> Windows of the building were broken as a result and several police officers were also hit. The attacking law enforcers consisted of the combined forces of police and so called plain clothed squads without any identification, often associated with the Constitutional Security Department and Special Operative Department at the MIA. The operatives were attacking demonstrators with their hands, , pursuing the fleeing protesters and beating them at the spot.<sup>91</sup> The total number of the police

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<sup>89</sup> [http://www.youtube.com/watch?v=OG\\_KqyC27uk](http://www.youtube.com/watch?v=OG_KqyC27uk) the video shows the chaotic scene in front of the Public Broadcaster building and the start of the attack.

<sup>90</sup> Monitoring report - 21/05/2011

<sup>91</sup> <http://civil.ge/eng/article.php?id=23479&search=>

reached around 200. About 100 members of the security police of the Public Broadcaster were also present.

The identity of the citizens throwing stones towards the building could not be established. There were allegations that the policemen in civilian clothing were also present among the demonstrators and could stage a provocation but the fact could not be confirmed.

The initial confrontation lasted for less than five minutes. After the dispersal, the remaining demonstrators, only around 200 people, returned to Era Square where they decided to stay for the night.

An analysis of the circumstances identified two major form of misconduct: Firstly throwing stones and shattering windows can by no means be considered as a peaceful act since the demonstrators initiate violence themselves which can serve as a justification for intervention. Secondly, the ultimatum towards the TV station can also provide legal ground for state interference at different extent since it can be justified by the fact of 'imminent threat of violence'.

In regards to violence displayed by the unidentified civilians (throwing stones): state representatives have the obligation not to protect public safety only, but the assembly also. Two main duties of law enforcers can be mentioned in this regards: first, the duty to identify individual perpetrators (who can be dangerous for the assembling citizens as well) and not, therefore, 'treat a crowd as homogenous in detaining participants or (as a last resort) forcefully dispersing an assembly'.<sup>92</sup> Second, it is defined under the Guidelines that the violent conduct of a small group in the assembly should not result in dispersal of it as a whole. The Guidelines oblige the state representatives to 'take appropriate action to remove the agent provocateurs rather than terminate or disperse the assembly or declare it to be unlawful'.<sup>93</sup> In this context the aggressive behavior of the small group, whether they were provocateurs or not, could not serve as grounds for a crackdown.

In regards to the ultimatum announced by the organizers: The imminent threat of violence which the aforementioned announcement ultimately represents is prescribed in the OSCE Guidelines as a possible ground for dispersal of the assembly and can justify the law enforcers' behavior in this particular case.<sup>94</sup> However it must also be noted that paragraph 155 under the same chapter declares that the 'power to intervene should not

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<sup>92</sup> OSCE Guidelines on Freedom of Peaceful Assembly – paragraph 159.

<sup>93</sup> OSCE Guidelines on Freedom of Peaceful Assembly – paragraph 167.

<sup>94</sup> OSCE Guidelines on Freedom of Peaceful Assembly – paragraph 166.

always be used'. The attempt to negotiate should be used to avoid a violent confrontation.<sup>95</sup>

As a general evaluation it must be noted that the decision to intervene could be justified. However it would have been better to try and negotiate with the participants concerning the unlawful ultimatum and threat of violence in the ideal case scenario.

A separate significant observation was that the attackers also targeted journalists. For instance a journalist of the "Batumelebi" newspaper, Ms. Mzia Amaglobeli, was ordered to delete all photos. Furthermore, the attacker in civilian clothing did not let the HRIDC representative take photos as well.<sup>96</sup> This observation clearly confronts the rights of those recording or taking photos at the assembly which imply that 'the photographing or video recording of the policing operation by participants and other third parties should not be prevented, and any requirement to surrender film or digitally recorded images or footage to the law-enforcement agencies should be subject to prior judicial scrutiny.'<sup>97</sup>

#### **7.4 May 22**

The group of activists spent the whole night in front of the Public Broadcaster without any notable developments. However day two of the protest in Tbilisi started with two separate incidents early in the morning.

The Public Assembly had its armed forces by May 22: the young men with flag handles and sometimes hand-made shields who were covering their faces with wraps were patrolling in groups around the assembly. It was evident that they were protecting the demonstrators and could potentially use objects in their disposal as weapons. The report from our monitor cites: 'their equipment and behavior was not leaving the impression of a peaceful assembly.'<sup>98</sup>

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<sup>95</sup> OSCE Guidelines on Freedom of Peaceful Assembly – paragraph 157.

<sup>96</sup> Monitoring report – 21/05/2011

<sup>97</sup> OSCE Guidelines on Freedom of Peaceful Assembly – paragraph 169.

<sup>98</sup> Monitoring report – 22/05/2011.





The Public Assembly activist covering his face while being interviewed

During the first incident a group of Public Assembly activists armed with sticks which are also used as flag handles attacked a police car.<sup>99</sup> They surrounded the vehicle and started to beat it, breaking windows and damaging it severely. As the car managed to drive away, a separate group of policemen fired rubber bullets and supposedly smoke or gas grenades. Three demonstrators were arrested according to the statement of the MIA.<sup>100</sup> Initially it turned out that the activists, as they later claimed, were trying to rescue one of their comrades from, as they alleged, illegal detention when the latter was 'kidnapped' and dragged into a non-patrol car belonging to the police.<sup>101</sup> At least one elderly woman was injured and hospitalized as a result of the police response. Circumstances surrounding her relation to the rest of the incident however could not be clarified.

In regards to this confrontation it must be noted that the response from the police was limited to the detention of specific perpetrators. The attack of the law enforcers ended

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<sup>99</sup> The car was not a patrol car but a regular vehicle belonging to the police.

<sup>100</sup> <http://police.ge/index.php?m=8&date=2011.5.22&newsid=2493> the link to the Ministry of Internal Affairs statement also contains video material from the incident.

<sup>101</sup> <http://civil.ge/eng/article.php?id=23483&search=>



within several minutes and did not transform into a large-scale crackdown on the rest of the assembly. Therefore the aforementioned operation can be classified as being in line with the OSCE Guidelines, clearly separating the responsibility of particular offenders from the rest of the demonstration.

In a separate incident the protesters clashed with another group of young men, holding the same type of sticks used by the Public Assembly, several hours later. No intervention from the law enforcement agencies was observed and the injured were taken to hospitals in ambulances.

Both these incidents occurred very early in the morning, reportedly before the start of the monitoring by HRIDC. Hence the information concerning them was obtained from secondary and open sources.

By the time of our monitors' arrival on May 22, there were fewer than 2000 demonstrators at the TV station. The numbers were growing as the scheduled time of the meeting was nearing and it reached around 4500 participants by 3pm.

The police were located some 80-100 meters away, between the Public Broadcaster and the local police department armed with, at least what could be observed, truncheons and shields. Another, smaller group was located on the left side of the building.

A huge number of policemen were present inside the building of the Public Broadcaster for the whole duration of the assembly. This building has large windows and is easily observable from the outside. Our monitors reported a strong police presence with different uniforms and equipment on all floors. The presence of firearms was rarely observed. Several policemen among this group also had cameras and were filming the demonstration.<sup>102</sup>

No open confrontation was observed during the day. The demonstration was peaceful and the street remained blocked despite this not being caused by the number of demonstrators for the most of the time. This circumstance was falling under the blanket prohibition set in Article 5 of the Georgian Law on Assembly and Manifestation and has proved to provoke a very intense police response in a number of cases. Particularly, restrictions were imposed on these grounds during the protest demonstration in front of the Ministry of Penitentiary, Correction and Legal Aid on March 25.<sup>103</sup>

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<sup>102</sup> Monitoring report – 22/05/2011.

<sup>103</sup> March 25 incident is reviewed in chapter 4 of the report.

A demonstration was also held in Batumi on May 22 and similarly ended without incidents. During the night the protesters used tents and blankets to protect themselves from wind and rain.

### **7.5 May 23**

The assembly continued for the following day but with less participation from the citizens. The area in front of the Public Broadcaster, including the Kostava Street was still patrolled by activists of the Public Assembly, armed with sticks and their faces covered. The road was closed by the time of arrival of monitors in the morning and subsequently the whole day despite the small number of demonstrators which counted only 150 people in the morning. The demonstration peaked at 2000 in the afternoon but gradually reduced towards the evening. Our monitors also reported that beer was being continuously supplied and numerous participants were under the influence of alcohol . The leaders of the Public Assembly were constantly referring to facts of arrest of their activists and supporters when addressing the demonstrators from the stage.<sup>104</sup>



The assembly in front of the Public Broadcaster at its peak on May 23

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<sup>104</sup> Monitoring report – 23/05/2011.

The police presence around the area was variable. Law enforcement officials were present only in very small numbers in the first part of the day. 10 policemen were standing at the entrance of the patrol police building some 100 meters from the assembly and 10 others were guarding the entrance to the Public Broadcaster.<sup>105</sup> Their numbers started to grow at 15:00 when the whole first floor of the TV building was filled by operatives in less than an hour. They were also vastly present on the second floor and were almost constantly recording the assembly on the camera.<sup>106</sup> In this regard it is worth mentioning that international standards do not prohibit the recording of assemblies by the operatives, but constant recording can be considered as a violation. The OSCE Guidelines state: 'while monitoring individuals in a public place for identification purposes does not necessarily give rise to interference with their right to private life, the recording of such data and the systematic processing or permanent nature of the record created and retained might give rise to violations of privacy'.<sup>107</sup>

## **7.6 May 24 and 25**

May 24 was also free of incidents. The demonstration peaked at 2000 people in the afternoon once again. The young activists, some of them allegedly under the influence of alcohol, armed with sticks and covered faces were patrolling the perimeter again the whole day. The novelty for the 24<sup>th</sup> was the tents which were set up by the demonstrators on the opposite side of the Public Broadcaster building.<sup>108</sup> No police reaction was observed in regards to the emergence of tents despite the experience of violent response on the presence of similar belongings at assemblies at different assemblies.<sup>109</sup>

The number of police forces was low throughout the day. 10 operatives were located on the left side of the PB building. 5 policemen in regular uniforms were also observing the assembly together with them.

The rally back towards the Rustaveli Avenue was planned on the 25<sup>th</sup>. The organizers announced that they would start to march at 15:00 as they a large number of protesters was expected by that time. Indeed at 14:00 the demonstration reached 10 000 as

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<sup>105</sup> Monitoring report – 23/05/2011.

<sup>106</sup> Monitoring report – 23/05/2011.

<sup>107</sup> OSCE Guidelines on Freedom of Peaceful Assembly – paragraph 169.

<sup>108</sup> Monitoring report – 24/05/2011.

<sup>109</sup> Tents and other belongings for night stay were taken away by the police during two separate assemblies. See the case of Iranian citizens and the case of lawyer's hunger strike in chapter 6.2 of the report.

participants from different regions of Georgia, including a large group from Sagarejo in Kakheti region joined the assembly.<sup>110</sup>

The rally started earlier at 14:30 and lasted for almost an hour. The demonstrators settled in front of the Parliament according to organizers' decision.<sup>111</sup> There were no constraints on their way towards the destination and the area in front of the Parliament was also free from police. Only the regular security guard members were located at the front entrance of the Parliament.

May 25 seemed to be chosen by the organizers in purpose as May 26 Independence Day, when an annual military parade is held in front of the Parliament. By assembling in front of the building of the legislative body the demonstrators were intending to hinder the preparations and the parade itself.<sup>112</sup>

The prior notification procedure submitted by the Public Assembly for the planned event was expiring on May 26 therefore potentially the demonstrators only had a limited right to assemble at the location especially considering the planned military parade for May 26.<sup>113</sup> However the leader of the assembly, Ms. Burjanadze, claimed that the demonstrators had the right to assemble at that particular area and that they were not going to leave.<sup>114</sup>

The crackdown was expected after midnight. The fact of expiration of the prior notification together with the necessary preparatory work for the May 26 parade made this almost inevitable. In this regard all monitors were called back at 21:30 and the coordinator of the monitoring process went to observe the events accompanied with only one monitor.

By 23:00 the assembly in front of the Parliament counted up to 2000 participants. The stage was assembled on the opposite side of the parliament building and the main core of demonstrators was gathered in the surrounding area. The access to the assembly was restricted with the use of metal fences put together in line by the demonstrators. The neighboring streets connecting to the Rustaveli Avenue perpendicularly from both sides of the Parliament were also blocked with similar fences. After walking around the area it became clear that the part of demonstrators were armed with sticks and self-made shields, ready to defend the assembly in case of the attack.

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<sup>110</sup> Monitoring report – 24/05/2011

<sup>111</sup> <http://civil.ge/eng/article.php?id=23513&search=>

<sup>112</sup> <http://civil.ge/eng/article.php?id=23497&search=>

<sup>113</sup> For prior notification procedure and rights see chapter 3 of this report.

<sup>114</sup> <http://civil.ge/eng/article.php?id=23514&search=>

Earlier during the day the Tbilisi City Hall warned the leader of the opposition group Ms. Burjanadze of the expiration of the prior notification, of the forthcoming military parade and proposed alternative locations for the assembly.<sup>115</sup> Before midnight the representative of the Tbilisi City Hall once again approached the organizers and handed them the official notification on the existing circumstances concerning the lack of right to hold the assembly at that particular location. The arrival of the official was observed by the monitors.

## 8. May 26 Crackdown

### *8.4 The issue of legality of the assembly*

While assessing the legality of the May 26 assembly, two key dispositions have to be evaluated. Particularly, whether the demonstration was legal and whether the decision to use force could be justified. The legality of the event can be assessed by examining its peacefulness and lawfulness.

According to both Georgian and international norms it is essential that an assembly is peaceful in nature, hence not threatening public order and safety. Whenever the demonstration no longer fits into the defined margins on peacefulness, it is no longer protected by international and local mechanisms.

As a general definition, the OSCE Guidelines state that ‘an assembly should be deemed peaceful if its organizers have professed peaceful intentions and the conduct of the assembly is non-violent.’<sup>116</sup> In this regard the Guidelines further elaborate that passive resistance from the side of the group seeking to exercise the right does not make the assembly non-peaceful.<sup>117</sup>

In this concern the argument can be made whether the assembly in front of the Parliament on May 26 was exceeding limits of the wide definition of peacefulness shared by the Guidelines or not.

The members of the so called ‘Oath of Fealty’ had sticks and self-made shields. These objects could be used as weapons and as the monitoring revealed were intended to be

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<sup>115</sup> <http://civil.ge/eng/article.php?id=23518&search=>

<sup>116</sup> OSCE Guidelines on Freedom of Peaceful Assembly – paragraph 1.3.

<sup>117</sup> OSCE Guidelines on Freedom of Peaceful Assembly – paragraph 26.

used as such but for the sole purpose of defense. This was confirmed during monitoring as the group did not leave the area and did not behave aggressively towards others.

In practice it must be noted however, that the influence of alcohol which affected a large number of the group, combined with the experience of assault on a police car in previous days, somewhat undermines the status of 'passive resistance' of the 'Oath of Fealty'.

On contrary 'the core' was not equipped with objects which could be used as weapons. This group did not show any signs of aggression or willingness to resist at any circumstances and stood peacefully on the avenue, refusing to disperse. In this regard actions of the 'core' of the May 26 demonstration should be interpreted as being in line with the aforementioned standards on peacefulness.

The main concern over the lawfulness of the May 26 demonstration is the prior notification submitted in reference to demonstrations planned from the 21<sup>st</sup>. According to the submitted document it was due to expire at the end of May 25.

Under locally and internationally defined standards the assembly should disperse voluntarily after the end of the notified period. Continuation of the event after the indicated term makes it formally unlawful by definition.

According to OSCE Guidelines the police should differentiate between peaceful and non-peaceful demonstrators and not treat the crowd as homogenous.<sup>118</sup> The norm is of increased importance considering that the members of the Oath of Fealty were clearly separated from the rest of the demonstration. As they took positions behind fences around the demonstration, the core gathered in the middle, concentrated around the stage. It should not have been difficult for police forces to differentiate these two groups and treat them respectively.

Furthermore the OSCE Guidelines assert that the unlawful assembly should not be automatically subjected to police intervention provided that it is peaceful. Dispersal of a peaceful assembly solely because of the notification procedure violation can be considered as a disproportionate act.<sup>119</sup> The Guidelines suggest that the authorities should give the demonstrators a reasonable time to comply with the law.<sup>120</sup>

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<sup>118</sup> OSCE Guidelines on Freedom of Peaceful Assembly – paragraph 159

<sup>119</sup> OSCE Guidelines on Freedom of Peaceful Assembly – paragraph 131.

<sup>120</sup> OSCE Guidelines on Freedom of Peaceful Assembly – paragraph 168

Since the police intervention started only after 10-15 minutes from the formal expiration of the prior notification it can be potentially argued that the time provided to the demonstrators could not be enough.

On the other hand the declared goal of the demonstrators was to prevent the authorities from holding the military parade dedicated to the independence day of Georgia on May 26. The organizers were openly referring to this goal before the police intervention and also during the previous day. This circumstance has the potential to undermine the meaning of providing reasonable time.

### ***8.1 The police forces***

The riot police appeared from both sides of the Rustaveli Avenue and from streets perpendicularly connecting to the avenue from both sides: Chichinadze, Chitadze, Purtseladze, and Jorjadze Streets. They were first spotted at 23:40 approaching from the side of the Rustaveli metro station. Special riot units from that side approached gradually and were held stationary for 15 to 20 minutes before closing in on the demonstrators.

It became impossible to leave the area when the riot police closed in from all sides. It must be noted that the riot squads did not isolate the assembly immediately after arrival.

The police forces involved in the dispersal of the May 26 demonstration were only riot police squads operating under the command of the Ministry of Internal Affairs. No other units were observed at the scene before, during or after the incident.

The policemen were well equipped and armed. All were dressed in black uniforms with plastic reinforcements and armour to protect from impacts and black helmets with visors. The majority had rubber truncheons and shields as weapons but several carried rubber bullet armed shotguns or gas grenade launchers. It is difficult to assess their numbers based on monitoring since they approached the assembly from virtually all sides. What can be said is that their overall number was exceeding the number of demonstrators and could be counted in thousands. These operatives were brought by buses which the monitoring team observed later when leaving the area. A noteworthy fact is that these seemed to be regular public buses, which were used to transport passengers during the day. Some of them had advertisements and posters typical to ordinary city buses operating in Tbilisi.



An important observation was the lack of any means of identification on riot squad officers. It was not visible whether they had small metal nameplates similar to regular police officers or not but they also lacked numbers or other identifiable signs on their uniforms. This proves to be in contrast with the definition provided by the OSCE Guidelines stating that 'When in uniform, law enforcement personnel must wear or display some form of identification (such as a nameplate or number) on their uniform and/or headgear and not remove or cover this identifying information or prevent persons from reading it during an assembly.'<sup>121</sup>

Among other equipment were trucks with water cannons, sonic devices and also an armoured military vehicle, which was identified as "Cobra" or was at least a similar design armoured vehicle. This vehicle was parked at the right side entrance of the Parliament on Chichinadze Street and was not used during the dispersal. The vehicle also did not have a machine gun turret which is its usual equipment in a military service.<sup>122</sup>

## **8.2 The Public Assembly**

The demonstration in front of the Parliament consisted of three types of actors. First were the organizers or their direct allies. They were located on the stage straight across the Parliament building or in the nearby area.

The second part was the demonstration core itself. These were unarmed, peaceful citizens with only umbrellas to protect themselves from the heavy rain. After the emergence of the riot police this group of demonstrators gathered together in front of the stage. Their number was not exceeding 1500-1800.

The third group consisted of the so called Oath of Fealty. Before midnight the members of the group were scattered around the area. The monitoring team witnessed some of them making new sticks from wooden pallets while others were drinking beer. Supposedly the beer was provided by the organizers considering the number of empty bottles gathered at School #1 and the condition of the part of 'the armed group' who were clearly under the influence of alcohol. By the time of the emergence of police the Oath of Fealty members started to organize into groups and took positions behind prior built barriers out of fences.

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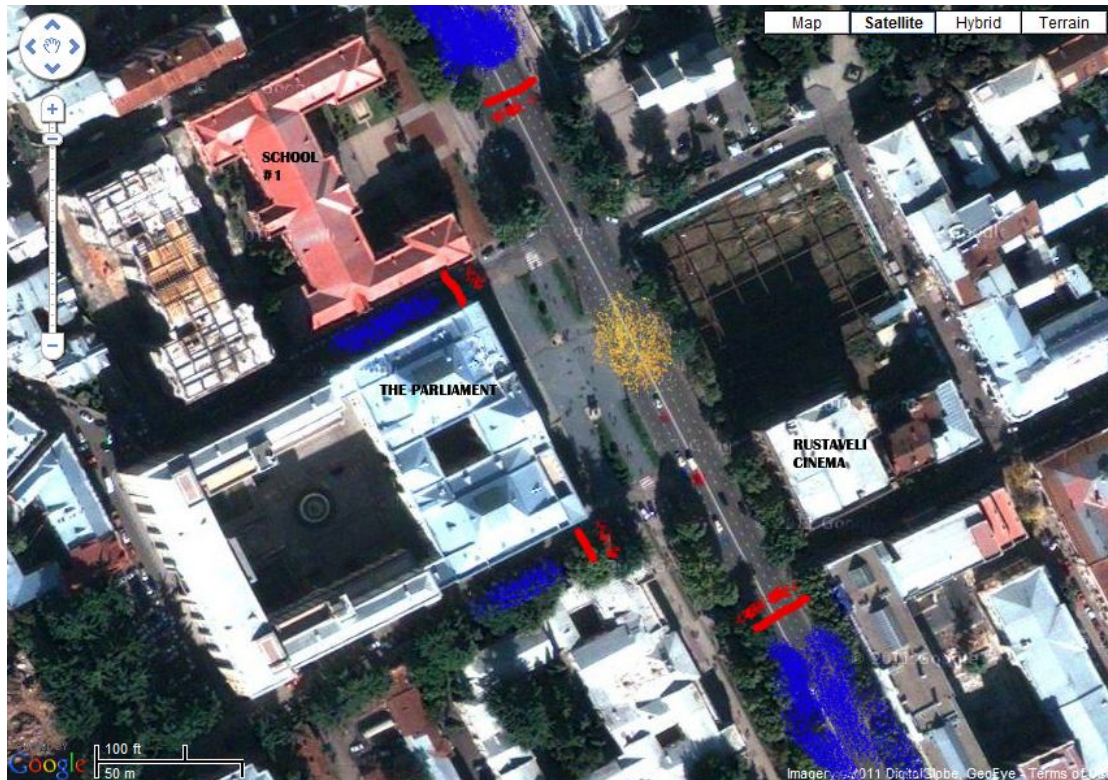
<sup>121</sup> OSCE Guidelines on Freedom of Peaceful Assembly – Article 153.

<sup>122</sup> [http://www.otokar.com.tr/en/products/product\\_detail.aspx?urun=44](http://www.otokar.com.tr/en/products/product_detail.aspx?urun=44)



### 8.5 The dispersal operation

The picture below represents the location of police forces and demonstrators prior to the attack. Police are drawn in blue, peaceful demonstrators in yellow and the Oath of Fealty behind fences in red.



Deployment of opposing forces minutes before the attack

The attack started at around 00:15. The police forces located at both ends of the demonstration on the Rustaveli Avenue started to close in. The gas grenade launchers and water cannons were fired first together with the continuous sound of a siren. A small isolated group of armed protesters tried to resist, some even in an organized manner but were quickly overran. Overall, the resistance was not of massive character.



The photo shows arrested protesters on the Rustaveli Avenue; one of them is a founder of the Democratic Movement and member of the party since its establishment (November, 2008) Giorgi Ogbaidze is in his own blood. Ogbaidze is a chief lawyer of the Law Department, an activist of the youth branch of the party. He was detained at night to May 26; According to him, he was tortured in the temporary detention setting. Since the detention, his family has been watched and intimidated by governmental officials.

As the police advanced the peaceful demonstrators abandoned their location in front of the stage and retreated towards the Parliament building but there was no escape, they were already surrounded. The policemen started to beat everybody without any discrimination. Rubber bullets were being fired from close distance<sup>123</sup> and the force was used against all demonstrators regardless whether they resisted the law enforcers or not.<sup>124</sup> Several journalists faced restrictions according to the open sources, some were deprived of the recorded materials. The use of force against allegedly minor was also captured by a camera.<sup>125</sup>

Part of demonstrators ran into the Rustaveli Cinema seeking to escape. The riot police squads followed them there, started to beat and arrest. Some eyewitnesses claim that

<sup>123</sup> The video shows the police officer firing a gun from a close distance at 7:35  
<http://www.youtube.com/watch?v=Oh9I3wKOGcU>

<sup>124</sup> Maestro TV report from the crackdown:  
[http://www.youtube.com/watch?v=1vPcOkHYaug&feature=player\\_embedded#at=46](http://www.youtube.com/watch?v=1vPcOkHYaug&feature=player_embedded#at=46)

<sup>125</sup> The following footage shows the use of force against what looks like minor at 8:00  
<http://www.youtube.com/watch?v=Oh9I3wKOGcU>

when it became difficult to distinguish the protesters from cinema visitors, officers started to ask for cinema tickets as a confirmation of not belonging to the demonstration.<sup>126</sup>

Human Rights Centre monitors witnessed how arrested citizens were taken out of the cinema; some of them were being beaten or already had signs of physical injuries.<sup>127</sup> The exact list of detained persons remains unknown.<sup>128</sup> Human Rights Centre monitors observed the situation after the crackdown was over. Detained persons were thrown down on the road in the rain with their hands and feet tied, they were beaten and verbally assaulted by the policemen. According to various sources around 40 people were considered disappeared.<sup>129</sup> The public defender's office managed to find some of them in different detention facilities around Georgia.<sup>130</sup> The Georgian Young Lawyers' Association reported that some cases of disappearance were associated with the fact that detainees were constantly being transferred from one detention facility to the other hindering the process of their finding.<sup>131</sup>

The table below summarizes points concerning the legality of the demonstration, the intervention and the use of force.

<b><u>May 26 Matrix</u></b>	<b>Core</b>	<b>Oath of Fealty</b>
Peaceful	YES	<i>passive resistance</i> (Guidelines 26)
Lawful	NO	NO
Reasonable time provided?	NO	YES
Use of force justified?	NO	YES
Excessive use of force	YES	YES

<sup>126</sup> Testimony by Shorena Latatia, the cinema visitor.

<sup>127</sup> The footage shows the scene at the Rustaveli Cinema. ill-treatment of arrested demonstrator is shown at 3:55 <http://www.youtube.com/watch?v=IGKQiURpSQO>

<sup>128</sup> According to the MIA there were 90 detainees however the Public Defenders' office published the list of 152 people.

<sup>129</sup> <http://www.civil.ge/eng/article.php?id=23544&search=>

<sup>130</sup> Many detainees were transferred to different detention facilities around the country which made it difficult to defend and even find them.

<sup>131</sup> Georgian Young Lawyers' Association – May 26: p109.

## ***8.6 Loss of life during the dispersal***

The monitoring mission did not witness any circumstances leading to suspicions on the fact of casualty and refers to secondary sources only in this regard.

Two people were reported dead according to the official press-release of the Ministry of Internal Affairs on the May 26 dispersal, one being a demonstrator and the other being a police officer.<sup>132</sup> The official release states that both individuals were killed by a car from Burjanadze's escort when the leader of the Public Assembly was leaving the area shortly after the start of the dispersal.

Therefore the official position of the authorities excludes any fatalities resulting from police actions.

Two other cases of loss of life were reported in following days which could potentially be related to May 26 events.

The bodies of Nika Kvintradze and Suliko Asatiani were found on 27<sup>th</sup> May in the surrounding area but their link with the demonstration was denied by the Ministry of Internal Affairs despite controversial circumstances and facts.<sup>133</sup>

It was officially reported that both individuals were found dead on the roof of a shop located right next to the Public Assembly's demonstration.<sup>134</sup> Their bodies were subjected to medical examination establishing the electric shock as a cause of death in both cases. It was stated that both individuals came into contact with the high voltage electric wires leading to their death.

A controversial circumstance emerged on May 29 when the journalist Nana Lezhava interviewed Kvintradze's friend Rezo Rekhviashvili who confirmed that he and his friend were both participating in the demonstration during the police attack and even identified Kvintradze on one of the photos when the latter was photographed lying on the ground with his hands tied among other arrested participants. Therefore Rekhviashvili's statements imply that Kvintradze was alive at the time of detention. The

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<sup>132</sup> The official statement of the Ministry is available at <http://police.ge/index.php?m=8&date=2011.5.26&newsid=2504>

<sup>133</sup> See chapter 8.5 on Kvintradze's case.

<sup>134</sup> Statement of the Ministry of Internal Affairs available at: <http://police.ge/index.php?m=8&date=2011.5.27&newsid=2516>



Ministry of Internal Affairs did not follow up on Rekhviashvili's statement and denied the fact of Kvintradze's arrest.

The Georgian Young Lawyers' Association inquired into the reported deaths in its report. GYLA identified cases which generated suspicions concerning their association with the police operation.<sup>135</sup> The association submitted Kvintradze's photo together with the photo taken at the assembly for identification to the DABS Fingerprints/Forensics Ltd on August 26 which reported "no significant differences" between the two photos. In response to the forensic findings, MIA reported that the detained person shown in the images was Giorgi Bakradze currently living in Kareli district<sup>136</sup>

## **9. Interaction with Stakeholders during monitoring**

The general evaluation of the monitoring in terms of monitors' safety was positive. There was not much communication between our observers and other groups or individuals present at the assembly and in majority of cases where the interaction did happen, the attitude from the side of the demonstrators was positive and welcoming.

Furthermore, during the later stages of the monitoring some organizers contacted the Human Rights Centre in order to warn the organization of a forthcoming assembly.

This was the case with the youth activist group Ara (No) when they were organizing an assembly in Gori, a city some 70 kilometers from Tbilisi. Also the notification on planned demonstration was received from the former shareholders of a clothing factory who were actively protesting against as the privatization of the factory.

Unfortunately there were negative experiences as well. In several cases demonstrators, police and at one instance even journalists made aggressive remarks towards our monitors.

The case of the protest action of the Iranian citizens in front of the UNHCR Tbilisi is reviewed in chapter 6 of this report. The police appeared soon after the arrival of our monitor and was trying to force the demonstrators out of their tent. As the monitor reports the policemen were aggressive towards her and did not let her to take photos

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<sup>135</sup> Georgian Young Lawyers' Association "May 26" – 2011; p76

<sup>136</sup> GYLA 2011; P.79

justifying it by the fact that the law prohibits photographing policemen. The situation was resolved only after the patrol officers learned about the command of English language by the monitor and she became useful for them to communicate with the demonstrating foreign citizens.<sup>137</sup>

On May 21 our monitor was observing a protest rally organized by the Public Assembly in Batumi when the police started to attack the demonstrators. The case is covered in the chapter 7 of this report. The HRIDC representative was trying to take photos of the incident when a policeman in plain clothes aggressively coerced her not to take pictures.<sup>138</sup>

The 5 day demonstration was ongoing in the framework of the same campaign in Tbilisi in front of the Public Broadcaster building. On May 24 our monitors were observing the area when the activists of the Public Assembly opened the trailer and started to distribute water to the participants of the rally. Our monitors stood behind journalists also trying to obtain information. Their behavior and comments were aggressive towards the activists and cynical. When our monitors tried to record it the journalists attempted to provoke them into a verbal confrontation.

After several minutes the monitors ran into the Public Assembly activists armed with sticks who also tried to provoke by calling the monitors police agents several times.<sup>139</sup>

## **10. Conclusions**

The monitoring process revealed several important trends both in exercise of the Freedom of Assembly in Georgia and in the state policy towards this right.

### **10.1 Legislation**

It is welcomed that the Georgian Legislation adopted a liberal approach towards spontaneous assemblies from the beginning and obliges the organizers to submit prior notifications only under limited circumstances.<sup>140</sup> The liberal approach, in line with the

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<sup>137</sup> Monitoring report – 31/05/2011.

<sup>138</sup> Monitoring report – 21/05/2011.

<sup>139</sup> Monitoring report – 24/05/2011.

<sup>140</sup> Prior notification procedure covered in the chapter 3 of the report

OSCE Guidelines on Freedom of Peaceful Assembly, is effectively implemented in practice in this regard. The monitoring revealed that the demonstrators were mostly free to exercise the right to assemble without prior notice and mainly without any constraints. The administration of prior notification procedures was carried out promptly and there were no references by the organizers towards limitations in this concern.

The study of the legislative process in the country revealed that the main quality of the Georgian legislation on the freedom of assembly is its constant amendment. The series of amendments and the litigation process are covered in respective chapters.

A significant finding in this regard is that waves of amendments coincide with particular 'big events' in terms of their timing and could potentially represent response action of the state authority aimed at preventing the emergence of similar circumstances in future.

Outstandingly, the 2009 amendment package consisted of amendments to both Assembly and Manifestation and Police laws. The former restricted the use of public thoroughfare making it available only when the number of demonstrators made it impossible to hold the assembly elsewhere. The later incorporated the list of special means and non-lethal weapons available to law enforcers for maintaining public order.<sup>141</sup>

These amendments could potentially be related to two main developments in 2009: first, the occupation of the Rustaveli Avenue by radical opposition who put cages on the street for weeks; second, allegations on the unlawfulness of non-lethal bullets used at the demonstration in front of the Ministry of Internal Affairs in May 2009.<sup>142</sup>

Furthermore, a second package of amendments was adopted in July 2011, almost one month after the May 26 crackdown. The newly introduced regulations imposed restrictions on alcoholic substances and on potentially dangerous objects at assemblies. They also introduced a prohibition on disfiguring monuments of cultural significance.<sup>143</sup> These limitations can potentially be interpreted as an answer to veteran's protest at the Heroes' Memorial and the presence of Oath of Fealty members during the series of demonstrations by the Public Assembly.<sup>144</sup>

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<sup>141</sup> The amendments are reviewed in chapters 4 and 6 of this report respectively.

<sup>142</sup> <http://civil.ge/eng/article.php?id=20863&search=>

<sup>143</sup> Limitations reviewed in chapter 4 of the report.

<sup>144</sup> The case of veterans' hunger strike reviewed in chapter 6; Public Assembly demonstrations reviewed in chapter 7.

## **10.2 Practice**

In general terms it must be noted that all assemblies held in Georgia for the reporting period were peaceful. Organizers and demonstrators did not have violent intentions and demands during all assemblies were peaceful as well. As an exception, a group of organized individuals, equipped with objects, which could potentially be used as weapons, was observed during the series of demonstrations by the Public Assembly for several days. The group could still potentially remain within the wider definition of peaceful assembly adopted by the ODIHR Guidelines.

Moreover, the monitoring process revealed that rallies of fascist, racist, nationalist or of other similar nature are not characteristic to Georgia. Not a single demonstration of this kind was observed.

The practice of counter demonstrations also seems less-present and no such activity was observed for the whole reporting period either. Subsequently no clashes between confronting groups have appeared. The violent confrontation between two parties had occurred in the previous year though. Liberals and religious conservatives clashed in May 2010. The incident ended with injuries and several arrested demonstrators.<sup>145</sup>

Unfortunately the monitoring process revealed that police officers often showed an inconsistency in their approaches to assemblies. Certain circumstances were responded differently at different assemblies. Particularly this relates to removal of tents and other belongings brought by demonstrators at assemblies. This was observed at the protest of lawyers and the protest of Iranian citizens in front of the UNHCR.<sup>146</sup>

Cases of good practice in regards to police action were also observed in a number of occasions. In these instances officers restrained from intervention during the emergence of formal grounds and in one case successfully negotiated with the demonstrators. The successful negotiation prevented a violation of the Georgian Law on Assembly and Manifestation and subsequently prevented the violent intervention in Batumi.<sup>147</sup>

Cases of the arrest of demonstrators in contested circumstances were observed during assemblies. According to reports by open sources these demonstrators were mostly charged for petty hooliganism, resistance to police, or the resistance to police officer's

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<sup>145</sup> <http://iwpr.net/report-news/georgia-gay-book-provokes-storm>

<sup>146</sup><sup>146</sup> Both cases are reviewed in the chapter 6.2 of the report.

<sup>147</sup> The case of Georgian Party's assembly in Batumi is reviewed in chapter 4.1 of the report.



lawful orders. Arrests of this character were observed during the veteran's hunger strike in January, during the protest rally by the youth movement 'Ara' on May 7 in Batumi.<sup>148</sup>

While using force the police officers were effectively differentiating between perpetrators and peaceful demonstrators in a number of cases. Several interventions with of use of force by police were carried out in general compliance with international standards. Lawful and effective intervention was reportedly carried out during the assembly in front of the Public Broadcaster building on May 22.<sup>149</sup> Such differentiation was not always the case unfortunately. The attack on demonstrators on May 21 in Batumi, May 7 in Rustavi and especially the dispersal of the demonstration in front of the parliament on May 26, all represent cases of indiscriminate approach by the police.<sup>150</sup>

Ill-treatment of demonstrators was observed during assemblies. Already detained protesters were subjected to verbal and physical abuse. Such cases were observed during the dispersal of the May 26 demonstration and also other events. There were instances when arrested demonstrators were ill-treated by individuals in civilian clothing, supposedly policemen. One of such incidents was recorded on video during the dispersal of veterans' hunger strike.<sup>151</sup>

According to observation the law enforcement officials rarely tolerate the presence of tents, blankets and other objects intended for night stay. Several cases of deprivation of property under similar circumstances were observed.

Cases of interference in journalists' professional activities have occurred in a number of occasions. Non-journalists recording video material during incidents were also affected. Our monitors became subjects of such intimidation in two cases.<sup>152</sup>

Finally, cases of deprivation of life were not convincingly investigated by relevant institutions. Evidences confirming official statements of the Ministry of Internal Affairs are not disclosed to public.<sup>153</sup>

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<sup>148</sup> Cases are reviewed in chapter 5.1 of the report.

<sup>149</sup> The incident is covered in chapter 7.4 of the report.

<sup>150</sup> Cases are covered in chapters 5.1; 7.2; and 8 respectively.

<sup>151</sup> The case of veterans' hunger strike covered in chapter 6.4.

<sup>152</sup> Case of dispersal of the Public Assembly rally in Batumi is reviewed in chapter 7.2; case of the Iranian citizens is reviewed in chapter 6.2.

<sup>153</sup> Cases of loss of life are covered in chapter 8.6.

## **Recommendations:**

### **To the Georgian Parliament**

1. It is welcomed that the recent amendments have introduced less rigid regulations concerning the use of public thoroughfare and the application of the restriction involving a 20 meter radius;
2. Other blanket prohibitions of similar character still remain. In particular, Article 9.3 fully prohibits the blocking of railways, highways and entrances of buildings. It would be welcomed if the legislation removed a full ban and considered such actions legal under specific circumstances envisaged for blocking highways. Particularly under article 11' (the number of participants making it unable to hold the assembly otherwise) and article 11'' (allowing the interference for a short period of time with the rights of those who live, work, shop, trade and carry business in the locality);
3. Blanket restriction is also applied in regards to 20 meters radius around the entrance to the Prosecutor's office, the police (all police stations), penitentiaries, temporary detention facilities and law-enforcement bodies; railways, airports and ports. It would be welcomed if the case by case approach was adopted instead of the blanket prohibition in this concern as well;
4. Restriction on foreign citizens' rights to act as organizers of assemblies using public thoroughfare under Article 5 can also be considered disproportionate. The case of foreign citizen-organized demonstration was observed during the reporting period. The assembly was not a large-scale in this particular case but such events can exceed the boundaries of the Article 5 in future;

### **To the Ministry of Internal Affairs**

5. Ensure that use of force by the police adheres to the principles of necessity and proportionality and that the dispersal of an assembly does not occur where a small number of participants act in a violent manner. In such instances, action should be taken against those particular individuals.
6. Strictly define the rules on the use of non-lethal weapons during policing operations. The amount of special means used and their combination should be proportionate to prior-defined objectives;
7. Ensure that all police officers wear means of identification during regular policing or interventions by riot squads;
8. Ensure that prompt warnings are given to demonstrators before police intervention;

9. Plan policing operations and the dispersal of assemblies, when necessary, leaving adequate space for assembly participants to voluntarily leave the area after the warning. Indicate potential exit for demonstrators and ensure that reasonable time is provided for them to disperse voluntarily after the warning;
10. Prevent ill-treatment of already detained protesters;
11. Develop and encourage a consistent lawful approach to identical circumstances by the law enforcement officials;
12. Instruct police officers to restrain from imposing restrictions on monitors' activities, particularly on photographing or other type of recording during incidents;

#### **To the Prosecutor's Office**

13. Investigate cases of disproportionate planning of the dispersal operation of May 26 with a view to bringing the perpetrators to justice, should potential misconduct by the police amount to a criminal offence;
14. Investigate cases of excessive use of force and ill-treatment during detentions and dispersals on May 26 2011 with a view to bringing the perpetrators to justice;
15. Carry out an effective and prompt investigation on fatalities potentially related to May 26 events with a view to bringing the perpetrators to justice.

#### **To Assembly Organizers and participants:**

16. Ensure correct interpretation of rights concerning the use of public thoroughfare granted by the Georgian legislation;
17. Restrain from mobilizing potentially dangerous, unidentifiable groups or individuals who can undermine the peaceful nature of the assembly. Take all lawful measures to prevent their presence at assemblies;
18. Restrain from reacting to allegedly unlawful police conduct in a violent manner;