

Georgia: A Flickering Beacon of Democracy

Human Rights in Georgia in 2007

The Human Rights Centre (HRIDC) is a non-governmental human rights organization, without any political or religious affiliations. The purpose of HRIDC is to increase respect for human rights and fundamental freedoms in Georgia, as well as to contribute to the democratic development of the country.

HRIDC implements projects to ensure compliance with human rights laws and standards. We cooperate with international organizations and local organizations which also share our view that respect for human rights is a precondition for sustaining democracy and peace in Georgia.

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Photo on cover page: Two riot policemen during the November 7th 2007 dispersal of demonstrators,
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Introduction

In 2004, in line with the positive changes in the country, we pointed out the human rights violations which took place after the “Rose Revolution”. Most of the people did not dare speak of them. We dared to tell the truth. “One Step Forward – Two Steps Back” was the name of the human rights report the Human Rights Centre published in December, 2004. As antidemocratic tendencies developed further, our reaction was immediate. The report produced in 2005 was called “Next Stop – Belarus?” Many people considered this title to be an exaggeration of the situation and were irritated by it. The reason for using this title was to send a wake-up call to Georgians and the international community. In 2007, we talked about the “Velvet Downfall”. In November 2007, many people stated that if adequate attention had been paid to the alarming signals, the country would not have had to face the November events. Some of them apologized because they had not believed the information we had provided about Georgia earlier. We were trying to speak the truth, which has caused problems for us.

“A Flickering Beacon of Democracy” attempts to cover the main human rights that were under threat during the reporting period. The report describes the events that led to the violent dispersal of the demonstration on November 7th, 2007 and the cruel dispersal itself. Moreover, it provides an assessment of human rights violations.

The report provides an assessment of three phases of the Presidential Elections of January 5th, 2008. Particular attention is paid to the abuse of administrative resources as well as direct and indirect threats from governmental representatives. In addition, the report describes various techniques used during the Election Day as well as violations of the election procedure that took place after the Election Day.

Furthermore, the report highlights issues such as: the aggressive policy of seizing property from owners without compensation; the zero-tolerance criminal justice policy and its consequences with respect to crime prevention and rehabilitation of offenders; the deteriorating state of freedom of speech and expression, particularly the problems media representatives are facing in everyday practice; the straightforward militarization policy of the government and the problems that several thousands of refugees of Chechen origin are facing in Georgia.

The Human Rights Centre, in cooperation with the World Organization Against Torture (OMCT) and the Public Health and Medicine Development Centre of Georgia (PHMDF) prepared a “shadow report” for the third periodic report of the Georgian Government before the UN Committee on the Rights of Child. To increase public knowledge on the children’s rights situation in Georgia, it was decided to include an abbreviated version of the “shadow report” in this report.

The International Community on Human Rights in Georgia

Summary of the Concluding Observations of Committee on Civil and Political Rights on the third periodic report of Georgia¹

The Human Rights Committee of the United Nations has considered the report submitted by Georgia and has given Concluding Observations. The Committee welcomed the legislative and institutional changes made. It also welcomed the accession to the Optional Protocol to the Convention Against Torture (OPCAT). Conversely, the Committee highlighted some principal areas of concern and made some recommendations to Georgia. The Committee was expressly concerned over the use of excessive force by police and prison officials as well as the conditions in prisons. It recommended the government to ensure impartial investigations of actions of law enforcement officials and initiate criminal proceedings against alleged perpetrators. Also, the government should provide victims with compensation and take measures to prevent torture and other misuse of force. Another main concern of the Committee was the prevalence of domestic violence. In this regard, Georgia should implement the Law on Combating Domestic Violence, Prevention of and Support to its Victims. The Committee requested the state to submit follow-up information on these topics within one year.

Other recommendations the Committee made were to take positive measures to ensure the protection of the population in the Abkhazia and Tskhinvali/South Ossetia regions; to ensure the proper regulation of privatization of collective centres for IDPs and prevent forced evictions; and to fully respect the principle of non-refoulement by adopting legislative and procedural safeguards and train border guards on the rights of asylum seekers. In addition, the Committee recommended Georgia to uphold the right to freedom of religion or belief; to guarantee the freedom of speech and of the media and to protect and promote the integration of minorities by considering to allow minorities to use their own language in dealings with local authorities and to ensure adequate participation and representation of minorities. Lastly, Georgia should safeguard an independent judiciary and adequately educate judges on the obligations of the state under the Covenant. The government is obligated to submit its fourth periodic report on 1 November 2011.

¹ Concluding Observations of Committee on Civil and Political Rights on the third periodic report of Georgia, Geneva, 19 October 2007.

Summary of the Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)²

The mandate of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) is to inspect detention centres, prisons, psychiatric institutions and facilities for juvenile offenders. The criteria for the inspections are those established by the Council of Europe on issues such as prisoner abuse, prison overcrowding, sanitation etc. On the whole, compared to 2006 the CPT found that conditions had "considerably improved" (CPT, p. 11).

The CPT evaluated the facilities run by the different ministries separately. The recommendations expressed most urgency and concern over overcrowding and prisoner abuse in institutions run by the Ministry of Justice.

With regard to abuse, on the positive side the CPT noted the implementation of legal reforms aimed at combating torture. Information obtained during a police interview was no longer admissible in court unless the same facts were repeated/confirmed by the prisoner during the trial. A plea argument would also be considered null and void if it was formed in such a way that it prevented a law enforcement officer from being held accountable for torture or abuse (CPT, p. 12). The committee also highlighted an 80% drop in reported prisoner ill-treatment since 2005 according to statistics of the Public Defender's Office.

On the negative side, the CPT expressed deep concern over the procedural manner in which abuse reports were handled. They recommended that when a prisoner was brought before a judge, in case the judge would see signs of abuse he should order a medical examination irrespective of whether the prisoner requested this or not. To support this the CPT cited 2006 statistics according to which of a prisoner population of about 18000, 2700 were found to have lesions, but only about 190 reported ill-treatment. Furthermore, the medical examination at present involves a number of non-medical prison staff whose presence was felt to undermine the credibility of the process (CPT, pp. 12-14).

With regard to overpopulation, the committee expressed concern over several individual cases in prisons and detention centres. Prison No 5 in Tbilisi and No 6 in Rustavi were singled out. A

² Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 21 March to 2 April 2007, Strasbourg, 25 October 2007.

minimum space of 4m² per prisoner was recommended, it being observed that Prison No 5 only provided 0.5 m². Detention centre No 1 was described as highly satisfactory. The Committee suggested that Recommendation Rec(99)22 of the Committee of Ministers of the Council of Europe on overcrowding should be respected.

In a remark that had bearings on all institutions, the CPT stressed three factors it considered central to the correct treatment of a prisoner/detained person: access to a third party for notification of custody, access to a lawyer and access to medical care. Of these three, the committee suggested that the unsatisfactory nature of the current free legal aid system meant the right to a lawyer was not properly guaranteed (CPT, p. 15). Other problems were that the right to letters and telephone communication is seldom respected (CPT, p. 41) and that if a prisoner is accused of an offence while in prison, he is rarely informed of the right to appeal this, nor is there any rule that guarantees him some form of hearing (CPT, p. 42).

Another general issue was that the detention period allowed for individuals arrested as criminal suspects and those subject to administrative arrest is markedly different (72 hours and 30 days respectively) which gives the authorities a bigger incentive to misuse the system. Finally, the report also made critical comments on the sanitary and dietary conditions in some juvenile and psychiatric institutions. Compared to its 2001, 2003 and 2004 inspections, similar issues (most notably ill-treatment and overcrowding) were raised in those years, but the language of the committee suggests the problems were worse at that time compared to now.

Summary of the Annual Report of the United States Commission on International Religious Freedom 2007³

In its last report on religious freedoms, the US Commission on International Religious Freedom observed that the status of respect for religious freedom by the Government continued to improve during the period covered by this report, and governmental policy continued to contribute to the free practice of religion in most instances. Attacks on religious minorities, including violence, verbal harassment, and disruption of services and meetings, continued to decrease. The Ministry of Internal Affairs and the Prosecutor General's Office remained active in the protection of religious freedom, but some groups demanded greater activity. The President and the Public Defender were effective advocates for religious freedom and made numerous public speeches and appearances in

³ Annual Report of the United States Commission on International Religious Freedom, Washington D.C., May 2007.

support of minority religious groups, although not all minority groups were satisfied with all aspects of their activities.

With respect to religious education in schools, the Commission observed that public schools offer an elective course on religion in society; however, the course deals exclusively with the theology of Georgian Orthodox Christianity, and the primary textbook approved for use in the course focuses on Orthodox Christianity to the exclusion of other religious groups. To address this, the Ministry of Education began developing a curriculum for the course pursuant to a memorandum signed by the Georgian Orthodox Christianity patriarchate and the Ministry of Education in 2005. Although the Ministry of Education formed a joint working group towards this end, it included representation only from the Georgian Orthodox Church. The working group suspended activity in early 2007 without effecting any changes to the curriculum.

At the same time the Ministry of Education continued a separate project of textbook development to replace older textbooks that contain themes or materials considered inappropriate under legislation promoting freedom of religion. The new textbooks include materials on religious groups other than the Georgian Orthodox Church and discuss various religions in a neutral fashion. During 2007, new textbooks were scheduled to be introduced for grades 1, 7, and 10; in subsequent phases new textbooks were to be introduced for the other grades. In the national curriculum, schools must teach religion only as a component of a generally chronological or thematic treatment of history and culture, describing religious themes, texts, and beliefs without endorsement or favour. As early as the third grade, excerpts from religious texts or with religious themes may be taught in literature courses, for instance. The Ministry of Education guidance states that such texts and themes are to be integrated with civics and morals teaching to emphasize interfaith tolerance and mutual understanding. Plans called for civics curriculum guidelines to make religious tolerance an element of mandatory civics training in the ninth-grade level.

Local Orthodox priests and public school teachers continued to criticize minority religious groups and interfaith marriages. Some also discouraged Orthodox followers from interaction with students who belonged to Protestant churches. Teachers at times ridiculed students who had converted to Protestant faiths, claiming the students converted because they were offered financial benefits.

The status of respect for religious freedom by the Government continued to improve, and government policy continued to contribute to the free practice of religion in most instances.

There were no reports that the Ministry of Justice refused to approve applications for registration; however, some religious communities expressed dissatisfaction with the status that registration provided. The Roman Catholic Church and the Armenian Apostolic churches opposed registering as civil organizations, preferring to be recognized explicitly as churches or some other distinct status for a group based on religion. Several also expressed dissatisfaction with what they considered inadequate legal protection of their property rights and tax status under the registration law. In addition, they objected to the perceived favoured status of the Georgian Orthodox Church under the tax laws, because it is explicitly exempt from certain taxes from which other groups are not.

The report notes that the restitution of property confiscated during the communist regimes remains a problem. During the period covered by this report, the Government did not return any churches to the Georgian Orthodox Church or to other denominations, nor did it return any mosques, synagogues, or meeting halls of other religious groups. However, restoration continued of Georgian orthodox churches previously returned, in part with government subsidies on the grounds that the buildings are national cultural heritage sites. The Government also provided subsidies for the maintenance and preservation of mosques on similar national cultural heritage site bases, but there was a perception among minority religious groups that state funding was not provided on a neutral and equitable basis.

Summary of the European Commission against Racism and Intolerance (ECRI) Second Report on Georgia⁴

ECRI was established by the Council of Europe. It is an independent human rights monitoring body specialised in questions relating to racism and intolerance. The country-by-country approach deals with all member States of the Council of Europe on an equal footing. The work is taking place in 4/5 year cycles, covering 9/10 countries per year. The reports of the first round were completed at the end of 1998 and those of the second round at the end of the year 2002. Work on the third round reports started in January 2003.

The third round reports focus on “implementation”. They examine if ECRI’s main recommendations from previous reports have been followed and implemented, and if so, with what degree of success and effectiveness. The third round reports deal also with “specific issues”, chosen

⁴ European Commission against Racism and Intolerance (ECRI) Second Report on Georgia, Adopted on 30 June 2006, published in Strasbourg, 13 February 2007.

according to the different situations in the various countries, and examined in more depth in each report.

The working methods for the preparation of the reports involve documentary analyses, a contact visit in the country concerned, and then a confidential dialogue with the national authorities.

Since the publication of ECRI's first report on Georgia on 23 April 2002, progress has been made in a number of the fields highlighted in the report. Georgia has ratified a number of legal instruments relevant to the fight against racism and intolerance, including the Framework Convention for the Protection of National Minorities. New criminal law provisions have been introduced to prohibit racial discrimination and incitement to racial hatred. The authorities have taken steps to curb violent acts of religious intolerance. A civil integration programme has been launched for the country's ethnic and religious minorities and other minority groups. It includes measures to improve ethnic minorities' knowledge of Georgian and an educational reform designed in particular to take fuller account of the country's cultural diversity.

However, a number of recommendations made in ECRI's first report have not been implemented, or have only been partially implemented. Ethnic minorities' lack of knowledge of Georgian is a major obstacle to their integration and hampers their access to information, public services, education and employment. They continue to feel like second-class citizens, take little part in the country's public and political affairs and come up against a series of problems which the state must help them to resolve. Members of non-traditional religious minorities can still be exposed to physical attacks on them or their property. They also encounter administrative and other barriers to religious worship. A number of shortcomings must be remedied in asylum law and practice. Refugees from Chechnya are subject to illegal treatment on the part of law enforcement officials. Those who live in the Pankisi region suffer difficult living conditions. The authorities are insufficiently aware of the situation of some minority groups such as Roma and migrants, and do not monitor it sufficiently. Progress towards resolving the issue of the return of Meskhetian Turks to Georgia is too slow. Persons displaced as a result of armed conflict in the country continue to experience difficult living conditions and suffer from a lack of integration. Stereotypes and prejudice liable to cause discrimination persist among the majority population, particularly against ethnic minorities, non-traditional religious minorities, refugees from Chechnya and Meskhetian Turks.

In this report, ECRI recommends that the Georgian authorities take further action in a number of areas. It recommends in particular that they continue to supplement the criminal law provisions for combating racism and intolerance and to provide officials in the judicial system with more training on the importance of applying provisions of this kind. It asks that a specialised body be set up to combat racism and racial discrimination and that the civil and administrative law provisions prohibiting racial discrimination be strengthened. ECRI recommends that efforts to effectively combat manifestations of religious intolerance be strengthened. Steps should be taken to put an end to the law enforcement agencies' illegal acts against refugees from Chechnya. Lastly, ECRI recommends that ways be found to enable ethnic minorities to participate more fully in the country's affairs and to communicate with the authorities while preserving their languages and cultures.

*Assessment of the November Events*⁵

This section represents an assessment of the events taking place in Georgia since November 2, 2007. In particular, this article examines the compatibility of the actions taken by the Government of Georgia with respect to the Constitution of the country and the international obligations undertaken by it. Events provided herewith are clear demonstrations of the fact that the Government of Georgia, by dispersing the demonstrators with use of excessive force, by taking two TV stations off the air, Imedi TV and Caucasias, and by destroying the property of Imedi TV after forcefully entering its office, has violated several fundamental rights guaranteed by the Georgian Constitution and international treaties that Georgia has ratified. These rights include:

- The right to freedom of expression
- Freedom of assembly and association
- The right to property

Description of the events

On November 2, 2007, the Georgian people gathered in the streets under the leadership of the United Opposition. Opposition parties have established the Public National Council, which includes among others the following political parties: Republican Party; Political Movement Tavisupleba (Freedom); Labour Party, Chven Tviton (By Ourselves); Conservative Party; Party Saqartvelos Gza (Georgia's Way); Party Ertiani Saqartvelosatvis (For United Georgia); National Forum; Kartuli Dasi, etc. The manifestation was organized in compliance with the requirements of the "Georgian Law on Assemblage and Manifestations". In particular, opposition representatives had filed an official notification with the Tbilisi City Municipality. The notification contained the form, purpose, place, starting date and expected number of participants of the demonstration. Peaceful demonstrations in Tbilisi had been ongoing for several days in front of the Parliament.

The requests of the United Opposition to the government were the following:

1. Parliamentary elections should be held according to the original and legal constitutional timeframe – that is, in spring, 2008;

⁵ Simon Papuashvili, Human Rights Centre, "Assessment of the November Events", Tbilisi, 21 December 2007.

2. For the majoritarian election system, district mandates should be distributed on the basis of votes received by each candidate (i.e. a true single mandate voting system) and not the present undemocratic majoritarian system;
3. Elections should be carried out by an election administration that is based on political parity;
4. Political prisoners should be released and for this purpose a state commission should be created that enjoys public trust and support.

Since the government refused to engage into a discussion with the leaders of the demonstrators, some opposition leaders went on a hunger strike.

The number of demonstrators reached around a 150,000 people. The political demands of the demonstrators did not contradict the constitution and legislation of Georgia. The demands did not contain any calls for forcefully overthrowing the government. It posed no threat to the national sovereignty and territorial integrity of the country. Also, the opposition did not call for incitement of any conflict, racism or national and religious conflicts among people. Since the government showed little interest in meeting the demands set forth by the demonstrators, a request for the resignation of the president was added to the initial demands.

The government did not intend to start a dialogue. Finally the government dispersed the peaceful demonstration and President Mikhail Saakashvili announced a state of emergency in Georgia for 15 days.

The Human Rights Centre (HRIDC) considers that the means which were utilized by the government were unacceptable and ineffective. Moreover, they increased tensions.

The Human Rights Centre considers that the government breached national legislation by the following actions:

Zugdidi dispersal

On October 28, during the Zugdidi demonstration, which was followed by demonstrations in Tbilisi, law enforcement officials attacked some of the opposition leaders, in particular MPs Bejan Gunava and Bidzina Gujabidze. Despite that, the attack of MPs constitutes a crime, only some of the MPs attackers have been sentenced to administrative imprisonment and fined GEL 400. It is

worth to mention that activists supporting the opposition, have previously been convicted to administrative imprisonment for distributing posters around Tbilisi.⁶

Preventing demonstrators to come to the capital

On November 1, people arriving from all over Georgia encountered serious obstacles: the government seized cars and the keys of those cars, car registration papers, blocked motor ways and slashed car tires. Some drivers were assaulted. For instance: roads coming into Tbilisi and the Chakvi Tunnel were blocked for mini buses coming from Batumi. The tires of Kutaisi and Zugdidi mini buses had been damaged beforehand. They took the car registration papers from drivers. They did not allow buses from Tbilisi to go to Kakheti, in order to prevent them from bringing people to the parliament building. (This information was broadcasted by TV-companies Imedi, Rustavi 2, Mze and other media sources.)

Okruashvili being forced to leave the country

Former Minister of Defence, Irakli Okruashvili, who publicly accused the government of corruption, was forced to leave the country as he intended to attend the demonstration on November 2. Irakli Okruashvili gave an interview to TV Imedi from Germany and confirmed this. In addition, he stated that his family is still in fear of persecution while remaining in Georgia.

Government starts persecuting the demonstrators

Since November 2, some demonstrators have been maltreated. Special brigades were formed to persecute the participants of the demonstration. Law enforcement officials attacked and abused people who were detected far from the demonstration area.

During the night of November 5, a group of people armed with clubs attacked a mini bus standing in front of parliament, in which demonstrators from Batumi were sleeping. The attackers physically abused people in the bus and also damaged the bus. (Information agency Media News)

On November 2, Rati Maisuradze, the young leader of the Labour Party, and Koba Chitanava, the director of the board of Sokhumi University, were attacked. They were badly injured. Data Akhalaia, the former head of the Constitutional Security Department, has allegedly participated in this attack. Rati Maisuradze was pushed in the boot of Akhalaia's car and was kidnapped. (TV-companies: Imedi, Rustavi 2, Mze)

⁶Unless otherwise noted, based on information of the Human Rights Centre and its online magazine www.humanrights.ge.

On November 5, vice-colonel of the police, Giorgi Gotsiridze, brought poisoned wine for the demonstrators in front of parliament which caused the intoxication of over 30 people. The poisoned people were urgently taken to hospital. (Imedi, Rustavi, 2 Mze, Medianews, Inter Press News and other agencies).

On November 5, the Regional and Criminal Police of Ozurgeti dispersed the demonstration aimed to support the United Opposition. (Rezonansi, November 6, 2007)

November 7 – The government against people

In the morning of November 7, the police dispersed the people in front of parliament, as well as people participating in a hunger strike and arrested some of them, including Goga Khaindrava, one of the leaders of the United Opposition. The police seized cameras and recording materials from journalists. (Imedi, Rustavi 2, Mze, etc.

By 1:00 PM, the Special Task Force attacked peaceful demonstrators and dispersed them. They used water cannons, tear gas and clubs; as a result ordinary people, as well as several opposition leaders, were badly injured. The dispersing of the demonstration was broadcasted live by all Georgian TV-companies. All leading TV-companies in the world, as well as newspapers and press agencies (BBC, CNN, EURONEWS, etc.) highlighted the dispersal.

After the dispersal of the demonstration in front of the Parliament, the demonstration relocated to Rike, a large square. (The demonstrators chose Rike, because the first demonstration was dispersed on the ground of blocking traffic.) Without any warning, the Special Forces attacked the protestors on Rike. Special Forces again used water cannons, tear gas, rubber bullets and clubs. People fled immediately when they saw the approaching Special Forces, although the riot police kept chasing them.

The use of excessive amounts of tear gas, which according to experts in the field exceeded the amount that is allowed to use, and the use of rubber bullets, which is not permitted by Georgian legislation is a clear demonstration of the disproportionate use of force.

At the same time some of the representatives of the “National Movement” organized an alternative demonstration on the Rustaveli Avenue, where among others, special task force units also took part. According to the various sources, those representatives of the law enforcement agencies that took

part in the illegal dispersal, instead of punishment got additions to their salaries that varied from 500 to 2000 GEL as a form of incentive.

Stories of demonstrators

Vakhtang Inasaridze:

Vakhtang Inasaridze was supporting the demonstrators from the very beginning. He attended the demonstration everyday except on November 6. On November 7 he was in Rustavi and was planning to stay there until late. However, he suddenly decided to return to Tbilisi because his daughter was not answering phone calls and he got worried.

“The TV was on. I knew what was going on in front of Parliament. My daughter was not answering my calls and I got afraid. I doubted she was at the demonstration. The pictures I saw on TV were terrifying. I decided to go to Rike (located near the River Mtkvari embankment in Tbilisi).”

Vakhtang Inasaridze recalls the situation he witnessed after he arrived at Rike. “People were telling me how they had been beaten; stepped on by riot policemen. Protestors had not made any provocative statements, as public officials claimed.”

“Suddenly I noticed that “Robocops” with clubs, police officers in yellow raincoats, elite military units and soldiers in jeans are running away from the bridge. They seemed to be well-trained. I was looking at them and thought the enemy was approaching us.”

People were confused and afraid. We were running up the Wine Rise. Many of us could not find a way out and stopped at the small mounting under the Palace of Queen Darejani. One could hear screaming, shouting and crying... I felt both pain and pride together. The riot policemen were scolding and destroying everything on their way back. Later they returned with weapons and started to shoot at people. Consequently, people started to panic. They run up the Wine Rise. We saw snipers at Metekhi Church; they were shooting. When they started shooting I had not reached the Wine Rise yet. I was looking at the direction soldiers were coming from. They were moving in groups and were shooting at us. When I was wounded, the first thing I thought was to escape the area. I was wounded in the leg, but I was not afraid of death; I did not want to be

insulted, which was likely to happen if I had stayed. I was helpless. I cried out several times and unknown boys ran up to me to rescue me. Both my leg-bones were broken. The bullet had broken one bone and then it broke another too. The X-ray picture can prove it. The boys were dragging me up the Rise. I felt a terrible pain, but suddenly I learned that another attack was starting from below because my rescuers were running faster. I leaned on their shoulders afraid they would leave me there. Suddenly I heard “Boys help us, we are carrying a wounded man,” but there was answer “No we cannot, we are also carrying a wounded boy.” I looked ahead and saw they were holding Nika.”⁷

Nika Didishvili:

Nineteen-year-old Nika Didishvili happened to accidentally be on Rike on November 7. He crossed Baratashvili Bridge after he had seen his aunt to her house next to the City Hall building.

“The traffic was heavy. I walked from Baratashvili Bridge to City Hall because mini buses were not running at all. I was about to take a taxi at the Embankment (very close to Rike) to go home. Rustaveli Avenue was overcrowded. Riot policemen, water cannon trucks, fire trucks and jeeps with acoustic weapons were occupying Rustaveli Avenue.”

A lot of people were standing there. Nika thought that everybody was there to have a little rest. Many people felt bad; they seemed to have inhaled gas.

“People on Baratashvili Bridge said that the riot police would not go down to Rike. Suddenly everybody panicked. We heard shooting. There was smoke in the air. Everybody was screaming, running and people were beaten. It had no sense to run up the Wine Rise. There were many people there. If somebody fell down s/he would have been stepped on. People were escaping soldiers who were moving along Baratashvili Bridge. I followed the crowd of people because I could not resist them. Soon I was close to Metekhi Bridge and ran towards the Wine Rise. Suddenly, something exploded behind which catapulted me 4-5 meters away. I do not remember how I fell down. I remember I was standing on my right leg and was trying to stretch my left leg. Both my legs were aching. It did not happen by mistake; almost every wounded person was shot in the leg. My leg-bone was broken and my muscle was badly damaged. If they had shot

⁷ Human Rights Centre interview with Vakhtang Inasaridze, December 26, 2007.

me 50 centimetres higher, I would not have survived. After I was wounded, I started crying so loudly that people running in front of me turned back and carried me to the Wine Rise. I felt how difficult it was for them to carry me. Riot policemen were following us. Suddenly I was alone; people got afraid; only one person stayed with me. I leaned on him and we went on together. My rescuer was crying for help and soon strangers ran up to us. We stopped at the Wine Rise. The street is narrow and difficult to follow. I told others to leave me alone; I could go up the street on my own. However, that man was not abandoning me. We were calling for an ambulance, but there was none to be seen. I did not lose consciousness and felt how I was bleeding. Luckily, a car was coming up the street and the driver helped me very much. I felt safe in the car. Riot policemen were far away, but my legs were aching terribly.”⁸

Some of the results of the brutal clash

According to the Ministry of Internal Affairs, 21 people were arrested after the dispersals, but some of them were released on a fine.

According to the Ministry of Health, approximately 600 people have been hospitalized in Tbilisi.

Some of the opposition leaders were brutally beaten during the demonstration. Koba Davitasvili, the leader of the People’s Party, has announced on Public Broadcasting that he was attacked by 7 people, who were dressed in civil clothing. He was kidnapped and taken to Gori hospital. Another opposition leader, Levan Gachechiladze, was also beaten.

Cruel way of preventing the demonstrations in Batumi

On November 8, students of Batumi State University were having lectures when tear gas was released into the class rooms. Allegedly, students who were not aware of the fact that the state of emergency had been declared for the entire country were planning to hold a demonstration. Injured students were taken from the university building by emergency medical personnel. Among them was 22 year-old Tamta Badjelidze, who was five months pregnant at the time. There were hundreds of policemen surrounding the university, waiting for further orders. According to Davit Berdia, the head of Adjara’s Main Department of the Ministry of Internal Affairs, all necessary means were used.

⁸ Human Rights Centre interview with Nika Didishvili, December 26, 2007.

The Government against the media

On November 7, approximately at 9 o'clock, Special Forces, without warning or without following formal procedure, went to the independent media company Imedi. They ordered journalists and other employees to leave the building and damaged significant part of the equipment. After this, Imedi TV and Radio were taken off the air. (This event was covered by TV-companies Mze, Rustavi 2, and Public Broadcasting) TV Imedi is one of the most popular media companies in Georgia, where members of opposition parties had the opportunity to express their opinions publicly. Radio Imedi was taken off the air at the same time as TV Imedi without any legal justification.

On the same day, TV company Caucasia was shut down. The director of Caucasia, Davit Akubardia, stated that one person offered him millions for him to stop broadcasting. When he refused, the government shut down his TV company.

In addition, government ordered Georgian cable broadcasters not to broadcast some foreign TV channels, which among others included: BBC, Euronews, CNN and some Russian channels.

During the demonstration, many journalists from different newspapers and TV companies were physically assaulted by the police. In addition, police stopped a mini bus driving from Tbilisi to Batumi; four journalists were on their way to a seminar. Police prevented them from continuing their way to the capital for three hours without any justification or explanation.

The attacks on TV companies and banning broadcasting represent violations of the Constitution of Georgia, the Law on the Freedom of Speech and Expression and article 10 (freedom of expression) and article 14 (prohibition of discrimination) of the European Convention on Human Rights and Fundamental Freedoms.

The response of the international community to the November events

Recent developments in Georgia have met with a firm response from the international community. Most of the officials and representatives of foreign countries, institutions and organizations issued a statement that condemned the imposition of the state of emergency and expressed their serious concern over the actions undertaken by the government which directly caused the limitation of fundamental human rights. "The imposition of Emergency Rule, and the closure of media outlets in Georgia, a Partner with which the Alliance has an Intensified Dialogue, are of particular concern

and not in line with Euro-Atlantic values,” said Jaap de Hoop Scheffer, the NATO Secretary General, in a statement on November 8. “NATO is following closely and with concern events in Georgia. I have asked NATO's Special Representative for the Caucasus, Ambassador Robert Simmons, to express to the Georgian Foreign Minister the Alliance's view that all parties must exercise restraint, avoid violence and act within the legal framework.”

The OSCE Chairman-in-Office, the Spanish Foreign Minister Miguel Angel Moratinos, urged to remain calm, avoid excesses and engage in constructive dialogue in his statement. "I hope the Georgian authorities and the opposition will do their utmost to prevent a deterioration of the situation." He also emphasized that a solution to a situation of this nature can only be found through dialogue based on democratic principles. According to that, the OSCE welcomed President Mikheil Saakashvili's decision to call an early presidential election. "This should help to reduce tensions," Minister Moratinos said. He has also sent Josep Borrell Fontelles as a special envoy to Georgia. His task was to listen and speak to all sides during his visit to Tbilisi and to call for a peaceful and democratic dialogue and the lifting of the state of emergency.

Miklos Haraszti, the OSCE Representative on Freedom of the Media, expressed concern over the suspension of the work of Imedi TV, Georgia's most watched independent broadcaster, and Caucasia TV, which broadcasts in Tbilisi. “While introducing a state of emergency may be in accordance with the country's Constitution, the media also must be able to fulfil their constitutional vocation of informing society about events in the country. Pluralism of broadcasting is essential for a democracy. I urge Georgia's authorities to allow the resumption of Imedi and Caucasia television stations.” He also condemned the violence against journalists during a rally in Tbilisi. “The disturbing reports of journalists falling victim to violence during a political rally on 7 November are worrying. I urge the authorities to show restraint in dealing with journalists during political demonstrations and avoiding interference with coverage of public events in the media. Deliberate attempts to confiscate, damage or break journalists' equipment in order to silence reporting are criminal offences and those responsible should be held accountable in accordance to the requirements of Georgian law,” said Haraszti.

Also, the Secretary General of Council of Europe, Terry Davis, admitted that he is “very concerned about the situation in Georgia. Freedom of assembly is guaranteed by the European Convention on Human Rights, and the authorities must make sure that any restrictions are justified and proportionate. The priority for all sides now must be to show restraint, avoid provocations and avoid being provoked.” What is more, the Parliamentary Assembly of the Council of Europe

(PACE) decided to send two rapporteurs, Matyas Eorsi and Kastriot Islami, on a snap visit to Georgia, from Friday 9 to Sunday 11 November, to assess the situation on the spot. They have met with high-ranking government officials, members of the parliamentary majority and opposition, media representatives and ambassadors. Unfortunately, recent events have damaged Georgia's reputation as "championship of democratic reforms in the region," said Matyas Eorsi on November 10 in Tbilisi. The last time Eorsi was in Georgia was last September. "You remember how enthusiastic we were [in September] about progresses Georgia had achieved," he said. "Contrary to what we saw in mid-September, now we see that the country has been upset by events which we believe has damaged Georgia's reputation as championship of democratic reforms in the region," Eorsi stated at a news conference in Tbilisi. "I have been visiting Georgia since '92 and all the time I come to Georgia I start to say how happy I am to be back to Georgia. This is not the case today." "Police violence against peaceful demonstrations, shutting down private broadcasting stations and clamping down information dissemination is unacceptable in any circumstances in a democratic system," he said. "We believe that it is interest of whole Georgia to lift state of emergency in the closest time possible." The PACE co-rapporteurs have both urged the authorities and the opposition to immediately resume talks and find a compromise on all the disputed issues.

The High Representative for the Common Foreign and Security Policy of the EU, Javier Solana, also decided to send his Special Representative for the South Caucasus, Peter Semneby, to Tbilisi. Solana said in a statement that Peter Semneby planned a meeting with both the opposition and the authorities. "I am concerned about the latest developments in Georgia. Political differences should be resolved within the democratic institutions. All sides should therefore resume the dialogue and refrain from actions that contribute to tensions. This is the best way out of the crisis. I have transmitted this message to President Saakashvili and to the Georgian opposition."

The state of emergency imposed in Georgia "seems to be quite far-reaching" in contrast to the challenges posed by the November 7 unrest in Tbilisi, Peter Semneby, the EU Special Representative, said at a news conference in Tbilisi. The Georgian leadership has claimed that the country was facing a threat to the constitutional order, which compelled it to declare a state of emergency. The unrest was, according to the authorities, part of a planned attempt by "the radical political opposition", supported by Russian intelligence services and financed by business tycoon Badri Patarkatsishvili, to destabilize the country and overthrow the government. "I do not want to go too far into this and I do not want to go into the issue of whether there was any serious threat to the state and so on, at least as long as I have not seen solid evidence," Semneby said. He said that in the short term, recent developments in Georgia had "obviously been a distraction from the normal

agenda of relations between Georgia and the European Union.” “But I do not want to speculate on the long-term effect,” Semneby said. “I would rather say that if presidential elections are carried out successfully, there should not be any lasting damage to these relations.”

The U.S. Department of State declared in a statement of November 8 that it welcomed the Georgian authorities’ decision to hold early presidential elections and a referendum on the timing of parliamentary elections. “At the same time, we continue to urge the Government of Georgia to lift the state of emergency and restore all media broadcasts. These are necessary steps to restore the democratic conditions for the election and referendum. We call on all parties to maintain calm, respect the rule of law, and address their differences through serious discussions to strengthen Georgia’s democratic political system. These discussions should take place in a spirit of compromise and in support of Georgia’s sovereignty, independence, territorial integrity, and commitment to human rights.”

Gela Bezhuashvili, the Foreign Minister of Georgia, held a phone conversation with his German counterpart, Frank-Walter Steinmeier, to discuss the recent developments in Georgia on November 9. On November 8, the Foreign Minister of Germany declared the following: “I am concerned about the escalation of the situation in Georgia, most particularly the imposition of a state of emergency yesterday evening and the closure of several TV and radio networks.”

The UK Foreign Office expressed its concerns about the fact that that a state of emergency had been declared in Georgia, particularly the restrictions on the media. “We hope that these will be lifted as soon as possible,” it said in a statement. “We encourage all parties to behave in a peaceful, democratic manner and to immediately engage in a constructive dialogue. We urge all parties involved to exercise restraint and refrain from using language and actions that could escalate the situation.”

The statement of the Foreign Ministry of France reads as follows: “The violence against the opposition and the violations of freedom of the press and individual freedoms are unacceptable. We call on the political forces involved to show restraint and calm. We invite the Georgian authorities to launch a dialogue with the opposition to restore the democratic process in that country. It is up to the Georgian political forces alone to find a peaceful solution to the present situation. We also call on Tbilisi to avoid any escalation with Moscow.”

The international NGO community was greatly disturbed by the human rights violations. “Even in a time of crisis, Georgians have a right to protest peacefully without being beaten by the police,” said Holly Cartner, Europe and Central Asia director for Human Rights Watch. “Firing rubber bullets at peaceful demonstrators is a complete abuse of the use of force. The government does not have a *carte blanche* to restrict fundamental freedoms just because it is in crisis.” The organization also issued a brief report on the police intervention. A Human Rights Watch representative witnessed how riot police chased and beat fleeing protestors as they ran into the yard of a nearby church and into nearby streets. The protestors offered no resistance and called on each other not to resist in order not to provoke harsher retaliation from the police.

Assessment of the November events in the light of Georgia’s international obligations

Restriction of the freedom of expression

Freedom of speech and expression constitutes one of the essential foundations of democratic society, one of the basic conditions for its progress and for the development of every man.⁹ This right includes the freedom to hold opinions and to receive and impart information and ideas without interference of the state. The *Handyside* Case of the European Court of Human Rights stated that:

The right to receive and impart information is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend shock or disturb the State or any other sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society".

Nevertheless, certain restrictions are expressly allowed on the freedom of expression under international law. The situations in which the restrictions may be justifiable include the need to protect important public interests such as – national security, territorial integrity, freedom from crime and disorder, health and morality and the authority and impartiality of the judiciary, also other individual rights such as the right to privacy and reputation. In any case, every “formality”, “condition”, “restriction” or “penalty” imposed in this sphere must be proportional to the legitimate aim pursued.¹⁰ In addition, according to the principle of legality, any limitation to the right of freedom of expression can only be carried out in accordance to the procedure prescribed by the

⁹ *Handyside v the United Kingdom*, Judgment of 1976.

¹⁰ *Ibid.*

domestic law. As the European Court expressed it in the *Sunday Times* Case – the law upon which the government bases a limitation to the right must be adequately accessible: the citizens must be able to have an indication that is adequate in the circumstances of the legal rules in a given case. Secondly, a norm cannot be regarded as a “law” unless it is formulated with sufficient precision to enable the citizen to regulate his conduct. Thus, in order for a particular state action or enactment to be considered to be “in accordance with law” under the convention, it must be both accessible and foreseeable.¹¹ The European Court went further in the *Malone* Case by declaring that:

It would be contrary to the rule of law for the legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate the scope of any such discretion conferred on the competent authorities and the manner of its exercise with sufficient clarity, having regard to the legitimate aim of the measure in question, to give the individual adequate protection against arbitrary interference.

In case a state is in a position to meet the requirements of the principle of legality the test of “necessity in a democratic society” needs to be passed. In order to determine whether the restriction was “necessary in a democratic society”, two criteria need to be fulfilled: first the state has to prove that the aim of the restriction imposed, is itself legitimate and second, authorities also need to prove that the means of restricting the right to freedom of expression is “proportionate to the legitimate aim pursued”.

The actions of the Government of Georgia discussed above are in contradiction to the requirements of the Constitution of Georgia and the obligations undertaken by it due to the following reasons:

Limitations carried out against two broadcasting stations, Imedi TV and Caucasias, do not meet the requirements of the principle of legality of the limitations. Both TV stations were taken off the air before the declaration of the state of emergency without following formal procedure prescribed by the Georgian legislation. None of the stations received any formal explanation prior to shutting down the broadcasting. The cancellation of the broadcasting license of Imedi TV was done post factum. The judgment of the national court that suspended Imedi’s license is dated November the 7th. However, according to the logic of the events, which is clearly described in the report of the Public Defender of Georgia related to the suspension of the license and initiation of the criminal case against Imedi TV as a legal entity, the judgment of the court and the decisions of the Commission on Regulation of Broadcasting has actually been delivered a few days later.

¹¹ *Sunday Times v the United Kingdom*, Judgment of 1979.

Therefore, the Georgian government is trying to use the post factum national court decision to give a legal justification for shutting down the broadcasting of Imedi TV. Nevertheless, even after the suspension of the state of emergency, there is no formal explanation as for taking Caucasia off the air. Therefore, it is evident that the Georgian government went far beyond the scope set by Georgian legislation and international law by not following the formal procedure concerning limiting or suspending the broadcasting of Imedi TV and Caucasia.

The context of limitations and the methods used by the Government are sufficient to declare that the requirement of proportionality has not been met in the case of shutting down Imedi TV and Caucasia. The actual taking off the air, and the initiation of a criminal case with respect to Imedi TV, can be considered as respectively the least and the most extreme forms of limitation of the right. Prior to the suspension of the broadcasting the Government did not attempt to explain to the administration of both TV stations what exactly constituted as an illegal act in their work and did not give a notice on the content regulation. By shutting down Imedi and Caucasia, the Government of Georgia not only deprived these two broadcasting companies the right to impart information and ideas without interference, but the act also deprived the Georgian public of the possibility to receive information on crucial political debates and events. Therefore, it can be argued that the limitations with respect to Imedi and Caucasia do not meet the requirement of “necessary in a democratic society”.

Restrictions on the freedoms of assembly and association

The right to freedom of peaceful assembly is considered to be one of the foundations of a democratic society and it is therefore not to be interpreted restrictively. The rights cover not only static meetings, but public processions as well. Moreover, it is considered to be a freedom which can be exercised not only by individual participants of such demonstrations, but also by those organizing it. Authorities do not only have the negative obligation not to interfere, but also the positive obligation to take all necessary measures to guarantee the free exercise of the rights. A demonstration may annoy or give offence to the persons opposed to the ideas or claims that it is seeking to promote. The participants of the demonstration must, however, be able to hold the demonstration without fearing they will be subjected to physical violence by their opponents; such a fear would be liable to deter associations or other groups supporting common ideas or interests from openly expressing their opinions on highly controversial issues affecting the community.¹²

¹² Platform “Arzte fur das Leben” v Austria, Judgment of 1988.

Similar to the right to freedom of expression the rights to freedom of assembly and association are subject to certain limitations. However, these limitations need to be prescribed by law and necessary in a democratic society. The grounds for restriction include: national security or public safety, protection of health or morals and protection of the rights and freedoms of others.

Article 4 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (1990), stipulates that:

law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result. Article 5 goes in more detail stating that: whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall: (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved; (b) Minimize damage and injury, and respect and preserve human life.

Another document that deals with the proportionality of the use of force by government officials is: the Code of Conduct for Law Enforcement Officials, adopted by the UN General Assembly (1979). Article 3 of the Code stipulates that:

law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty. This provision emphasizes that the use of force by law enforcement officials should be exceptional; while it implies that law enforcement officials may be authorized to use force as is reasonably necessary under the circumstances for the prevention of a crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders, no force going beyond that may be used. In no case should this provision be interpreted to authorize the use of force which is disproportionate to the legitimate objective to be achieved.

Dispersal of the peaceful demonstration by using excessive force, that was not necessary for any of the above-mentioned purposes, is a clear example of a grave breach of the rights to assembly and association. The demonstration that started on November 2, was held in accordance with the requirements of Georgian legislation. The Tbilisi Municipality received a notification form the organizers of the demonstration

prior to the demonstration. Apart from the end date, the notification contains all necessary requirements set by article 8 of the Georgian “Law on Assemblage and Manifestations”. In addition, requests of the demonstrators did not represent a call for subversion or forced change of the constitutional order of Georgia, infringement on independence or violation of territorial integrity of the country, which constitute propaganda of war and violence and trigger a national, ethnic, religious or social confrontation (Article 4.2. of the “Law on Assemblage and Manifestations”).

The use of excessive force that was documented and witnessed by the media, among others includes:

- Fierce beating of the demonstrators. Individual demonstrators were severely beaten by several (usually four to five) law enforcement officials;*
- After the dispersal of demonstrations in front of the Parliament building, on Rike and near the office of Imedi TV as well, dispersed demonstrators were followed by special task force representatives after actually leaving the scene of the demonstrations. Demonstrators were captured and beaten in small dark streets and entrances of nearby buildings;*
- Some law enforcement officials deployed for the dispersal and who were most active, did not wear any uniform or identification mark. The only symbol which made them different from the crowd was black masks;*

One fact that needs to be noted is that approximately 400 demonstrators were subjected to administrative process for taking part in the “illegal demonstration”. The majority of those people were fined 400 GEL.

Stemming from the above, the dispersal of the peaceful demonstration by using excessive force was not necessary in a democratic society. The true reason behind the violent dispersal was to instil fear in the demonstrators and the public at large.

Obligation to respect the right to property and the Imedi Case

According to Article 1 of the Protocol No. 1 of the European Convention on Human Rights and Fundamental freedoms:

*Every natural or legal person is entitled to the peaceful enjoyment of his possessions.
No one shall be deprived of his possessions except in the public interest and subject to*

the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

In order for an interference with property to be permissible, it must not only serve a legitimate aim in the public interest, but there must also be a reasonable relationship of proportionality between the means employed and the aim sought to be realized. A fair balance must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights.

When the actual act of seizing a (or deprivation of) property takes place, compensation is implicitly required. For example in the case of *James v. the United Kingdom*, European Court observed that:

As far as Article 1 [of Protocol No. 1] is concerned, the protection of the right to property it affords would be largely illusory and ineffective in the absence of any equivalent compensation. Clearly, compensation terms are material to the assessment whether the contested legislation respects a fair balance between the various interests at stake and, notably, whether it does not impose a disproportionate burden on the applicant...

In any case the amount of compensation should at least be reasonably related to the value of the property.

Almost one month after the forceful entry of the office of Imedi TV station by Georgian Special Forces, the material damage has not yet been calculated. What is known to the Georgian public is that a criminal case has been initiated against the company as a legal person, which was followed by a suspension of the broadcasting license. Whatever the outcome will be, the damage caused by the forceful entry into the TV company, the damage needs to be compensated by the state. In order for compensation to take place, Imedi TV representatives first need to be granted an opportunity to calculate the material damage and secondly, they need to have the possibility to apply to a national court and claim compensation.

In addition, there are many question marks regarding the legality of the actions of the Government with respect to the suspension of Badri Patarkatsishvili's property rights and business interests. Under no circumstances can seizing of property for political purposes be accepted.

Recommendations

- **The Human Rights Centre demands an independent and fair investigation of the above-mentioned facts.**
- **The Human Rights Centre requires punishing all those responsible of violating the Criminal Code of Georgia.**
- **The Human Rights Centre demands immediate compensation of the material damage caused by the destruction of the property of Imedi TV.**

*Presidential Elections*¹³

Introduction

The Government of Mikheil Saakashvili which came into power as a result of the “Rose Revolution” in the autumn of 2003, has successfully implemented a series of economic reforms that lead to a boost in foreign direct investment and steady economic growth in the country. However, an aggressive state building policy, intensively supported by both the United States and Europe, created a political imbalance. The political opposition was too weak and disorganized to counterbalance the government, whereas financial assistance from the west for local watchdog NGOs was dramatically decreased. Some of the major problems that developed as a result of the political imbalance include: formation of elite corruption, weakening of the judiciary, summary killings carried out by government officials and unprecedented prison overcrowding.

Public dissatisfaction reached its peak in late October when political parties from the opposition created a coalition and started organizing demonstrations. November 2 became a starting point for mass demonstrations¹⁴ which continued until November 7th when demonstrators were violently dispersed. Saakashvili introduced a state of emergency on the same day. Emergency rule allowed the restriction of fundamental rights including the freedom to receive and impart information and the freedom of assembly and association. Two television companies, Imedi TV and Caucasias, were taken off the air a few hours before introducing the state of emergency.

On November 8th, Saakashvili announced Presidential Elections, which would be held on the 5th of January 2008. The international community stood firm in requesting an immediate lift of the state of emergency to allow for a just and fair pre-election campaign. As a result, the state of emergency was lifted on November 16th. However, Imedi TV - the only television company that broadcasts in the whole territory of Georgia and which was critical of government actions - remained off the air after its broadcasting license was suspended.

Members of the Coordination Council of the Coalition of Independent Georgian NGOs (hereinafter: the Coalition for Democracy¹⁵) decided to unify their resources to carry out extensive monitoring of

¹³ Simon Papuashvili, Human Rights Centre, “Preliminary Report on Georgia’s Presidential Elections 2008”, Tbilisi, 11 January 2008.

¹⁴ It was estimated that the number of demonstrators present on the first days of demonstrations reached 150 000 people.

¹⁵ The Coalition for Democracy unifies over 200 independent Georgian NGOs.

the Presidential Elections of January 5th. This preliminary report contains information and findings of the Human Rights Centre (HRIDC) with respect to the three phases of the Presidential Elections: the pre-election, election and post-election periods.

1. Violations observed in the pre-election period

Since the announcement of the date of the Extraordinary Presidential Elections, the Centre has collected information on the breaches of the requirements of Georgian legislation during the pre-election campaign. The report compiles information that has been grouped in three categories:

- Direct/indirect pressure of voters;
- Abuse of administrative resources; and
- Voters' list fraud.

1.1. Direct/Indirect Pressure

NGOs Revealed Violations during Pre-election Campaign

Non-governmental organization “International Society for Fair Elections and Democracy” provided civil society and media sources with new information about the violations revealed during the pre-election campaign. Those violations were discovered during monitoring carried out between 17-24 December.

Eka Siradze-de-Lone, the executive director of “Fair Elections”, stated during the briefing at the media centre of NGOs involved in monitoring, that the observers were sent to all 75 election districts. According to one of the observers in Batumi, activists of the National Movement distributed food products to voters in exchange of their ID numbers. Those who did not give IDs were not handed food.

Activists stated that they needed the ID numbers in order to collect supporting signatures for their presidential candidate. Representatives of “Fair Elections” asserted that the deadline of the registration process had already expired.

Observers from the Chiatura election district stated that a young man tore down Mikheil Saakashvili's election poster in the street and was cruelly beaten by police officers. The unconscious man was taken to the hospital. Public officials in other districts demanded their

employees to take photos of the ballot paper after they marking who they have voted for. Afterwards, they would have to show the photo to the employer to inform him/her. Eka Siradze-de-Lone stated that their organization would continue observing the pre-election campaign until January 5th and then they would provide the mass media with information.

Students Trapped in Employment Programme

The students of the Akaki Tsereteli State University in Kutaisi appealed to the Human Rights Centre's Kutaisi Office. On December 23rd 2007 they were invited to Lado Meskhishvili Theatre in Kutaisi and were not allowed to leave the theatre hall for about one hour.

The frightened students, who preferred to stay anonymous, said that, "On December 22nd, representatives of the National Movement got in touch with us and asked to go to Kutaisi Quality House (they call it the Office of Victory) in order to be registered for the Students' Employment Programme. They asked us to bring the IDs of our parents too. We went to Kutaisi Quality House; they wrote down our data and told us to go to Lado Meskhishvili Theatre in Kutaisi because the process of taking our signatures was to be held there. We were taken to the theatre by two buses; we had to wait there for a while and finally were able to enter the building. We found pre-election materials and flags of presidential candidate Mikheil Saakashvili. Several activists were running in the theatre hall waving flags and shouting "Misha-Misha"."

Later, the students discovered they were on the forum of the National Movement's Youth Union. The forum was attended by local young Nationalists together with their "colleagues" from Tbilisi. When the girls realised that the registration for the employment programme was only a trick to take them to the forum, they decided to leave the theatre, but it turned out to be impossible.

"Two men were standing at the exit. They refused to open the door. "To entrance was your own choice, but you will not be able to leave this place until the event is over," they told us. When we expressed our protest, they started to ask who we were, from which district and who our coordinator was. This argument lasted for approximately one hour. In the meantime, the number of people who wanted to go out dramatically increased. I remember one girl who was crying. It turned out that her husband called her on the phone and told her their baby was crying and asked to come home immediately," one of the students told us.

Finally, the guests from Tbilisi learned about the problem. One of the guests came down and made the man standing at the exit open the door. The students were finally free to leave.

Opposition was Terrorized

NGOs accuse the government of human rights violation during the pre-election campaign. Human rights defenders mention oppression, threatening and physical abuse of voters and demand an adequate response from responsible bodies.

According to the Human Rights Centre, the offices of the United National Movement are officially located in private buildings, but in fact representatives of the ruling party are holding pre-election campaign activities in the buildings of local government and they are agitating and taking punitive measures against those people who do not support them.

Almost in every district of the Kakheti region, local self-governments work in favour of the United National Movement. After the observation it turned out that during working hours and especially reception days, the heads of Saakashvili's election staff met each other in the cabinet of the governor. The citizens, who have applied to them for assistance, have received promises. In addition, when the district governor presented his work implemented through the use of local funds, he is accompanied by activists of the National Movement. They are distributing election posters and booklets among people. Although the Georgian Election Code permits governmental officials to participate in the pre-election campaign, representatives of local self-government are actively involved in these processes," stated Lia Khuroshvili, the lawyer of the Kakheti office of the Human Rights Centre.

According to the lawyer, members of the Election Commission, police officers, the prosecutor's office, District Branches of Subsidy Agencies, the Tax Inspection and the Department of Revenue are actively involved in the pre-election campaign.

Human rights defenders declare that representatives of local self-government firmly demand their colleagues not to cooperate with the election offices of other presidential candidates than Mikheil Saakashvili; otherwise they will be fired.

During the monitoring of the pre-election campaign, we observed the following in the Kvareli district. On December 11, Levan Gachechiladze, the presidential candidate of the United Opposition, met Kvareli residents in the Culture House. The medical staff of a maternity hospital attended the meeting and they were consequently dismissed.

Maia Kikoleishvili, the head of the maternity hospital, was warned by the local self-government that if a similar situation occurs again, she will be dismissed as well. Zaza Lomidze, the deputy governor, warned the employees of the Culture House not to attend the meeting. In order to check the staff, one of them was ordered to record the meeting in the Culture House on video. Vano Khandurashvili, an employee of the Kvareli fire department, representing the United Opposition in Kvareli Election Commission #3, was threatened and summoned to the quarters of Koba Burkiashvili, the Kvareli Municipality governor. He was demanded to support the National Movement. Other employees of governmental bodies were also pressured. For instance, Ramaz Kerechashvili, the Gurjaani governor, forced his employees to write their resignations which are not registered at the chancellery. The resignation letters are on the governor's table and in doing so he tries to blackmail his personnel," said the lawyer.

According to the Human Rights Centre, throughout the Kakheti region most violations of the law were observed in the Kvareli, Signagi, Gurjaani and Telavi districts.

During the visit of the presidential candidate Mikheil Saakashvili, the participants of the presidential programme "Patriots" arrived by busses and they were represented to the society as Saakashvili supporters and potential voters. In fact, most of them do not have any right to vote in the election. Saakashvili and his supporters often announce on television that people all over the Kakheti region had arrived to support Saakashvili.

The taxi drivers in Kvareli and other districts were forced to put up Saakashvili's posters on their cars with the slogan "Saakashvili and I Will Win."

Aminat Alieva, the head of Election Commission #12 in the village of Tivi, and Alik Aliev, a member of the Kvareli Municipal City Council, took IDs from voters and have not returned them yet. Tivi is located within the Akhalsopeli country and it is populated by ethnic Leks. Activists of the National Movement put Badri Taturashvili, a member of the Kvareli Regional Commission in their car. This person is supposed to be supporting the United Opposition in the village of Sanavardo. Badri Taturashvili was physically abused by so called "Black Gela". According to our information the instruction was given by David Adeishvili, brother of the General Prosecutor, "declared human rights defenders in Kakheti.

Vazha Varadashvili, the head of the Kvareli election staff of the presidential candidate of the United Opposition, is of the opinion that Kvareli residents are recruited to join the local and regional governments and they are well aware of the methods of falsification in this region and that is why the violations are mainly observed in Kvareli. A tense situation also arose in the villages of Mtisdziri and Akhalsopeli. General Prosecutor Zurab Adeishvili comes from Mtisdziri and MP Marika Verulashvili is from Akhalsopeli, who is at the same time the president's spokeswoman. Of course they do not want to lose the election in these villages. Thus, they are applying to all measures," stated Vazha Varadashvili.

According to Vazha Sepashvili, the head of Badri Patarkatsishvili's election headquarters, they faced the same problems too. They tried several times to rent a building in the city for their election activities centre, but all negotiations with the owners were cancelled. As the head of Patarkatsishvili's headquarters states, the district police was actively involved in the process. They oppressed and forced the owners of commercial spaces not to rent to representatives of Badri Patarkatsishvili. The headquarters of the presidential candidate then located to one of the private houses, whose owner ran a store there before. The store had closed since tax inspection decided to check the accounts of individual entrepreneurs.

"Two men entered the shop. They bought two cigarette boxes and I immediately gave them the receipt. Then, they inquired who my family members and I intended to vote for during the elections. I did not answer them. Finally, they told me that they were from the Tax Inspection and told me to vote for Mikheil Saakashvili on January 5th. They said they have counted how many votes Saakashvili should receive and if it is not enough I would have some problems. If I obey their orders, they would discharge me from a fine," said the shop assistant.

Sighnaghi district judge, Tamaz Jaliashvili, fined lawyer Tamaz Bezhashvili, the head of the Sighnaghi election staff of the United Opposition, one hundred lari. Bezhashvili said that the judge had found him guilty based on a report of a police officer, accusing him of minor hooliganism. "On December 20th, police officers started an argument with my son, Tsotne Bezhashvili, who is also actively involved in the pre-election campaign. They wanted to provoke him. On the next day, I went to Tbilisi. The police station was nearby. Before the car arrived, I tried to find out from Ilia Kutsikashvili what complaints they had about my son. During our conversation he accused me of minor hooliganism and drew up a detention report on me," said Bezhashvili, who thinks that the incident was a form of political revenge.

Our attention was attracted to another incident in Sighnaghi. Witnesses say that police officers, investigator Giorgi Elizbarashvili, and others threatened Zaza Barnabishvili, a local resident, with planting drugs on him unless he voted for Saakashvili. Zaza told his father about the threats and the latter tried to find out more from investigator Elizbarashvili. During the conversation, the father of Barnabishvili was arrested for having injured the investigator and he was sent to prison. Zaza Barnabishvili escaped.

Nobody at the Kakheti main department of the Georgian Ministry of Internal Affairs confirmed the incident. Representatives of the Sighnaghi police say that Bezhashvili committed a crime and he was not fined for political reasons.

Representatives of the Tax Inspection also deny oppressing individual entrepreneurs. The Kvareli district Administration also does not agree with the complaints; they claim that almost every employee of the administration acts according to the law.

Levan Bezhashvili, the head of Mikheil Saakashvili's election staff in Kakheti, agreed to comment on the situation. He thinks that the pre-election campaign is in compliance with the law. "I do not believe that it could even be possible that people are dismissed on the basis of their political views. However, I will find out about the Kvareli maternity house. We plan to cooperate with those NGOs who will monitor the elections on January 5 2008. We will respond to every violation. The government does its best to hold fair elections. As for the accusations from the opposition, I think that they are exaggerating the situation in order to gain more votes," said Levan Bezhashvili.

Authorities are Accused of Persecuting Opponents

"The district governor persecutes members of district election commissions. They are invited to the Administrative Board and demanded to work against the opposition;" "Members who represent the United Opposition in Election Districts, have their holidays cancelled; they are called back to the offices and are prevented from working in support of their candidates;" "Several election districts were closed for uncertain reasons. Voters cannot check their names in the voters' lists," similar statements are made by representatives of the opposition and NGOs who monitored the pre-election campaign.

Zviad Kviralashvili, a representative of the United Opposition, accuses local authorities of persecuting their supporters. He said that Ketevan Paposhvili, a commission member of the Kalauri Election District in Gurjaani Election County # 12, had her vacation cancelled after the local

authorities learned she supported the United Opposition. She was demanded to support the presidential candidate of the United National Movement.

“Paposhvili was called to the Gurjaani Municipality Administration to meet the district governor. The latter demanded her to stop her activities in favour of the United Opposition; they threatened her with a demotion,” said Kviralashvili who added that many other people, who support the opposition, cope with similar problems. “Several days before Levan Gachechiladze, the presidential candidate of the United Opposition, visited the Kakheti Region, our representatives were informing people about the date and place of his visit. In the village of Shashiani police officers detained our representatives. Law enforcement officials demanded them to stop providing people with information, but soon let them free. Because of the situation we were unable to inform people properly,” said Zviad Kviralashvili.

The governor and some other public officials were oppressing supporters of the opposition. Another member of the opposition, a representative of “New Rights”, Zurab Kandelaki, confirmed this. “In the village of Chumlaki, Ekaterine Shushaberidze, a member of the election commission, was also oppressed. She was forced to submit her resignation. Similar violations were witnessed in almost every election commission throughout the Kakheti Region. We are trying to make similar violations public and demand a response, though in vain,” said Zurab Kandelaki.

NGOs have observed the pre-election campaign very actively and they have some information about violations.

Representatives of the Human Rights Centre state that voters from the Kvareli District informed them that some election districts are closed. “Our representatives checked the information by arriving during working hours. Several election centres, for example in the village of Akhalsopeli, were really closed. Voters could not check their names on the list. Nani Kevkhishvili, a member of the election commission of Akhalsopeli, stated in her conversation with the Centre that she had come to the office in the morning and found it closed. The reason for this was the untidiness inside the office; but it cannot excuse a breach of the legislation,” said lawyer Lia Khuroshvili.

According to locals, the election district was closed on the orders of the representative of the Kakheti Regional Administration and the Kvareli District Governor, because the polls carried out by activists of the “United National Movement” revealed that the Akhalsopeli residents do not support Mikheil Saakashvili.

Lela Taliuri, head of the Kakheti office of the Georgian Young Lawyers Association (GYLA) focuses her attention on the human rights violations during the pre-election campaign.

“During Saakashvili’s visit to Telavi, on December 10, Telavi public schools were ordered to meet the presidential candidate. Children informed us about it, but we would rather keep their names anonymous. Lessons were cancelled at schools because of the visit. We know that they made special lists of those pupils who attended the meeting. The organizers were eager to take as many people to the meeting as possible.”

As for representatives of the United Opposition and their presidential candidate, they were not allowed into the Telavi State Theatre because of on-going repair works. However, a day before, Mikheil Saakashvili met people at the State Theatre and had not encountered any problems,” said Taliuri.

Representatives of the National Movement state the accusations against them are groundless. Badur Guliashvili, deputy Regional Governor, stated that the opposition tries to increase their rating by making similar groundless and loud statements. “Nobody is harassed. Their complaints are groundless. Nobody has raided the offices of any political parties; neither was anyone kidnapped. There are no violations in election districts,” said Guliashvili.

Levan Bezhashvili, the Chairman of the Legal Committee of the Georgian Parliament, stated that the accusations on not allowing Gachechiladze into the Telavi State Theatre aim to increase tensions during the pre-election campaign. Bezhashvili is the head of the Saakashvili’s election staff in the Kakheti Region.

“We investigated all incidents and discovered that our opponents made completely groundless accusations against us. We have the statement of Neli Tskitishvili, the head of the regional branch of the political union “Tavisufleba”, in which she demanded the Telavi Election County to give a space to their union in the Telavi Culture House. The chairman of the election commission satisfied the request; consequently they had a chance to meet voters. But, finally they did not like the Telavi Culture House and decided to hold a meeting in the street. It is not a problem, unlike those groundless accusations which aim to increase tensions during the pre-election campaign,” said Bezhashvili.

Shop Windows of the Opposition Leader were Smashed

On December 8, at approximately 3:00 AM, unidentified individuals smashed the windows of the shop owned by Oleg Sandroshvili, the head of the election staff for presidential candidate Levan Gachechiladze.

Oleg Sandroshvili's neighbours informed the owner about the incident over the telephone. "The barred windows were smashed by large stones. The stones are inside the shop and the walls were damaged from the stones as well. It was not a surprise for me because a day before they broke some of our shop windows as well."

Residents of the Aspindza Street # 38 confirm Oleg Sandroshvili's statement about the previous incident. Oleg Sandroshvili's shop closed as a result. There were only several empty counters in it, so there was nothing to take. "The reason for breaking into a shop is to take something valuable from there," said Oleg Sandroshvili.

The head of the election staff connects the incident to political oppression. "It is not committed by hooligans from the area. It is a well-organized attempt to threaten me and my supporters. Before the incident I was warned and threatened. My relatives and friends were also called and threatened..."

According to Sandroshvili, he and the people close to him have been mistreated since November 2, when the protest demonstration started. "I took a large group of people to the demonstration. Certain people did not like it; they could not imagine that so many people from Akhaltsikhe would ever go to the demonstration. They started protesting on the same day. Most of them could not get in touch with me after we returned to the town. I could not get in touch with some of them at all. They told me that they were threatened and could not support me any longer. Of course I cannot tell you their names."

Sandroshvili thinks that the person who smashed the windows tried to threaten his supporters and wanted to show that they can damage ordinary activists easier than they dared to do with the head of the election staff. "It is a simple act of hooliganism and everybody knows that I will not be scared by someone throwing a stone at my shop."

Shalva Dalalishvili, deputy governor of the Akhaltsikhe Municipality, considers that the incident is a crime against the government.

“It does not make any difference who is the owner of the shop; in any case it is hooliganism. All similar cases damage the government. Because of such situations, the government loses its supporters during the pre-election campaign. We call on everybody who supports our government to cancel their intentions. The government can win the elections without such illegal activities,” said Dalalishvili.

The Akhaltsikhe district police department launched an investigation into the incident. Police officials refused to comment on the incident.

Government Prevents Levan Gachechiladze from Opening Election Office in Abasha

Members of the election staff of presidential candidate Levan Gachechiladze remained without an office in Abasha. It is already the third occasion they were obliged to leave office after having signed the lease contract and paid the rent. The owners of the offices cannot inform them on the exact reasons for the refusal. Kakha Mikaia, a member of the political council of the political movement ‘Tavisufleba’, stated that it is a another provocation from the government. According to his statement the brains behind the incidents are Badri Chachava, the Abasha Municipality Governor, and Davit Darsmelidze, head of the Police Department.

“I will not allow the United Opposition and Levan Gachechiladze to open an office here,” stated Badri Chachava according to Kakha Mikaia. “Chachava has kept his promise and members of Levan Gachechiladze’s election staff were forced out of three offices. The district governor openly opposes the United Opposition. I warn Chachava and Darsmelidze, who threw nails on our way to Tbilisi at the beginning of November and did his best to prevent members of the opposition from attending the demonstration on November 2. We will open an office in Abasha and prove to them that the local people will not support Mikheil Saakashvili!

Other members of the United Opposition also complain about problems they have encountered in Abasha during the pre-election campaign. Murad Kvantaliani, the coordinator of the political movement “Tavisfuleba”, said: “The government used all measures to prevent us from renting an office. The owners of spaces forced them out for uncertain reasons. They were supported by the municipality administration, police department and the Department of Constitutional Security.”

Zurab Kuprava, the head of Levan Gachechiladze’s election staff, speaks about the pressure on teachers in the Abasha public schools. He said that the population is being seriously threatened. “Teachers from public schools are invited to the meetings of the District Municipality where law

enforcement officials give them precise instructions. If teachers do not vote for Mikheil Saakashvili they will lose their jobs based on their personal resignation letters. Representatives of the government and the police department demand all people to write such a letter. In most occasions, governmental officials focus on taxi drivers who we usually hire. Taxi drivers were demanded to provide law enforcement officials with precise information about our itineraries.’

Members of the opposition in Abasha intend to publish a list of dead people whose names are most likely to be used in favour of Mikheil Saakashvili. “Activists of the National Movement have written down the names from grave stones in Norio, Sujuni, Old Abasha, Sakacharao and other villages. Those names will occupy an honourable place on the list of Saakashvili’s supporters. It is not necessary to have real ID numbers of dead people; their names are essential. In addition, those people should have died within the last two or three years. Each activist has to find twenty names,” said Murad Kvantaliani.

Badri Chachava categorically denies the accusations made against him and intends to appeal to the court for slander. However, the former judge accidentally forgot that according to recent amendments introduced to the legislation slander is no longer a crime in Georgia.

Badri Chachava: “I know neither Mikaia nor Kuprava. I will bring suit against them for slander. They are liars and cannot have any complaints about me. How could I prevent a private person from renting an office?! Have I thrown nails on the road?! I have my own business and never involve myself in politics. I only concern myself with economic matters.”

The governor got particularly annoyed at seeing journalists in Abasha. Badri Chachava got furious when journalists were using an audio recorder and a photo camera. He immediately left the administration building in order to avoid being photographed.

Opposition Members Relatives’ Businesses Closed

Since November 7th, tax inspectors have begun to raid businesses owned by relatives of opposition party members in Batumi. These private businesses have now been closed. Although the decree allowing this mentions an “immediate raid for tax inspection”, the inspections began fifteen days after the decree was enacted.

Thirty-six employees of the Bumerangi shop, located at #115 Chavchavadze Street in Batumi, have not been able to work for a month. Officials from the tax inspection agency closed the shop on November 7th in order to raid it, but have not yet begun their search.

Bumerangi is registered to entrepreneur Zebur Dekanadze, but the official owner of the shop is Mikheil Tavartkiladze, brother of the leader of the Adjara branch of the People's Party, Djumber Tavartkiladze.

The entrepreneur stated that the financial police and tax inspection agency entered their shop based on an anonymous letter. "According to the letter," Dekanadze says, "unregistered goods were delivered to the supermarket and sold in violation of the tax code. The anonymous letter also stated that the entrepreneur conducts dirty accounting and hides his real income."

Based on this information, the shop was closed on November 7th and a 15-day term for executing a search of the business was granted on November 8th by the Batumi Civil Court.

"They could not produce any court decision allowing them to close the shop," said Tavartkiladze, the shop's owner. "I offered to let them start the raid and if they found any violations they could close it."

The immediate raid by tax inspectors ended with the drawing up of a programme of issues that should be investigated and the seizing of the shop's accounting materials. On November 22nd, the deadline for the execution of the raid lapsed without the actual inspection being carried out at all. The Batumi Civil Court has received a new application and granted an extension. "The large amount of possible illegal activities renders the raid unable to be carried out within the given time," the court decision stated. Judge Khatuna Bolkvadze granted the tax inspection agency an additional fifteen days. That decision was appealed in the Kutaisi Court of Appeals.

"My client and I have unsuccessfully appealed to the Batumi tax inspection agency to start their inspection," said lawyer Malkhaz Abuladze. "The long-term closure of the shop caused material damaged for the owner as all perishable products have spoiled. We demanded the right to register and resume all activities, but they refused our request."

On November 23rd, another unit owned by Alkazar Baghaturia, the father of Jondi Baghaturia, was closed in Batumi. “I own 50% of the JSC Rubber-Technical Factory in Batumi,” said Alkazar Baghaturia. “On November 23rd, I was invited to the Department regarding the closure of our business. Before the trial started, officials from the financial police visited the factory. They did not wait for the court’s decision and sealed the doors. On November 26th, they began their inspection but did not state the exact reason for this unplanned investigation.” The owner of the enterprise stated that the only reason for the raid is that he is the father of Jondi Baghaturia. “They did not tell me about it, but leasers of some space in our factory were warned to leave and were told that the income of the factory was transferred to the budget of the opposition.”

The Kandeli computer training centre, founded by Murman Dumbadze, the deputy of the Adjara Supreme Council of the Republican Party, has also been closed. Dumbadze stated that officials from the tax inspection agency were artificially prolonging the duration of the inspection. “I asked them to start the raid on time because delays could damage our business. The inspector who was ordered to raid the enterprise said he felt bad himself. Their goal is to prolong the investigation and cause damage for us.”

Eldar Varshalomidze, the deputy head of the Batumi tax inspection agency, refused to comment on the situation. “I am not making any comments. It is not a suitable topic for comments and as soon as the investigations finish, the units in question will open,” he said, just before cutting the line.

MP from the Opposition Was Physically Assaulted

Merab Khurtsidze, a member of the parliamentary party “Our Georgia”, was attacked and beaten by five unknown individuals. The MP said in his conversation with Medianews that the young men of about 30-35 years old were waiting for him in front of his house when he got home. He also added that he could not recognize any of the attackers. The attackers were not armed.

The injured MP was taken to the Otar Ghudushauri Hospital where doctors concluded that he had high blood pressure, felt sick and had some bruises on his face and head. At this stage he needed hospitalization, however his overall health condition was satisfactory.

Leader of the party “Our Georgia”, Valeri Gelbakhiani, stated that the incident was some sort of political revenge. He stated that Khurtsidze had been threatened several times before.

“It was a message from the government which started its presidential campaign with terror and will also end it with terror. We have been threatened personally by unidentified individuals; they threatened us with raiding our houses, kidnapping and physical assault. As far as we know, yesterday an initiative group introduced Badri Patarkatsishvili as a presidential candidate and the first reaction to it was the beating of Khurtsidze. He had assumed a position in parliament as a member of the ruling party; but he left the National Movement after he joined our party. The leading party was oppressing him for him leaving the party. We do not really care about the reasons for attacking the MP, we believe that it was political revenge,” said Gelbakhiani.

The leader of the party said that last night they appealed to Nino Burdjanadze, the then Interim President of Georgia, and Vano Merabishvili, the Minister of the Internal Affairs, about the incident. “Khurtsidze and I are often times being threatened over the telephone. As almost all phones are wiretapped throughout Georgia, it should not be difficult to find those responsible. But when the government uses excessive violence, I am completely sure that the incident will not be reacted to at all,” said Gelbakhiani.

The leader of the party intends to petition the Head of the European Commission Delegation to Georgia. “The first issue in my petition will be the beating of Khurtsidze. Other problematic issues will be the future elections and current violations of the law. Yesterday, we received the registration forms for presidential candidates at the Central Election Commission which must be printed at printing shops. However, we found out that almost all printing shops are ordered not to print the forms delivered by the representatives of Badri Patarkatsishvili. Although one of them initially accepted our offer, two hours later they called us and refused. The reason for this was that they had been threatened. We tried other printing offices as well, but received similar replies from all of them. Thus, we had to make copies of the forms,” said Gelbakhiani.

Konstantine Gabashvili, chairman of the Parliamentary Committee for Foreign Affairs, member of the parliamentary majority, condemned the incident in his conversation with Medianews. However, he does not agree with the statement that Khurtsidze was assaulted for political reasons. Gabashvili said that it is not excluded that it was an ordinary argument between men. He also said that the incident was caused by activists of Khurtsidze’s own party and the aim of it was to increase tensions.

1.2. Illegal Use of Administrative Resources

Political Revenge

Representatives of the bureau of MP Nikoloz Kvezereli, were exiled from their office in the administration building of the local government; the room was assigned to them according to the law. The reason for the exile was his support for the parliamentary group “Our Georgia” with the leaders of presidential candidate Badri Patarkatsishvili. The MP from Gurjaani is a member of the group. The head of the MP’s bureau said that the local government was particularly annoyed by the fact that civil society actively cooperates with them.

“The incident happened at about 2:00 PM on November 29th. The Gurjaani Deputy Governor, Valeri Vardosanidze, other officials and employees of the Administrative Board broke into our office and forced us out. Before, they had warned us several times to leave the room. Although the reason stated was repair works, in fact our room does not need any repairs,” said the representatives of the MP’s bureau.

Everything started when MP Nikoloz Kvezereli left the parliamentary group “Majorities” and joined “Our Georgia”, the newly established group of MP Valeri Gelbakhiani. After the election date was officially announced, representatives of “Our Georgia” officially stated that they supported presidential candidate Badri Patarkatsishvili.

“After that statement, the Administrative Board started demanding us to leave the office more actively. Before, they did not like the fact that we actively cooperated with media sources, NGOs and representatives of political parties. The governor and former chairman of the Municipality used to accuse us of having an opposition headquarters in our office and were working against the local authorities. They did not like those people who visited us often, because they criticized them. For some time they demanded us not to let them in and to refuse to meet those people. However, we did not accept their suggestion and explained to them that their demand was unfair and unacceptable to us. Local officials were particularly irritated by the fact when “Transparency International Georgia” held a meeting with independent journalists and local NGOs. The guests discussed excessive expenditure of administrative resources before the elections. High ranking officials got annoyed by such statements and accused us of arranging a coup against them in their own building. Afterwards, when I was in Tbilisi, they broke into our office where only our female staff remained and forced them out,” said the head of the bureau, Akaki Begashvili.

Reportedly, Murtaz Shaluashvili, the head of the Mikheil Saakashvili's election bureau, has seized the key to the office from the employees of the bureau. Shaluashvili refused to comment on the situation. It is noteworthy that local NGOs claim that Shaluashvili, who is also a bailiff of the Georgian parliament, has one more than one occasion been a suspect of committing crimes before and during the pre-election campaign.. He has given orders to damage the houses of members of the opposition; Shaluashvili used his physical power to force out journalists from the municipality meeting; etc.

Ramaz Kerechashvili, the Gurjaani Municipality Governor, stated that the MP's bureau was closed because of repair works. "I do not care what their staff claims. There are repair works going on where their office is situated; thus they had to leave it. They were not persecuted on political grounds," said the governor.

It must be pointed out that there was slight reconstruction going on in the administrative building. However, they have not demanded anybody else to leave the building.

Reservists are Forced to Meet Presidential Candidate

After Mikheil Saakashvili met participants of the Patriot program funded by the president, reservists are now required to meet with Saakashvili. Reservists have received a special summons from their local municipality military units last week. The letter stated that unless the soldiers attended the meeting in the Gurjaani sporting grounds on December 11th, they face a fine of 500 lari and an official charge of resistance.

According to reports, Mikheil Saakashvili, the presidential candidate of the United National Movement, intended to visit the Gurjaani district on December 11th. He would meet with locals at the sporting grounds. Reservists from the region were already invited to attend the meeting. In a conversation with the Human Rights Centre, one reservist recalled that he was verbally warned to appear at the sporting grounds on time. "Representatives of the district military unit delivered a letter of invitation to me personally," said a twenty-five-year-old man, who wished to remain anonymous. "I read it and asked the messenger why they were inviting us. He answered that Saakashvili was arriving in Gurjaani on Tuesday and that we had to meet him. Before that, we were to go to Telavi to receive new military uniforms."

Another reservist said that he was busy at the time Saakashvili intended to meet with them, but was still obliged to be at the Gurjaani sporting grounds. “Unless I go,” the man said, “they will fine me 500 lari or put me in prison for resistance and breach of military discipline. I cannot remember the exact context of the contract, but I remember exactly that last year when I finished my courses at the reservist unit I signed a contract. It seems I took on a responsibility to obey all orders by signing that document.”

The Human Rights Centre contacted the Military Department of the Municipality and got in touch with the head of the department to verify reports of the letters being sent to reservists. Zurab Ananiashvili confirms that reservists received the notes, but he does not know the exact reason for it. “Our department recruits the soldiers,” Ananiashvili said, “We have no connection with this specific act. Our representatives who supervise the villages simply assisted the unit,” said Ananiashvili.

Temur Shakarashvili, the head of the Telavi Reservist Unit within the Defence Ministry, directed journalist inquiries to Irakli Vanishvili, his deputy. “On December 11th, we have invited the reservists. We intend to take them to Telavi where we will give them new uniforms and this event is not connected with Mikheil Saakashvili’s visit. I did not know that he was arriving in Kakheti,” said Vanishvili. The Human Rights Centre asked why new uniforms were being given out on the day a presidential candidate was arriving in Kakheti if this event was not connected to Saakashvili’s visit. Vanishvili explained it was simply a coincidence.

A short time before Saakashvili resigned from the Presidency, he visited Kvareli, a town in the Kakheti region. The Governors, the Chairmen of the District Municipalities and leaders of local offices of the National Movement led dozens of buses with Patriot Camp participants from various districts in the Kakheti region to the meeting, which was attended by many people. Saakashvili was proud and stated that the whole of Kakheti supported his policies. He believed that the whole region was attending the meeting.

Patarkatsishvili’s Hard Life

Who is attacking the business activities of Badri Patarkatsishvili and why?

The spokesperson of businessman Patarkatsishvili stated that ever since television company “Imedi” and “Mtatsminda Park” have stopped functioning, the “Standard Bank” was next on the list. On November 24, the Georgian National Bank (GNB) appointed an interim administration for

the “Standard Bank”. The owner of the bank is the US Investment Group and it is managed by “Salford Georgia”. “Salford”, an official owner of the “Standard Bank”, protests the appointment of an interim administration for the bank on the initiative of the GNB and states that the latter acted illegally.

Standard Bank

Businessman Badri Patarkatsishvili had indirect interests in the bank. “Salford Georgia”, which implements the management of the investment portfolio of Badri Patarkatsishvili with a value of 100 million USD, stated that the seizing of the shares of “Salford” in the “Standard Bank” is part of a campaign against Patarkatsishvili’s interests in Georgia carried out by the authorities.

Irakli Rukhadze, director of “Salford”, claims that since November 7th clients of the “Standard Bank” were persuaded to cancel their accounts at the bank. Rukhadze said that such an act was aimed at the artificial collapse of the bank’s degree of liquidity which would result in the appointment of an interim administration and the company would lose control over the bank.

Representatives of the company stated that in response to the persuasion, many clients - both state organizations and people - cancelled their accounts at the bank. “Because of its financial strength, the bank managed to satisfy the demands of the customers according to Georgian legislation. We feel that the GNB violated both Georgian and international law,” said Rukhadze. He also added that the companies under the umbrella of “Salford”, people connected with the company, and its personnel have been pressured by various governmental bodies in the last two weeks. “On November 21st, after a twenty-hour interrogation, I was found guilty groundlessly and they charged me for forced trading under paragraph III of the recently amended article 339.1, of the Georgian Criminal Code. Several people were interrogated and they conducted a search based on that charge. In addition, representatives of the Financial Police and the Ministry of Internal Affairs raided “Georgian Glasses and Mineral Waters”, “Telenet” and “Standard Bank”. These companies only have one thing in common - all of them are managed by “Salford,” said Rukhadze. Thus, the representatives of “Salford” think that the situation has a political character and they think that the current events cause serious concern in the financial sector for foreign investments in Georgia. Representatives of “Salford” presented a group of lawyers from the leading international law firm “Debevoise & Plimpton LLP” who will protect the business activities of “Salford”.

Giorgi Kadagidze, the head of the interim administration, stated at the briefing yesterday that their introduction to the bank was caused by the problems concerning the liquidity of the “Standard Bank”. This problem resulted from the increased withdrawal of funds from the bank. During the last two weeks, over forty million lari has been withdrawn from the “Standard Bank”, which threatened the interests of both the bank creditors and the customers. The principal function of the National Bank is to protect their interests. That is the reason for the introduction of an interim administration for the bank. The interim administration will stay on for two months. Kadagidze explained that they do not intend to liquidate the Standard Bank. The aim of the National Bank is to promote the financial stability and protection of creditors and customers’ interests. Kadagidze stated that the interim administration was assigned to the “Standard Bank” according to all relevant laws. In doing so, the National Bank ensured the protection of the deposits of all customers of the bank and it monitors the activities which will ensure the normal functioning of the bank. Kadagidze also declared that the statement of Rukhadze was absurd where it stated that the National Bank was putting pressure on the employees of the Standard Bank. Kadagidze said that such irresponsible statements serve the collapse of the financial stability of the “Standard Bank”.

Mtatsminda Park

Linx Ltd, the company operating Mtatsminda Park which belongs to Badri Patarkatsishvili, protests the decision of Tbilisi City Hall regarding the cancellation of the 49 year contract with the company. Tbilisi authorities closed the park after armed and masked people rushed into the park at 11:00 AM on November 7.

According to representatives of Linx Ltd, despite many questions, the masked men did not produce any documents or give any verbal explanations for their actions.

Later, the Tbilisi vice-mayor, Giorgi Akhvlediani, stated that the contract on the restoration of the park was cancelled. He added that “Linx Ltd” has not paid the lease since 2005 and has not fulfilled other conditions of the contract, despite many demands.”

In addition, Akhvlediani pointed out that the “minimal sums” which were spent until now would be reimbursed.

Most of the construction works and carousels have already been finished; however some is still under construction. The park opened in September and people could enjoy it free of charge.

“We do not want the park to become another “Ar Ashenda” (a well-known unfinished building in Tbilisi) because of the inactivity of “little men” (the surname of Patarkatsishvili means little man in Georgian),” said Zaza Begashvili, chairman of the Tbilisi Municipality. “All projects initiated by Patarkatsishvili in Georgia have failed.”

According to “Linx Ltd”, none of the parties, the Tbilisi authorities being among them, that transferred the park to Linx for 49 years, provided any legal documents serving as a justification for their actions. “The only information the company has received are television statements by two high ranking officials, Mamuka Akhvlediani and Zaza Begashvili. They claimed that the Linx had been late in paying the lease,” representatives of the company said.

The company denies these accusations; it considers them groundless. “The letter signed by Akhvlediani on November 17th 2007 demonstrates that according to the government’s decision Linx had to pay the lease until November 17th 2007,” said people from “Linx”.

The Human Rights Centre read the above-mentioned letter on the following website indicated by “Linx”: <http://www.flickr.com/photos/19808610@N08/1982238468/>. The letter stated that Tbilisi City Hall assigns a one-month period to “Linx” “for them to pay the outstanding amount of the lease”.

The company categorically denies the statements made by Akhvlediani and Begashvili, who said that “small investments were made in the park, but much is still to be done.” “Although the lease contract between the company and the government envisaged an investment of five million USD, the company has in fact invested almost 25 million USD and intends to make more investments in the near future. The absurdity of their statements is demonstrated by the fact that the park was unofficially opened in September of 2007 and had been operative for nine weeks before the police officers raided it. Nearly 80 000 guests visited the park in September and October. Public officials also visited the park several times and they were fully aware of the progress made in the park,” said representatives of “Linx”.

The company holds on to its strict position and has complied with the demands of government officials. The company claims that “Linx” intends to continue protecting its rights according to the contract they have signed with the state.

As for “Telenet” and the “Georgian Glass and Mineral Waters Company”, the financial police unexpectedly raided them on November 20th. After a two-day investigation, the financial police returned the documents to the company and left the office without any explanations.

The Human Rights Centre tried to get in touch with representatives of the financial police, but none of them replied to the questions raised by the Centre.

1.3. Voters’ List Fraud

While Checking the Voters’ Lists, the Republicans Ran Into a Registered Voter, Who had Died a Year Earlier.

The opposition discovers new pre-election problems every day. For example, the Republicans have information that teachers in Kaspi are forced to visit every family and ask everyone who they are voting for. According to political party New Rights, the government will use 3 000 votes of Jehovah’s witnesses in Gori. It needs to be mentioned that Ajadar Ogli Iasimi, an inhabitant of the village of Perma in the Kaspi district, is registered in three different polling stations under three different names: Ajadar Ogli Iasi, Ajadar Ogli Iasim and Ajadar Ogli Iasimi.

Khatuna Thathanashvili: (Republican Party in Kaspi) “We have given detailed information to the OSCE monitoring mission on what is going on in the Kaspi district. We possess a universal voters’ list sent by the CEC. We also requested the voters’ lists according to polling stations but were rejected those. The reason was simple: they do not have them. We have the voters’ lists of the Kaspi district which the Kaspi District Election Commission sent to the CEC. Special groups made this list. We have started to check the voters’ list and have found many violations of election procedure. For example, there is a man called Vasil Gamdlishvili, born on December 22 1959, whose address, according to the voters’ list is Kostava Street #2 in Kaspi. A person with that name does not exist at all. Besides, it is the address of our office and we do not know that man. We have known of instances where the same person was registered under two names. For example, Maia Kazarashvili, an inhabitant of Aghmashenebeli Street # 80, is registered on the list and Kazashvili Maia, living on Aghmashenebeli Street #80, is on the list as well. There are two Shotas on the list, one is Obgaidze and the other is Obgadze. Both live on Kostava Street and both have the same house number.

Bacilashvili Gulnara, born on February, 14, 1974, is registered in Kvemochala and Vacilashvili Gulnari, born on the same day, is registered in the village of Lower Gomi. There is Cherupova Zeinab, registered in Kaspi, and Cherupovi Zeinabi, registered in the village of Perma .They are both born in 1978.

We also have Kasradze Zaza and Kasradze Genadi, who both suffer from mental problems and therefore are not allowed to vote. A court has granted a pension for mentally disabled people to both of them.

The surnames I mentioned are registered three and four times in various villages and districts. For example, the name of one person is registered in three different ways: Ajadar Oglis Iasimi, Ajada Oglis Iasim, Ajadar Oglis Iasi. Some people's names are registered without their passport data. Some are registered with their surnames only, for example, Poladashvili L., Papunashvili L., etc.

There are many so-called "dead people" on the voters' list. We ran into Baindurashvili Guram, who had died a year earlier, while reviewing the voters' list. This incident happened in Kaspi on Vazha-Pshavela Street.

Tatanashvili Omari has been dead for two years now. Janjalashvili Mariami is dead as well. The addresses of people who live abroad for 10-20 years are indicated in this way: is abroad. However, according to law, the people who are legal emigrants specify their address so they can vote in the consulate of Georgia in the country they reside. If a person is an illegal emigrant then you indicate that he/she is abroad. Here we see that all emigrants were registered identically. Such an infringement has been observed in polling station # 32. Some prisoners are on the lists as well. Also, some constituencies could not be found, for example, Khalipovi Poladi and Khalipovi Olgami.

The new method of the National Movement annoys me. Teachers are forced to visit every family in the villages Duisi and Akhalkalaki and record who they are voting for."

Mamuka Faniashvili: (New Rights in Gori) "We have voters' lists from every polling station. There are people who were born in 1924 on the list. 5-6 People out of every 40 are dead. We are going to dedicate a press conference to this issue. IDPs will have their own particular polling station. They can vote there together. The IDPs were warned that if they vote for the opposition they will be kicked out of their houses, which have been assigned to them as their legal property by the

government. The common polling station for IDPs will be established in the Regional Office of the Ministry of Refugees and Accommodation of Georgia.

Soldiers have the same problem. They have been warned that if the opposition gets even one vote from them, they will be punished. The soldiers will vote together at the common military polling station in the morning and then they will go to their own polling stations without their uniforms and vote there as well.

Some people who have passports without addresses, will vote in a common polling station, on Guramishvili Street, in the building of an old nursing home. The government plans to falsify the votes of Jehovah's witnesses. Approximately 3 000 Jehovah's witnesses are registered in Gori and the government intends to vote instead of them. The Jehovah's witnesses will not go to the elections because their faith forbids them to. Generally, the voters' lists are not arranged properly. Six million lari was apportioned for the organization of voters' lists. Nevertheless, the lists of 2003 are still in force. These are the voters' lists that stipulated the "Rose Revolution".

Representatives of the police and intelligence forces put pressure on members of the election commissions. Some are threatened with dismissal and some with imprisonment. The head of school # 5 met the teachers and warned them against supporting the opposition", states Faniashvili.

People born in 1900

In order to check the correctness of the voters' list, the Human Rights Centre checked the information about the people born in 1900, who are registered on the voters' lists. There are hundreds of people born in 1900, whose data is still on the lists. The data of dozens of these people have been checked by the Centre. The results showed that they either do not exist at all or are not alive anymore. It proves once more that there are important errors in the voters' lists.

2. Violations Observed on Election Day

The Human Rights Centre deployed mobile groups of observers, who observed elections on January 5th. The overall number of observers was 35. They were coordinated by two coordinators from the HRIDC, who were based in the Coordination Office of the Coalition for Democracy. The following types of violations of the election procedures were observed on January 5th by the observers of the NGO coalition:

1. Problems with admitting observers to the polling stations. Precinct Election Commission (PEC) members refused to admit observers from the NGO Coalition for Democracy to the polling stations;
2. Several instances of hampering the work of exit poll interviewers from the NGO “Former Political Prisoners for Human Rights” were observed. Interviewers were asked to leave the area in the proximity of the polling stations which made it impossible for them to interview voters.
3. There were uniformed police officers present at polling stations. PECs explained that police officers were needed to secure CCTV cameras in the polling stations.
4. There were cases of police involvement in the electoral process: i.e. marking and registration of the voters. There were also instances of government officials being present at polling stations in the capacity of NGO observers. Reportedly these individuals were instructed by the National Movement.
5. Not following the marking procedure enabled certain individuals to vote more than once; voters were on certain occasions not marked or not checked for marking.
6. There were many cases reported where the marking equipment was not functioning properly or not used at all, which made it impossible to check whether somebody had voted before.
7. There were instances of voters being denied registration to the additional list, despite the fact that all the documentation needed for registration was presented.
8. “Merry-go-Round” voting - There were many cases of the same individuals voting in several polling stations. Coalition observers detected and documented groups of individuals that were travelling from one polling station to another with mini buses (usually two or more buses). Bus drivers, who were reportedly paid 100 GEL and given 40 litres of gasoline, avoided giving clarification on the questions asked by the coalition observers or gave contradicting explanations about the reasons for their presence and for transporting voters from one polling station to another.
9. PEC members. National Movement representatives or unidentified individuals were pressurizing and/or instructing voters to cast a vote for a presidential candidate No5.
10. The number of voters on the voters’ lists was artificially increased on the Election Day or the day before.
11. Representatives of political parties, who had the right to observe the elections, were forced to leave the polling stations by representatives of the Department on Constitutional Safety of the Ministry of Internal Affairs.
12. On certain occasions the number of ballots counted exceeded the number of votes cast according to the voters’ list, implying a manipulation of counting results;

13. Observers reported many occasions of stuffing multiple ballots in the ballot box by voters, who immediately left the polling stations. The voting process was usually temporarily suspended, however resumed shortly after upon orders of the CEC.
14. Observers reported the presence of unauthorized individuals, who were disrupting or influencing the counting process. On certain occasions these also included violent outbursts during counting.
15. Representatives of political parties and authorized observers were denied copies of Summary Protocols.

These violations of the election procedure observed on Election Day can be grouped in the following categories: Pressure and agitation at polling stations, manipulation of the voters' list, procedural breaches, "Merry-go-round" voting and violation of the counting procedure.

2.1. Pressure and agitation at polling stations

In Kakheti, police officers physically assaulted observers from NGOs and political parties from the opposition. The incident occurred in the evening of January 8 in Gurjaani. Observers from the Human Rights Centre and Fair Elections demanded the Precinct Election Commission (PEC) to declare the results of several Polling Stations (PS) invalid. In reply to their demand the police officers from the Gurjaani Department of the Internal Ministry beat them.

The following statements could be heard at polling stations in the Kakheti region:

"Either number 5 or prison! Do not dare to deceive us!" Such words could be heard from police officers and representatives of the Prosecutor's Office dressed in civil form. "If you want to receive fuel to cultivate your plots; if you want financial allowances from social programs; if you want to maintain your job, you must circle number 5," threatened representatives of the local governments and Saakashvili supporters. To avoid suspicion of their choices, intimidated voters filled out their ballots in the open, in front of their harassers, instead of going into the polling booths. Those who chose not to fill their ballots publicly were actively "supported" by representatives and observers of the Racio Legi NGO, who in fact were activists from the National Movement. Activists from the leading party were also working against other presidential candidates in a more direct, negative way. Murtaz Shalvashvili of the National Movement was an observer from the NGO "Racio Legi" in Kardenakhi Polling Station # 33. He was shouting "Urias" (an insulting name for Jewish people in Georgia) at people who supported Badri Patarkatsishvili. Levan Gachechiladze's supporters were called traitors.

Lamara Azirashvili, a representative of presidential candidate Levan Gachechiladze at polling station # 12 in Adigeni, spoke about the physical assault of a representative of presidential candidate Davit Gamkrelidze. The chairwoman of the DEC, Iza Balakhashvili, stated everything had been going according to the procedure prescribed by the law.

The chairman of the Precinct Election Commission (PEC) of Kardenakhi polling station #32 in the Gurjaani precinct, Shengeli Guliashvili, and other members of the PEC, which represented the National Movement, influenced observers representing presidential candidates Levan Gachechiladze and Badri Patarkatsishvili. These observers were not allowed to file official complaints into the Record Book. At the entrance of the polling station, employees of the Gurjaani Municipality Administrative Board and the District Council as well as police officers were making statements in favour of presidential candidate Mikheil Saakashvili. Voters, who did not obey, were threatened and their names were recorded. In addition, Gela Mtvlishvili, an observer for the Human Rights Centre, reported he was verbally assaulted by PEC members and was asked to leave the polling station. Mtvlishvili filed official complaints into the Record Book though they remain unconsidered until the polling process finished.

In Iormugalno in the Sagarejo voting district, the chairperson of the PEC, Nari Arakh Berdiani, and her deputy, Rizvan Abasov, were following voters into the voting booth and requesting them to circle presidential candidate number 5, Mikheil Saakashvili of the National Movement. The PEC members were not handing envelopes to voters until the voters showed them their ballot papers with number 5 circled.

It was also reported that Alik Ramazanov, a voter present at polling station #15 of Chantliskuri in the Kvareli district, was directly instructing voters to circle presidential candidate number 5. This district is mainly populated by ethnic Avars, who do not speak Georgian. Voting regulations were not posted in a visible place, which made it possible for Ramazanov to join some voters, those who did not speak Georgian and elderly people, in the polling booth and to instruct them to vote for candidate number five. Thirty-one of such violations have been observed at the polling station. It later became clear that Ramazanov is a member of the National Movement. The chairperson of the PEC, Magamed Gaji Magamedov, did not react on any of the abovementioned violations of election procedures. Gela Mtvlishvili filed an official complaint on these matters with the PEC, which was also signed by other observers.

Violations were also observed at Karajala polling station #38 in Telavi. This village is completely populated by Azeri people. Voters were not marked. Otar Svimonishvili, a supporter of Mikheil Saakashvili, was following voters into the polling booth and was circling candidate number five for them. Having commented on the violations, the observers ran into problems with the chairperson of the PEC who tried to expel them from the building. He called Mikheil Saakashvili's Election Headquarters in Telavi and asked them whether he had to register the complaints of the observers into the Record Book. Finally, the observers succeeded and the complaints were registered. At three polling stations in Karajala voters were not marked, which made it possible for them to vote at various polling stations; moreover they did not have to sign the voter's list.

Similar violations were detected in almost every polling station in the Kakheti region, which is mostly populated by ethnic minorities.

In polling station #15 in the village Jugaani in Signagi precinct #13, representatives of the Department for Constitutional Security and police officials made an observer from New Rights leave the polling station. This has been confirmed by the secretary of the polling station. He was made to tear off all the complaints filed about every violation observed during the whole day.

In polling station #6 in the Avlabari voting district of Tbilisi, there were unidentified individuals present. Those unidentified individuals were trying to influence members of the PEC, as well independent observers and voters.

Unauthorized members of the National Movement were present at polling station #39 of the Samgori district in Tbilisi. In fact, the abovementioned individuals were having office in the adjacent room of the actual voting location. The members of the PEC representing the National Movement had intensive and permanent consultations with these individuals. When Londaridze and an observer of the Georgian Young Lawyer's Association (GYLA) protested the presence of the individuals the chairperson of the PEC requested them to leave, which resulted in a chaotic environment in the polling station. This chaotic situation hindered voters to exercise their right to vote.

In the proximity of polling station #26 of the Gldani district there were two mini-buses present. The people from the mini-buses reportedly tried to persuade voters to vote for presidential candidate number 5, Mikheil Saakashvili of the National Movement.

At approximately 3:00 PM there was terrible chaos at Varkhani polling station # 7 where 1 547 voters were registered. Nearly forty people were unsuccessfully trying to vote and were looking for the polling box located somewhere in the corner of the hall.

At Varkhani polling station # 7, Marekhi Datiashvili, a supporter of Mikheil Saakashvili and chairperson of the Adigeni Municipality Educational Resource Centre, was trying to control the situation in the polling station and was giving directions to people. She tried to prohibit journalists from taking photos. Other representatives of the presidential candidate from the ruling party were in the polling station as well, namely Marekhi Datiashvili's, Davit Oganezian; Petre Merabishvili, the chairperson of the National Movement fraction.

Teona Machitadze, a representative of Badri Patarkatsishvili, stated voters entered the polling station after having negotiated who to vote for and they already knew what number they would have to circle in the booth.

An observer of Levan Gachechiladze's team spoke about violations in the village of Klde: "The chairman and members of the election commission pressured observers. They made remarks: Do not stand here! Do not do that! Stop there!... I noticed that they had put ballot papers under the polling box. I immediately demanded them to raise the box. Suddenly they discussed the issue and a little girl said it was her fault. Thus they did not let me file a complaint. The whole commission was ready to beat me. I could not resist them and changed my mind about filing a complaint."

People in Tbilisi have stated that National Movement's supporters offered them money if they put an already filled-out ballot paper into the polling box and brought out an empty ballot paper instead.

Uniformed and non-uniformed police officers were mobilized in the precincts and outside the polling stations in Samegrelo; activists of the National Movement were wearing red scarves and hats. They made propagandist statements about Mikheil Saakashvili.

2.2. Manipulation of the voters' list

In the Lagodekhi district, the voters' lists have been significantly amended. On 4 January 2008, 35,142 voters were registered and included in the voters' list, but on 5 January, this number was increased to 37,018. For example 234 more voters were added to the list at Lagodekhi polling station #2; 209 names were added to the list in the polling station #3; and 93 more voters were included in the voters' list in polling station #19.

The voters' lists at polling stations #22 and 52 of the Bolnisi District have been purposely manipulated to include more voters. The amount of real voters did not exceed 600.

2.3. Procedural breaches

“The final report of Kardenakhi polling station # 33 stated that 934 persons took part in the elections. The total amount of invalid ballots from both the movable and main polling boxes was 808. We are unable to locate the additional 126 ballot papers. The Chalaubani DEC declared 30% of votes cast to be invalid; that is 11 ballot papers; I am doubtful of that fact too. I believe the data was falsified at the Velistsikhe and Vachnadzeani polling stations. As a member of the PEC I have a right to express my opinion at the meeting and demand to check the data. I can agree or disagree with the opinions of other commission members. Despite my rights, you can witness what is going on,” said Zurab Danelishvili, a critical member of the DEC for that district.

The chairperson of the DEC did not allow commission members and observers to make comments during the meeting of the Commission. After Zurab Danelishvili claimed his right to express his opinion, Begashvili called the police,” said Nana Devidze, the Kakheti regional coordinator of Fair Elections. The Chairperson of the Commission, Nato Begashvili, ordered them to lead Davit Nikolashvili, a representative of Badri Patarkatsishvili, and other observers out of the room. Everybody protested her order and the police officers, with Shota Bezhanishvili as a head of the team, started to harass people. Law enforcement officials were beating observers and public officials called them traitors.

Unauthorized individuals were present at polling stations in the villages of Vazisubani, Chandari, Dzirkoki, Vejini, Vachnadzeani, Shashiani, Kachreti, Kardenakhi and Bakurtsikhe in Gurjaani district # 12. In addition, police officers were present at the polling stations and carrying guns, even though it is prohibited by the Election Code. It is noteworthy that National Movement members and representatives of Saakashvili's Election Headquarters were at the polling stations in the aegis of the non-governmental organization (NGO) “Racio Legi”. This violation has been observed in the Bakurtsikhe election district, where Nika Nizharadze, the chairperson of the Culture Department within the Gurjaani Municipality Administration, represented the abovementioned NGO. In addition, Murtaz Shaluashvili, one of the chairpersons of Saakashvili's Election Headquarters in Gurjaani represented the same NGO in a polling station in Kardenakhi. At least three individuals represented the NGO ‘Racio Legi’ at polling stations. These individuals interfered with the

functions of the PEC members and were conducting activities of the commission; they were giving orders to PEC members. Observers filed official complaints into the Record Book.

The Human Rights Centre received information that a large number of envelopes were pushed into the ballot box in the polling station of the village of Zerti in the Gori district. Upon arrival, the Human Rights Centre found a very calm situation. 1,783 people were on the voter's list and by seven in the evening 1,750 of them had already voted. Nobody had filed an official complaint on the fact. When the Human Rights Centre arrived at the site, the observer from the New Rights party filed a complaint stating that at 5:00 PM only 800 ballot papers had been issued to voters, making it highly unlikely that the number had increased to 1700 by 7:00PM. The complaint was not registered by the Commission chairperson. The Chair did, however, note that they did not agree with the complaint.

At polling station #14 in the Poti PEC, only observers from the National Movement were monitoring the activities of commission members. Other observers were not allowed to exercise their rights.

Voters were not being marked in the 3 polling stations of the Gardabani District. The same breach of election procedure was observed at polling station #13 of the Poti precinct.

MP Tlashadze claimed that in the village of Keleti in the Kareli District, the polling station was not located in the Public School as it should have been and opposition observers were unable to find the polling site at all. Later on they learned that the polling station had been opened in the house of the Deputy Chairperson of the DEC and the polling had been conducted without any means of marking voters. MP Tlashadze stated that she was in possession of both photo and video proof of the violations and that they had been sent to international observers.

At polling stations in the village of Kabali in the Lagodekhi district, which is inhabited by Azeri people, the chairperson, the deputy chairperson and the secretary of the polling station were accompanying voters into the polling booths and were circling presidential candidate number five for the voters. Most voters were not marked and people were allowed to vote several times. They did not even show their identification cards.

Ivane Feikrishvili, a voter who is a member of the Telavi Municipality Administrative Board, visited polling station #1 in Telavi district #17 at 13:00 hours. Having left the polling booth, Feikrishvili pushed a pile of ballot papers into the polling box and rushed out of the polling station. The incident was observed by local and Latvian observers. Upon the requests of Georgian observers, the election process was ceased; the Record Book was sealed, but after the CEC directed the PEC to reopen the polling station for voting. According to Eka Tkeshelashvili, Ivane Feikrishvili has been detained. The minister stated that it is still unclear who Feikrishvili was supporting in the elections, but it does not make any difference. A criminal case was launched against the person.

A similar situation occurred in Gulgula polling station #16 in Telavi. Representatives of opposition parties present at the polling station observed that at around 15:30 hours, several unidentified individuals pushed ballot papers into the polling box. The voting process was stopped temporarily, but voting resumed shortly after on an order of the CEC. There were many unauthorized people present in the polling station, among them there were police officers dressed in civil clothing carrying guns. Official complaints on these violations have been filed.

At Kardenakhi polling station #33 of Gurjaani Precinct #12, there were 739 signatures on the voters' lists. However after the votes were counted there were 934 ballot paper, i.e. 195 more votes had been cast than voters present throughout the day. In addition, after the polling station was closed and votes were counted, members of the PEC were leaving and coming back to the station after consulting with members of the Nationalist Movement.

In the Kareli district observers for not allowed to enter the village Dvani under the guise of this region being a conflict region and the tense situation there. In addition, observers from the Labour Party were unable to file official complaints in the entire Kareli district. Other problems which arose in this district were that at three polling stations voters were not marked which made it possible for people to vote at several polling stations. In addition, the chairperson of the DEC did not know his commission members and observers at the polling stations. Also, ballot boxes were not taken from the polling stations according to official procedure. It is noteworthy that the head of the Shida Kartli election headquarters of the National Movement, Lado Vardzelashvili, comes from the village of Ruisi.

In the afternoon of January 5 there was a terrible chaos at Varkhani polling station # 7 where 1 547 voters were registered. Nearly forty people were unsuccessfully trying to vote and were looking for the polling box located somewhere in the corner of the hall.

In the Vake district of Tbilisi in polling stations #44. #38 and #63, people were not always marked or checked for marking.

At Polling Station # 3 and #4 in the Akhaltsikhe district, a voter pushing several ballot papers into the polling box. Observers tried to file official complaints, but these were not registered with the DEC.

New Rights claims that their observers were not allowed in several polling stations in the Gori district based on a late arrival to the polling site. “Chairpersons of the Commission do not know the law, which places no time restrictions on observers,” Mamuka Faniashvili, a New Rights representative, says. “For example, when our representative arrived at the polling station at 12:00 PM, he was not let in as election staff stated they did not accept late observers. We had to call Giorgi Botkveli, the head of the National Movement’s support team in Gori, for help. After that our observer was allowed in.”

Voters at polling stations in Senaki were not marked. In addition, in precinct # 18 the procedure for transporting the ballot box was breached.

Many people stopped on the Zugdidi-Tbilisi high-way near Abasha on January 5. Everybody could hear the song “Misha is great’ coming from the election headquarters of Mikheil Saakashvili. Two hours before the polling process finished the supporters of the presidential candidate could not help their excitement. Rezo Mikadze, the head of the HEADQUARTERS said: “Our excitement is equal to our victory. Mikheil Saakashvili has gained the most votes in Abasha.” Mikadze considered that he was not violating the law while singing “Misha is great” and it was not propaganda because he was 500 meters away from the polling station.

An unprecedented incident occurred in Martvili precinct # 65. The seal was taken away from the polling station # 4 for half an hour. Aleko Faghava, a representative of Levan Gachechiladze’s headquarters said: “Nika Tsulaia, an observer protested the fact. Commission members from the ruling party abused him and advised him to keep silent” Polling station # 4 also did not have a sufficient number of red envelopes for voters registered in the additional list.

A PEC member in Lekhaindrao polling station # 34 in the Martvili district looked through the filled-out ballot paper of a voter before putting it into the ballot box. Having seen that number one was circled; he tore one side of the paper and made it invalid. Similar blatant violations were observed by Mamuka Danelia, the district governor but without any response.

People tried to push extra ballot papers in the ballot box of Namikolao polling station # 32.

Guge Tsanava reported that voters visiting polling station # 9 located at Zugdidi Public School # 4 were protected from Abkhaz attackers by Georgian police. “Officers from the Zugdidi division of the Special Operations Department (SOD) and Constitutional Security Department of the Ministry of Internal Affairs were mobilized at the precinct. They introduced themselves as commission members; however later they admitted they were police officers protecting the precinct from Abkhaz.

Just after polling station #59 closed for counting, the electricity supply in the village of Orsantia in Zugdidi district was cut off. Tsitso Toloraia, a representative of Levan Gachechiladze’s headquarters bent over the polling box to protect it; but she was attacked. Activists from the National Movement mixed fraudulent ballot papers with the ones dropped from the broken polling box. However, government representatives were unable to replace the box. After a long heated discussion, opposition representatives left the polling station in protest.

2.4. “Merry-go-round” voting

It was reported that in Tbilisi several mini-buses were taking voters from one polling station to another to vote in all these stations, especially in polling station # 47 and #60. One of the drivers of told Ucha Nanuashvili, executive director of the Human Rights Centre, that the National Movement hired him to take people to different polling stations throughout the city. Mini-buses with the following license plates were observed in this regard: LEV 543, ABT 786; BER 814; NIA 949; SIO-466; COO-486; AEB-471; ABI-999; STS-836; VIV-220; ITI-180; STS-836; and LLK-684. Nanuashvili was able to gather evidence of this practice by taking pictures. The drivers stated they were contracted by the National Movement.

A similar practice was observed by the Human Rights Centre in Kutaisi where mini-buses with the following license plates were present in the proximity of polling station # 55: CAC 937 and LIG 778 The drivers claimed they were mobilized at the polling station to help voters.

“Merry-go-round” voting took place at several polling stations in the Akhaltsikhe district. A mini-bus was moving around the town and was driving a group of people. They visited almost every polling station, voted there and then moved to other stations.

“Merry-go-round” voting also occurred at several polling stations in Tbilisi at polling stations #24 and #26. There remains the question of how these people managed to take part in “merry-go-round” voting if they are marked... Supposedly, they are not marked at all or they can remove the substance from their fingers afterwards. An observer of the Human Rights Centre carried out an experiment; the observer removed the marking substance immediately and afterwards the apparatus did not detect the fluid at all.

Nine mini buses were driving around in the Gldani district transporting voters. Patrol police car # 412 was following the mini buses. The license plate numbers of the buses are NAB 987; GTO 917; RAN 758; ABG 229; LLL852; GGG354; ROO 015; MUM 894; and DII 164.

“Merry-go-round” voting was also observed at polling station # 19 of the Nadzaladevi precinct.

Alkazar Baghaturia, an activist for the United Opposition was arrested in the evening of January 5th at polling station # 21 of the Didube district in Tbilisi while trying to prevent “merry-go-round” voting from taking place. During this attempt, one of the voters accidentally dropped and broke his mobile phone. The police interfered in the incident. Having learned that my brother was there, police officers immediately arrested him. A criminal case was initiated on the ground of destruction of property. A court released him on GEL 2000.

One of the observers reported in the morning that nearly fifty mini buses were mobilized in the Didi Dighomi district in Tbilisi. The drivers were paid one hundred lari and were given fuel.

Konstantine Gamsakhurdia, leader of the political party “Tavisufleba”, started visiting polling stations in and around Zugdidi. He visited almost the whole region. Having returned from the villages of Ingiri, Darcheli and Kakhati, Gamsakhurdia stated: “Groups of activists from the National Movement and police officers are mobilized in the Zugdidi district. I noticed Tengiz Gunava, the head of the Regional Police Department, who personally drove a car for “merry-go-round” voting near the village of Darcheli.” The “merry-go-round” voting was observed at polling stations # 53, # 19 and # 9.

The Georgian population did not leave the Abkhazian territory on January 5th. Most of the IDPs voted in polling stations # 26, # 89 and # 27 located in the Enguri paper factory district and took active part in “merry-go-round” voting.

2.5. Counting

The electricity supply was cut off while counting the votes at polling station # 3 in the Akhaltsikhe district. The result of the delay was 200 more ballot papers on the table.

Human Rights Centre representatives learned that additional ballot papers had been prepared to fraud the elections in the village of Berbuki in the Gori district. After a five-minute-negotiation with the police, the electricity supply to the building was cut off. Police officers were clearly visible pulling down the electricity switch handle on the ground floor. The electricity to the village was not cut off. Women could be heard crying on the second floor, “What are you doing? Are you not ashamed? The process was so smooth during the whole day and now...” Two minutes later the power was back on, but it was soon cut off again. Many people gathered outside the building where the polling station was located, including several journalists. “Why are you panicked? Nothing is going on... You can go up and observe yourselves if there are any violations.”

The polling station was opened and entering the room, one could see ballot papers on the floor. Tsira Merebashvili from the Labour Party and Ketevan Naniashvili from the United Opposition stated that while the electricity was cut off three men put additional ballot papers on the table. Merebashvili said that, “900 of 1500 ballots had been given out during the day...Let’s see how many papers we will have now.” Later, the opposition members present said that they could not remember clearly whether observers from the National Movement had put the extra ballot papers on the table. When counting had concluded, there were 1,304 ballots on the floor with 1,134 of them supporting Mikheil Saakashvili, 154 supporting Levan Gachechiladze and 130 votes for the Labour Party. Badri Patarkatsishvili did not receive any votes.

No one has yet declared the results of the Berbuki Polling Station to be invalid. Commission members have filed complaints, and the Human Rights Centre has inquired as to why the ballot papers were being counted from the floor. The Commission Chair’s response has been because not all the ballots could fit on the table.

A member of the PEC of Akhaltsikhe polling station # 29 was pushing envelopes into the box. She took ballot papers from voters and then put them into the envelope. Nobody made remarks about the violation.

3. Violations observed in the post-election period

Lawyers from the Human Rights Centre, despite being oppressed, state that the final record of one polling station in the Vachnadzeani District was signed by someone other than the District Election Commission Chair, Ilia Dalakishvili. According to the Precinct Election Commission (PEC), presidential candidate Mikheil Saakashvili received 85 % of votes in that particular polling station. Kristine Magamedov, a resident of the village of Chantliskuri in the Kvareli District, recently called the Human Rights Centre to detail the reprisals she faced after confirming election violations on January 5th. Magamedov said that immediately prior to her calling the Human Rights Centre, Alik Ramazanov and other members of the National Movement broke into her house and demanded that she withdraw her supporting statement regarding election violations detailed in the official complaint of Gela Mtvlishvili, an observer from the Human Rights Centre. Based on that complaint, the Centre demanded that the poll results from the Chantliskuri Polling Station be invalidated. The complaint was drawn up by Mtvlishvili, with Magamedov confirming that Ramazanov was accompanying voters into polling booths and circling number five for Saakashvili. Magamedov states that unless the Human Rights Centre withdraws their appeal, National Movement members are threatening to burn down her house at night. Representatives of the National Movement also threatened to detain her father.

Representatives of the Coalition for Democracy accidentally witnessed a grave violation of election procedure while demonstrating in front of the CEC office on January 10th 2008. The violation consisted of disposing of large amounts of filled-out ballots, voters' lists from different PECs and other election related documents. The representatives of the Coalition for Democracy were able to document this fact by taking pictures. In addition, they were able to take some of the boxes containing the election documentation with them. According to the Election Code of Georgia, the authorities are obliged to safely store such documentation for the duration of five years.

There have been several instances where observers were unable to file official complaints with DEC's due to the fact that these DEC's were closed. Considering the Election Code allows observers to file complaints related to the observed breaches for a duration of three days, the closing of the

DECs made it impossible to adequately utilize the complaint procedure provided for by the Election Code.

4. Evaluation and Conclusions

Fairness of the elections is to be evaluated by taking into account the three phases of elections: the pre-election, Election Day and post-election periods. During the pre-election period presidential candidates were not given an equal opportunity to effectively carry out their election campaign. The restrictions imposed on the media severely hampered opposition parties in imparting information to the public concerning their political platform. Due to the lack of time, candidates had limited possibilities to raise funding which could have been used for the pre-election campaign. In addition, the extensive use of administrative resources by presidential candidate Saakashvili put him in a favoured position.

The irregularities of the voters' lists had a direct impact on Election Day. Many people were not registered before the elections and needed to register themselves onto the additional voters' lists at the polling stations. This registration process took up extra time and consequently many polling stations were overcrowded. In turn, the queues at the polling stations negatively affected the registration of voters onto the additional list and the voting process in general.

The presence of uniformed police officers, unauthorized individuals and governmental representatives seems to have been a purposeful attempt of the authorities to instil fear in the public during voting.

Various techniques used during the Election Day, as well as the post-election period, had a significant impact on election results. The gravest attempt to manipulate the results was the falsification of the results by amending the summary protocols. Most of the protocols were amended without following formal procedure. Amended protocols that were scanned and put on the CEC web site did not coincide with the protocols taken from the polling stations by observers. Observers of the Human Rights Centre, as well as witnesses ready to provide evidence, were being threatened.

Most of the representatives of the Georgian media remain subjective providing no space for equal competition. Violations documented by the Coalition for Democracy were not given adequate news coverage, depriving the Georgian public of the possibility to be informed on issues of high importance.

Based on the findings provided in this report, as well as the findings of the other members of the Coalition for Democracy, the Human Rights Centre believes that the 2008 presidential election fails to meet the fundamental requirements set by Georgian legislation and international law. To avoid mass falsification of the coming parliamentary elections and to guarantee the free exercise of the right to vote, it is necessary that the international community gives an objective and firm evaluation of the 2008 presidential elections.

*Violations of the Right to Property and Forced Evictions*¹⁶

Introduction

This report covers the period between 2003 and 2007 and exposes the situation about the protection of the right to property in Georgia. The report reveals cases in which property rights were breached.

After the Rose Revolution in 2003 the protection of private property has become one of the most serious problems in Georgia; hundreds of private properties were demolished and assigned to the state. The number of cases in which private owners “granted their properties” to the state without reimbursement has increased. As a result of the so-called wave of demolition we received numerous “granted” entities, ruins and a larger number of unemployed people.

Since 2003, several violations of property rights have been observed in Georgia. Initially, the granting or seizure of property was more frequent but later it was followed by demolition.

Large-scaled dismantling of the estates was based on the ideology of the revolutionary government. They feel those buildings damaged the façade of the city; however most citizens whose properties were dismantled had all the necessary documents to prove their legal ownership of the entities. Despite that, the owners were neither compensated nor offered alternative space.

The right to property is protected by the Georgian Constitution both for physical and legal persons. Although the Georgian Constitution envisages and protects the right to property, the government continuously reviews the legality of ownership. The bodies, which should guarantee the inviolability of property, breach that fundamental right. Thus, the private owners are damaged and the inviolability of property is not guaranteed.

Legislation

Set of normative documents were enacted regarding the protection of private property. The right to property is one of the most protected and guaranteed rights in Georgian legislation.

¹⁶ Nestan Londaridze, Human Rights Centre, “Violations of the Right to Property and Forced Evictions”, Tbilisi, February, 2008.

According to the Georgian Constitution:

- 1) *The property and the right to inherit shall be recognized and guaranteed. The abrogation of the universal right to property, of the right to acquire alienate and inherit property shall be impermissible.*
- 2) *The restriction of the rights to property and inheritance shall be permissible for the purpose of the pressing social need in the cases determined by law and in accordance with a procedure established by law.*
- 3) *Deprivation of the property for the purpose of the pressing social need shall be permissible in the circumstances as expressly determined by law, under a court decision or in case of the urgent necessity determined by Organic Law and only with appropriate compensation.*¹⁷

As for the definition of the urgent necessity, it is regulated by the Georgian Organic Law on Deprivation of Property in the Case of a Pressing Social Need. According to the law, the urgent need is ecological or a natural disaster, epidemics, epizootic threats to human life and health, state or public security.¹⁸

According to Georgian legislation, the restriction of the right to property is permissible only in case of social need and pressing necessity and only with appropriate compensation.

The decision on depriving the property shall be made by the Georgian president, any authoritative body of the executive government, governmental body of the autonomous republic or self-governmental institution in accordance with the location of the private property.

The price of the entity shall be estimated according to the market price by the authorized governmental body. The price of the property shall be given to the owner before the property is seized.¹⁹

It is Impermissible to Demand the Legal Owner to Return the Object of Property

The deconstruction of buildings contradicts legislation; a detailed definition is provided in the Georgian Law on State Supervision of Architectural and Construction Activities.²⁰

¹⁷ see Georgian Constitution, Article 21.

¹⁸ see Georgian Organic Law on the Deprivation of the Property in the Case of Social Need, Article 2.

¹⁹ Ibid, Article 4.

The State Supervision of Architectural and Construction Activities has the right to enact a resolution on full or partial dismantlement of the buildings that are not constructed according to regulations as well as fining the owners; however, it is necessary to comply with certain norms. More precisely:

- In case of a violation committed during architectural and construction activities, the participants shall receive the recommendations on improving the violations of the demands in normative documents, regulations and construction norms. In the case of eliminating the violations the contractor shall not be fined;
- When the deadline pointed out in the recommendation is violated, the State Supervision of Architectural and Construction Activities inspects the violator and draws up a report on the fact. The report provides information whether the contractor had complied with the recommendations on improving the violations.
- If the violation is not eliminated the Inspectorate makes a decision on fining the violator. The decision may be appealed against with the superior of the state inspection or a court. At the same time, the execution of the decision shall be suspended until the body or court makes a decision.

International Obligations

The norms that protect individuals from deprivation of property are guaranteed by many international documents; among them the Universal Declaration of Human Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms are the most important.

“The legislation of Georgia shall correspond to universally recognized principles and rules of international law. An international treaty or agreement of Georgia, unless it contradicts the Georgian Constitution, shall take precedence over domestic normative acts.”²¹

Article 17 of the Universal Declaration of Human Rights states;

- 1) *Everyone has the right to own property alone as well as in association with others;*
- 2) *No one shall be arbitrarily deprived of his property.*²²

²⁰ see Law on State Inspection of Architectural and Construction Activities, Article 4.

²¹ see Georgian Constitution.

²² see Universal Declaration of Human Rights, article 17.

The right to property is guaranteed by the International Covenant on Economical, Social and Cultural Rights as well as the International Covenant on Civil and Political Rights.

The first paragraph of article 1 of Protocol I to the European Convention for the Protection of Human Rights and Fundamental Freedoms states:

*Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*²³

Cases on Infringement of the Right to Property in Georgia²⁴

Tabukashvili Street # 50²⁵

26 Families residing in Tabukashvili Street # 50 (Tbilisi) deal with arbitrary deprivation of property.

Based on the case materials, a building plans of the residential building were agreed upon with the Main Architect of Tbilisi based on Resolution # 292 dated by June 3 1998. On December 31 1998 the Inspection of Architectural and Construction Activities issued permission # 297 on launching the construction. Later, the project was amended and the changes were approved by resolution # 133 of the Main Architect, dated by May 8 2001.

The residents of the building remained homeless. Although they can produce all necessary documents to prove the legality of the construction, their property was deconstructed without any notification to the owners.

The deconstruction of the residential building started on July 20 2007. Representatives from the Supervision Service Department of Tbilisi City Hall appeared at the Tabukashvili Street # 50 unexpectedly and started dismantling activities. The residents had not been informed about their intention. The windows were smashed but people were not allowed to leave the building. Those residents who were outside were not let inside either.

²³ see Protocol I to the European Convention for the Protection of Human Rights and Fundamental Freedoms, article 1.

²⁴ For a detailed discussion on the infringement of the right to property of Imedi TV as a result of the November events see the part of this report called: Assessment of the November events in the light of Georgia's international obligations - Obligation to respect the right to property and the Imedi Case.

²⁵ see Human Rights in Georgia, Georgian Public Defender's Report. First half of 2006; www.humanrights.ge.

Although people asked the dismantlers to let them go in their flats and take their furniture and possessions out, nobody allowed them in. Several people were injured during arguments with policemen.

Tbilisi City Hall claims that the construction rules were breached and the building was not steady enough. However, the building had survived the earthquake without any cracks. Another reason for deconstruction is low quality construction material; however later the building turned out so sturdy, that it was too difficult to dismantle.

In order to build a thirteen-storied building, a contractor needs several years, many construction materials, money, time and energy. Dismantling of the building takes some expenses too and the process of deconstruction goes on in Tbilisi when a lot of people are homeless or live in extremely poor conditions. The priority for our government has become the deconstruction of already built houses instead of starting new constructions.

“Orkidea Ltd” “Merry Time Ltd”²⁶

Another deconstruction that took place near the metro station “Gotsiridze” is also a case of infringing the right to private property. They deconstructed two buildings - café-bar “Orkidea Ltd” situated on the right exit of the metro station and the double-storied building of “Merry Time Ltd” on the left exit of the station. Orkidea Ltd was dismantled on January 27 2007 and the other property was deconstructed on January 30.

The owners of the properties had learned about the deconstruction three days before and no documents were delivered to them. Nearly one hundred people were destroying the buildings. They surrounded the building and set fire inside in order to force people out and then destroyed the building.

The café-bar was working with full equipment inside at the moment of deconstruction. The owner had leased the space in accordance with the law.

As for “Merry Time Ltd” the owners learned about the possible deconstruction by chance. The victims claim that they were going to sell the property and learned about the deconstruction from the purchaser. Afterwards, they applied to the Supervision Department and demanded the normative protocol of the court decision. The Supervision Department could not produce them the protocol.

²⁶ see <http://www.humanrights.ge/index.php?a=article&id=1525&lang=en>.

The case materials were accompanied by all necessary legal documents: an extract from the Public Registry on the Ownership of the Estate, permission for the construction and the license for exploitation of the property.

Nevertheless, the building was surrounded; a bulldozer approached the café-bar and demolished it. An audit estimated 240 000 lari as a price for the property that was illegally deconstructed. According to the Georgian Civil Code the presumption of the validity and completeness of the registration at the Public Registry is guaranteed until it is not abolished by the court.²⁷ No one shall be deprived of property without issuing the corresponding administrative protocol; deconstruction implemented based only on oral warning is illegal.

“Nia Ltd”²⁸

On January 17 2006, the trading company “Nia Ltd”, located at Dadiani Street #2, was deconstructed. The dismantling works were carried out by a bulldozer which approached the building and demolished it. The company had two shareholders. Before 1997 the owners had leased the land and then they privatized it. The owners had registered the property with the Public Registry.

There is a resolution on confirmation of the project and the protocol on exploiting the building.

Nevertheless, representatives of the Supervision Department of Tbilisi City Hall met the owners and warned them about the decision on deconstruction. However, they did not explain the reason for their intentions; neither did they produce any official documentation.

According to the Human Rights Centre the Georgian Public Defender applied to the Tbilisi Supervision Department of Tbilisi City Hall regarding the case and received a response on January 22 that stated that the Supervision Department had not launched an investigation into the situation yet. Consequently, they had not made any decision on the deconstruction. However, the Public Defender had sent the letter to City Hall after the building had already been deconstructed. The trading centre was dismantled on January 17.

²⁷ see Georgian Civil Code, Article 312.

²⁸ see www.humanrights.ge.

Irina Nergadze's Case²⁹

Irina Nergadze's right to property was also infringed.

In December of 2005 "Shushis Sakhli" (glass house), owned by Irina Nergadze, was deconstructed in the Vake District in Tbilisi.

Irina Nergadze, based on the resolution of the Public Registry, together with the state, owned the building situated above the underground passage on Ilia Chavchavadze Ave. # 34. Only 230 sq. meters out of the total space of the building was owned by I. Nergadze.

Initially, Nergadze was leasing the space. Afterwards she applied to the Tbilisi Municipality to assign the 160 sq. meters of the land to her (without the right to sell it) to reconstruct the pavilion near the underground passage in order to open the trade centre there. Her request was satisfied by the Tbilisi Municipality Cabinet's Resolution dated June 29 1998; based on that resolution Irina Nergadze received 160 sq. meters of land. The resolution of the Main Architect of Tbilisi, dated November 17 1998, states that the total space of the building was 230 sq. meters which significantly exceeded the space estimated by the Vice-Mayor's resolution. Besides that, according to the building plan, the building should have been one-storied, while the draft project of the building, confirmed by the Main Architect on November 11, 1998, represented a doubled-storied building. Based on the Georgian Law on Declaring Non-Agricultural Land Owned by Physical or Legal Persons a Private Property the Vake-Saburtalo District Court found Irina Nergadze to be the owner of the 230 sq. meters and co-owner of the 182 sq. meters of land together with the state. The property was registered at the Public Registry with this status.

Despite the violations made during the construction, nobody had the right to destroy Irina Nergadze's property. Infringing the right to private property, which disregards the court decision, is impermissible since the right to property is guaranteed by the Georgian Constitution.

Khimshiashvili Street # 94³⁰

Anzor Baramidze purchased a flat from a Russian frontier officer in March of 1991. The house was legally registered to the new owner. Batumi City Hall (formerly known as the executive committee) issued a warrant on the ownership of the flat. In 1996, the Russian army assigned their flats to the

²⁹ see Human Rights in Georgia, Report Statement of Georgian Public Defender, first half of 2006 and <http://www.humanrights.ge/index.php?a=article&id=1526&lang=en>.

³⁰ see www.humanrights.ge.

state. The flat in Khimshiashvili Street # 94 was not on the list of 49 flats assigned by Russian soldiers because it was not registered to the military unit.

Anzor Baramidze was evicted from his flat, however the Border Police Department has not offered any alternative accommodation or compensation for the flat.

“Sonny Centre” and Book-Shop “Saunje”³¹

The Sonny Centre was situated on the ground floor of the Georgian Ministry of Justice. The Sonny Centre and the Ministry had signed an agreement based on which the centre legally owned the occupied space until 2015. Nevertheless, the Financial Police raided the Sonny Centre and closed it. The reason for the raid was un-taxed equipment in the shop. Soon after, the centre was allowed to continue working, however they had to leave the place and move to another space in the near future. The Ministry of Economic Development offered them the space of the shop “Saunje” in exchange for their space.

The shop “Saunje” had been selling stationary and books for dozens of years. Shota Beridze, the director of “Saunje” said that they had all the legal documentation proving their ownership of the space. Despite that, the Ministry of Economic Development illegally raided the shop; cut the water supply for shop-personnel and forced them to leave the space immediately. The shop was already sold. Mzia Kakabadze, the former owner of the “Sonny Centre” and café “Rustaveli”, had purchased it. She assigned her property to the state as a “present”.

Cession under Force³²

For the last few years there have been many cases where property was handed over to the state as a present. Several people, after being arrested, assigned their properties to the state after which they were released. Despite a large number of “presents” former property-owners prefer not to talk about it openly.

Hotel “Abastumani” and Resort “Aghobili”

Anton Merabishvili, the former governor of the Abastumani District, and businessman Genadi Endeladze owned hotel “Abastumani” and resort “Aghobili”. These properties were seized from the owners and assigned to the state.

³¹ see <http://www.humanrights.ge/index.php?a=article&id=1444&lang=en>.

³² see www.humanrights.ge.

The Adigeni District State Property Registration and Privatization Department within the Ministry of Economic Development signed a contract on assigning the property to the state. The Notary Protocol was drawn up on October 30 2006. Based on the cession agreement, resort “Aghobili” and hotel “Abastumani” were assigned to the state.

The administrative building of the Health-Resort Union, which was transformed into a hotel, was purchased by Genadi Endeladze in February of 1999 for 4 800 lari. The estimated price for the resort “Aghobili” with its estate and surrounding land was 38 700 USD.

“Acho” Ltd³³

Residents of the regions also started to assign their properties to the state.

Gela Bezhashvili, the director of the “Acho Ltd”, who is the head of the Social Aid Department of the Sighnaghi District Administrative Board, stated in his conversation with the Human Rights Centre that he was ordered to cede his property to the state as a present. He owned a market, an equipped space and a small shop in Sighnaghi. Bezhashvili was summoned to the Sighnaghi Tax Inspection where he was ordered to assign the property to the Ministry of Economic Development.

According to the information of the Kakheti branch of the Human Rights Centre, many other businessmen shared the fate of Bezhashvili. Baadur Milashvili, Omar Tsakiashvili and Eliko Berulashvili also assigned their houses to the state.

The Human Rights Centre reported that the parliamentary opposition got a hold of the list which proves the cession of a certain amount of property to the state. Although the list does not represent a complete picture of the situation, the texts of the cession agreements signed between the Ministry of Economic Development and individuals or companies are the same. For example: “Mr. Lasha Shakaia, director of Natvris Khe Ltd, and Revaz Lortkipanidze, a representative of the Ministry of Economic Development, applied to me. Lasha Shakaia stated that he wished to transfer the real estate of “Natvris Khe Ltd” (201,8 sq. meters of cellar, 224,34 sq. meters of entresol, 574,65 sq. meters of accommodation on the first and second floors) to the Georgian Ministry of Economic Development as a present; Revaz Lortkipanidze stated that in the name of the Ministry he wished to accept the property for free...”

³³ see <http://www.humanrights.ge/index.php?a=article&id=1422&lang=en>.

The Conservative Party can produce several materials proving similar deals for numerous properties. More precisely:

- Deal #1) Natvris Khe Ltd: real estate of 869.500 lari in Rike, Tbilisi (30-10-2006);
- Deal #2) Valter Shakaia: property of 260 850 lari in Rike, Tbilisi (30-10-2006);
- Deal #3) Vladimer Abashmadze and Besik Zhghenti: property of 867 750 lari, in Rike, Tbilisi (06-11- 2006);
- Deal #4) Georgian Sport Society “Martve” (07-11-2006);
- Deal #5) property of 1 388 400 lari on Ts. Dadiani Street;
- Deal #6) Manana Gabechava: property of 433 750 lari in Rike, Tbilisi (10-11-2006);
- Deal #7) Nani Kalatozishvili: property of 277 536 lari in Rike, Tbilisi (16-11-2006);
- Deal #8) Gogita Ltd: property of 867 300 lari on Abano Street, Tbilisi (20-11-2006);
- Deal #9) Irakli Ltd: property of 867 000 lari on Grishashvili Street, Tbilisi;
- Deal #10) Davit Janiashvili: property of 520 000 lari on Chavchavadze Ave., Tbilisi.

All these cases demonstrate that an amount property worth 6.352.286 lari in total was seized from property owners in October-November of 2006.³⁴

Case of Manana Macharashvili³⁵

A resident of Signaghi, Manana Macharashvili, stated that she was forced to sell her commercial accommodation located in Signaghi to an investor. The purchase contract was signed at midnight. Macharashvili was taken to the Notary Bureau under physical force where law enforcement officials made her sign the sales contract.

Manana Macharashvili claims that public officials threatened her with sending the Financial Police if she would not sell it to businessman Bachana Davlianidze. The Financial Police could find some violations in the shop and consequently she would be arrested. Moreover, high ranking officials threatened her with planting drugs in her house. Despite all that, Macharashvili was against selling the shop but finally she had to sign the contract under force. Policemen visited her at home and made her sign the sales contract at midnight. Macharashvili directly told Notary Giorgi Lomashvili that she did not want to sell her property. She did not produce the necessary documents so the sale would not be able to take place and she would have prevented the injustice; but in vain.

³⁴ see <http://www.humanrights.ge/index.php?a=article&id=1526&lang=en>.

³⁵ see <http://www.humanrights.ge/index.php?a=article&id=2149&lang=en>.

Manana Macharashvili applied to the Kakheti branch of the Human Rights Centre for help.

The purchase was illegal because the shop was sequestered based on the December 16 2006 resolution of the Georgian Tax Department within the Ministry of Finance. Although a sequestered property is not allowed to be sold according to the law, neither the Notary Bureau nor the Signaghi Public registry faced any problems drawing up the purchase contracts or other documents.

Lawyers for the Human Rights Centre applied to the Signaghi District Prosecutor's Office regarding the infringement of the right to property and demanded the Office to start an investigation into the case. The District Prosecutor's Office sent the appeal and enclosed materials to the Georgian Prosecutor General's Office. However the fact was not investigated at all. The victimized property owners met with Elene Tevdoradze, the chairperson of the Committee on Human Rights and Civil Integration of the Georgian Parliament; though in vain.

Manana Macharashvili petitioned to Nino Burjanadze, the chairwoman of the Georgian Parliament; however she has not received a reply yet.

Case regarding Forty Leaseholders³⁶

The case of 40 leaseholders of non-residential spaces in the underground passage of Freedom Square in Tbilisi deals with the infringement of the right to private property. The injured parties applied to the Human Rights Centre for help.

On March 1 2007, a leaseholder and New-Market Ltd signed a lease contract. According to the contract, the leaseholders received non-residential space in the underground passage of Freedom Square for seven months. The leased space was to be used for commercial purposes.

The Supervision Service Department of Tbilisi City Hall agreed with the space-owner without taking notice of the interests of the leasers.

The deconstruction of commercial spaces in the underground passage started without preliminary warning; the loans were guaranteed by leased spaces at the bank but the contract was cancelled. According to paragraph VII of the contract agreement, it cannot be cancelled by one party only; however the owner violated the paragraph under pressure of the Supervision Service Department of City Hall.

³⁶ see <http://www.humanrights.ge/index.php?a=article&id=1687&lang=en>.

Dispute on Land³⁷

Batumi City Hall sold the plot of Nevrestan Tarielashvili, resident of the village of Angisi, in the Khelvachauri District.

The ancestors of Nevrestan Tarielashvili had lived in the village of Angisi for centuries and the disputable plot had always belonged to them. In Soviet times the plot was confiscated from their family and only 3 500 sq. meters were left to them. Now this plot was confiscated again.

According to Georgian legislation the estate of the Tarielashvili's was to be transferred into the possession of the family after the collapse of the Soviet Union. But during Aslan Abashidze's governance, as he was the head of the Autonomous Republic of Adjara, the land reform was not implemented and housing estates did not go into the possession of the population.

Nowadays, the confiscation process of the plots, which were legalized during Aslan Abashidze's governance, is underway. The list of confiscated plots was added by the Urekhi community. 350 Families lost their housing estates there, which were assigned to them in 1999-2000. These are plots where people produce vegetables and fruit for winter and have houses built.

The Tarielashvili's expect the court to resolve their problem.

Expecting New Internal Displacement³⁸

Georgian Ministry of Refugees and Accommodation was added to the list of those governmental institutions which seize private properties. The IDPs who have already experienced internal displacement from their homeland face a similar threat again. They are being expelled from the accommodations which they have occupied temporarily. IDPs might remain in the street.

IDPs from Abkhazia often apply to the Kutaisi office of the Human Rights Centre and complain about the violation of their rights. The IDP population copes with many problems; their poor living conditions are aggravated by the fear of repeated displacement.

³⁷ see <http://www.humanrights.ge/index.php?a=article&id=1780&lang=en>.

³⁸ see <http://www.humanrights.ge/index.php?a=article&id=1701&lang=en>; <http://www.humanrights.ge/index.php?a=article&id=1734&lang=en>; and <http://www.humanrights.ge/index.php?a=article&id=1786&lang=en>.

Nearly 300 IDPs lived in hotel Kutaisi for fifteen years. In 2005 the hotel was sold for 355 000 USD at an auction. The new owner of the property is Interinvest Ltd. The purchase contract signed by the Ministry of Economic Development and the investor states that if the new owner starts the reconstruction of the hotel he must provide the IDPs residing in the hotel with alternative accommodation or compensate them. The agreement was not followed. IDPs residing in hotel Kutaisi were being forced to leave the place for six months. The offered compensation for the IDPs was 4 500 USD. The temporary inhabitants of the hotel could not accept the offer and it resulted into permanent protest demonstrations. IDPs residing in the hotel claimed that the investor had cut off the water and electricity supplies of the building as well as telephone communications. Nevertheless, the IDPs were not leaving the building and appealed to the court to defend their rights.

The Kutaisi Civil Court satisfied the appeal of the IDPs on ceasing their forcible expulsion from the hotel as well as ceasing the authority of the hotel owner. Interinvest Ltd was forbidden to expel the IDPs from the place and to carry out all kind of reconstruction activities. However, the representatives of the investor tried to expel the residents of the hotel under force that ended into a severe conflict between the IDPs and local law enforcement officials. As a result, innocent people were arrested. A 70-year-old woman was sentenced to five days imprisonment. Finally, the board of Interinvest Ltd had to satisfy the demand of the IDPs and compensated them with 8 000 USD.

A similar situation arose in the Telavi-based hotel Kakheti. IDPs residing there were given five days to leave the place. Since 1992, nearly 60 IDP families lived in the hotel. The Human Rights Centre protects the rights of those IDPs. Building Company “Centre Point” purchased the hotel. Local authority offered 10 000 lari as compensation to the IDPs. It was impossible to buy a proper residential house in the district for amount offered. Nevertheless, the IDPs were evicted from the building. According to the Kakheti Office of the Human Rights Centre, several families continued living in the yard of the hotel. Most families have rented flats with the money they received as compensation. What will happen when they do not have any money left for renting accommodation is unclear.

The situation in densely populated residential areas is analogical. After an investor purchases a building where IDPs are residing in, the people are evicted from their rooms under force and they face another danger of becoming IDPs in their homeland.

Gumashvili Family Remained Homeless As a Result of Special Operation³⁹

On June 3 2005, Malkhaz Gumashvili was in the mountains. His brother Avtandil Gumashvili was visiting his family who was wanted by the police together with his cousin, Vakhtang Gumashvili. A special operation carried out in the house ended with the death of both wanted men.

This tragic story started ten years ago. Otar Margoshvili, a resident of the village of Duisi in the Akhmeta District abused the wife of Avtandil Gumashvili, which was witnessed by under-age children. Afterwards, Avtandil Gumashvili divorced his wife and the woman moved to Russia with her children. Blood revenge is still practiced in Pankisi Valley, so since the incident Gumashvili was looking for Margoshvili for revenge. He learned that Margoshvili was renting a flat in Telavi. During a conversation with Jibrail Khangoshvili, Gumashvili said that he wanted to kill Margoshvili, but when he saw his children he could not kill him and only wounded him in the foot. A criminal case was launched on the incident and the police declared him wanted. However, ten days after the accident Gumashvili continued to reside in his house in the village of Duisi and neighbours claimed that law enforcement officials did not visit him during that time, making the reasons for carrying out the special operation in Duisi unclear.

On June 3 2005 at 8:00 AM, masked people arrived in Duisi; people gathered in front of the village council building claimed that they were riot policemen. The number of law enforcement officials was over 200; they were too aggressive. Law enforcement officials shot something at the house of Malkhaz Gumashvili where Avtandil Gumashvili was at that time and the house was set on fire. Vakhtang Gumashvili, cousin of the wanted, jumped out of the window with his hands up without a weapon, but the riot policemen killed him on the spot. The operation lasted until midday. Avtandil Gumashvili was lying in the house.

During the operation, the mother of Malkhaz Gumashvili and his under-age daughter were in the house. The little girl was seriously traumatized and she was in a bad state of health. Now she has problems with eye-sight and needs a extensive medical treatment. She often loses consciousness. Malkha Gumashvili lived in the house burnt down by the riot policemen with his mother and little daughter. His family and the whole village suffered from the death of the two people. The trouble was aggravated by the fact that their house was burnt and it cannot be restored. The house was

³⁹ see <http://www.humanrights.ge/index.php?a=article&id=1031&lang=en>; <http://www.humanrights.ge/index.php?a=article&id=1094&lang=en>; <http://www.humanrights.ge/index.php?a=article&id=1188&lang=en>; and <http://www.humanrights.ge/index.php?a=article&id=1700&lang=en>.

destroyed by the special operation carried out by the Georgian Ministry of Internal Affairs and since that time Malkhaz Gumashvili and his family have had to take shelter with their relatives.

Malkhaz Gumashvili applied to the Human Rights Centre for help. The Centre petitioned the Ministry of Internal Affairs to assist Malkhaz Gumashvili and to compensate the damage. However the Ministry did not respond to the appeal. On July 27 2006, the Human Rights Centre petitioned the Ministry of Internal Affairs again, but the reply from the Ministry stated that the Centre should apply to the General Inspection of the Ministry. The Human Rights Centre applied to the General Inspection several times, as well as to the Chancellery of the Ministry but it turned out that the petition was not delivered to the General Inspection. Neither the Chancellery of the Ministry of Internal Affairs could provide the Centre with valid information. The final reply from the Ministry of Internal Affairs stated that the discussion of the above-mentioned fact was beyond their responsibilities and the victim should apply to the court to receive compensation.

The Human Rights Centre represented Malkhaz Gumashvili, victim of the special operation, in the court proceedings.

The suit was brought to the Collegium of the Administrative Case at the Tbilisi Civil Court. The suitor demanded compensation for the damage caused by the special operation. A friendly settlement was reached according to which Gumashvili received 13 000 US dollars from the Ministry of Internal Affairs as a compensation for the material damages.

IDPs Will Not Be Evicted Anymore

IDPs residing in the hotel “Kutaisi” in the centre of the city for nearly fifteen years do not face the danger of eviction anymore. Kutaisi Regional Court satisfied the motion of the IDPs’ lawyer who demanded to stop the eviction process of the people from the hotel and the owner of the hotel was seized of its power.

The hotel “Kutaisi” with 300 IDPs residing in it was sold out at the price of 355 thousand USD at the tender. Interinvest Ltd became a new owner of the hotel. The contract, signed by the investor and the Ministry of Economics stated that if the hotel owner starts a reconstruction of the building, the owner must provide current inhabitants with alternative accommodations or they must be compensated with corresponding sum.

The contract was violated. A representative of the Interinvest was trying to force the IDPs to leave the building over the course of several months. He offered them 4,500 USD as compensation. The IDPs could not accept the offer, and they subsequently held demonstrations.

Despite the resistance, representatives of the Interinvest Ltd started reconstruction of the building. They surrounded the hotel area with the fence and stated that very soon IDPs would not be permitted to live in the hotel.

“Before the trial, they did their best to force us out of the building. Together with the hotel administration, they cut every kind of utility – water, electricity etc. We could not use the telephone, either. However, we did not give in and said continued to hold firm on our position that we would not leave the hotel for 4,500USD. Before the trial, representative of Interinvest tried to persuade us to withdraw our suit. Finally, when the court passed a verdict in our favour, the owners started to insult us,” said Lamara Mikiashvili, an IDP. She had applied to the Human Rights Centre’s Kutaisi office for help several times.

The IDPs state that after the trial, representatives of the Interinvest surrounded the hotel with a fence. However, the IDPs remained where they were.

Interinvest was prohibited to evict IDPs according to the law. Besides that, the company could not carry out repairs. “We have appealed against the purchase contract, which was drawn up illegally. There are number of violations in it, which resulted in the above-mentioned problems,” said Murman Kamadadze, a lawyer for IDPs who stated that the hotel owner could not evict the IDPs from the building on the basis of these violations.

“The Law on IDPs” defines that the government must do its best to improve the living conditions of IDPs and not worsen it. In this particular case, these people learned about their future eviction from the newspaper. One could not have imagined a worse situation,” said Kamadadze.

Administrative Bureau of the Tbilisi City Court is about to discuss the case on IDPs residing in the hotel “Kutaisi” in the nearest future. The IDPs hope that the appeals court will protect them and pass a final judgment in their favour.

IDPs from Kutaisi Are Not Going To Surrender

Several months ago an argument started between IDPs from Kutaisi and local law enforcers that later turned into a serious clash. Finally innocent people were arrested. The reason for the incident was IDPs' eviction in the hotel of "Kutaisi". Although the court temporarily deprived the owner firm from its power on the hotel, representatives of the "Interinvest" still force the inhabitants out of the hotel.

Several days ago representatives of the "Interinvest" Ltd tried to wrap up and to reconstruct building but the IDPs resisted them.

"Last week they arrived here and categorically demanded us to leave the building within five days. We tried to explain to them that the court passed verdict in our favour. Kutaisi Civil Court prohibited the "Interinvest" to evict us; however they are not going to obey the verdict and want to make us lose temper," said IDPs living in the hotel.

As a result of the resistance and controversy with law enforcers, Abkhaz woman Vera Salia was arrested. Seventy-year-old IDP woman was sent to five-day-imprisonment and IDPs held protest demonstration.

"We did not give in. We wanted to receive compensation in peace to resettle to one district from where nobody would ever evict us in the future. But those people want war and argument. Let us see who will win," said Shota Milorava, chairman of the IDP Committee.

On June 10 Kutaisi Civil Court made decision to send case materials to the Administrative Chamber of the Tbilisi Civil Court.

Murman Kamadadze, lawyer for IDPs: "It is bad that the Tbilisi Civil Court has to discuss this case. Kutaisi Civil Court must discuss this argument to the end. In addition to that case materials are still in the Kutaisi Civil Court and nobody knows how long it will remain there."

Tbilisi Civil Court will supposedly make final decision on the case in August. Thus both IDPs and representatives of the "Inerinvest" Ltd will have hot summer.

In the Expectation of Internal Re-Displacement

IDPs residing in Telavi based hotel of Kakheti” were given five days to leave the building. The police warned them about it yesterday. The hotel, where nearly 60 families have lived since 1992, was purchased by Centre-Point Company. Local government offered 10 000 lari as compensation to each family from district budget. The IDPs said that they will not be able to buy any accommodation in Telavi with the money.

IDPs have applied to the Telavi Municipality and Kakheti Regional Administrative Board to find out the situation but in vain. Officials from local government did not meet them.

“As far as we know, the hotel building was sold twice. Initially Andronikashvilis purchased it for a very cheap price. Then Vakhtang Rcheulishvili, representative of Centre-Point Company, purchased it. Now certain Nino Jijeishvili represents this company. Today we learned that she has applied to the Telavi District Police and claimed that we are damaging her property and occupy the hotel illegally. We have not occupied the building forcibly. In 1992 the government lodged us in. The investor or its new owner has not met us and demanded to leave the hotel.”

“Nearly a month ago, Gaga Tsigroshvili, Telavi district Governor visited the hotel together with his companions. He threatened us to send a unit of Special Forces to the hotel unless we left the building on time. Do you know what he told us when we resisted him? “What do want at last, I do not care about you at all?” and spat at us. Despite being so much insulted, we applied to the Administration for help but they did not meet us. The Kakheti Regional Gubernator hid from us each time we visited his office. We are not going to leave the building because we do not have to go anywhere,” said Naira Ugrehelidze, Besik Maisuradze, Murad Dadvani, etc.

“Our refusal on leaving the building is not categorical; however we cannot remain without alternative accommodation. Nobody has offered money to us officially. We have heard that they are speaking about 10 000 lari. So we started to look for flats and found out that a flat with two rooms costs 8-9 thousand USD in the suburbs of Telavi. We can buy house for 10 thousand lari in those villages of the district where there is no road and water and the territory is permanently under threat of landslide. In those villages people do not live as a rule. We cannot add anything to the money they have offered because we do not work. We receive allowances only for socially excluded people or for IDPs and it amounts to 11 lari a month. We have spent fifteen years in these terrible conditions but we have not bothered anyone. We do not want to become IDPs again,” said Demur Ghudumidze.

Enver Gagnidze resides in one room of the Hotel “Kakheti” with his wife and two children. The total space of the room is 11 sq. meters. One of his children is ill with cerebral palsy and lost eyesight short time ago. The second child goes to school. Three of his children died during Abkhazian War. Enver Gagnidze hardly escaped the death himself during the war. This year he lost allowance for his disablement and the family’s only monthly income is only 66 lari.

“This money is not enough to buy medicines for children. We are half hungry and nobody has ever assisted us. Even Abkhazians did not treat us like our government does it now. Nobody has forced us out from Sokhumi. We simply were patriots and joined Georgian people. So we became IDPs,” policemen entered the room and interrupted Enver.

“Take this warning and sign the document,” said the inspector. Enver refused to sign and we supported him. As soon as policemen noticed camera, they left the place. IDPs explained law enforcers’ behaviour as follows: “Policeman Mevlud Maisuradze warns us that their people have poor nerves and we should not resist them or it might result into a serious clash. Do they know how poor nerves we are having? We have endured so much disaster and we are like beasts,” said IDPs.

Gaga Tsigroshvili did not make comments on the situation. “I told you over the telephone that I am not going to make any comments about it and why have you come here? I will not say anything about the complaints of nervous people,” said Tsigroshvili and banged the door.

Neither Gia Natsvlishvili, President’s Representative to Kakheti Region, wanted to speak about IDPs. His press-secretary told us that the inhabitants must leave the hotel within five days by all means, because “it is necessary for the development of Telavi Infrastructure.”

Lawyers for the Human Rights Centre (HRIDC) defend the interests of IDPs residing in the Hotel “Kakheti”. Lawyer Lia Khuroshvili said that every activity is illegal that is carried out at the expense of the rights of IDPs. “Georgian Law on Internally Displaced People, Article 5 section IV states that the issues regarding accommodation must be settled through court discussion. Besides that, until Georgian jurisdiction is restored on corresponding territories, IDPs shall not be evicted from compact residential areas unless they sign contract, or are granted with alternative accommodation in which their living conditions shall not be worsened. In this particular case there was no contract signed. According to current unofficial agreement with IDPs their living conditions will be worsened. Thus we are preparing a suit to the court and we will bring it at the end of this week,” said the lawyer.

The IDPs demand meeting with the government to find out the situation. Unless their demands are satisfied they will go on a hunger-strike in front of the Kakheti Regional Administrative Board.

Victims of Earthquake Remain Homeless for the Second Time (Part I)

In March 2007, victims of the April 25, 2002 earthquake will become homeless again. The court has decided to evict them from their current houses. They have fifteen days to leave their flats.

Currently, the victims are residing in flats that were purchased by the Tbilisi City Hall after the earthquake. Money was allocated from the “Fund for Liquidation the Earthquake Results” that was created by donations. These people were lodged in those flats when Mikheil Saakashvili was the Chairman of the Tbilisi Municipality and Vano Zodelava was a Mayer. Now, authorities in Tbilisi claim that these people broke into the flats illegally, and are demanding that they leave the flats, which were bought for 4 000 USD years ago. The officials act under the verdict passed by the court.

The problem has originated from the lack of proper documentation such as a transfer report. However, the City Hall handed these people the keys of the new flats during an official ceremony. Maybe this was a premeditated violation and that someone is personally profiting. If we look through the documents at the court, we will observe quite clearly that these people are victims of the earthquake and the city authority purchased these flats for them from the fund.

The victims wonder how much longer they will stay homeless. They have some documents that show that the board of the fund made their documents fraudulent. Victims said that the authority wants them to leave the flats in order to sell them out again and that the authorities sold the flat, which had been already transferred to a victim’s family for the second time.

Case #1

Giorgi Aleksaniani, an earthquake victim is disabled. The court concluded that he should also leave his flat. His legal heir and representative is Irma Basilahsvili. According to the documents, Aleksaniani lived in Meidani District, Samghebro # 6. Since the earthquake, it was impossible to live in their house. The conclusion of the specialists confirms the situation.

The Fund for Liquidation of the Earthquake Results was created on May 16, 2002. It was initiated by Tbilisi’s vice mayor Giorgi Sheradze. In fact, flats were purchased with the money allocated in the fund through donations.

Irma Basilashvili spoke about the situation herself: “The fund purchased the flats eventually. Officials from the fund announced on TV that every victim’s family of the earthquake could apply for a flat. So, our family did so. We submitted all the necessary documents to the fund and they confirmed that we were victims and granted us special number. At that time Zurab Gudavadze was the chairman of the fund. Meeting all demands of the fund, they asked us to find a flat for 4 000 USD in Tbilisi. I found a flat in Merve Legioni District. It is Tsulukidze lane I, B/L 14. The owner of the flat refused to sell the house for less than 4 300USD. We agreed and said that I would add 300 USD and the fund would pay 4 000USD. Everything happened according to the agreement. We were handed the key of the flat at the official ceremony at the City Hall. Zodelava attended the ceremony too and he gave me the key personally. Mikheil Saakashvili and other members of the municipality also attended the event.”

Although, the flats were transferred to the victims, no contract report was drawn and signed. The victims applied to the fund several times, but officials from the fund insisted that everything was in order and that they would receive documents on property very soon.

Basilashvili was visiting the fund twice a week: “I visited the fund several times. Each time, Akaki Gongladze, the chairman of the fund and Nana Chachua, the secretary, told her that under certain circumstances, they preferred to lodge in every victim’s family in the flats and would then sign the contract with them. However, they did not keep their promises. In January of 2003, a criminal investigation was launched on the misappropriating of funds. Consequently, the fund ceased its activities. The investigators met us and asked whether we had bribed the fund.”

In September 2003, Basilashvili applied to the fund again. She received the same answer from the fund representatives - everything was in order and demanded a document proving that her uncle was a disabled person. On May 14, she provided those documents to them. “After that, the officials from the fund told me that there were no problems. Despite that, I visited the fund three times a month. One day, I learned that I was refused to be transferred to the flat. This document is dated by May 28, thus they kept the document in secret for three months,” said Basilashvili.

Victims of Earthquake Remain Homeless for the Second Time (Part II)

The victims of earthquake, having learned they faced eviction from their houses, thought that the court would find out the reality. Consequently, they waited for the court decision. However, they applied to the parliament for help.

One of the victims, Irma Basilashvili said that Nino Burjanadze, the chairman of the Parliament, did not reply them. Mikheil Machavariani, the deputy chairman of the Parliament, sent mediation to Akaki Gongladze, the chairman of the fund. Machavariani wrote in the mediation that the documents of the victims were in order and they should not have any problems in future.

Meanwhile, the case was being discussed at the court. The chronology of the trial decisions is too complicated. “On January 17 2005 Gongladze appealed to the Mtatsminda-Krtsanisi district Court and demanded to evict Basilashvili from her flat. On February 6, 2006 Judge Leila Arkhoshashvili satisfied the appeal and concluded that the family was to leave the flat.”

“On March 6 2006 the victim appealed against the verdict at the Appeal Court. Representatives of Gongladze did not appear at the trial. However, Judge Paata Katamadze passed verdict without accused side and abolished the conclusion about the eviction.”

“The fund appealed against the above-mentioned verdict at the Appeal Court. The judge decided to move the victim family into another flat. February 6, 2006 decision # 2/6763 of the Tbilisi City Court states the following: “Giorgi Aleksaniani must be exiled from the flat and moved into a one-room flat that will be empty by the time of eviction.”

The victim visited the flat in the Moscow Ave herself. “I arrived at the flat in this address and found out that ten people already lived there. It is a hostel in the Moscow Avenue,” said Basilashvili. The information is real and the journalist for the Human Rights Centre visited the flat herself. Akaki Gongladze confirmed the information as well. However, he added that present residents of the flat are going to be evicted and the new family will move in there.

The victim appealed the last verdict at the Supreme Court-the last instance. According to the Supreme Court’s January 22, 2007 decision, the case remained unsettled, thus the conclusion of the Appeal Court remained valid.

The financial police got interested in this complicated situation too. The victims hope that the truth will be soon found out. They applied to the financial police and part of them made testimonies to them. Another part of the victims will also be interrogated in future. As for Basilashvili’s case, her 15 days limit expires on February, 28 and she does not know what will happen with them on that day.

Case #2

The court concluded that one more victim family of Vardo Dzavashvili should leave flat. They have to leave the flat until March 1. The victim retold the story herself:

“In 1996, our house in Nadzaladevi district burnt down. Only walls remained from it. We started to rebuild it in order to make it possible to live in it for some time, though not very comfortably. After April 25 2002 the earthquake our house was finally destroyed after a landslide. On that very evening the whole district was exiled because it was impossible to stay there. The fund granted us with a flat in the Fonichala District B/L # 20. However, I did not receive the transfer report like many other families. I have been living in this flat since December 2002. However, Gongladze claimed that I am not victim of earthquake and there are no documents on me in the fund. I wonder, if there are really no documents, how investigators found me to ask whether I had bribed anyone in the fund. Or why did they give me that flat? Where are they going to move my family to if we are evicted? There are all necessary documents in my case materials. I have to leave the flat within fifteen days and I do not know where I should go with my two children, mother-in-law and a husband?”

Dzavashvili can produce a document that proves that this family was inserted in the information bank for socially excluded families.

Case #3

Mzia Nadirashvili's family is also a victim of earthquake. Her family has to leave the flat within fifteen days too. Before earthquake they lived in Ksovreli Lane #2. She has epilepsy and is a disabled person of the first group. Marina Nadirashvili, her sister, is her legal representative.

Marina Nadirashvili: “There is a conclusion about our house stating that it cannot be repaired. Since the fund could not find cheap flat for us, we decided to look for it ourselves. Finally we discovered a flat in Varketili district for 4 300 USD. The fund purchased that flat for us on February 17 in 2003 and we moved in. We have been living there since that time. Having not received any documents of property, we started to register the flat ourselves. I discovered quite by chance that Gongladze had declared certain Levan Dzidziguri's family as a legal owner of the flat on August 11. One fine day, member of Dzidziguri's family visited me and tried to break into the flat. I applied to the fund after the incident. Gongladze told me I had occupied the flat illegally and he appealed to the court against me. According to the court decision, I have to leave the flat within fifteen days.”

There are a number of similar stories of victim families. All of them are nearly the same- initially the government bought the flats for victims and now they are evicting them from those flats.

Victims of Earthquake Remain Homeless for the Second Time (Part III)

The first and second parts of the journalistic investigation focused on how the victims of the earthquake were lodged in various flats and how they are now being evicted. The third part of it will attract your attention to the documents that include the case materials of the victims.

Having spoken with the victims, I studied those documents from the case materials. These materials prove that victim's families reside in those flats legally.

What is written in the documents?

Document 1. Tbilisi Authority enacted the structure of the Fund for Liquidation of the April 25, 2002 Earthquake Results under the July 4, 2002 resolution # 11.03.201. Tbilisi Prime Mayer, Gia Sheradze, signed the document, which stipulated that a) the fund is established with donations; b) money used to purchase flats for the victims of the earthquake will be apportioned from the fund; c) contracts and transfer reports will be signed between the fund and the victim's family after they move into the new flats purchased by the fund (neither contracts nor reports have been drawn up), etc.

Document 2. On May 22, 2003 the authorities drew up a new resolution that was designed to address the absence of documentation of 346 flats of the victims and Karbelashvili (Vice Prime Mayer) is obliged to register those flats on victim's families. However, Karbelashvili did not follow the resolution.

Document 3. At that time, Tbilisi Mayer Vano Zodelava and Chairman of the Tbilisi Municipality Mikheil Saakashvili, considered that those flats were registered as victim families' property.

Document 4. There is another document, Tbilisi Authority's December 2002 report # 24, which provides detailed information about the victims and flats that should be registered under their names.

Document 5. Under the Tbilisi Municipality March 18, 2005 resolution # 28, the chairman of the Municipality, Zaza Begashvili, ordered Temur Kurkhuli, a representative of the Tbilisi Authority:

“To discuss the question of purchasing the temporary shelters for the victims of earthquake by the special Fund for Liquidation the Earthquake Results and prepare a contract on private property transfer with the victims. Also, the document pointed out that it is an urgent order of the Georgian President.”

Document 6. Tbilisi Authority enacted the regulation of the property transfer under the June 5, 2003 resolution # 08.28.176.

Document 7. On August 9 2005, Akaki Gongladze, the chairman of the fund sent the following letter to the Tbilisi Mayor Gigi Ugulava and Prime Mayor Temur Kurkhuli: “First of all, let me express my gratitude in the name of the citizens whose flats are being registered. These flats were transferred to them as temporary shelters because of the loss of their houses after the earthquake. Fifty-eight families have already registered their flats and this process is going on... I want to kindly remind you that some families, who live in the flats purchased by the former board of the city hall and Municipality members, have no connections with the earthquake. The court has passed judgment on these families’ and is prepared to evict them from those flats. There are two ways- either these families should be evicted, or some alternative accommodations should be found for them. We do not support the first way; however, the second way of resolving the problem is beyond our competence.”

Document 9. Tbilisi Authority’s May 22 2003 resolution # 07.02.146, signed by Gia Sheradze, states the following: “The flats must be registered on victim’s families for permanent residence. Deputy Prime Mayor Giorgi Karbelashvili is in charge to oversee how the resolution is implemented.”

Having found no justice at the court, the victims applied to the Human Rights Centre for assistance. The centre applied to the Tbilisi City Hall and demanded to investigate the situation. On January 16, 2007, the centre received an answer from the chief of the Local Property Management City Service Department, Sergo Kavtaradze, which goes as follows: “According to our information, the fund has sent 47 cases of eviction to the court. One of these cases deals with the Dzavashvili’s family, which wasn’t affected by the earthquake. As for Basilashvili’s and Bregvadze’s families, we do not have any information about their eviction.”

Lawyer for the centre, **Davit Managadze**, took effort to conduct a full and complete investigation into the matter and revealed that their demands are legal.

Davit Managadze: “Demands of these people are legal. The fund was to register flats on those families; however, they did not do that. These people really are victims of the earthquake and they were compensated with those flats. The fund should not have bought the flats for them if they had broken into those houses? The aim of establishing the fund is to satisfy the population with accommodations. The Tbilisi Authority must resolve this problem once and for all. The flats must be registered under the names of the victim’s families. Under some circumstances, the board of the fund and Tbilisi Authority will be charged for stark violations.”

Victims of Earthquake Remain Homeless for the Second Time (the end)

To find out the reality, Human Rights Centre got in touch with the representatives of the Tbilisi City Hall who were in charge to make some decisions and sign documents on the case materials. One of them is Temur Kurkhuli, (that time Prime Mayer), secretary of the City Municipality.

Journalist: Mr. Temur, Why some problems have emerged regarding the victims of the earthquake? Initially they were lodged in those flats and now they are demanded to leave places.

Temur Kurkhuli: I only know that those flats were transferred to the victim families legally for permanent property. However, there are families, (I think they are only fifteen), whose cases were discussed at the court. They broke into those flats.

Journalist: What do you mean by “breaking into”?

T. K: I cannot say- they might have been lodged in by the fund too. The investigation should find out the reality. In any case, I think those people, who have occupied the accommodations, do not meet the demands of that time authority.

Journalist: I have examined the documents of these three families. Everything is in order, besides that there is a list signed by the officials from the city authority where these families are inserted. Why did they have to break into the flats?

T.K: I do not know. Gongladze was responsible for that and I do not remember details. I have not attended to this matter for a long time. I cannot tell you who these people are and if they are right.

After that we applied to Sergo Kavtaradze, the chief of the Legal Service Department of the Tbilisi City Hall. He said that until the General Inspection of the City Hall finishes the investigation of the case, nobody can evict those people from their houses.

Sergo Kavtaradze: “The court hearings are still going on regarding the situation and the General Inspection of the City Hall is raiding the fund. Every case is hindered by the fund until the General Inspection makes final decision.

Journalist: What would you say about the court decision under which these families have to leave the flats within fifteen days?

S.K: Until the General Inspection investigates everything properly, it will be difficult to say anything. Many new violations can be discovered in the case that might cause the holding a new trial. Nobody will evict those people before the conclusion is prepared.

Journalist: Did any service departments of the City Hall or your service department investigate the case? The documents show that these people did not break into their flats and they are really the victims of the earthquake.

S.K: Our service department has studied the case and consequently we ordered the general inspection to raid the fund.

Corruption or Swindle?

According to the documents, in 2002 the fund purchased a flat in the Fonichala district 3, B/L 23, Entrance III; App. 63 for 3 800 USD from certain Teimuraz Lachashvili. Since 2004, certain Shevchenko is considered to be a co-owner of the above-mentioned flat. The Human Rights Centre found out that in 2006 the flat was sold for the second time to Gakhokidzes. However, it is strange that the Gakhokidzes bought the house from Teimuraz Lachashvili. One more interesting detail is that Lachashvili was a member of the above-mentioned fund and member of the Isani District Commission. Thus, fund member sold his flat to the fund and afterwards, through some plots the flat is still his property, however it is registered on Shevchenko and Lachashvili sold the flat for the second time.

Chairman of the Fund

Finally we got in touch with Akaki Gongladze, the chairman of the fund.

Journalist: Mr. Akaki, how did it happen that once you lodged the victims of the earthquake in the flats and then appealed against them at the court as if they had broken into the flats?

Akaki Gongladze: Do you know what has happened? It is not so easy to explain because various families have various documents. If you tell me concrete names I will answer you in details. Tell me the surname.

Journalist: For example, Aleksaniani...

A.G. He is a single man who resides in two-room flat. Under the current legislation and our resolutions, we offer him a new one-room flat in the Moscow Avenue. Courts of all instances have made such conclusions regarding the family. The Supreme Court also made conclusion that Giorgi Aleksaniani must leave the flat and we will lodge him in the flat in Moscow Avenue.

Journalist: Mr. Akaki, that flat is already occupied, is not it?

A. G. Yes, but a person who lives in that flat, has no connections with the earthquake and he has no right to live there. So, nobody will force Aleksaniani out from the flat until it is possible to move them into the flat in Moscow Avenue.

Journalist: If this flat did not belong to Aleksaniani why did you lodge him in there?

A.G. Aleksaniani was a victim of the earthquake and since he is a single person, he could not be granted with the flat with more than one room.

Journalist: But you should know that this person is disabled and his relative is looking after him.

A.G. The courts should have taken that fact into consideration and not I. I have the conclusion of the Supreme Court and I can produce it if you come to my office.

Journalist: I also have it.

A.G. So, if the court has not taken the situation in consideration, I have no fault in it.

Journalist: As far as I know, the court did not discuss the fact because the documents on disability of the person were not produced there. The victims say that you have hidden it.

A.G. I cannot criticize the decision of the Supreme Court. Its decision must be followed and I am doing it. Good bye.

The respondent told some insulting words over the phone and cut the line. He did not let the journalist say the word to the end.

According to Gongladze's words, the flats were distributed according to the number of family members. The documents and the victims also prove the fact.

July 4 2002 resolution, article VII states that the flats will be distributed according to the number of family members and not the space in the old flats. Irma Basilashvili, guardian of one of the victims, confirmed it. "4 000 lari was a fixed sum. They told me that I was to find the flat for that price. If the flats were transferred according to the number of family members, why the fund did granted one of the victim families with three-room flat of 51 sq. meters which had occupied only two rooms prior to the earthquake. Gognladze registered that flat on the family."

The limit for victims of the earthquake, whom the court blamed for having broken into the flats, will soon expire. They are waiting for the day of eviction with fear. They claim that if the eviction really takes place everything will end in terrible results. However, they hope that the General Inspection will make fair conclusion.

IDPs from Abkhazia Are Offered Accommodations in Tuberculosis Hospital

Local authority in Kakheti is going to evict IDPs residing in the area of the resort house of Akhtala. Twenty nine families live in the area and the reason for their eviction is the construction of new district hospital in its place. The local authority offers the IDPs to move to the building of the hospital. In several days tuberculosis centre should be placed in one part of that hospital.

Last week, the information about future eviction of the IDPs from the Gurjaani based resort house Akhtala, was spread by the Municipality Governor. Representatives of the regional non-governmental organizations met the Governor Ramaz Kerechashvili, who stated that the municipality tries to start negotiations with IDPs in vain. They wanted the IDPs to leave the resort house.

"You might know that the question of building a regional hospital in Gurjaani is nearly settled. French investors are going to build a medical diagnostic centre in its place and some more medical institutions will be arranged there as well. We decided to use the area for future constructions that will be carried out by the Ministry of healthcare; however, the IDPs refuse to leave the place. We offered them to move to the building of the present district hospital. We also offered them that if they wished we could register those places on them, though they refuse everything. They demand compensation for eviction. We cannot compensate them all and please help us to persuade the IDPs to leave the resort house," said the Governor at the meeting to the representatives of NGOs.

Representatives of the NGO “Human Rights Centre” said in their conversation, that they appreciate the initiative of the authority to open a district hospital in Gurjaani. It is the most convenient area for the population from all Kakheti districts. However, they said that it must not be done at the expense of the IDPs.

“Under the Georgian Law on IDPs, Article 5, the IDPs must not be evicted from their shelters, unless they are offered with alternative accommodation or compensation. There is also a governmental resolution, state strategy regarding the IDPs under which living conditions of these people must not be worsened in the case of eviction. In this particular case, the building in the area of the resort-house of Akhtala is a state property and IDPs reside in it. Thus, the government should provide the IDPs with corresponding assistance. In fact, the government offers those people quite unacceptable conditions,” said Lia Khuroshvili, a lawyer for the Human Rights Centre.

Gia Natsvlisvili, a president’s representative to the Kakheti Region confirms the fact that a new hospital should be built in the place where IDPs live now. “That territory is the best to build a new hospital. Resort Akhtala surrounds the building; a Georgian- French Centre is situated nearby and is a perfect place for regional hospital. Everything will be agreed upon. We will give the IDPs alternative accommodations,” said Kakheti regional Governor.

Though the question is settled by the authority, IDPs are not going to leave the place. They said that they would never agree with the government to move to the building of present hospital. “What kind of conditions are they going to create for us? They are deceiving us according to their wish. How can a person live in the building of a hospital? Moreover, it is located far from the town centre. Besides that the building is too cold and it is impossible to heat it. The ceiling is nearly collapsed. The rain leaks in the building and reaches even the ground floor. The walls are damp. Rats are running around in the building because of great mess in it. In several days they are going to open a tuberculosis centre in one part of that building. The centre was removed from its old place on the basis of people’s complaints, which lived around it. And we, socially excluded people, with poor health should face the danger of getting tuberculosis there?” the furious IDPs said and they are not going to leave the place until the government gives them proper alternative accommodations or compensate them. The compensation sum should be 7-10 thousand USD.

If situation is aggravated and they are forced to leave the building, IDPs threaten to hold demonstrations and start hunger strikes.

People Deported from Russia Are being Evicted from Shelter

A family, deported from Russia, will remain without shelter. The Kvaratskhelias' family expects the government to keep its promise on assisting the deported family; however nobody has paid attention to them yet. Moreover, they have been deprived from the right to live in a poor cellar of one of the dormitories.

Thousands of Georgian people, who resided in Russia, had their rights violated because of complicated political relationships between Georgia and Russia. They spent some time in isolators in the expectation of deportation. Because of severe and inhuman conditions there several Georgian people died. One of them was Manana Djabelia.

Fifty-one year old Djabelia spent several days in an isolator together with other Georgians. Although her documents were in order and she should not have been deported, she was placed in an isolator. On December 2, 2006 Djabelia died. She was buried in Tbilisi. Although her family-husband and three sons-did not have a house in Georgia, the government promised them their assistance. Meanwhile they were lodged in a small flat of 18 square meters that belonged to their aunt. Twelve people lived in that tiny room for more than five months. The aunt is an IDP from Abkhazia too. She has been living in a dormitory in 42 Vazha Pshavela Ave. with her family for fifteen years already.

The aunt said that the flat is too little to live in. They spread mattresses on the floor to sleep on. Because of the situation, the deported family decided to move to the room of former lab in the same building. However, law enforcers did not let them to. The family urges the government for help.

“You can observe how many people live in this situation here. Can a normal person live in such a flat? It is impossible to place twelve people here. We do not demand something incredible. If they do not let us move into that abandoned room, let them at least not take this room away. We have no more shelter and they should not leave twelve people in the street,” said Shakhi Kvaratskhelia.

Sons of Manana Djabelia said that their mother became a victim of harsh political relationships between two countries and they should not have problems in Georgia. “My mother became a victim of this government, Georgia and the politics of this country. She was completely healthy and never complained of anything. She was placed into an isolator because of her Georgian ethnicity. Thus, the government is obliged to give a shelter to her family,” said Gogita Kvaratskhelia.

Although, the government promised them assistance, the family is not allowed into a pulled down room either. Human Rights Centre tried to find out the fate of the family and the building at the Ministry of Economy, but nobody could answer their questions there.

The Kvaratskhelias said that they are going to apply to international and local human right organizations for help. If they are evicted from their aunt's flat, they would have to live in the street.

Property Rights Violated

Unfortunately, violation of private property becomes a habit in Georgia. At present, the owners of the underground located on the Freedom Square face the danger. The owners of the market located on the mentioned place, have to free the territory till Monday, otherwise the market will be destroyed.

Some days ago, strangers visited mentioned shops, who declared, that they were the representatives of Tbilisi City Supervision Department and demanded to free the underground. About details talk leaseholders themselves.

Marina Phiralishvili, leaseholder of one of the shops in the underground: "I have been working in this shop during 8 years on the bases of lease. Agreement was signed with the private owner. We have all the confirmation documents. The leaseholder agrees on continuing working. Because, according to the agreement, we have the right to continue our job. Though, the representatives of the Supervision Department demand from us to free the place till Monday, or they will destroy our shops. Each of the leaseholders has taken the loan from the bank. With this loan we have bought the goods for the shops, but now, we have no opportunity for the realization of the goods. Where should we take these goods? Should we throw away it, or take it home? There is only one way, we have to appeal to court."

Lika Imnadze, one of the leaseholders: "I have the same problem. There are 40 leaseholders here. I have signed the agreement with the owner Rusudan Daushvili. Her representative met with me and told, that they were not going to annul the agreement, though according to him, they also were not going to appeal to court, because, they were sure that if the government wants this place, they will take it anyway."

Marina Litisiani: "If the municipality and government need this place, let's take them it, but they have to give us 2-3 months to sell our goods. We have taken the loan from the bank, and if we don't

sell it, we won't be able to cover the loan. The agreement expires at the end of September. We are not going to leave the places, where should we go? We have all the documents.”

Besides the leaving of the place, the leaseholders have another problem also. According to them, their lease does not ask them to free the place. If the leaseholders leave the place, they are afraid that they will annul the agreement, and the lease will appeal to court. As the lawyers explain, under the law, the mentioned danger really exists.

The same history has the other 37 leaseholders working in the shops. According to the received document from the public registration, they are the legal leases of the mentioned territory. According to the document, the leaseholder pays 415 GEL to private owner in a month. The lease agreement is signed between the directors of Ltd. “New Market” Rezo Mgebrishvili and leases. According to the document, it is impossible to annul the agreement from one side.

After the receiving of the mentioned information, Human Rights Centre decided to talk with the Chairman of Tbilisi City Supervision Department Lasha Makatsaria. He did not deny that those shops have to be destroyed.

Lasha Makatsaria: “The negotiations with the owners of the territory still continue. We argue about the changing of the place. Traders will not be allowed to trade in the underground. The owners do not refuse to move their shops to another place. What about the leaseholders, the agreement is signed with the territory owners, and they themselves have to negotiate with the leaseholders. They feel that our request will be executed. I cannot tell what we are going to offer to the owners, because the negotiations on this case still continue. May be we should offer leaseholders our help. We would apply to other supermarkets, to let these traders on their territory.”

As Makatsaria says, underground will be much more comfortable than today. As for the leaseholders, they say that nobody has contacted to them with the offering of help and this is a lie.

To clear, if somebody contacted to the leaseholders with the alternative proposal, Human Rights Centre talked with the Director of the Market Rezo Mgebrishvili. According to him, he only knows that, the shops have to be destroyed till Monday: “The Department of the Supervision declared that they have to take the territory. But they also say that if we do not appeal to court, may be they would find some other alternative territory for the traders.”

The representatives of the Human Rights Centre left their contacts to the Director. He promised that he would arrange the meeting with the owners. Later, we called him, but he said that the owners refuse to talk with journalist.

The leaseholders appealed to the lawyer of Human Rights Centre Nestan Londaridze: According to lawyer, the rights of the leaseholders are violated: “On 1 March of 2007, leaseholders and Ltd. “New Market” signed a lease agreement. According to the agreement, the area of the underground located on the Freedom Square was handed to the leaseholders. Dismantling of the shops are decided, though, nobody is interested with the faith of the leaseholders. The leaseholders took the loan from the bank. We appealed to the Department of Supervision and asked to take into consideration mentioned situation and to give a month period to leaseholders to free the territory... According to the law, if the administrative organ violates the rights of the person, he/she has right to appeal to court.”

Khelvachauri Municipality Seized Plots of More Than One Thousand Families

Khelvachauri Municipality concluded that plots distributed to people between the years 1999 to 2004 were illegal. Initially, the New Rights Party, the National Forum Party and the Georgian Young Lawyers Association appealed to court against the Municipality resolution on nullifying the distribution of plots. Roin Malakmadze, the chairman of the Khelvachauri Municipality, said that all the acts were cancelled that had been adopted illegally. Murad Malakmadze, a resident of the village of Sharabidzeebi, protests the Chairman’s actions. “The plot was granted to me under the reform. I have built a house, started a farm on it, and now they say it is illegal. Do I have any fault in it?!”

“The municipality decision is legal but unfair,” said Avtandil Beridze, a member of the Republic Party, to the Municipality Decision. He said that by abolishing the acts on granting plots to people in 1999-2004, the Municipality had violated the rights of many ordinary people.

Khelvachauri Court started the discussion of the appeal of “New Rights”.

Rezo Lomadze, the head of the Khelvachauri District Organization, said that “the court allowed us to become involved in the case as a third party. Now we are collecting the signatures of the people who have become victims of the new resolution. We will monitor the case all the way to Strasbourg [ECHR].”

Davit Gamkrelidze plans restitution (new property grants to people with seized lots) if he is elected to office. Members of the Republic Party state the same in their public speeches.

National Forum sent a similar appeal to the court. Tamaz Kobuladze, the head of the regional organization, said that they have prepared an appeal in the name of residents. “We do not have any complaints about [what] New Rights [is doing]. If the court joins our appeals, we will not protest. There were too many signatures, but in order to avoid the misunderstanding of the witnesses’ absence at court, we asked only five people to sign [the petition].”

“Nationals” are going to appeal to the Constitutional Court. Kakha Shartava stated that the Khevachauri Municipality has violated two articles in preparing their resolutions. In addition, they are going to introduce the draft law to the Adjara Supreme Council. “The Adjara Supreme Council should introduce the initiative to the Georgian Parliament. They should demand the enforcement of land reform in Kobuleti and Khelvachauri. It needs the signatures of two thousand people. We will introduce the Supreme Council with the initiative in the nearest future,” said Shartava.

One more organization, the Georgian Young Lawyers Association, plans to protect the rights of the Khevachauri residents.

Nikoloz Gegeshidze, member of the organization, said that Association is getting ready to protect the rights of the property-deprived people. “We have received the applications of seventy people so far. The number will probably be more.”

Chairman of the Khelvachauri Municipality, Roin Malakmadze, calls the opposition’s accusations absurd. “We have discussed the legality of the acts. Part of those acts were found to be nonsense or needed to be abolished. There are some acts that we have not cancelled. These acts dealt with old families, who received those plots legally, and families who purchased the illegally granted plots. In this case, they are the legal owners.”

Murad Malakmadze protests Malakmadze’s actions. “I had leased the land in the village of Sharabidzebi. Then the land was registered in my name. I built a house and started a farm on it. It cost much money. Now they tell me that the land was purchased illegally. Why is it my fault?! If somebody had sold the land illegally to me, let them punish him and not me.”

Sergo Goradze, a resident of Gonio, said that he is an old settler of the district but even he was deprived of the land. “I have registered the plot in my name according to the law, though they have now seized it. The reason is that I live close to the Sea.”

What happened in Khelvachauri was discussed by Tamaz Tsintsadze, the head of the non-governmental organization, “Social Experts Union.” On December 31, 1998, the land reform was completed in Georgia. At the time, Aslan Abashidze, former head of the Adjara Supreme Council, dropped the reform in Kobuleti and Khelvachauri districts. Then in 1999-2004 the Adjara Government continued the reform illegally and registered some plots for certain families. In fact, it was illegal, and therefore the resolution of the Khelvachauri Municipality on abolishing those acts is legal. However, peasants have purchased those lands honestly.”

“On November 26, 2004, Georgian Parliament adopted a new two-chapter resolution according to which the land reform should have been finished in Adjara before December 31, 2006. Unfortunately, the reform was not finished by that time. The reason for the delay were changes to the parliament’s resolution carried out by the Adjara Government. Under the law, the land should have been granted to the families settled before 1992. Adjara Government demanded that families that settled after 2004 be included, too.

“The reason for hindering the land reform is obvious. The central government does not want to distribute plots located on the coast. The incident, which occurred on the Mount Feria, proved this. The central government is trying to seize the land. Otherwise, they should have punished the local government for delaying the reform,” said Tsintsadze.

Conclusion

There are many other cases on the infringement of the right to private property. For example, 90 organizations were evicted from the building of Publishing House “Samshoblo”. The evicted organizations were television stations “Kavkasia” and “Miri”; and newspapers “Asaval-dasavali”, “Sakartvelos Respublika”, “Vecherni Tbilisi” and “Svobodnaia Gruzia”.

The Georgian Constitution guarantees the right to property but the officials who are responsible to protect the right to property breach the Georgian legislation. They seize, destroy and dismantle properties neglecting the legislation; people are threatened with imprisonment unless they assign

their properties to the state. The most terrible is that those people are forced to admit that they have presented their properties to the state by own choice and as an expression of gratitude.

The Supervision Service Department of Tbilisi City Hall deliberately violates the rights of property owners and there are many other cases besides the above-mentioned facts. The Supervision Service Department deconstructs the buildings without any administrative protocol; they only give verbal warnings to the owners on rare occasions. Such deconstruction is a blatant violation of the law. The owner should receive the administrative protocol in order to enable him/her to bring suit against the protocol.

On June 22 2007, the Law on Legalization of Property was enacted. Article 7, paragraph I-a of the law gives a complete list of the properties on which judiciary or administrative discussion were going on. According to the law, the list was introduced to the Parliament. The list mentions a large number of properties and most of the buildings are located in prestigious districts of the cities in Georgia.⁴⁰

The following governmental bodies have supplied the above-mentioned information:

- **Georgian Prosecutor General's Office**
- **Tbilisi City Hall**
- **Vake-Saburtalo District Administration in Tbilisi**
- **Georgian Ministry of Economic Development**
- **Georgian Ministry of Environmental Protection and Natural Resources**
- **Batumi City Hall**
- **The Ministry of Finance and Economy of the Autonomous Republic of Adjara**
- **Khelvachauri Municipality Board in the Autonomous Republic of Adjara**
- **Khelvachauri Municipality Administration in the Autonomous Republic of Adjara**
- **The Government of the Autonomous Republic of Adjara**

Reasoning from the general attitude towards private properties, it is more likely that the properties demonstrated in the above-mentioned list will be sold illegally.

⁴⁰ see http://www.parliament.ge/index.php?lang_id=GEO&sec_id=435&info_id=16558.

Georgian president Mikheil Saakashvili announced the initiative when the presented report of the Human Rights Centre was being prepared. The initiative regulates and legalizes all kinds of property that are in legal possession of Georgian citizens.

The initiative covers the lands of private persons that are not in lawful possession, are not lawfully cultivated or are appropriated and the owner cannot provide legal documents on their possession as well as the spaces built to/on the residential buildings. (Loggias, attics, etc).⁴¹

However, it is noteworthy that the properties can legally remain in the possession of private individuals under certain conditions; that is if they were built before January 1 2007 and do not damage the architectural feature of the city, etc.

The court or administrative collegium discussions on the abolishment of the right to possession or purchase of those properties that were inserted on the above-mentioned list were dropped. The hearings were ceased and the properties remain in the possession of previous owners. However, other similar cases that were submitted to the court will not be dropped and their fate will be settled in court.

The President's initiative does not discuss the rights of those property owners who already have their properties lost. The people damaged as a result of the deconstruction of their properties will neither be compensated.

The Human Rights Centre is deeply concerned over the current situation.

Recommendations

- **To provide absolute protection of the right to the purchase, assignment or inheritance of property;**
- **To start a large-scaled investigation on the above-mentioned cases;**
- **The state should compensate the people whose private properties were illegally confiscated;**

⁴¹ see Georgian Law on the Recognition of the Right to Ownership of Lands in the Possession of Private and Legal Persons.

- **To deconstruct buildings after relevant administrative bodies deliver the administrative protocol to the property-owners which states the legality of the deconstructions.**

*Penitentiary System and the System of Penalties*⁴²

Background

Reform of the system of the execution of penalties was set as one of the top priorities of the Georgian Government, which acknowledged the need for changes in both existing infrastructure and the methods used for the management of the system. The Strategy of the Criminal Justice System Reform⁴³, which was approved by both Parliament and the Government of the country, set the following ten priorities for the reform of the penal system:

- Creation of real and effective mechanisms for protection of rights of the convicts;
- Real and effective re-socialization of offenders;
- Provision of possibilities for employment, education and sporting activities of the convicts;
- Reasonable reduction of the number of prisoners on the stage of preliminary imprisonment as well as after conviction, by maximum application of alternatives to imprisonment and humanization of punishments, considered by the law;
- Permanent improvement of living conditions and the quality of service existing in penitentiary establishments;
- Classification of the convicts, placed in penitentiary establishments, effective risk assessment and allocation of inmates in relevant penitentiary establishments;
- Setting in operation semi-open and open penitentiary establishments;
- Isolation of influential criminal, and prisoners carrying high social risk, from the basic population of prisoners, and their placement in most secure penitentiary establishments;
- Increasing the professional skills of responsible personnel, providing adequate education, salaries and social guarantees;
- Strengthening the capacity of the Probation Department.

It was acknowledged that timely and gradual realization of those activities taken together was essential for the successful completion of the reform. In addition, the Government elaborated and

⁴² Simon Papuashvili, Human Rights Centre, “Penitentiary System and the System of Penalties”, Tbilisi, February 2008.

⁴³ Strategy of the reform of the Criminal Legislation Of Georgia(Working group established by the Presidential Decree No. 914 of 19 October 2004).

approved the Action Plan for the Implementation of the Criminal Justice Reforms in Georgia,⁴⁴ a document that lists activities necessary for the achievement of the goals set by the strategy paper. A study of both abovementioned documents reveals that the major goal of the reform is to create conditions for the re-socialization of convicts, an aim which is set by article 39 of the Criminal Code of Georgia.⁴⁵

Despite some positive changes, it can be said that most of the goals, set by the strategy paper remain unexecuted. This is clearly demonstrated by the continuous and steady increase of the prison population and non-existence of the rehabilitation oriented approach, which taken together can create devastating consequences for the individuals that are subject to imprisonment on and to the society as a whole.

Problem of overcrowding

The problem of overcrowding is not a new phenomenon for the Georgian prisons system; however, the years 2006-2007 have shown a record increase in the number of sentenced inmates particularly. Compared to the number in 2003 – 6274 sentenced inmates - there has been an increase in the prison population of more than 200%; the number has grown to 19244 sentenced inmates.⁴⁶ The excessive number of inmates, combined with the devastating conditions that prisoners have to endure, often equal inhuman and degrading treatment, which has a destructive effect on the prisoners' physical and mental health. Moreover, the prison administration has no choice other than focus on security matters of the prison management.

Despite an officially declared policy of putting more emphasis on the use of alternatives to imprisonment, which was reflected in the Concept of Criminal Justice System Reform (also referred to as the Concept Paper), President Saakashvili declared a zero tolerance policy towards crime. Saakashvili's public statements about zero tolerance policy had immediately been reflected in the number of both pre-trial detainees and convicted prisoners. At the same time, significant investment is being made into the development of the new prison infrastructure. However, the opening of new facilities in Kutaisi and Rustavi in 2005 and in Gldani in 2007 is not a mitigating factor since

⁴⁴ Implementation Plan for the Strategy on Criminal Justice Reforms in Georgia, 12 June 2006, as amended by the State Commission on Coordination of Legal Reforms.

⁴⁵ Article 39. Purpose of Punishment (1). Punishment is aimed at the restoration of justice, prevention of new crimes and re-socialization of a criminal. (2). The purpose of punishment shall be fulfilled through pressure upon the convict and other person in order that they develop a feeling of responsibility for the protection of law and order. Such forms and instruments of pressure upon the convict are provided for by the legislation of Georgia on sentence administration. (3). The purpose of punishment shall not be a physical suffering of a human being or humiliation of his/her dignity. Criminal Code of Georgia, Adopted on 22 July 1999.

⁴⁶ Data is taken from the website of the Ministry of Justice: www.justice.gov.ge.

opening of the new prisons is usually related to the closure of old institutions that are on the edge of collapse. The number of new places created does not correspond to the rapidly increasing figures. This trend was more or less stabilized by introducing the changes to the Criminal Procedural Code in 2005-2006, especially with respect to decreasing the time limits of the pre-trial detention. From 5063 pre-trial detainees in 2005, the number dropped down to 4163 inmates in 2007. However, a different number of the convicts showed another tendency. Whereas the number of the sentenced prisoners was 3832, it went up to 15081 sentenced inmates, causing major overcrowding in the penitentiary establishments for the convicted.

Statistics provided by the Penitentiary Department of the Ministry of Justice clearly show that most of the institutions remain overcrowded. The Decree of the Minister of Justice, dated February 28 2007, provides maximum capacity for each penitentiary institution. It is important to note that the rule used for calculating the maximum capacity is based on the Georgian Law on Imprisonment which does not correspond to international standards. In particular, article 33.2. of the Georgian Law on Imprisonment sets the minimum square meters per inmate. According to this provision of the law, the minimum square meter per detainee is 2 m² per adult male, 2.5 m² for adult women and 3.5 m² for juvenile detainees. While minimum personal space allowed per detainee in Europe is recognized to be 7 m², the abovementioned provision of the Georgian Law on Imprisonment and the corresponding rule of calculating the maximum capacity of penitentiary establishments contradict this basic standard. Moreover, in most of the cases the Government allows the number of inmates to exceed the official capacities of the institutions. This is demonstrated by the figures provided by the Penitentiary Department. In particular by the statistics of November 2007:

Prison	Official capacity	Numbers of inmates in practice
Rustavi No 1	1846	2040
Rustavi No 6	830	1126
Ksani No7	1336	1820
Khoni No 9	600	708
Educational Establishment for Juvenile Offenders	160	182
Batumi No 3	503	1036
Zugdidi No 4	305	538
Prison No 5	1881	5266

The situation has dramatically improved after the transfer of 3500 inmates from No 5 to new Prison No 8 in Gldani.

Despite improving living conditions, the newly built prisons are far from complying with European standards, as it is frequently stated by public officials. First, the minimum space requirement is not met in any of the newly built prisons. Second, there are no arrangements for prisoner activities in new establishments. Since the building of several prisons is a major investment for the Georgian Government, the non-inclusion of rehabilitation facilities (workshops for prisoners' employment and facilities for education) in newly built prison is a serious drawback. Moreover, it demonstrates that the only thing that the Government cares about at present is to lock up the inmates, leaving aside the aim of rehabilitation and creating a serious danger for the society in the medium or long term.

One of the main statements that Saakashvili made both before and after his inauguration, concerned a change of the policy regarding the criminal justice system and decreasing of the number of prisoners, which will solve major problems in the Georgian prison service. The Human Rights Centre is planning to monitor the changes in this respect and will respond adequately.

III-treatment of detainees

The prohibition of torture, inhuman or degrading treatment and punishment is a fundamental human right that cannot be derogated and is subject to immediate implementation (direct effect). Effective implementation of this right is especially important with respect to persons deprived of liberty. In this regard, the state has a positive obligation to create conditions of imprisonment that do not infringe the human dignity; to introduce legislation aimed at the prevention of acts leading to such an infringement both by state actors and private individuals; and to investigate alleged facts of torture. In order for the investigation to be considered effective, it has to be capable of leading to the identification and punishment of the perpetrators of such acts.

As it was repeatedly stated by the European Committee for the Prevention of Torture, acute overcrowding of the facilities combined with the hygienic conditions, lack of activities and poor quality of medical services is sufficient to declare that detainees in many Georgian prisons are subject to inhuman and degrading treatment. By failing to improve prison conditions, the Georgian Government continuously violates the absolute right to prohibition of torture.

Changes introduced to the Criminal Code in 2005 have brought the Georgian legislation, aimed at the prevention of torture, in line with international standards.⁴⁷ However, there are big question marks as to the application of those provisions in practice. The investigation of the March 27 2006 events can serve as an example in this respect. Seven inmates were killed and at least 17 were significantly injured as a result of use of excessive force during the suppression of a prison riot. The perpetrators of this violent suppression remain unpunished.

There are allegations of ill-treatment in Prison No 8 (Gldani Prison). Lawyer of the Human Rights Centre Nino Andriashvili has visited Gldani Prison several times in January 2008. During one of her visits at 25th of January, defendant Philippe Leshkasheli, who agreed to disclose his name, informed Andriashvili that he was beaten by prison guards several times without any reason. Leshkasheli also said that other prisoners are subject to systematic beating from the side of the prison staff. One of the techniques used, as Leshkasheli described, is taking individual inmates on the roof of the prison (where a one hour walking area is located) during the night and beating them for 10-15 minutes. The Human Rights Centre will follow up on these cases in order to document them and draw the attention of responsible Government agencies and international organizations to them.

Effectiveness of the monitoring mechanisms

There have been various attempts to create effective mechanisms for monitoring the detention centres and penitentiary establishments. Some of these mechanisms are still operating on a relatively limited scope, however by ratifying the Optional Protocol to the Convention Against Torture (OPCAT), the Georgian Government undertook the obligation to create an effective monitoring mechanism that shall operate on a countrywide scale. There are three main criteria that national monitoring mechanisms should meet: independence, impartiality and professionalism.

Mechanisms that are created within the state machinery obviously cannot be utilized for such purposes. Therefore, the state has to initiate and contribute to the creation of independent monitoring mechanisms.

Article 93 of the Georgian Law on Imprisonment envisages the creation of Local Monitoring Commissions of the Penitentiary Institutions. The requirements for the Local Monitoring Commission members and the criteria for the appointment are defined by Decree No 2190 of the

⁴⁷ Articles 144¹, 144² and 144³ of the Criminal Code prohibit torture, use of and threat to torture and inhuman and degrading treatment respectively.

Minister of Justice. According to the Statute of the Commission, established by the mentioned decree, the members of the commission are selected on the basis of their desire, possibility to work intensively, qualification and reputation. Additionally, the candidate should reside within 30 kilometres from the penitentiary institution the Commission in question should monitor. The Members are approved by the Minister of Justice.

By 2007, the following 11 local prison monitoring commissions were operating within the penitentiary system of Georgia:

- Public Control Commission of Tbilisi Penitentiary Institution # 5;
- Public Control Commission of Rustavi Penitentiary Institution # 6;
- Public Control Commission of Rustavi Penitentiary Institution #1;
- Public Control Commission of Tbilisi Women and Juvenile Penitentiary Institution #5;
- Public Control Commission of Civil Control Batumi Penitentiary Institution # 3;
- Public Control Commission of Zugdidi Penitentiary Institution # 4;
- Public Control Commission of Ksani Penitentiary Institution # 7;
- Public Control Commission of Geguti Penitentiary Institution # 8;
- Public Control Commission of Kutaisi Penitentiary Institution # 2;
- Public Control Commission of Ksani Tubercular Condemned Prison Hospital Institution;
- Public Control Commission of Prison Central Hospital.

As for the composition of the commissions, there are 35 representatives of NGOs, 11 representatives of local municipalities, 2 students, and 11 priests. The Ministry of Justice launched a new call for applications for further recruitment of the commission members for the remaining of the penitentiary institutions.

Several Georgian NGOs, including the Human Rights Centre, have been deprived of the possibility to have their representatives in commissions. Moreover, the abovementioned commissions cannot be regarded as an independent monitoring mechanism for the purposes of OPCAT for the following reason: members of the commissions are recruited and appointed by the Ministry of Justice, expressly contradicting the principle of independence which is the essential for the effectiveness of the commissions. Since the main purpose of the commissions is the identification of problems in penitentiary institutions, including ill-treatment and lack of adequate living conditions, individuals who are selected and appointed by the Ministry of Justice cannot carry out their major function of

supervision of the prisons. Furthermore, the Concept Paper envisages the creation of a two-layer monitoring mechanism. In particular, the Concept Paper states the following: In order to achieve maximum results of inspecting activities, the existence of a two-level public monitoring mechanism, which would be independent from institutional structures, is necessary:

- I. Supervisory commissions at penitentiary institutions that will be staffed with representatives of local society;
- II. Central coordinating commission, which will be staffed with representatives from society who enjoy high prestige and have experience in the field of human rights. The Central Commission will have the following major functions: general monitoring of the prisons, recruitment of the local commission members, coordination of the work of the local commissions and lobbying the changes. This kind of monitoring system is envisaged by the Draft Code on Imprisonment.

Contact with the outside world

Rule 61 of the Standard Minimum Rules for the Treatment of Prisoners (SMR) draws particular attention to the maintenance of the prisoner's contact with society. In particular, the article states that: "the treatment of the prisoner should emphasize not their exclusion from the community, but their continuing part in it." The quantity and quality of family and other contacts need to be enhanced in order to fulfil whatever the limited crime prevention role the prison may have. To unduly restrict family contact is to undermine the alleged function of the prison.⁴⁸ Rule 92 of the SMR contains a more detailed statement in this respect: "an untried prisoner shall be allowed to inform immediately his family of his detention and shall be given reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to such restrictions and supervision as are necessary in the interests of the administration of the justice and of security and good order of the institution."

The policy of the current administration of the Penitentiary Department is far different from the propositions made in the abovementioned provisions of the SMR. One of the major tasks that was given to Bacho Akhalaia upon his appointment as the chairman of the Penitentiary Department was the elimination of the influence of "thieves in law", which unquestionably was an essential step towards the successful accomplishment of the reform. However, finding a balance between eliminating the illegal influence of the "thieves in law" and establishing order by reasonable means proved to be a mission impossible for the new administration of the Penitentiary Department. The

⁴⁸ Making Standards Work, an international handbook on good prison practice, Penal Reform International, 2001, pp. 101-102.

fight against unlawful practices in prisons coincided with measures related to the minimization of the contact of prisoners with the outside world. Examples in this respect include: decreasing the occasions and time of meeting family members, relatives and friends; elimination of the import of parcels and preventing the information flow from prisons. Clearly these are easy solutions to the problem of criminality within the penitentiary system and implementation of these measures will have a negative influence on prisoners in many ways.

Article 48 of the Georgian Law on Imprisonment regulates prisoners' meetings with family members and close relatives. Paragraph 1 of the mentioned article eliminates the possibility for friends of prisoners to visit them during their incarceration. This is clearly a wrong approach considering that many prisoners are unmarried, divorced or separated from their families. Therefore, for those who have no family or close relatives, the law leaves no possibility of maintaining contact with the outside world. Also, it deprives friends of the possibility to provide support to the prisoners from the outside.

One innovation that was introduced in September 2007 is the right of the prison directors to allow additional meeting(s) to a prisoner stemming from his/her law-obeying behaviour. The prison director can exercise this right on his/her own discretion or based on an appeal of the prison's social division or local monitoring commission. While recognizing the positive intentions of the authors of this amendment, it is also necessary to note that outside contact for prisoners must be seen as an entitlement rather than as a privilege. They should, therefore, not be used as either rewards or punishments. To deprive prisoners of such contacts as a disciplinary sanction is unacceptable, except where a specific abuse of the exact contact was an offence. With respect of family contacts, any such deprivation should be avoided.⁴⁹

Training of Personnel

Every prison requires staff of a high calibre, "since it is," as Rule 46 (1) of the SMR states, "their integrity, humanity, professional capacity and personal suitability for the work that the proper administration of the institutions depends." The staff deals with prisoners on a daily basis, caters to their needs, is responsible for the smooth running of the prison as well as for security and safety, and identifies and tackles problems. The prison's inhabitants are in a perpetual state of interdependence, a situation in no way diminished by inequalities in the balance of power. Prisoners have very little say, being dependent on fellow prisoners and on staff for their requirements; their

⁴⁹ Ibid.

food, the general atmosphere, work and the minutiae of everyday life.⁵⁰ Rule 47 (2) of the SMR goes into more detail by stating that: “before entering on duty, the personnel shall be given a course of training in their general and specific duties and be required to pass theoretical and practical tests.”

The establishment of the Prison and Probation Training Centre in 2006 was a big step forward towards improvement of the quality of the personnel for both the prison and probation services. By September 2007 the Centre has already trained 57% of the Penitentiary Department and 100% of the Probation Service staff. The Centre has a newly refurbished and well-equipped office which has been operating since December 2007. The Centre plans to train 1000 more staff members of the Penitentiary Department in 2008. For this purpose and for the proper functioning it is essential that the Centre receives adequate funding from the state budget annually.

Probation Service

One of the issues that the Concept Paper paid particular attention to as a key component of the humanization of the system of penalties was the application of alternative punishments. Moreover, the Concept recognized the necessity of the creation of not only legislative, but also practical and material guarantees for application of alternative punishments, which first of all meant the strengthening of the capacity of the probation service. The basic problems that still remain unsolved are the number, the quality and working conditions of the personnel.

At present there are over 250 probationers per probation officer, which is five times more than the reasonable maximum of 40 probationers per probation officer. This practice limits the supervisory function of the probation service to the formal registration procedure. In addition, the poor working conditions make proper functioning of the probation bureaus a mission impossible. All this taken together once again proves the inability or at least the lack of will of the Georgian Government to carry out a comprehensive reform of the criminal justice system.

Conclusion and recommendations

People have the right to live in a secure society and humane treatment is the only road to creating a safer society. Individuals who have been convicted, taken into custody or otherwise came into contact with the prison and probation service, should be met with respect and honesty. The criminal justice policy implemented by the Georgian Government fails to meet this basic principle. Individuals who become subject to detention in Georgian prisons do not have a chance for

⁵⁰ Ibid.

reintegrating themselves into society. Their dignity is infringed on a daily basis by the living conditions they have to endure. The quality of treatment, food, medical services and the absence of activities make prisoners feel excluded rather than integrated. The negative cumulative effect of bad treatment and living conditions makes offenders dangerous for the society in the long term. There is a high probability of re-offending after release and usually the crimes committed by individuals released from prisons are more severe. Moreover, keeping people locked up is expensive for society.

Recommendations

- **Give more emphasis to alternatives to imprisonment in both the pre-trial and post-conviction stage, thereby contributing to the decrease of the number of prisoners and solving the problem of overcrowding;**
- **Revise its criminal justice policy and make it more humane and oriented to the re-integration of offenders;**
- **Replace the administration of the Penitentiary Department and appoint individuals capable of implementing a policy aiming for re-integration;**
- **Investigate any cases of death or claims of ill-treatment of people in custody, including the March 27 incident;**
- **Create an effective mechanism for the monitoring of detention centres;**
- **Create conditions for the employment and education of prisoners;**
- **Set into operation semi-open and open penitentiary establishments in accordance with the Concept of Criminal Justice System Reform and the Action Plan for its implementation.**

Military Situation in Georgia⁵¹

Analysis of Legislation (Law on Compulsory Military Service)

Every Georgian citizen shall take compulsory military service. While serving in the army working place and salary of the person is maintained. Georgian citizen of the age from 18 to 27 must join Georgian Army. District governments are recruiting the soldiers.

A person is discharged from military service on the ground of poor health, or if he served in the army of foreign countries, if he has been charged for particularly grave crime, or has non-military, alternative occupations. In addition to that, students of post graduate course, individuals with scientific degrees or those carrying out tutorial activities are discharged from military responsibilities. Finally, the only son in the family with at least one member killed in the fight for territorial integrity of Georgia or during ordinary military service shall not serve in the army.

It is noteworthy that according to the Georgian Law on “Military Responsibilities and Military Service”, Article 29, Georgian President is empowered to discharge a young man of paramilitary age from military responsibilities if he has particular talent in any field.

According to the law, recruiting of young man can be postponed for one year if he is considered temporarily unfit for military service. The young man can be released from the service: if criminal case is launched against him, or he is a student of a high school or a vocational institute and the faculty has military department; if he is a student of a high school accredited in Georgia or foreign high school acting according to the regulations estimated by foreign legislation; if a person paid the fee estimated by the Georgian Law as a Tax for Postponing the Compulsory Military Service; if he is a student of the comprehensive school-under the age of twenty; if he looks after the disabled person and is bread winner of the family; if he has two or more children; if he is a clergyman or takes course at Ecclesiastic Academy; besides that the recruiting of a person shall be postponed if he is a lonely child or works as a doctor or a teacher in a village; if he has one child under the age of three years.

If a young man of paramilitary age takes part in Georgian parliamentary elections his recruiting shall be postponed until election results are announced publicly. If he is elected as a member of Georgian Parliament, he is discharged from the military service.

⁵¹ www.humanrights.ge.

Duration of compulsory military service is 12 months but for contractors it is estimated with 4 years.

It must be pointed out that special institution-Military Police- is established to investigate the crimes committed in military units or by military servants. Georgian legislation envisages administrative or criminal liabilities for the crimes committed during military service.

Besides, there is **non-military, alternative labour service** that includes **public service in favour of community**. It replaces military service and depends on the refusal of compulsory military service in military uniforms based on the freedom of dignity, faith and belief. Georgian Ministry of Labour, Healthcare and Social Welfare is in charge of supervision of recruiting together with state commission of non-military alternative labour and monitor the decision made by the commission with the support of separate divisions within the Ministry.

Human Rights Centre received information about the monitoring carried out in Military Units of the Defence Ministry from the Georgian Public Defender's Office. The monitoring revealed facts of human rights violation in Georgian Army.

The report of the Public Defender's Office stated that "soldiers as a rule avoid speaking about being abused because they are afraid of worsening their situation in the army and causing future problems with other soldiers or officers."

During monitoring "Representatives of the Public Defender's Office visited the prisoners in Tbilisi Prison # 5 who were accused for deserting and willful flee from military units. Motivation for the crime committed by them was quite obscure. They avoided naming exact reason for their behaviour. However, some of them pointed out that the reason for their flee was unbearable situation in military units. More precisely:

In Military units soldiers are separated according to their origin and conflicts between them mostly start on this ground. Besides that, there is hierarchy in the army among soldiers. Consequently, they have so called respectful (authoritative) soldiers and humbles (non-authoritative soldiers) in the army. Thus, they have established various rules for the soldiers belonging to various hierarchies. For example, if a respectful soldier can go on holiday without any problems, so-called humble one must first ask permission to the respectful soldier and then to the chief of the unit. If "boss" does not let him go, he cannot take a holiday; but if he does not obey his order, disobedient soldier will be

seriously punished. In addition to that, being asked which unit they are in, soldiers should tell the surname of the soldier who “controls” the unit. Ordinary soldier must endure assault from the sovereign but cannot pay him back. When salaries are taken the unit collects so-called “collective” money. Besides that, the deserted soldier should rather go to prison than return to the unit because he would be seriously rebuked for his mistake by the “boss”.

Analysis of the Legislation (Reservist Service)

It must be pointed out that nowadays there are three kinds of Compulsory Military Service in Georgia. They are: Reservists Army, Alternative Military Service and recruiting. Each of them is regulated by legislation.

HRIDC is concerned with the new changes in Georgian law according to which the reserve service has become obligatory for every man in Georgia. Thus, everyone who has already served in the army will have to do the same once more. The law was put in force in December 27 2006. The age of the active reservists is from 27 up to 40.

Under Georgian law on "Reserve Service", the reserve of the military forces is being created in the case of mobilization, war or national security to support the armed forces.

Avoiding reservist service is punished under the law. If a person, having received summon from the mobilization division within the Georgian Defence Ministry, does not appear to the military unit on the estimated day for inadequate reason, or avoids reservist service, will be charged under the Georgian Legislation (Article 10).

Georgian Parliament enacted the Law on Military Reservist Service. The Article VIII of the law represents the list of people who are free from military obligations. Article VIII-‘h’ states that **“people who served in alternative military service”** are free from military service.

It is noteworthy that women in Georgia are free from military reservist service, as well as employees and technical staff of the railway department who take part in transportation or railway reconstruction department. In addition to that, teachers and doctors are free from the military service if they work in villages; the personnel of navy, employees of the Georgian Internal and Defence Ministries, Tbilisi Underground Department, judges, people who were employed in alternative services, those who receive education abroad, diplomats, clergymen and members of Georgian Parliament.

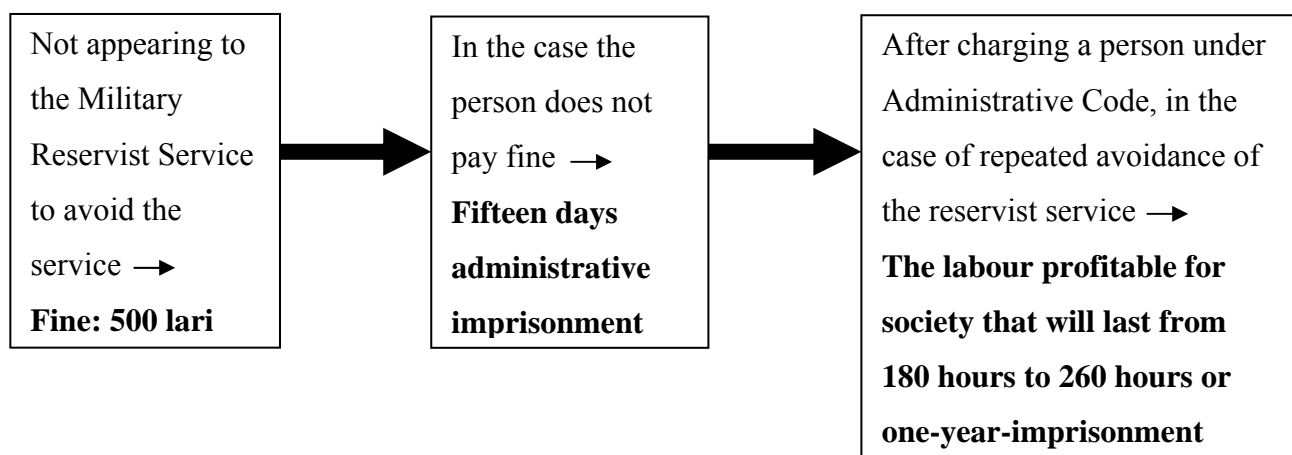
According to the definition of the law on Reservist Service, the aim of adopting the law was “to establish well-trained armed forces in the country in order to reinforce the defence capability of the state.”

Reserve of Military Forces is divided in three groups:

Reserve Groups	Personnel	Aim
I Active	Former military servants, contractors, professionals, people resigned from military service whose health conditions are satisfactory.	Maintenance of high military readiness of people, mobilization promptness
II National Guardia	Is staffed according to territorial units, with those people who comply with estimated criteria with their education and experience.	Participation in the liquidation of the results of some particular situations and urgent operations in the rear of enemy.
III Individual	People who are not members of the first and second group of reserve army. Also people who enjoy the right of being free from military service or had their term postponed.	Rotation and replenishment of subdivisions within Armed Forces

Liabilities for avoiding Military Reservist Service

Following liabilities are estimated for avoiding military reservist service:



A person shall not be charged if he could not appear to the Mobilization Department within the Defence Ministry for respectful reason. This reason can be death of a close relative (family member, siblings or step siblings, brother-in-law, sister-in-law or parents-in-law); illness, as well as natural disasters or some other kind of serious problems.

Human Rights Centre conversed with one of the reservists who served his term in Kojori Military unit.

The reservist discussed the problems in Kojori military unit. He said there was terrible mess in the unit. “Hot water flowed only during one hour a day. However, there were 500 soldiers in the battalion so everybody could not manage to take a bath during that one hour. Toilets were out of order and water leaked downstairs. Lavatories were cleaned once in 3-4 days and there was terrible anti-sanitary there. There were not enough places for beds in the barracks. The beds were so close that we could hardly get to our ones.

We wore only one uniform for eighteen days. During trainings we fall down in the mud or simply get wet of sweat but we could not wash our uniforms because it could not dry for the next day. As for nutrition it was really good and I can even say that it was close to NATO standards,” said the reservist.

“The training was not very pleasant either. Mostly young sergeants and lieutenants trained us who had neither much experience nor theoretical education in the field. However, there were several exceptions, lieutenant-in-chiefs who had taken part in war and had received good education in the military science,” said the reservist.

Kakhetian Youth Forced to Join Army Reserves

40% of Young Soldiers in Gurjaani Infected with Hepatitis B.

Not too long ago, young people were enticed to fill the reservist camps in Kakheti with the promise of 5 kilos of rice and macaroni, 100 GEL and further employment. Today people are forced to join the army or face violence and police threats.

Despite notable improvements in the financial conditions of military personal, many people do not want to join the army. The reasons they give include the recent disregard for human rights and the increasing number of murders in the Georgian army.

The Parliament may also introduce proposed changes and additions to the law regarding “payment for the deferment of military service”, prepared by the Committee of Defence and Security. These changes envisage increasing the amount of payment required to defer military service ten fold. Youth of military age will be forced to join the army, as they would then have to pay 2,000 GEL, instead of the current 200 GEL, to postpone military service for 18 months – a sum beyond the means of most of the population.

“The youth of military age try to avoid military service. That is why, according to the President’s orders, Spring call up for military service, which started on 10th January 2006 and was due to end on the 15th March, was extended twice, the second time until the 15th July.

During the spring call up, 126 young people of military age must be called up in Gurjaani. We would not have had any problems if we didn’t have to turn down 40% of the young people for having Hepatitis B - that was completely unexpected. That is why we have to make the youth of military age appear before the commissariat with police help, which is no violation of the law”, declares Zurab Ananeishvili, the Head of the Military Department of the Gurjaani Administrative Board.

Calling up the youth as reservists using police threats and force, it is something categorically denied by Vano Elizbarashvili, a representative of the Gurjaani Administrative Board. According to him, the local government distributes neither macaroni nor money from the budget. “Only patriots join the reservist army. We go to the villages as well, accompanied by the heads of the village military offices and ask people to join the reservist army. We explain that they should love their country. Those who love their country, accept our proposal. How we could we dare threaten people or use force?” stated Vano Elizbarashvili surprised.

One person who spoke to us did not deny that he had been forced to join the army reserves. “A few days ago, at midnight, representatives of Administrative Board and Commissariat came to my house and demanded that I join the reserves despite my wishes. I told them that I had under age children. Besides, I am the only bread winner in my family and could not join the reserves. Because of this, the representative of the Administrative Board became furious and called me a traitor to my country. They became violent, saying they would make me go if I did not obey them, but the noise made the neighbours come outside. In addition to this they threatened me, saying that if I did not appear at the Commissariat on the set day, I would have problems with the police, I would be arrested and so on,” says the person, who does not want to be named publicly.

The information about the forcing of citizens to join the army is confirmed by the Kakheti office of the NGO the Human's Rights Centre. "Several people, whose identities we know, applied to us orally. They pointed out that they were made to join the army reserves as a result of various threats, for example, the creation of problems with the police, ceasing aid to their families and so on – things that are completely inadmissible. A certain person, working at a government office, was threatened that he would be blamed with irresponsibility at work and would be sacked if his brothers did not join the army. According to the law currently in force, joining the army reserves is voluntary and not obligatory," declares solicitor Lia Khuroshvili.

According to information obtained by The Human's Rights Centre, the same situation is observed in other Kakhetian districts.⁵²

Population of the villages of Grdzelichala, Eniseli and Gremi in the Kvareli District complain about the low qualification and lack of security measures in reservist battalions. They demand to remove the Military Polygon of Telavi Reservist Battalion from the village of Shakriani. They have applied to the local government and Defence Ministry regarding the problem; though in vain. Villagers claimed that as a result of gunfire they find bullets in their yards and fields are set on fire quite often. One person was killed by a spray bullet of a reservist.

Military Polygon, where reservists are trained in shooting and in some other military arts, is located one kilometre away from villages. Thus, specialists think that it is violation. They claim that polygon must not situate so close to the residential area because a stray bullet can kill a local resident during the training.

Residents of the village of Grdzelichala said that a little time ago eighty-year-old Aleksi Khutsurauli, was killed by a spray bullet fired by reservists. The old man was working in the garden in front of his house when suddenly he fell down. Doctors found him dead having arrived on the place. Later the bullet was removed from his abdomen.

After the accident local people demanded the Kvareli Municipality to remove the polygon from the area but nobody replied to them.

"We wanted to leave our petition at the Kvareli Municipality but they did not accept it at the chancellery. They said similar problems were not in their competence and we should have applied

⁵² "The Velvet Downfall", Human Rights Report 2006, Georgia. HRIDC.

to the Ministry of Defence. We have not sent written petition to the Ministry; however, the problem was widely discussed in media. Anyway the situation has not changed at all,” said Darejan Davitashvili.

Seventeen families live in the village of Grdzelichala. They say that they live in constant fear because of polygon. “It has become impossible to live in the village. We are afraid to leave house because we do not know whether we return home alive. Thus we have to abandon our village and move some other place. But the problem is that we do not have anywhere to go to,” said Natela Tvaliashvili.

“Unless somebody assists us, we will either die or the village will get completely empty. How long can we remain without attention? Initially, they killed my father-in-law and nobody investigated the accident. Now my mother-in-law escaped the death. How long should they continue killing innocent people?” asked Isan Mamulashvili, a son-in-law of murdered Khutsurauli.

The Ministry of Defence does not deny that the death of Aleksi Khutsurauli was connected with reservists’ training. They also confirmed that on the day of accident the soldiers were trained on Shakriani polygon. However, Archil Mamageishvili, deputy head of the Military Police Department, claimed that the old man, working in his own garden, could not be killed by a reservist.

“On that day reservists really were trained on the polygon. Consequently, they were firing too, but the distance between villages and the polygon is nearly two kilometres. In addition to that there is approximately 400-meter-high-hill between them. Thus, I do not think Khutsurauli was murdered by the bullet shot by reservists,” said Mamageishvili.

If the training polygon of Telavi Reservists Battalion had no deals with the accident, Asmat Khutsurauli, daughter of the murdered man, wonders why the Ministry of Defence paid the expenses of Khutsurauli’s funeral.

“Officials from the Ministry stated that the polygon has no connection with the death of my father. The investigation has not finished yet. Why did they pay the expenses of my father’s funeral if they were not guilty for it? Why did they warn and urged us not to tell anything to journalists, particularly about compensation?” said Asmat Khutsurauli.

Military expert, Irakli Sesiashvili stated that in order to avoid the danger the government should formulate the norms to comply with NATO standards. Those norms will regulate how long distance should be between the polygon and residential area; in what direction the soldiers should fire, etc.

“Today, there are not any regulations in Georgian jurisdiction. The accident in Kvareli demonstrated that the Georgian Government and particularly Ministry of Defence must formulate concrete norms immediately and they must comply with NATO standards,” stated Sesiashvili.

Lia Khuroshvili, a lawyer for the Human Rights Centre, said that according to the legislation if military training is carried out close to residential area, population can appeal against it and protect their rights. “The local residents should inform the Ministry of Defence regarding the problem and the Ministry is responsible to reimburse the damage for population without any delays. Unless people are compensated, they might appeal to the court,” said the lawyer.

According to the Human Rights Centre’s information, the area, which is used by the Ministry of Defence for military trainings, is leased by farmers.

“We leased this territory to use as pasture before they started military trainings here. Now the field is burnt and we cannot use it anymore. Corresponding bodies have information regarding the situation; though they still demand us to pay lease taxes. Besides that there is not empty place nearby and our cattle do not have pasture at all. Consequently we have to stop breeding the cattle that is the only source for local people to earn living,” said Spartak Kamashvili.

After great effort, the leasers met Nika Janjgava, Commander-in-Chief of the National Guardia. However, the negotiation had no result.

After the second half of 2006 Georgian Public Defender’s Office started the monitoring of the guardhouses within the Defence Ministry throughout Georgia.

There are six cells in the system in total. They are Disciplinary Cell of Tbilisi-Mtskheta-Mtianeti Region (in Tbilisi), Disciplinary Cell of the Kakheti-Kvemo Kartli Regional Department (in Vaziani), Disciplinary Cell of the Samegrelo-Zemo Svaneti Regional Police Department (in Senaki), Disciplinary Cell of the Adjara Regional Department (in Batumi), Disciplinary Cell of the Samtskhe-Javakheti Regional Department (in Akhaltsikhe) and Disciplinary Cell of the Shida Kartli Military Police Department (in Gori).

Sozar Subari, Public defender of Georgia, stated at the presentation that their representatives were not allowed to carry out monitoring in the disciplinary cell of the Senaki Infantry Military Base II. They were not allowed in the area either. "Only in the Vaziani disciplinary cell, the situation was satisfactory. As for the rest four, there is a horrible situation in them. There are not even minimal conditions for a person to live in. It is terribly cold in there. The prisoners have to sleep on the ground. There are no showers and light in the cells. Some of them do not have windows either and they are lit by a little bulb fixed in the corridor. Living in similar situations is torture," said the public defender.

Regarding the recommendations of the Prison's European Regulations of the Ministry Committee within the Council of Europe, section 24, every prisoner should have separate bed and linen. The facts that in the evening boards are taken into the cells in order to lie on them at night, proves that a person cannot normally live in the cells. All aforementioned facts show that the principles of treating prisoners are violated.

According to the UN Minimal Standard Regulations, rule #11, cells in the detention setting, where prisoners live and work, must have windows in order to read and work. In addition to that, every cell must have electric light.

However, the monitoring showed that no norms of these recommendations are met in Georgian disciplinary cells.

Despite such inhuman conditions, soldiers avoid speaking about their rights violated. They are afraid to complicate their situation in military units and do not want to have problems with other soldiers and officers.

Sozar Subari declared that regarding the situation, he applied to the Georgian Defence Minister under Georgian Organic Law of the Public Defender, to take measures to improve the horrible situation in the disciplinary cells in Georgia.⁵³

Officials from the Legal Department of the Defence Ministry informed us that according to current data 114 military servants serve their term in guardhouses in Georgia.

⁵³ http://www.humanrights.ge/eng_/articles.php?tbl=articles&id=519.

Budget of Defence Ministry

In 2007 the budget of the Georgian Defence Ministry increased with almost half billion USD. The news caused serious concern of the society.

The chart below represents the budget of the Ministry published on official web-site of the Defence Ministry.

2007 Budget of Georgian Defence Ministry

Expenditures	Estimated Budget for 2007	1 st Additional Expenses	2 nd Additional Expenses	Additional Expenses in Total	Exact Budget in Total
Number of the Staff	28 750	28 750	28 750	28 750	28 750
In Total	513 270 000	442 100 000	315 845 000	757 945 000	1 271 215 000
Work Reimbursement	127 556 700	18 200 000	36 852 700	55 052 700	182 609 400
Assignments	26 754 300	3 600 000	7 724 200	11 324 200	38 078 500
Business Leaves	26 473 400	21 100 000	17 910 500	39 010 500	65 483 900
Other Goods	161 529 300	120 616 300	112 650 500	233 266 800	394 796 100
Food	26 500 600	0	7 232 000	7 232 000	33 732 600
Subsidies	10 175 900	700 000	3 022 600	3 722 600	13 898 500
Capital	160 780 400	277 883 700	137 684 500	415 568 200	576 348 600

Human Rights Centre prepared special article on incredible increase in Defence Ministry's budget:

Budget of State Defence Has Increased into 442 Million Lari

Georgian Parliament has voted through the budget of the state defence which was increased into 442 million lari. Although the opposition does not vote for the budget, it could not prevent the parliament to enact the budget. The opposition demanded the transparency of the budget and wanted to be explained why defence needs such great funds. The answer was too simple-everything is transparent what must be public.

Discussion of the defence budget is a topic which causes fuss and controversy between majority and minority for many years. The majority did not insert the members of the opposition into the

responsible group and it became the reason for the controversy. Another reason for the argument was unanswered questions.

As for the responsible group, it is set up of MPs and cooperates with law enforcement bodies. It aims to control all those issues which cause some misunderstandings and doubts. When the parliament was discussing the establishment of the responsible group cooperating with the Ministry of Defence, the opposition offered Davit Gamkrelidze, a leader of the “Rights”, to be their representative into the group. The majority turned down his candidature because they could not trust him. Thus, the parliamentary opposition remained beyond the group and consequently they have no access to the information about the defence issues.

Afterwards, the opposition started to speak about their doubts and reasons why the expenditure of the defence budget was inaccessible for them. Kakha Kukava, representative of the Conservative Party, said in his conversation with the Human Rights Centre, that “one of the reasons for hiding the information are secret purchases carried out by the Defence Ministry.”

Kakha Kukava: “There are no documents to prove why the Ministry needs such a great sum. As far as we know, the fund is mostly apportioned on operations in Iraq. Georgian government denies making the Defence Budget transparent. In the nearest future, military budget might become the topic of serious consideration because billions are spent on development of army from state budget and various foundations. However, very soon we might find out that the sum is not invested into the army. One of the proofs for our suspicions is the fact when Georgian army became a hostage of Kokoiti’s armed formations during the very first clash in the conflict zone. Army cannot be tested during the parade. In addition to that, we should remember the most expensive purchase from the Ukraine carried out by the Georgian Army when purchased equipments went wrong. We cannot get information about other purchases and I am sure the situation will not be better this time either.”

Majority MP Giga Bukia has similar complaints about the transparency of the budget. He doubts that those funds might be spent unreasonably. “The Defence Budget was increased in almost 400 million lari and there are no documents that can show the purposes of the expenditure. We are not against increasing the budget but we wonder what the money is spent on and how budget expenses are monitored. We are told that the principal part of the budget is secret. Unfortunately, the majority decided not to have the opposition member in the responsible group. Thus, the information is closed for society and in this case, the funds can be spent on anything as well as on 2008 parliamentary elections.”

Members of the Parliamentary Defence Committee from the parliamentary majority state that they cannot understand the complaints of the opposition. They claim that the part of the defence budget that can be publicly discussed, is public; however, what cannot be openly discussed is kept in secret. Davit Kezerashvili, the Defence Ministry, agrees with the majority MPs. “The budget will be spent on the defence and armed forces. Everything what must be transparent we make it public. I cannot understand the opposition’s complaints.”

“Human Rights Centre” has got hold of the document which reveals that main strategic destinations of the Defence Ministry in 2007-2010. According to the document 955 370,00 lari will be distributed on following fields: salaries of the employees - 145 756,70 lari (last year it allocated to 103 732,20 lari); employment tax -30 354,30 lari (last year it was 21 505,90 lari); business trips- 47 573,40 (last year it was 27 196,90 lari); other stuff and services- 282 145,60 lari (last year it was 261 236,50 lari); nutrition expenses 26 500,60 lari (15 131,80 lari); transfers – 10 875,90 lari (last year it was 5 314,30 lari); capital expenses 438 664,10 lari (last year 438 664, 10 lari).

The document contains no more information. The expenses of other part of the budget are not given in the document. One of the chapters of the document deals with the strategy which lists following goals: 1. improvement of the living conditions of the military servants and their families according to the location of service office; 2. raise in salaries of certain military servants; 3. improvement of medical service for military servants.

As for the upcoming results, the document states that “high qualified personnel is invited to the armed forces; military servant and his family will be socially protected that will raise the prestige and motivation of a militant; the youth will have desire to joint the army.”

As for other goals, the document states that the budget must be spent on improvement the potential of the armed forces; modernization and repairing of the weapon and equipment; improvement and modernization of the military infrastructure as well as on participation of international programs and missions.

Military expert, first Georgian Defence Attaché in America, **Archil Tsintsadze**: “Unfortunately not only those military servants who were trained by American forces, but also the personnel trained in NATO member countries abandon the military service and start civil activities. Similar drain of professional personnel will tell on development the armed forces badly. We must pay attention to the stuff we have already trained. Otherwise, the whole sum will be spent unreasonably.

The increased budget will have no result if it is wasted. Youth must be challenged by the example of older officers. When they are not praised in the system, they cannot remain on their jobs. The young generation witnesses the negative situation in the system and consequently they will lose all kind of interest in it. It is easy to change the weapon but it takes at least ten years to train the officer.”⁵⁴

Besides the budget of the Defence Ministry, Georgia increases its contingent in Iraq while other countries withdraw their armed forces from there:

Number of Georgian Soldiers in Iraq to 2 000

Since 2007 the contingent of Georgian soldiers working as peacekeeping troops in Iraq and Kosovo increased from 280 up to 2000. If Georgian peacekeepers patrolled the green line and carried out mine-clearing operations, hereafter they will be moved to the red line. Many people fail to understand why Georgia increases its contingent in the war zone while other countries have either reduced or withdrawn their troops from Iraq.

A faction of parliamentary members has been demanding explanation on these questions for a long time; however they could not get any satisfactory information yet. The military experts also fail to understand why the peace-making contingent is increased. They demand to see the conception on the basis of what the number is increased.

The Human Rights Centre asked Davit Kezerashvili, the Defence Minister, to comment on the issue. He replied in short that the increase was caused by Georgia’s integration into NATO. “Since the USA is one of our most important partners, and they need our help, the Georgian Government decided to increase the contingent to 2000. It is quite natural that this initiative would help us to integrate Georgia into NATO.”

However, the MPs have different opinion regarding the question. They claim that this initiative has nothing to do with NATO.

Mamuka Katsitadze, a representative of the “Rights Opposition” said, “the increase in Georgia’s troop contingent in Iraq is not laid out in the project of NATO. NATO is implementing its project in Afghanistan, and its aim is to locate an army there. As for the increased numbers of troops in Iraq, it depends on the state’s wish. Georgia stated that we wish to increase the number of our soldiers from

850 to 2000. Consequently, Georgia has occupied the third place after the USA and England according to the number of its soldiers in Iraq. It means we are showing off and boasting in front of the whole world. If we want to integrate into the world, if we want the whole world observed the situation in our conflict zones, we should also take active part in similar activities. However, nobody obliges us to be in the warm front. We discuss the aim of this initiative. I suppose we must be more careful regarding the situation. However, I do not think that we must be excluded from the mission. But everything must be relevant to the state demands.”

We asked the same question to MP Giorgi Tsagareishvili, a representative of the opposition. He considers that Georgia must withdraw its military units from Iraq. “We are told that we are following partnership responsibilities. We came into these responsibilities with a coalition and the US, and I am concerned by the fact that initially 50 countries involved in the coalition but more than half of them have withdrawn their units from Iraq, while we are increasing our number. It must be pointed out that initially Georgian military units patrolled the green line, and nobody died there. Now we are moving to the so-called red line. It is in our character – we always fought for others and did others’ business throughout the history. Remember Georgian soldiers fought in Afghanistan, India, etc. Thus, it is a bitter reality. Although the army must be permanently trained, Georgian soldiers will not make peace in Iraq. It is impossible. US soldiers have not managed. We must withdraw our army from there. Besides this, the whole coalition army should be withdrawn. It has not done any good in Iraq. Georgia must withdraw its contingent from there like France, the Ukraine, Poland and other countries did.”

The MPs do not argue that Georgia should not be involved in international peace-making activities. However, they need proof that Georgia will benefit from the increased contingent. MP Fikria Chikhradze said that the army of neither 2000 nor 10,000 would assist us to integrate into NATO.

One of the good examples to answer this question is Colonel Archil Tsintsadze, First Georgian Defence Attaché to the US who was is an active member in the military relationship between Georgia and the US. He could not find his place in Georgian army at all. He, as a military expert, cannot understand why the military contingent is increased because there is no necessity of it at all.

Archil Tsintsadze: “I do appreciate our participation in peace-keeping missions. In general, the name ‘peace keeping mission’ sounds too serious. Since peace keeping missions are not properly implemented in our country, I think that we must involve more and more similar missions in order to increase their role. I was the first soldier who took part in peace keeping operations in Iraq and

Afghanistan. I personally established the coordinative headquarters. It was my initiative. Then, Georgian Defence Ministry was sending peace-keeping units according to the US initiative, and the contingent was similar to the political ambitions of our country. Initially, we were involved in the operations in order to show that we are with the coalition forces. As for now, I do not know what the political benefit is of increasing the contingent. I cannot observe any profit at all. We have already reaped what we could. It was the Train and Equip Program, our recognition, etc. I cannot imagine what kind of political benefits they have promised our government in exchange of increased contingent. It needs much more explanation.”⁵⁵

It is interesting that, under the governmental initiative, Gori is gradually turning into a military city. Initially they moved military hospital in the centre of the city and now they are building forts for soldiers. The President said the forts will be the best in Europe.

HRIDC decided to write article on this issue:

It is too difficult to enter the fort and take photos in it. The construction is being built by the Defence Ministry and you should receive a permit from the Ministry to enter the area. The most interesting point in the situation is the land where the military fort is being built.

“Georgian army is strengthening and nobody will defeat us,” these are the most favourite words of the President. The Defence Ministry built forts according to NATO standards in Senaki. Now similar constructions are going on in Gori too. However, we wonder whether the NATO standards also foresee that population must sacrifice their private properties to military forts?!

The place where military base is being built was granted to local people as private property. Current authority has appropriated that land and is going to build forts on it. Before starting construction, they promised the owners to compensate the loss; in May they are going to lodge soldiers in the buildings and have not compensated the owners yet. 150 families were deprived from their property of 23 acres of land without asking any permission.

In 1991 Maia Shakulashvili was granted with the housing plot. However, she has not built any house in it, but she was cultivating the plot and keeping the family with the harvest she received from the plot. Now she cannot grow up vegetables and has to buy them in the market. The family is poor and extra expenses make their life more difficult.

“They started construction without asking us any permission. I have registered the plot at the Registration Department. I used to pay bills on the land too. Those, who had not their plots registered, were advised to register their properties in order to get compensations afterwards. Initially they offered 2 lari for a square meter and then they increased it to 3 lari. However, nobody has ever given anything to us. When we apply to the local government they tell us they do not know anything about the situation. They have appropriated out properties without asking any permissions. Now the authority refuses us to give any compensation,” said Shakulashvili.

The area where the military base should be located on belongs to the Karaleti Community. The plots of the local people were transferred to the Defence Ministry without signing any contracts. Besides that the owners are forced to sell one square meter of their plots for 2 lari only. Dali Dzakhshvili worked at the Karaleti Public School for 35 years. She was granted with the plot of 23 square meters from the Municipality to build a house on it. Now she has already had it registered, but the plot was registered as an agricultural land and not the housing one. Dzakhshvili does not complain about that, she is worried about the fact that the government is seizing her property.

“I was growing corn and beans in my plot. I have no more income and they have grabbed my last hope too. Soon this government will kick us out from our houses too. They have destroyed the restaurants that valued more than one million and then forced those people to write that they were giving their properties as gift to the authority. They might soon make us do the same. What do they have to do with our property? Let them at least give us compensation. However, the money, they offer us, is ridiculous,” Dzakhshvili.

Tsitso Natsvlshvili is one of those owners who try to get compensation for the property. She will not avoid travelling to Tbilisi to find justice. She has already applied to the Defence though without any results.

“I went to Tbilisi after local authority failed to assist me. I met every official who could help me. Nukri Dzebniauri, an official from the Logistic Department within the Defence Ministry, told me that they would not give us more than two lari for a square meter. Since that time they have not decided the question even on that price. Two lari is too little. We took a notification from the Shida Kartli Economical and Privatization Service Department which states that the price of a square meter of the third-category-plot is 4, 86 lari. As far as I know, Nino Burjanadze was also involved in the case and called upon the responsible officials to compensate the people. However, Dzebniauri tells us that they are ready to give us two lari; otherwise we will remain without everything. During

Self-governmental elections, President's Representative to the Shida Kartli promised us to give money in November and asked us to stop complaining. So much time has passed since that promise; they are going to open the forts, however we have not been compensated yet," said Natsvlishvili.

That time Deputy Governor of Gori District, Tamar Edisherashvili, who promised the people to resolve the problem, now is the head of the Financial Department within the Shida Kartli Regional Administration. She said that while she was the deputy governor, negotiations were held between the Gori District Administration and the Defence Ministry to resolve the problem. However, they could not make any conclusions.

"Negotiations were held in two directions. Either those people should be given compensation, or given alternative plots. Some of the owners had old fruit-trees in their plots. However, finally they could not agree on the price and decided to give plots. At present the Gori Municipality must work on the issue and you can get in touch with them," said Edisherashvili. Human Rights Centre got in touch with Marlen Nadiradze, the chairman of the Gori Municipality.

"The Municipality does not discuss the problem. I do not have any information about it. As far as I know the Defence Ministry is discussing the case. Who has advised you to get in touch with me?" Nadiradze was surprised.

The Human Rights Centre talked with the Chairman of the Logistic Department Nukri Dzebniauri within the Defence Ministry: "Few days ago, the heads of the Defence ministry visited Gori. They met with the owners of the plots. People ask for 5 Lari in a square meter. The Defence ministry can pay only 2-2,50 lari. Nowadays the heads of the ministry are not in Tbilisi. As soon as they arrive, we will continue the negotiations with the owners. The rumours that we are leaving them without any compensation are a lie," declares Dzebniauri.⁵⁶

According to the Operative Lay-out Department J-3 within the United Headquarter of the Georgian Armed Forces, nearly 6 640 Georgian solders have taken part in rehabilitation and maintenance of safety and peace in Iraq since 2003.

Under the Georgian Parliament's Resolution # 4886 dated by June 8 2007, one unit of Georgian Armed Forces takes part in operations for rehabilitation and maintenance of peace and safety in Iraq within the US Infantry # 3.

It is noteworthy that Human Rights Centre applied to the Georgian Defence Ministry regarding the public information when started working on the report. The letters were enclosed with request to send public information as soon as possible. However, twelve days later Legal Department of the Defence Ministry sent only two letters. One of them lacked all kind of information, as for second one, it did not answer all questions we had sent to them.

Whose Plot Is Georgian Army Located on?

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Soldier Sacrificed to "Collected Money"

Forester of Abi Wood in the Akhaltsikhe District discovered jeans, leather waistcoat, military boots and bones in the seven-kilometres-deep gap when he was doing his every-day round-wood-raid. The dead person turned up Daniel Aghlemashvili, a soldier who disappeared on March 9 after the incident caused by collecting of the money in the unit. The father, Isoeb Aghlemashvili, recognized the civil clothes of his son. The expertise is going on too. Since the incident happened in the unit, the fuss of the parents has turned into a fear.

Daniel Aghlemashvili, a contractor for the Akhaltsikhe Armor-tank Unit # 3 disappeared on March 9.

At that time, the father of the dead boy, Ioseb Aghlemashvili, related the disappearance of his son to the collected money in the unit.

“My son has been lost for more than a week. I do not know whether he is alive or dead. He served in an army. They seem to have collected some money-twenty lari each for some purpose. My son had an argument with the soldier who was collecting the money. I know nothing more. Since the incident my son has disappeared,” said the father in his conversation with the Human Rights Centre two months ago.

In February, special operation was carried out in the Akhaltsikhe Armor-tank Unit # 3 and two military servants were arrested for collecting the money. Whether the dead person had any information regarding the money-collecting, or his death was really related to the fact, is difficult to claim. However, Daniel Aghlemashvili was twice interrogated at the Prosecutor’s Office-initially as a witness and then as a victim.

At present, the family mourns for their son and they are going to investigate the murder of their son after the funeral. Ioseb Aghlemashvili is waiting for the police conclusion:

“The police have not concluded anything yet. They have not informed me yet. I do not know the truth and neither have I known when the truth would be discovered. I will monitor the investigation to the end. If nothing is revealed after the funeral, I will attend to the matter myself. They have taken photos and sent to the expertise. They found the body of my son on the place where it was difficult to get even by a car. I cannot claim whether my son knew the area or not but it is fact that he would not have gone there to kill himself,” said Ioseb Aghlemashvili.

Last week, the discovery of the dead body caused the same reaction from the ordinary people and relatives of the family.

“When I watched a clip of the state anthem, I always felt happy seeing our soldiers. I think it does not have anything to do with reality; it is just a play. Now I am afraid to send my son to the army. I do not deny that the military service helps a young fellow to become an independent man. But

since I heard the accident and reasons for the death of that poor boy, I have been confused and afraid,” said Leila Gogoladze.

“Who will guarantee me that my son will stay alive when he serves in the army? Who will protect his rights?” asked parents of the young boys.

Daniel Aghlemashvili was a resident of the village of Ude in the Adigeni district. The village was waiting for their neighbour for two months. However, none of them expected such terrible end of the incident. Law enforcers do not comment on the fact.

Kakheti Population Demands to Remove the Polygon of Reservists Unit from the Area

Residents of the villages of Gremi and Grdzlichala in the Kvareli district demand either to remove the polygon of the Telavi Reservists’ Unit from the area or to severe the security measures for reservists. The villagers became furious after the accident several days ago. According to the initial information reservists murdered Aleksi Khutsurauli by a machine gun. Local people claim that very often gun blazing result into a fire. Villagers find bullets on the pasture and in their yards.

Telavi Reservists’ Unit is trained on the polygon close to the village of Shakriani in the Kvareli District. Although Shakriani and other villages in the district are separated by a high mountain, population of the villages of Gremi and Grdzlichala complain about the noise and bullets that fall in the surrounding area. The villagers petitioned to the Kvareli District Administration regarding the problem and urged for the assistance; however there was no result. “We have applied to the Administrative Board but nobody replied to us. Reservists are trained on the polygon. In addition to terrible noise bullets from the automatic gun are falling down in the area,” said Vano Tsigroshvili, a resident of the village of Grdzlichala in his conversation with the Human Rights Centre.

“Gun shooting very often results into a fire and we live in constant danger. As we are far from the district centre and the road is in bad conditions, fire-engines cannot get to our village on time. We have to put out the fire on our own,” said Besik Gozalishvili.

Short time ago, eighty-year-old Aleksi Khutsurauli was murdered by the gun machine and local people got more concerned regarding the situation.

“My husband and I were working on the plot. Suddenly I heard gun shot and asked my husband if he had heard the noise, but he did not answer, just moaned and fell down. Coming up closer I

noticed he was wounded. I called the neighbour for help they called for the first aid but they could not help him. They withdrew bullet from his abdomen,” said Tebro Khutsurauli, wife of the dead man.

Law enforcers launched criminal case under the Criminal Code Article 116 on the accident. The article envisages imprisonment from one to four years for a murder without due caution. According to Archil Bozhadze, the head of the Kvareli District Police Department, the case was passed over to the Military Police of the Ministry of Defence after the scene of the accident and the body of the murdered person was examined. Officials from the District Police Department sent the case materials to the Ministry because of the reason of Khutsurauli’s death.

Officials from the Military Police Department within the Defence Ministry confirm that on Shakariani Polygon reservists were firing from gun machines on the day of Aleksi Khutsurauli’s death.

“The reservists were really trained on the day of the accident. Although they were shooting in the area, the distance between the scene of the accident and the polygon was more than two kilometres. In addition to that there is high mountain between those scenes. Consequently, we cannot claim anything until investigation finishes,” said Archil Mamageishvili, Deputy Chief of the Military Police Department.

Lawyers state that if the investigation concludes that Khutsurauli was murdered by reservists, the family of the dead person will have right to demand compensation from the Ministry of Defence under the Georgian Civil Code. However, the lawyers doubt the investigation will be carried out impartially.

In order to avoid the danger the local population demand to remove the Shakriani Military Polygon from the area or to severe the security measures. They will petition to the Ministry of Defence with the demand.

Population Finds Bullets Shot By Reservists in Their Yards

Population of the villages of Grdzelichala, Eniseli and Gremi in Kvareli District demands to remove the military polygon of Telavi Reservists’ Battalion from the village of Shakriani. They have petitioned to the local government and Ministry of Defence regarding the problem several

times, though in vain. Local residents claim that the firing very often results into fire and they find bullets in their yards. Unfortunately, one person became a victim of gunfire.

Military Polygon, where reservists are trained in shooting and in some other military arts, is located one kilometre away from villages. Thus, specialists think that it is violation. They claim that polygon must not situate so close to the residential area because a stray bullet can kill a local resident during the training.

Residents of the village of Grdzelichala said that a little time ago eighty-year-old Aleksi Khutsurauli, was killed by a spray bullet fired by reservists. The old man was working in the garden in front of his house when suddenly he fell down. Doctors found him dead having arrived on the place. Later the bullet was removed from his abdomen.

After the accident local people demanded the Kvareli Municipality to remove the polygon from the area but nobody replied to them.

“We wanted to leave our petition at the Kvareli Municipality but they did not accept it at the chancellery. They said similar problems were not in their competence and we should have applied to the Ministry of Defence. We have not sent written petition to the Ministry; however, the problem was widely discussed in media. Anyway the situation has not changed at all,” said Darejan Davitashvili.

Seventeen families live in the village of Grdzelichala. They say that they live in constant fear because of polygon. “It has become impossible to live in the village. We are afraid to leave house because we do not know whether we return home alive. Thus we have to abandon our village and move some other place. But the problem is that we do not have anywhere to go to,” said Natela Tvaliashvili.

“Unless somebody assists us, we will either die or the village will get completely empty. How long can we remain without attention? Initially, they killed my father-in-law and nobody investigated the accident. Now my mother-in-law escaped the death. How long should they continue killing innocent people?” asked Isan Mamulashvili, a son-in-law of murdered Khutsurauli.

The Ministry of Defence does not deny that the death of Aleksi Khutsurauli was connected with reservists’ training. They also confirmed that on the day of accident the soldiers were trained on

Shakriani polygon. However, Archil Mamageishvili, deputy head of the Military Police Department, claimed that the old man, working in his own garden, could not be killed by a reservist.

“On that day reservists really were trained on the polygon. Consequently, they were firing too, but the distance between villages and the polygon is nearly two kilometres. In addition to that there is approximately 400-meter-high-hill between them. Thus, I do not think Khutsurauli was murdered by the bullet shot by reservists,” said Mamageishvili.

If the training polygon of Telavi Reservists Battalion had no deals with the accident, Asmat Khutsurauli, daughter of the murdered man, wonders why the Ministry of Defence paid the expenses of Khutsurauli’s funeral.

“Officials from the Ministry stated that the polygon has no connection with the death of my father. The investigation has not finished yet. Why did they pay the expenses of my father’s funeral if they were not guilty for it? Why did they warn and urged us not to tell anything to journalists, particularly about compensation?” said Asmat Khutsurauli.

Military expert, Irakli Sesiashvili stated that in order to avoid the danger the government should formulate the norms to comply with NATO standards. Those norms will regulate how long distance should be between the polygon and residential area; in what direction the soldiers should fire, etc.

“Today, there are not any regulations in Georgian jurisdiction. The accident in Kvareli demonstrated that the Georgian Government and particularly Ministry of Defence must formulate concrete norms immediately and they must comply with NATO standards,” stated Sesiashvili.

Lia Khuroshvili, a lawyer for the Human Rights Centre, said that according to the legislation if military training is carried out close to residential area, population can appeal against it and protect their rights. “The local residents should inform the Ministry of Defence regarding the problem and the Ministry is responsible to reimburse the damage for population without any delays. Unless people are compensated, they might appeal to the court,” said the lawyer.

According to the Human Rights Centre’s information, the area, which is used by the Ministry of Defence for military trainings, is leased by farmers.

“We leased this territory to use as pasture before they started military trainings here. Now the field is burnt and we cannot use it anymore. Corresponding bodies have information regarding the situation; though they still demand us to pay lease taxes. Besides that there is not empty place nearby and our cattle do not have pasture at all. Consequently we have to stop breeding the cattle that is the only source for local people to earn living,” said Spartak Kamashvili.

After great effort, the leasers met Nika Janjgava, Commander-in-Chief of the National Guardia. However, the negotiation had no result.

*Freedom of Expression and Media*⁵⁷

Introduction

Since independence, the Georgian media has not been as restricted as today, at the 4th anniversary of the Rose Revolution. Many Georgian journalists feel the same on that issue. Many of them have left the field of their activities out of a feeling of protest. Some of them went abroad and some of them continued their career in a more peaceful sphere. The post-revolutionary expectation on enhancing and protecting democratic values was so huge that the Georgian media granted time and opportunity to the new government.

In early 2004, there were concerns that the diversity of the media was being significantly reduced since most of the media formerly connected to the opposition now supported the government, leaving very few outlets that did not have a pro-governmental orientation. It is clear that the freedom of the media in Georgia is restricted; Freedom House ranks Georgia at place 120 out of 195 countries and rates the media in Georgia as partly free. Looking at the reports of the recent years, one can even see a deterioration of the freedom of the press.⁵⁸ The current events in Georgia clearly show a decline in the freedom of expression. In November 2007, as part of the state of emergency, two media companies supporting the opposition were taken off the air without following the procedures prescribed by the law. By forcibly entering the premises of Imedi, the Special Forces destroyed the equipment necessary to broadcast. The damage is estimated to be millions of Euros.

Mainstream media sources face pressure from the authorities and are therefore unable to operate freely. It became difficult to prove facts with argumentation because the government cut all the ways of gaining information by imposing financial sanctions, forbidding to investigate trials and by actively obstructing journalists to access public information. Journalists have been hampered in their ability to discover any facts compromising the government during these years. Almost all governmental structures have blocked access for journalists, even those which were accessible during the previous Shevardnadze government. Journalists have lost their opportunity to get public information. Due to censorship or self-censorship the media has lost its function within society. The abuse of basic human rights is increasing and almost no independent media is left to report it. Especially issues concerning vulnerable groups like minorities, IDPs and refugees are left without

⁵⁷ Eka Kevanishvili, "Media Report", Human Rights Centre, Tbilisi, February 2008.

⁵⁸ "Freedom of the press", 2002-2007, www.freedomhouse.org.

proper attention by the media. Frequent violations of human rights are taking place in the regions of Georgia. In addition, journalists lack the skills in reporting human rights issues as far as human rights journalism is not developed in Georgia as such, especially in the regions.

Currently, there is no diversity within the media; the three major television stations broadcasting countrywide - Rustavi 2, Mze and Public Broadcasting - are pro-government and often lack impartiality. This practice deprives those of other opinions the opportunity of communicating these ideas to the public. The political opposition can therefore not communicate with the electorate which creates a political vacuum in the country.

This section of the report touches upon existing problems in the media throughout the entire country. It highlights the pressure journalists are under nowadays.

Legal Assessment

Media legislative framework - changes carried out since the “Rose Revolution”

Despite the unfriendly legislative framework during the Shevardnadze period, the right to freedom of expression was more or less respected. For the most part, the government did not interfere unduly with the media. There were sporadic attacks on independent journalists, and independent media outlets continued to face severe economic pressures. However, the media reflected a wide range of political viewpoints.⁵⁹ Some of the major changes that Saakashvili’s government undertook in order to secure the freedom of expression in general and rights of the representatives in particular include:

- The adoption of the Law On Broadcasting in 2004, and commencing reforms in the field of public broadcasting;
- The adoption of an advanced press law, the Law On Freedom of Speech and Expression, in 2004;
- The abolishment of defamation as a criminal offence in 2004;
- Further improvement of a comprehensive freedom of expression law (Chapter III of the General Administrative Code);
- Interim liberalization of the tax regime to include tax benefits for the print media; and

⁵⁹ “Agenda for reform: Human Rights Priorities after the Georgian Revolution, A Human Rights Watch Briefing Paper”, February 24, 2004.

- The adoption of professional standards for the media, signed by numerous major print and electronic media outlets.⁶⁰

These changes were meant to improve the free generation and exchange of ideas and to strengthen the level of independence of media as well as of activities of professionals in charge. However, expected results did not take place and journalists are experiencing significant difficulties. These problems, that do not always stem from the legal framework, can be categorized as follows: problems related to the ownership of broadcasting companies by government allied individuals; the government uses its influence with owners of major private television channels, except Imedi TV, to control the content of their programmes. These owners are either relatives of government officials or keep close ties with the government to secure their business interests. They directly control the media content, giving little editorial independence to staff and sometimes censor programmes that are critical of the government.⁶¹ The government has reportedly used financial pressure to control the media, giving a reprieve from tax debts to those outlets it perceives as pro-government and dispatching tax inspectors to those it perceives as overly critical.⁶² Journalists, nevertheless, are reluctant to speak publicly about interference or pressure to influence the content of their work. There are reportedly few protections against unfair dismissal, and journalists are rarely willing to risk their positions by speaking publicly.⁶³ Moreover, the introduction of various procedural bans to get information promptly from first sources is another factor hampering the effective work of the media. Finally, the taking off the air of two television companies: Imedi TV and Caucasia on November 7, 2007 represents an unprecedented measure of control of free broadcasting rights.⁶⁴

Taking this background into account, the question of adequacy of the legislative framework needs to be measured.

The most important law regulating the free exercise of the right to freedom of expression and to some extent the activities of the media, is the new Law on Freedom of Speech and Expression. The elaboration of this law was done by the Liberty Institute and it dates back to before the “Rose Revolution”. The law institutes a number of innovations bringing the Georgian legislative regime

⁶⁰ “Under Lock and Key, Freedom of Information and the Media in Armenia, Azerbaijan and Georgia”, 2005.

⁶¹ “Georgia and European Neighborhood Policy, Human Rights Watch Briefing Paper”, 15 June, 2005.

⁶² Ibid.

⁶³ Ibid.

⁶⁴ For a detailed discussion on the effects of the November events on the media see the part of this report called: Assessment of the November events in the light of Georgia’s international obligations - Restriction of the Freedom of Expression.

regarding the freedom of expression in line with modern western democratic standards. According to the new law, defamation is decriminalized. The burden of proof is reversed – the plaintiff is to prove the truthfulness of information disseminated about him. The law draws a clear line between facts and opinions – opinions and value judgments defended by the absolute privilege. The notion of a public figure is defined. Political debates are guaranteed and promoted by the law. In case of a court dispute related to the alleged defamation published by a journalist in the media, the media company will be considered the defendant in the case, not the journalist as a private person; Moreover, the law provides absolute protection of professional secrets and the sources of information. In particular, according to article 11 (1) of the law the following information is protected: information disclosed in confidence to journalists {...} as well as information that has become known to a person during the performance of his or her professional duty and disclosure of which would cause damage to the professional reputation of that person. The absolute protection conferred means that no person may ever be compelled to disclose the source of such information, no matter how important the countervailing interest.⁶⁵ A positive development since the enactment of the Law on Freedom of Speech and Expression is the elimination of the practice when public figures were going to the courts demanding compensation and retraction of the information disseminated by the media. Overall, the law is assessed as one of the most progressive media laws in the world, incorporating some of the best practices from around the world.⁶⁶ Nevertheless, as problems experienced by media in practice demonstrate, the given law is not sufficient for securing the proper exercise of their duties by representatives of media.

The Broadcasting Code of Conduct, the adoption of which was contemplated by the Georgian Law on Broadcasting, which determines the rules of conduct by license holders, is also meant to guarantee the proper functioning of media, among other things. It is apparent from the Law on Broadcasting that the Code of Conduct will be a legally binding instrument. It is described as a ‘normative act’ and the Georgian National Communications Commission will be empowered to impose sanctions for its breach. Its binding nature means that the Code will have the effect of restricting broadcasters’ right to freedom of expression in significant ways; the many detailed provisions are likely to have a bearing on virtually every programme produced in the future, constraining editors’ choice of how to gather and present information and opinions. “Article 19” advises every provision be screened for its compatibility with the internationally protected right to freedom of expression.

⁶⁵ “Guide to the Law of Georgia on Freedom of Speech and Expression”, Article 19, April, 2005.

⁶⁶ “Under Lock and Key, Freedom of Information and the Media in Armenia, Azerbaijan and Georgia”, 2005.

On the whole, media legislation needs further improvements in order to guarantee a higher degree of independence for media representatives. In addition, measures for the editorial independence need to also be strengthened.

Media in Georgia

The media in the capital has clearly been negatively affected by the developments in Georgia. Georgian journalism was in trouble which became obvious when some political talk shows, newspapers and even television companies were closed. The restriction of the media has become worse in a smooth way.

When we think of the central media during the last four years, we will see that the methods of oppression are little bit different from the methods used to put pressure on the regional press. The main method of the media oppression in the capital has been economic sanctions, as well as the confiscation and closure of media offices.

But the pressure on the independent media and journalists reached its peak in November of 2007 when three television companies - Imedi TV, Channel 25 and Caucasias - were taken off the air and all television companies, besides Public Broadcasting, were prohibited to broadcast news as a result of the state of emergency. On November 7th, after the dispersal of the peaceful demonstration, several dozens of journalists were taken to hospitals because of physical injuries. However, if we consider the ongoing developments since 2004, we should not be surprised over these events. Television debates slowly disappeared after the Rose Revolution. Journalists were openly physically assaulted by governmental officials. In reality, journalists had no access to state bodies; the public relations departments became so sluggish that they could or would not even answer the simplest questions

In 2007, Reporters without Borders issued her Worldwide Press Freedom Index; Georgia took the 66th place among 169 countries, improving her position with 23 places compared to the year before.⁶⁷ Despite this seeming progression, the free press in Georgia is actually under pressure from the government, which is clearly shown by recent events. Journalists do not want to lose their professional freedom and therefore they are leaving their jobs. Representatives of the government kindled a disagreement between journalists of leading television companies. Newspapers are shutting down and circulation of news is becoming more difficult.

⁶⁷ “Worldwide Press Freedom Index 2007”, 16 October 2007, Reporters without Borders, www.rsf.org.

It is worth mentioning that before January 1, 2007 media did not pay any value added tax (VAT) and property taxes. The benefits gained from advertisements and the bank accounts of the newspaper were not subject to tax collection. But from January 1st 2007, all these privileges were abolished. The existence of many newspapers was at serious risk due to the amendments of the Tax Code.

November Events - the Case of Imedi and Caucasias

The HRIDC managed to reach Imedi journalist Natia Mikiashvili. On November 7th 2007 rubber bullets struck both her and her cameraman on Baratashvili Bridge. “I asked my cameraman to get some footage on Baratashvili Bridge,” Mikiashvili recalls, “even though there were already very few people there. As we did so, riot police saw us filming, and began to follow us, shooting rubber bullets. We were the only TV crew there and the police were trying to cover our camera lenses so that we could not get footage of anything.”

Natia Mikiashvili said that in the days before November 7th, they had been receiving reports of a possible raid on the television station.

By November 7th, Imedi staff knew that riot police were planning to enter the station that evening. During the demonstrations, Levan Tabidze, a journalist for Imedi, was severely beaten by riot police, who threatened that Tabidze’s injuries were nothing compared to what they were planning to undertake later that evening.

Because of the police’s aggressive attitude, Imedi journalists took the station’s logo off their microphones to continue working. Late that evening, their work was stopped without question for at least two weeks.

Another Imedi journalist, Ana Gochashvili, who was on Imedi premises when riot police stormed the station, says that they had been expecting riot police to raid the whole day. “We still had some hope that they would not attack us,” Gochashvili says. “I was in the newsroom when one of our reporters ran in saying that we were surrounded. At that moment, the riot police entered the room. They shouted at us to lie down on the floor and not move. When we asked why they came, they replied, ‘because you are Russian spies, you are highlighting incorrect information, you want turmoil in Georgia’. Nobody was beaten, but they took our mobiles and then took us in the yard and let us out from the back door of the station.”

The methods used to stop television station Caucasica were different, as authorities blocked their broadcasts from their television tower. According to Davit Akubardia, Caucasica's station director, a well-known businessman came to him and offered him a deal. "I am not naming who yet," Akubardia says, "but a very famous businessman came to me and said that if I stopped broadcasting the news for one week, they would not cut the station entirely. They offered us a lot of money—I mean millions. We refused to accept such an offer. No riot police raided us, but our broadcast was cut from the television tower. As far as I know, Imedi uses a satellite to broadcast and that is why the authorities could not stop them in the same way."

"The main thing that should be clear for everyone is that the law has been breached," Akubardia continued. "A state of emergency had not been declared yet, nor had it been approved by the Parliament. Actually, media should be informed with official letters about restrictions placed on their activities after it is approved by Parliament. We have a licence that obliges us to inform society about current political events. It is written in laws enacted by this government. As soon as Parliament approves this declaration, I am going to seek legal action."

Akubardia also mentioned that if the government had only targeted Imedi, an argument could have been made that the station was "subjective" and "biased", requiring closure. Suspending the broadcasts of two stations at the same time, however, undermined the government's own policies and purpose.

As for Imedi Radio, it was suspended noiselessly. According to Lela Gamechava, an employee at the radio station, the broadcast was suddenly blocked three minutes before Imedi TV was taken off the air. There were eight people in the radio building, who closed the office and left the premises. "We were afraid that they might break the equipment," Gamechava says. "When we were leaving, we heard terrible noises."

Reporters Without Borders voiced "deep concern" about the declaration of a 15-day state of emergency, in which one of the first measures taken by the authorities was to suspend all the news programmes of the privately-owned television stations and to close two stations that broadcasted footage of the security forces violently dispersing demonstrators in the capital.

“The Georgian population has the right to be informed about what is happening in the country,” the press freedom organisation said. “We call on the authorities to reverse this decision and to allow journalists to resume working normally at once.”⁶⁸

Specific Cases⁶⁹

Privileges on Press Are Abolished

Georgia based media sources used to have some kind privileges up to now. However, after 2007 their privileges will be abolished. As a result, many of them might cease their functioning in future.

Media-organizations complain about the fact and urge the Speaker of the Georgian Parliament, Nino Burjanadze, for help.

Burjanadze promised them that printed media will have some privileges. Additional consultations in the parliament will estimate the future advantages for them. She also mentioned that the press should have some encouraging regime, and demanded representative of media to produce arguments proving the necessity for being granted with privileges.

Unlike Burjanadze, one of the leaders of the parliamentary majority, Maia Nadiradze, does not want the media to have privileges any longer. She thinks that publication is business and entrepreneurs should not be treated like beneficiaries of greenhouse. "Just the opposite, we should create competitive environment for mass media, in which the strongest will survive," this is Nadiradze's position.

On December 26, meeting between Burjanadze and mass media regarding the problem, ended in failure.

The meeting, presented by some more members of National Movement-Democrats, was held in the evening under Burjanadze's initiative. The question on privileges was raised by the Rights in parliament.

⁶⁸ “Government suspends news programmes, closes two TV stations after declaring emergency”, Reporters Without Borders, 8 November 2007, www.rsf.org.

⁶⁹ See www.humanrights.ge.

After the meeting, Lasha Tughushi, editor of the newspaper Resonance, said “Unfortunately, the meeting ended in failure and many questions are still obscure.”

Malkhaz Gulashvili, head of the Media holding "Georgian Times" declared that media could not receive any answers on any problematic questions. They only heard that the MPs will “think” on this issue in future.

Bokeria, Deputy Chairman of the Legal Committee in the Parliament, said that representatives of media could not give any valid arguments why they should have privileges and should not pay income taxes.

According to Bokeria, the press is really in crisis, but it is caused by lack of qualification and professionalism.

If press does not have privileges, the publishers will have to raise price on newspapers or to close their print-shops.

Association of Regional Media has also petitioned the Speaker of the Parliament regarding the privileges. "On January 1, 2007 privileges for media expires. In 2004, Georgian Government, through granting economical freedom to independent media, wanted to join those countries for which the freedom of speech and development of the independent media was priority. However, three years were not enough to turn the printed media into a profitable business. Today, it is still urgent to create particular economical conditions for press as principal instrument for the country's democratic development.

To charge regional press in advantageous regime has principal importance. It is high time to encourage local media and the state should take active part in it. Many courtiers have various forms of assisting the media; however, we are aware that similar prospect can be realized only in future in Georgia.

Association of the Georgian Regional Media, which includes more than sixty regional publications, thinks that estimating some privileges for media will be a great support not only for single issues and development of independent media, but it will also show the government's attitude to the aforementioned processes and irreversible processes of democratic development," the appeal stated.

Under Administrative Code, publishing organizations were free of some taxes from January 1 2005 until January 1 2007. Those taxes were the following: 18% of the Value Added Tax, 20 % of the Income Tax, 1% of the Property. The publishers paid only 20 % of social tax and 12 % of Income Tax.

The publishers hope that the parliament will agree on creating privileges for them. Although, opposition supports the demand, their votes are not enough pass the question.

News-Room of the Telavi Television Has Stopped Working

Long controversy between the local government and the Telavi TV Company Tanamgzavri resulted into ceasing the working of the news-room for the company. Daily TV program Matsne has not been functioning for two weeks already. The program used to spread the information about the situation in the Kakheti region.

After the Rose Revolution, the TV Company Tanamgzavri has had several problems with the local government. “It was almost impossible to get any public information from the Telavi Municipality for our correspondents. In November 2005, under Gocha Mamatsashvili’s order, financial police raided the TV Company. The fact hindered our activities. Later on they tried to detain the Director-General of the company, Enri Kobakhidze. Representatives of the Financial Police assaulted the journalists during the raid. Finally, they could not find any faults with our work and then raided the enterprises whose activities were advertising by our television. As a result, to avoid additional suppression, these organizations stopped cooperation with us. Thus, we faced financial problems and we had to stop the working of the news-room,” said Nato Megutnishvili, the head of the News-room and journalist for the Tanamgzavri.

Before the news-room was closed, the board of the TV Company stopped broadcasting of the weekly program “Dialogue”. Enri Kobakhidze assigned both facts to the eviction of the Tanamgzavri from its office. Three-year-long argument between the founders of the company resulted into a verdict of the Georgian Supreme Court, according to which the office was granted to Zurab Kumsiashvili, one of the founders. TV studio was functioning in that office and the programs were prepared there too. Afterwards, the Tanamgzavri continued its functioning in the building of the NGO, “Centre for Protection Constitutional Rights”. The local government did not give the TV Company board to find any alternative accommodation to move in.

Megutnishvili said that the Telavi district interim Gangebali and later chairman of the Telavi Municipality, Gocha Mamatsashvili did not let the Tanamgzavri to carry out its activities. “Negotiations with the owners of the places where the company wanted to move in, either through renting or purchasing ended in failure. The district authority threatened and suppressed those people,” said Megutnishvili.

According to the information, yesterday, Mamatsashvili resigned from his position of the chairman of the Telavi Municipality. Employees from the Tanamgzavri cannot give exact information about their future yet.

Although the items, broadcast by the Tanamgzavri, did not have high quality, the population demands the TV Company renewed its activities.

Investigation on Journalist’s Assault Has Been Renewed

The Prosecutor General’s Office has renewed the preliminary investigation on the fact of Ramaz Samkharadze’s physical assault after the Public Defender sent a recommendation to them. Samkharadze is a director of the Kakheti based Radio Hereti. The investigation was dropped on December 11, 2006 under the Gurjaani District Prosecutor’s resolution.

On October 1, 2006, analytical program “Mteli Kvira” (whole week) at the radio Hereti broadcast the reportage about the people who were voted for in the elections of local self-government. Davit Kapanadze, former MP was also mentioned in the reportage. On October 9, Kapanadze physically assaulted Samkharadze for the information he spread by TV program.

The victim applied to the Lagodekhi district hospital for the medical examination. The medical conclusion, prepared by the head of the reception department of the hospital, stated that Samkharadze had injuries on his body.

Samkharadze appealed to the Lagodekhi district police on the same day. Gia Lomidze, investigator for the Lagodekhi district Police Department, stated in his report to the representative of the public defender that on October 9 2006, Internal Ministry’s Lagodekhi Office launched a criminal case on the fact. The preliminary investigation was launched regarding the law on premeditated damage to a person. However, on December 11, 2006 on the basis of Giorgi Kokiashvili’s resolution, (prosecutor of the Lagodekhi district), the preliminary investigation was stopped.

The resolution stated that the investigation was dropped because of lack of victim's cooperation with the police.

Kokiashvili's resolution stated the following: "Preliminary investigation estimated that Kapanadze's behaviour did not disturb public order..." Thus, Kapanadze committed a crime under the Georgian Criminal Code, Article 125, section I (beating or other kind of damage that could result in a physical pain; though it does not cause serious injuries or paralyzes his/her activities). This crime is considered as a category of the single accusations and criminal charge that is investigated by the court on the basis of victim's suit."

Representative of the Public Defender's Office think that it was unreasonable to drop the case because of lack of victim's cooperation. We have already mentioned that Samkharadze appealed to the Lagodekhi district police department on the very day of the accident.

On January 9 2007, the public defender sent the materials of the journalist's physical assault to the Georgian Prosecutor General and the General Inspections of the Georgian Internal Ministry.

The Prosecutor General's office investigated the criminal case on the basis of the public defender's appeal. On January 23, they abolished Kokiashvili's resolution and renewed the investigation. Besides that, the case was withdrawn from the Lagodekhi district Police Department and the Internal Ministry's Kakheti Regional Department was put in charge of it.

The victim appreciates the decision of the Prosecutor General, though he does not hope the case will be properly investigated. "I think it was reasonable to abolish Kokiashvili's resolution. However, I do not hope that the Kakheti Regional Department within the Internal Ministry will carry out fair investigation on the case. There are a lot of cases of journalists' assault and harassment that remain uninvestigated," said Samkharadze.

Authority Has Dispersed the Only TV Company in Shida Kartli

Local authority has opposed the mass media vehemently in Shida Kartli. On May 26, at 2:00 AM tractors pulled down the fence of the TV Company Trialeti.

Before the raid, the Gori Municipality Governor, Vasil Makharashvili's resolution was brought to the TV Company Trialeti. He ordered the TV Company unless they pulled down the fence round the office, the Municipality would take urgent measures. There was not mentioned any reason why

the fence should have been destroyed. Representatives of the TV Company have all documents to prove that they had permission to make a fence.

On the same day, on May 18, the “Trialeti” Company appealed against the Governor’s resolution at the Gori District Court. But it did not prevent the local authority to use tractors against the local TV Company on the Independence Day.

Besides the deconstruction of the fence, the tractors easily pulled out the plants in the square in front of the TV Company.

According to the Georgian Administrative Procedural Code, Article 29, if the court accepts the appeal on individual administrative-legal record, the process should be dropped until the court passes final verdict.

Representatives of the local authority cannot realize the role of the media; otherwise they should have acted under the law. The local authority does not know the Georgian Constitution either, which protects the rights on property.

According to the Georgian Constitution Article 21 the deprivation of the property can be justified under certain circumstances which are envisaged in the law. Thus, the property can be deprived according to the court decision or organ law and the owner must be compensated (certain circumstance can be a scheduled construction of the strategic entity on the place).

No strategic entity is going to be built near the “Trialeti”. Although the territory was fenced legally, now it was pulled down by the personal decision of the governor and the court decision was totally ignored in this situation.

The governor’s resolution violates the Georgian Constitution, Article 6 which states that all legal documents should be drawn up in accordance to the Georgian Constitution.

Patrol policemen watched the deconstruction. The head of the patrol police, Davit Tabutsadze, said that representatives of the local authority had introduced corresponding documents to the patrol policemen and the deconstruction was carried out legally.

Revaz Gogiashvili, the head of the Legal Service Department within the Gori Municipality, said that “I have commented on the fact with the Public Broadcasting Company and you can get information there.”

Gogiashvili said in his conversation with the journalists for the Public Broadcasting Company that the permission should have been issued to the “Kartuli Filmi” (Georgian Movie) and not to the Trialeti Company. Besides that the fence should have been ornamented with piles and not with decorative barrier.

Representatives of the Human Rights Centre’s Gori Office checked the documents according to which the Trialeti office had been allowed to surround the territory with iron construction.

Non-governmental organizations and opposition parties countered the dispersal of the Trialeti office. Shalva Tlashadze, member of the Republic Party, said that the local authority is undergoing hard political situation.

“Local authority needs media sources only before elections. In other circumstances they prevent them to work. Unfortunately, local authority cannot realize the role of the media in the process of the civil society’s development. Similar criminal activities would not do them any good. However, most part of our Municipality must have been fired long before,” said Tlashadze.

Ketevan Bebiashvili, the head of the Young Lawyers Association’s Gori Office, said that the Trialeti’s rights on property have been blatantly violated.

“In addition to the violation of the rights on property, local authority suppresses media sources. In this case the Administrative Body must be charged The TV Company has right to demand the compensation for the damage. Furthermore, the Company had appealed against the Administrative resolution at the court,” said Bebiashvili.

Employees of the “Trialeti” have been stating loudly for a long time that the high-ranking officials of the local authority want to get hold of the company.

“It is the next fact of harassment of independent media by the local authority. Recently, we have been presenting the subjects where people complained about the government. Mikheil Kareli, the Regional Governor, might have disliked similar subjects and he fails to get used to the fact that did not manage to influence the TV. Thus, he used such barbarian method. Local Authority uses all

means to fight against the television and will never give in,” said Nino Chibchiuri, a journalist for the TV Company.

The author of the resolution, Vasil Makharashvili, does not answer phone calls.

Khobi Police Chief Detains Journalists from Zugdidi Bound for Tbilisi

Why were Konstantine Gamsakhurdia’s supporters detained in Khobi and how were they isolated in the Zugdidi Police Station?

Koba Khubulava, Chief of Police in the Khobi district, ordered journalists from the magazine Dioskuria and supporters of Konstantine Gamsakhurdia to be detained. Sixteen passengers were asked to get off a mini-bus and were then taken to the police station. After searching and interrogating them, police officers released the group and sent them to Zugdidi. The same group was detained a second time, however, in Zugdidi on their way home. The passengers of the mini-bus intended to go to Tbilisi to attend the protest demonstration.

As transportation to the capitol has been blocked as of late, not only from Zugdidi but from the other districts in the Samegrelo region as well, a group desiring to join in the protest demonstration decided to go to Tbilisi in secret. A mini-bus was waiting for nearly 16 people in Kedia Street. Supporters of Konstantine Gamsakhurdia and journalists for the magazine Dioskuria were taking cars to the loading area every so often to maintain secrecy. At 6:00 PM, the mini-bus left Zugdidi for Tbilisi. Near the Khobistskali River, police officers stopped the mini-bus.

Koba Khubulava personally organized the “special operation” against the bus’s passengers. Both the driver and passengers were taken to the Khobi Police Station. After an hour-long search and interrogation, the men, who had been placed in pre-trial detention cells, were released. Goga Farjanadze said, “We ten were brought into the Chief of Police’s quarters. They recorded our addresses and identities. They took our photos with mobile phone cameras. They insulted us and then accused us of being paid five lari to go to Tbilisi to attend the demonstration. It was false, of course. We are citizens of this country and we were obliged to attend the demonstration. We wanted to express our opinions.”

Khubulava threatened the driver of the mini-bus so deeply that the driver, after being kicked out of the police station, forgot to pick up three of his passengers from the centre of Khobi. The forgotten

passengers—Marine Damenia, editor-in-chief of the magazine Dioskuria, journalist Natia Khubulava and Tato Chanturia— were finally picked up and returned to Zugdidi by Bagrat Kiria, the Public Defender’s representative there.

After arriving in Zugdidi without incident, the passengers were detained by local policemen for a second time. Police officer Irakli Akhalaia took Tato Chanturia, Giorgi Chanturia, Mamuka Kukava and Goga Farjanidze to the Zugdidi Police Station. Several minutes before the detention, opposition supporters had noticed Vakhtang Gabelia, an official from the Department of Constitutional Security, in a car with the state number of VOV 123. The passengers figured that Gabelia had informed the police about the arrival of the mini-bus in town. Despite the danger, the passengers did not leave the area. “As I was a juvenile,” Mamuka Kukava recalls, “officials from the Zugdidi police station called my father and informed him that I was going to Tbilisi to attend the demonstration. The police had only one goal, which was preventing us from going to the demonstration. After we were determined to not be using narcotics, we were allowed to go home.”

Public Defender Kiria wanted to visit the people placed in the isolation cells in the Zugdidi Police Department, but soldiers, who had been called up to guard the police station, refused him entry. “I explained to soldiers that a representative of the Public Defender has the right to enter a detention setting at any time without any obstacles,” Kiria says. “Later, the soldiers explained to me that the policeman-on-duty refused to meet me. I drew up a document in response to my being barred from the detention setting.”

All four detainees were examined for traces of drugs. Mamuka Kukava and Goga Farjanidze were released by 1:00 AM. Tato and Giorgi Chanturias were released by 3:00 AM. “For reasons which are not clear,” Chanturias says, “Tato and I were released later than others. Tato is my uncle though he is only one year older than I am. He is seventeen. Both of us were examined for any signs of drugs. The results were negative. Policemen treated us rudely and cynically. They wanted to know why we were going to Tbilisi. They blamed me for setting up a gang that was going to attend the demonstration in the capitol.”

Marine Damenia stated that yesterday’s incident was a clear provocation. “On November 5th, at 11:00 AM, a certain person, who identified himself as Zurab Berulava, called me on the phone. He threatened me, saying, ‘I swear you will not go to Tbilisi, believe me I will not let you.’ I think that the incident yesterday was the result of that threat. Berulava seemed to follow the orders of the Special Forces...We are journalists who are professionals interested in current events in the

country. We wanted to gather information to prepare articles, not to make any kind of statements against the government.”

Konstantine Gamsakhurdia, leader of the Tavisufleba political movement, responded to the situations in Khobi and Zugdidi from Tbilisi. “The government harasses people so much that their fundamental constitutional and human right to free movement has been violated. It is evident that our government is at the edge of collapse. I wonder what these people think of their government. It is only a colourful, unsteady, fragile creature. Authority cannot be had up by violators and lazy leaders like Saakashvili, Merabishvili, Bokeria, Adeishvili and Akhalaia.”

Studio “Maestro” Demands Guarantees

Why has “Maestro” suspended broadcasting?

After law enforcers called the studio several times, “Maestro” suspended broadcasting. The analytical project “Profession of Journalist” was cancelled. The journalists working on the project are not going to give in. They will use all legal resources to resume the project.

One of the authors and TV presenter of the project, who is also a journalist for Radio “Tavisupleba” stated in his conversation with the Human Rights Centre that the program was completely apolitical and analytical. It would have four presenters - Tamar Chikovani, Ia Antadze, Zviad Koridze and Aleksandre Elisashvili. The program would have been on during the whole week including the weekend. “Approximately one hour before we had to start the program, Mamuka Ghlonti, the head of the Studio “Maestro” was called by the cable TV provider which broadcasts “Maestro” and they informed us that they had to shut the studio down. They said that law enforcers had called them and categorically demanded the discontinuation of broadcasting by “Maestro”, said Elisashvili.

Aleksandre Elisashvili would have been the first presenter of the program. “The program had been prepared during the whole day; a TV camera was following me and shooting what I was doing. In the evening the program would have turned into a talk show and the main topic of the program would have been the freedom of expression. I was doing my make-up when Mamuka Ghlonti entered the room and told me the news. I could not believe him; I asked him several times whether he was joking or not. Nevertheless twenty minutes before the program was to start they shut down broadcasting. According to legislation, if the law is breached a TV station should be warned and then it must be fined. However, our transmission was suspended without any warning and

unprejudiced reasons. All the equipment was turned off so they cannot blame the equipment for the suspension. We will use all legal resources to resume the program. We are not going to give in,” said Elisashvili.

One of the guests of the program would have been **journalist Eliso Chafidze from newspaper “Resonance”**. “When I arrived at the TV Station I learned about the interruption of broadcasting. I hope everything will be clarified. If the incident was connected to the program, then that is terrible. I would consider that to be one more case of violating the rights of mass media. Personally, I am really very concerned about the incident. Nobody intended to speak about politics in that program. It was completely analytical and we were going to speak about the rights of the media according to Georgian legislation. It is too difficult for me to understand how this program could have been unacceptable and dangerous for someone. Such incidents reflect negatively on the image of the government and I cannot understand why they need to act in this way,” said Chafidze.

Another presenter of the program, **Tamar Chikovani, who is also a journalist for Radio “Tavisupleba”**, stated that the authors of the project decided from the very beginning that the program should have been a form of civic education. “I can tell you the context of my program which would have been aired today. I had already arranged a live conversation with the secretary of the Central Election Commission, who would speak about technical issues concerning the elections. For example, where should a citizen check his/her name on the list of the voters, whether there would be additional lists; where people, who are not registered in Tbilisi but reside in Tbilisi, should vote... in short, we were going to discuss the most problematic issues for people. Another topic was the constitution - what the constitution is; what rights we have according to the constitution; etc. Unfortunately, TV stations pay little attention to such issues. This was the main reason we decided to provide people with that information in this way. The principal point is that we did not plan to invite politicians to our program; our guests would be experts. Nowadays nobody should be surprised at anything anymore; though I am still surprised our broadcasting was ceased in this way without any warning; it is shameful, not even mentioning other factors. Although we were called before the incident and we were threatened with discontinuation of broadcasting unless we canceled the program, we hoped we could have managed to work for a short time at least,” said Chikovani.

Mamuka Ghlonti, the head of Studio "Maestro" said that he had been called some time before the program was to start and he was advised to cancel the program. If he did not obey the order they threatened to cease broadcasting. Mamuka Ghlonti refuses to name the people who called him; he said that if he gives the name of the person who warned him, this person would face problems from

the people who oppress him. After we were shut down, I managed to get in touch with Cable TV Provider “Global TV”, but before it was impossible for me to call them.”

Mamuka Ghlonti had managed to get in touch with the “Global TV” fifteen minutes before the Human Rights Centre started an interview with him. They explained Ghlonti that the delay was caused due to technical reasons but the head of Studio “Maestro” does not believe this. It would be too much of a coincidence. “Although “Global” promised to restore the transmission I am not going to start broadcasting until I receive a guarantee that our studio will not resemble a circus and we will not face similar problems before broadcasting,” said Ghlonti.

Unfortunately, the Human Rights Centre could not get in touch with “Global TV”; they did not answer any phone calls.

As for the National Commission for Georgian Communications, Giorgi Ratishvili, the head of the Commission for Broadcasting Regulations, stated that private company “Global TV” provided the transmission for private company “Maestro” and the Regulations Commission has never interfered in their cooperation. “If somebody accuses us that the Commission had anything to do with the delay of “Maestro” broadcasting, I would state that it is false. We have not given directives to either side regarding suspending broadcasting,” said Ratishvili.

It is worth to mention that “Maestro” resumed broadcasting at 3:30 PM, but Mamuka Ghlonti stated that they are not going to start working: “We should receive guarantees from “Global TV” and we should find out from the National Commission for Georgian Communications which law we were breaching when transmitting and if so why they did not send an official notification to our office. Why are our rights violated and are we not allowed to show such programs when I received a license for analytical programs. If they prove that I have breached the law I should say that I am a very obedient person and I will abide by the “verdict’,” said the head of Studio “Maestro”.

Journalists with Radio Station “Hereti” Complain about Suppression

Georgian Public Defender protests the suppression on Radio Station “Hereti” and demands to start investigation on the case. Sozar Subari stated that the director of the radio station was offered to make a deal with the authority but if they refused the radio station was threatened with shutting down. Georgian regional media association responded to the violence on the independent media station. The NGO called upon the journalists to fight for their rights.

Roman Kevkhishvili, correspondent for the radio station “Hereti” stated that Isako Tskifurishvili, a resident of Lagodekhi district called Ramaz Samkharadze, the director of the company, who is not in Georgia currently, and asked meeting with him.

The audio recording of the over-phone conversation on November 30 2007 demonstrates that Isako Tskifurishvili got in touch with the officials from the central authority through the chairman of the Chamber of Control. In his conversation Tskifurishvili said that he had told the officials that he knew Ramaz Samkharadze and consequently he was sent as a mediator to him. Tskifurishvili explained the director of the radio station that it would take much effort for Mikheil Saakashvili to win the votes of Lagodekhi residents. So he asked the radio station “Hereti” not to criticize the “Joint National Movement.”

“Isako Tskifurishvili, who has criminal record, advised Ramaz Samkharadze not to criticize the heads of the Kakheti regional election offices of Mikheil Saakashvili, the presidential candidate. More precisely, the radio should not have criticized Gocha Mamatsashvili and Davit Adeishvili. Tskifurishvili also added that he had called Makharadze according to Davit Kirkitadze’s order, the Secretary General of the Leading Party. In exchange of the implemented work the radio “Hereti” would be paid certain amount of money. Otherwise they threatened with raiding the office like they did with TV Company “Imedi”. Besides that, radio could face some problems with Prosecutor General Zurab Adeishvili who is the brother of the above-mentioned Davit Adeishvili. In addition to that the Regulation Commission of the Communications would involve the case and the Radio “Hereti” might finally suspend its broadcasting,” said Roman Kevkhishvili who added that despite the particular method of threatening Samkharadze categorically refused Tskifurishvili to accept the deal.

According to “Hereti”, several days later the Regulation Commission of Georgian Communications spread information that the radio station was broadcasting without license.

“The National Commission of Communications has not issued a license on “Hereti” yet; however, the commission announced the radio station as a winner of the competition of license-seekers in April of 2007,” said people from the administration of the Radio Station.

Regarding the incident the Public Defender expressed his deep concern. “I call upon the Communication Commission to avoid becoming the weapon for suppressing the media sources and a body which follows the orders of certain political orders. Besides that I call upon the General

Prosecutor' Office and the Ministry of Internal Affairs to investigate the incident immediately because the fact unilaterally exposes the fact of threatening with the support of so-called "Zonder-groups", with Communication Commission. I demand to punish those people who abused the representatives of media station. I request the Interim Georgian President, Nino Burjanadze to supervise the investigation personally," Subari said.

Isako Tskifurishvili states the accusations of the radio station "Hereti" against him groundless. "I really met Ramaz Samkharadze. We have known each other for a long time. I considered it was my duty to give friendly advice to him. I have not threatened or abused him. I cannot understand why he needed to start such a campaign against me. As for Sozar Subari, I think he should have checked the information before making a statement. He should not have relied on the information provided only by the journalists from the radio station and the secret audio-recording of our conversation. I can repeat the context of our conversation now because I did not threaten him at all. I wish to meet the Ombudsman personally and talk with him about my conversation with Samkharadze in details. Of course if he finds time to meet me...I do not know Kirkitadze at all. At this moment I am consulting with lawyers regarding the case. I am ready to cooperate with investigation and interested journalists. I do not exclude the possibility of my appealing to the court regarding the incident," said Tskifurishvili.

Kakhi Kurashvili, the head of the legal department of the Regulation Commission of the Communications, said that the Radio "Hereti" has not provided corresponding documents on paid license fee until December 3 2007 which was the deadline for it. Consequently, the commission has not issued the license on broadcasting. If the representatives of the radio station have handed the corresponding documents to the accounting department it is not an official form of cooperation with the administrative body. Unlicensed broadcasting, according to the Georgian Administrative Criminal Code, envisages the fine of five thousand lari...However the representatives of the radio station have recently provided the document on having paid the 20 % of the fee. Thus, the license should be issued within seven working days," said Kurashvili.

Georgian Regional Media Association spread urgent appeal regarding the recent events about the Radio Station "Hereti."

“We protest any kind violence against the Radio Station “Hereti” and call upon the journalists to stand up together against the suppression regardless they work in ‘elite’ media companies and newspapers or in the poorest conditions in the regions of our country. It is high time to start struggle to protect our rights,” stated the appeal of the association.

Why is Khobian Irakli Tsurtsunia Protesting and What Made Him Go to the Egalitarian Institute?

The head of the Egalitarian Institute in Khobi, Irakli Tsurtsunia, was released after serving a 57-day sentence in Zugdidi jail №4 and paying a five thousand-lari bail. On August 7th, he was arrested on charges of disobeying the police. Tsurtsunia does not consider himself a criminal and talks about his sentence as Khobi police chief Koba Khubulava’s personal revenge.

The fact that the crime was provoked by police made Irakli Tsurtsunia to protest his treatment and decide to fight against police violence together with the Egalitarian Institute. A young man waiting for his inevitable arrest, even today Tsurtsunia makes statements against those who violated his rights and says he will try to protect the rights of other people while seeking justice himself.

After Irakli Tsurtsunia’s detention, the Khobian people began to give the following advice: “If you pass the building of the Khobi police station you will see the Chief of Police Koba Khubulava. Stay calm and don’t forget to greet him with a bow. If you have to talk with him, don’t forget to say ‘Sir’ and if he asks you why you are standing, be careful. Don’t answer him, bow and be quiet for a few seconds and wait for him to go away. Any other way and you will be ‘fit for food’ [his victim]!”

Irakli Tsurtsunia went to the police station to get information regarding his neighbour Zviad Kharebava’s detention. While meeting with the chief of the station he did not forget to greet Khubulava but attempted to answer the Chief’s query, guaranteeing trouble. “I went to the police station at 1 o’clock am for the third time with Kharebava’s sister. Kharebava was brought to the police station from narcotics verification. The chief of police came near the building with a car. While entering the police station, Chief Koba Khubulava came to me and asked me why I was standing there. I tried to explain to him why, but he became very irritated, began using bad language and then began to punch me. I was shocked and tried to defend myself from his attack. In response, I also used bad language and punched Khubulava, something that I will not deny even now. It was self-defense. It was obvious that the chief of the police station was surprised by my reaction. He tried to intimidate me with a registered weapon; he was ready to shoot me. He was stopped by other

police officials who took his weapon away from him. Then they put me in irons and took me to Khubulava's office. He continued using bad language," Tsurtsunia recalls.

There are eye witnesses to the incidents which took place at the Khobi police station, but they have not been interrogated yet. The investigation did not seem interested in the evidence against Irakli Tsurtsunia. In spite of the fact that Irakli Tsurtsunia requested to be interrogated since he was first detained, it was only after 50 in Zugdidi jail №4 that he was finally questioned. The only person who was interested in Irakli Tsurtsunia's interrogation was Khobi municipal court judge Shota Siradze, but he was unable to find evidence of the interrogation in the case files. "When the judge could not find evidence of my interrogation in the case," Tsurtsunia explains, "he requested an explanation from the investigator. Dato Akhalaia reminded Judge Siradze about a new law that he was probably not familiar with, which states that it is not necessary to interrogate a suspect. The judge was surprised by the investigator's answer and asked on what basis he should act. Akhalaia advised him to act on the basis of the prosecutor's application to the court. It's only cynicism to talk about the supremacy of law in these conditions."

Irakli Tsurtsunia expected an apology from the chief of police, if not some sort of punishment for his actions. He could not have imagined that he would be accused himself. The circumstances under which Tsurtsunia was charged can make things even worse for him. Tsurtsunia is threatened to the arrest from 2 to 5 years according to the article 373, the first part of the Georgian Criminal Code.

"After getting information about Kharebava's detention," Tsurtsunia says, "they say I broke into the police station, that officials called me on the order and advised me to go home. Instead, they say I did not obey them and beat 4 policemen. Further, it is stated that Koba Khubulava came to the scene and I began to beat him as well. I am then to have raided his office and damaged others' property. I state for the people who try to dishonour me that I have no criminal past and I have never committed any illegal act, unlike the swindlers who spread this kind of false information about me. Those who say that I was under the influence of narcotics or that I was drunk can see the materials of interrogation. I was not examined and I have never been in any suspect condition".

On October 5th, Irakli Tsurtsunia left Zugdidi jail. He spent his 21 days in cell №21. According to him he had to live in prison in inhuman conditions. There were 25 prisoners in his cell fit with only 14 beds. Prisoners slept one after the other, with the exception of a 71 year-old prisoner who always had place to rest as others respected him and let him have a spot. Irakli Tsurtsunia left 615 prisoners in the 230 place Zugdidi jail №4.

The violation in the society, in law enforcement and penal agencies, human rights violations in every field became the reason of the fact that Irakli Tsurtsunia said his protest loudly. He prefers to be a prisoner in jail than while being free. On October 22nd, while establishing a regional branch of the Egalitarian Institute, Irakli Tsurtsunia called on the population to fight against violence and to overcome their feelings of fear.

According to Jaba Jishkariani, one of the leaders of the Egalitarian Institute, the police stations of Merabishvili, Adeishvili and Kublashvili are purposely implementing violence against society. “They can kill the young people without a reason and peruse us,” Jishkariani says, “but they cannot kill the will to be free and alive inside all of us. The whole of society will protect the rights of Irakli Tsurtsunia with us and then the unbridled government of Saakashvili will have nowhere to go”.

Pako Tabatadze May Go to Strasbourg

Since 20-year old Pako Tabatadze was kicked off the reality show “Bari,” he has been busy consulting with lawyers. He is considering legal action against TV station Rustavi 2 because of their violation of his rights. Human rights defenders consider Tabatadze’s expulsion from the show as an issue of direct discrimination.

Pako Tabatadze “had not finished his greeting” when he was expelled from “Bari.” He had come to the show without going through the first round of selection as other must and, according to Tabatadze, he had received a guarantee of inviolability for a month from the leadership of “Bari”. During the live broadcast on October 13th, Pako publicly announced his homosexuality and added that he was not shy of recognizing it. On the contrary, he said he was proud of it.

That same night Bari’s director Giorgi Khaburdzania rebuked Pako. After a period it was found out that Pako would leave the project. Pako recounts the situation: “At 4 o’clock AM Khaburdzania told me that I had crossed boundaries, that I had overshadowed others and become more popular and that did not suit them. He demanded that I play neutrally and I continued this way. In the morning they got me out and told me that I would leave the project. When I asked the reason they answered that there were the phone calls of dissatisfaction from the Orthodox Patriarchate of Georgia and the population. If I would not leave “Bari” the TV station would have possible problems. After Khaburdzania’s told me to get out I was informed that anchorwoman Nino Khoshtaria would come in and announce the decision in ten minutes. It happened exactly so.”

After that Rustavi 2's leadership gave a short comment to the media and said that "moral values are higher for them than commercial interests". "Geo-Bari" is a TV show which must show the youths positively. One person's social problem must not be higher and must not attract more attention of society," said Koba Davarashvili, the manager of TV Company "Rustavi 2," in his own TV broadcast.

It's possible that the leadership of Rustavi 2 did not expect Pako Tabatadze to demand compensation for moral damage in court or talk about other concealed details openly. Tabatadze first offered Naniko Khazaradze's show the option of talking about people with different sexual orientations. Rustavi 2 was interested with this idea immediately, but it was decided that Pako should first participate in "Bari" and would then appear on Khazaradze's show.

"I was told that I would recognize during the broadcast that I am a gay, but I would say it two weeks after beginning of 'Bari'. The recognition is not a problem for me, it's obvious. I went to the casting where I was formally chosen. It was also decided that in spite of the messages sent by people I would stay on the project for a month and that I would not be sat on the chair. They made this image for me themselves. They took me on a rollercoaster. Then Saturday came. They took me aside three times and asked me whether I was ready. It seemed that when Khoshtaria would ask me to characterize myself, I would state openly my different sexual orientation, and I did," says Tabatadze.

The group "Inclusive" and its president Paata Sabelashvili are helping Tabatadze, who argues that other reasons for his dismissal from the show, outside of his sexual orientation do not exist. He also argues that according to the second article of a new labour codex, his dismissal is a direct act of discrimination.

"It appears from the comments made by Rustavi 2's leadership that, for them, appropriate behaviour seems to not be a possibility. It may be that at first they did not think they were making comments that might harm their image. Only later did they begin to clean their texts and the comments on their website. I don't doubt that for the first days of the show it's possible that they did not want to let Pako go, but the unexpected phone calls (according to verified information, these kinds of phone calls were also made from the government) forced them to make this decision. They obviously needed Pako on the show".

Paata Sabelashvili also argues that Pako did not violate the conditions of his contract, which outlines that he should not insult anyone and “should not wilfully manipulate the sexual or religious orientation as could harm the other players, society or the TV station’s interests.” Nothing is written in the contract limiting a player from talking about himself.

“It’s obvious that a person was let out of this show because they [the station] paid attention to the reaction of society, because of his sexual orientation. The contract was abolished unlawfully,” says Sabelashvili. “No one thought that Pako showed himself excessively. The actions of ‘Rustavi 2’ seem to be more terrible. Why he was let into the project? Is it possible that he was let in specifically to increase their ratings? Or may be he was let out because society considers the other players’ actions less irritating.”

Sopho Japharidze, a lawyer with the Georgian Young Lawyers Association, talks about the article of Pako’s contract which cunningly says that the TV station can consider a player’s actions unworthy and impose a fine of 5000 lari.

“It comes out that any action that the TV station’s separate leaders do not like can become the basis for such a decision. It must be proved, however, why the show’s dignity was demeaned,” continues Japharidze. “It’s interesting that the ‘project philosophy’ was added to the contract. It was written that the players should be frank as much as possible and should not be shy with expressing their thoughts and feelings openly. It’s obvious that these components are exclude each other.”

“If Rustavi 2 kicked a player out solely because of his sexual orientation it is an obvious case of discrimination. It now depends on whether Rustavi 2 can prove that the player was manipulating the situation in an unworthy fashion. Many things depend on the judge”, says Japharidze.

Nino Andriashvili, the lawyer with the Human Rights Centre(HRIDC), also considers the situation as a rude violation of human rights: “I think that actions carried out by Rustavi 2 towards Pako Tabatadze are unlawful. By expelling him Rustavi 2 violated our Constitution and also the principles and standards recognized by international law. According to our Constitution, ‘Every person is born free and equal before the law in spite of their race, colour of the skin, language, gender, religion, political and other opinion, national, ethnical and social belonging, origin, property and class condition, living place.’ The prohibition of discrimination is also strengthened in the European Convention for the Protection of Human Rights and Fundamental Freedoms. It’s a pity that a TV station like Rustavi 2 is violating these rights. I’m sure that Rustavi 2 has a lawyer and I

think that the leadership of this TV station should not make these decisions without consulting with a lawyer.”

If the Georgian court does not rule in Tabatadze’s favour, the complaint will go to Strasbourg. Paata Sabelashvili says that amongst the world media headlines discrimination of this nature is one of the leading themes. This fact had different responses on Tbilisi’s forums. Some are excerpted below: (the original style is kept):

“Pako can complain to the court against the TV Company Rustavi 2 and the organizers of the show to demand the moral damage and discrimination. He can take away ten-times more money than he could win there and they will deserve it!”

“In my opinion Rustavi 2 is in foolish condition. The society does not get (“eat”) such lies. They choose a person with different sexual orientation especially in order to have more audience. At the same time the idle people would engage with rapids. But as it seems someone got very irritated by Pako’s statement and violated his rights and not only rights. He was excluded from the project like they did not know who the abovementioned homosexual was in fact.” Do you consider this kind of action just?

“I could not bear Pako with his unserious actions, it made me upset, but that is my business whether I like him or not, but his exclusion is obviously inconsistent and discriminative action of Rustavi 2. Pako can protect his rights and complain to the court against “Bari” for the discrimination, of course if we don’t live in Iran. Any European embassy will advise Pako and tell him that there is discrimination of gays in Georgia. Then you can explain to the foreigners that Pako was a gay and not a monkey, will they believe you?”

It would be interesting to see how Giorgi Khaburdzania answers these questions himself. Unfortunately, it is difficult to contact him as it is with Georgian officials. He did not answer calls.

Today it was made public that the head manager of Rustavi 2, Koba Davarashvili, will leave his post and “return to business.”

Case on Irakli Batiashvili Will Be Sent to Strasbourg

Seven-year-imprisonment for “Intellectual Support” of the Kodori Gorge Rebel-it is the verdict of the judge at the City Court, Maia Tetrauli, which she has passed on a famous politician, former Security Minister and active member of national movement, Irakli Batiashvili. The accused went on a hunger strike and his case materials are going to be sent to Strasbourg.

On July 2006 Special Operative Department detained Batiashvili. He was accused for intellectual support of Emzar Kvitsiani, President’s Representative to Kodori Gorge. The prosecutor claimed that Batiashvili had committed a crime envisaged under the Georgian Criminal Code, Articles 25, 307 and Section III of the Article 315. These articles envisage the fifteen-year-imprisonment. Initially Batiashvili was charged for several crimes and high treason was one of them, which was dropped later on together with two more charges. In April of 2007 the Georgian Parliament removed the law on high treason from the Code and nobody is judged for the crime any more. Thus it has become the reason for discharging Batiashvili from that accusation.

To prove Batiashvili’s intellectual support to rebel people in the gorge, the Prosecutor General’s Office introduced the society with the telephone conversation of Batiashvili and Emzar Kvitsiani. The conversation took place in summer of 2006 during the famous events in the Kodori Gorge. During the conversation, Batiashvili called upon Kvitsiani not to give in though to avoid all kind of bloodshed. In addition to that he asked Kvitsiani to make a statement and called upon the soldiers not to use their guns in order to avoid the bloodshed.

The society cannot notice any kind intellectual support in these words. Batiashvili claims that the record is changed and they have introduced only those phrases to the public which would be useful to blame him. However, neither his lawyer nor the society could hear the support of the rebel in that record.

Before and after the court, we have often heard the following phrases regarding Batiashvili: “personal vengeance”, “political prisoner,” “the prisoner of conscious,” “patriot” and “prominent intelligent.” He has been detained for ten months already. The family was not allowed to see the detainee during that time. With the support of international organizations, Batiashvili has been allowed to meet only his wife lately. As for his sixteen-year-old daughter, she has not seen her father for ten months. One more problem is that Batiashvili’s family is threatened. The wife of the detainee made the statement regarding the threats. She said that armed people attacked her daughter when she was coming back from the “School Farewell Party”. Those people warned her to keep

silence and threatened with gun. Batiashvili's wife said that mediators had been sent to her several times who demanded her to persuade her husband to plead guilty. If he had apologized for the crime, nobody would have bothered him anymore.

On May 22 2007, Batiashvili went on a hunger-strike. He was planning not to stop the strike until he renders justice.

Professors, artists, representatives of non-governmental and public organizations prepared and signed a petition on Batiashvili's case where they demanded to release the accused. His lawyer, Gela Nikoleishvili claims that the society has listened to fraudulent record because some words were cut out of the text which resulted into a changed context. The lawyer had been demanding to carry out expertise on the tape record in vain.

One of the prosecutor's arguments to sentence Batiashvili to seven-year-imprisonment was that the defense side failed to produce valid proofs to the court.

The defence side is about to go on the discussion of the case in Strasburg Court. Gela Mikoleishvili is sure that they would win the process in Strasburg. He demands to punish everybody who declared innocent person a guilty.

Special committee was set up to protect Batiashvili's rights and famous people joined it. According to the chairman of the committee and former State Ministry, Goga Khaindrava, they will cooperate with international organizations and will do their best to protect Batiashvili's rights.

Goga Khaindrava: "Before the case is sent to Strasburg, two more court instances should have discussed it. It depends what their verdicts will be. As for international committee, we will cooperate with human rights international organizations, dissident organizations and those ones who fought against the soviet regime and government, totalitarianism and authoritarianism. We will send them the information about blackmailing Batiashvili's family. We will inform them that he was a prominent figure in Georgian national movement during the period when ambitious people did their best to join communist union and joined KGB armies in order to create successful diplomatic career. At that time, Batiashvili was devoting his life to Georgia's interests."

Eighty-year-old Old Man Is Judged for Contradicting the Testimony

Judge accused Shakhzad Vanadze, a resident of the village of Gelauri in Khulo District, for contradicting the testimony as a witness. Vanadze said that he could not make a testimony because he had not witnessed the crime and had no information about it. According to the accusation, Vanadze shall be sentenced to four-year-imprisonment.

Criminal case on Shakhzad Vanadze was launched for the second time during the last six months. In both cases the reason for the criminal prosecution was neighbour's conflict. In the first occasion he was found guilty and was sentenced to six-month suspended sentence. Now, Georgian court might find eighty-year-old man guilty for the second time.

Vanadze calls the new accusation a misunderstanding. He said that police officials invited him to the court. He was found in an awkward situation because he did not know the legislation. "Several months ago, my family and neighbours had an argument, though I was not at home. I was taking medical treatment in Batumi. A policemen brought me summon on the day of trial and asked me to appear before the court. At the trial I stated that members of my family, who took part in the argument, were away and asked them to postpone the hearing for the reason. The judge told me to sign the document stating I contradict to make a testimony, and there would be no more problems. I said I could not make a testimony because I was not at home during the conflict; thus I had no information about the incident. It seems I committed a crime when making similar statement before the court."

Lawyer Ramin Papidze said that, the accused made a factual testimony. "Vanadze said that he could not make any testimony because he had no information about the incident. In fact it is a testimony. The judge altered Vanadze's statement according to his wish. He considered that Shakhzad contradicted the testimony. On the one hand, if Vanadze did not want to make a testimony he would not have appeared before the court. On the other hand, the judge had concluded that Vanadze would have heard about the incident from other people and would have been able to make a testimony." The lawyer said that with the accusation, Vanadze faces the imprisonment ranging from six months to 4 years or suspended sentence.

The accused speaks about the personal interest of the judge in the incident. "My family has had argument with our neighbour Rejeb Shainidze for thirty years already. Shainidze burnt down my house, holiday house in the mountain and great amount of wood. Last year we had a serious quarrel

and as a result I was accused for the first time in my life. Current conflict happened with the Shainidzes. Salikh Shainidze, judge for Khulo District Court, is a relative of our neighbours.”

Vanadze recalled the first incident and for what he does not plead himself guilty at all. “The Shainidzes, three people, attacked my son in the field during mowing. My daughter-in-law heaped her husband. When I arrived on the place everything was over. Another neighbour who witnessed the incident and Rejeb Shainidze himself stated in their testimonies that I was not on the place during the incident. However one of them stated in the testimony that I had injured Makvala Shainidze by hitting an axe-back in her head. It is false, of course. How could a person survive with only a tenuous injure after being hit an axe?” Vaanadze wrote in his petition to Georgian President, Mikheil Saakashvili. The old man expects assistance from the president.

Imprisonment for a Joke

Gori Criminal police detained eighty-year-old man. He is accused for a grave crime-kidnap and attempt of selling the child. On September 3, Gori District Court sentenced Giorgi Tskhovrebashvili to two-month-pre-trial detention. Nana Jamaspishvili, mother of the child, cannot see any reason for the old man’s detention because she trusted the child without any problems.

All neighbours call grandpa to Giorgi Tskhovrebashvili because the old man loves children very much and he never forgets to buy sweets for them.

On September 1, grandpa Giorgi took four-year-old Mziko Jamaspishvili to his daughter, Nana Tskhovrebashvili. The old man and the child took a mini-bus to get to another district of the city; on the bus grandpa joked that he was selling the child. Having heard his statement, certain Bliadze, who was on the same bus, called criminal police department and informed that he was travelling with a man who was selling a child.

Meanwhile, Giorgi Tskhovrebashvili reached his daughter with little girl. However, they left the place soon because mother had to take Mziko to the doctor.

On their way home, policemen detained eighty-year-old man and four-year-old child and took to the station.

Nana Tskhovrebashvili said that her father, who visited her with a neighbour's child, had joked in the mini bus on his way to her house, that although Mziko was his granddaughter, he was going to sell her.

“Everybody jokes in similar way. How could he imagine that his words would become reason for such accusations? He usually has sweets in his pockets to give out to children. At my place I served the child with cake. When my father rang the bell, I looked out of the window and saw a boy who asked, “Who is that man?” I answered he was my father but the boy did not believe it. He said, “That man is selling a child...” I smiled because I thought he was joking...policemen detained the old man when he left my house and brought to the court. I arrived to the court and demanded to interrogate me as a witness but they categorically refused and kicked me out. I am mentioned as a “certain woman” in case materials; they did not ask me who I was,” said Nana Tskhovrebashvili.

Zakro Shermadini, investigator of the criminal police, visited Nana Jamaspishvili, mother of the four-year-old girl and informed that her neighbour was going to sell her daughter and police detained him.

“I have known this man for a long time and have never noticed anything suspicious about him. My daughter often visited him at home. I do not know what happened and why they detained him...I have as much information as you have. Initially I thought it was a joke but then the investigator met me several times and I thought he wanted me to be a witness against somebody. Having arrived at the court I saw my daughter and the old man there. They invited expert too and examined the child. Nobody invited me to the trial. However I stated to the court that I knew Tskhovrebashvili very well and had never noticed anything suspicious about him. Just the opposite, he treated my daughter very kindly and I absolutely trusted him. However, at that moment I did not know that he had taken my child to her daughter's. Although he had asked me to take the girl, I refused because I was going to take Mziko to a doctor. Anyway, the child might have accompanied him without my permission herself.”

Vakhtang Firalishvili, attorney for Tskhovrebashvili said that the detention was groundless and it is violation of the Procedural Code. The lawyer does not agree with the article (Criminal Code, Article 143, trafficking) under which the man was sent to pre-trial detention.

“Joke cannot be used as a ground for detention. In addition to that, the daughter of the detainee, who was refused to be interrogated, is mentioned as a certain woman in the case materials Person

was detained without initial warning. They invited me to the trial just before it was to start. As for victim, the mother of the child was not informed about the hearing at all. If she had stated at the trial that she knew Tskhovrebashvili very well and did not consider him a suspicious person, judge would have released the old man from the court room. However, they did not want to hear similar testimony,” said the lawyer.

Shermadin Kapanadze, investigator of the Gori Criminal Police Department, said that victim Nana Jamaspishvili’s initial testimony was enough to detain the old man.

“Let the mother of the child come and change her testimony. If she does, we will release the old man,” said Kapanadze.

New arbitrary detention of Mr. Jaba Jishkariani

The Observatory for the Protection of Human Rights Defenders, a joint programme of the World Organisation Against Torture (OMCT) and the International Federation for Human Rights (FIDH), has received new information and requests your urgent intervention in the following situation in Georgia.

New information:⁷⁰

The Observatory has been informed by the Human Rights Information and Documentation Centre (HRIDC) of the new arbitrary detention of **Mr. Jaba Jishkariani**, a member of the “Egalitarian Institute”, a newly-established Georgian NGO composed of human rights defenders, writers and intellectuals.

According to the information received, on March 19, 2007, Mr. Jaba Jishkariani was arrested after being sentenced on the same day to 30 days in prison for “disrespect to the court” (Article 208 of the Criminal Code of Georgia), by the Juvenile Court. Mr. Jishkariani was then attending the hearing in the trial against Mr. Giorgi Zerekidze, a juvenile prisoner (14 years old), along with other members of the civil society.

In 2006, Mr. Giorgi Zerekidze had been found guilty by the Tbilisi City Court of “attempted murder” and “hooliganism” and sentenced to ten years in prison. On July 18, 2006 the UN Children’s Fund (UNICEF) had expressed its deep concern following the sentence of Mr. Giorgi

⁷⁰ <http://www.omct.org/index.php?id=&lang=eng&actualPageNumber=1&articleId=6951&itemAdmin=article>.

Zerekidze and called on Georgia to follow its commitments to ensure the full implementation of international juvenile justice standards under the Convention on the Rights of the Child, which was adopted by Georgia in 1994.

On March 19, 2007, the Court of Appeals in Tbilisi reduced Mr. Giorgi Zerekidze's sentence to seven years' imprisonment. Following to this decision, Mr. Jishkariani reproached the Court its lack of independence and said that the sentence was unfair. He also accused the Court Marshals (guardians) of being the "slaves of Mr. Ivane Merabishvili [Minister of Internal Affairs]".

Mr. Jaba Jishkariani, who appealed his detention on March 20, 2007, is currently detained at the pre-trial detention centre at the Ministry of Internal Affairs.

The Observatory expresses its deepest concern regarding the arbitrary arrest of Mr. Jaba Jishkariani, which only seems to aim at sanctioning his human rights activities, and recalls that he has already been arrested twice in 2006.

25-day Imprisonment for Protecting Political Prisoners and Freedom of Expression⁷¹

Three members of "Egalitarian Institute" - Davit Dalakishvili, Jaba Jishkariani and Levan Gogichaishvili are arrested. They have been sentenced to 25-day imprisonment by Tbilisi City Court. The reason of the arrest is the violation of public order and blocking the entrance of the General Prosecution Office. Human rights defenders evaluate this fact as the campaign against the freedom of Expression.

The above mentioned persons had been arrested for the same reason for several times. The story of their imprisonment is the same every time – participation in the street actions to protect political prisoners and freedom of expression, loud announcements, etc. The reason of the recent imprisonment was the same: On 12 June, Members of "Egalitarian Institute" brought Official letter to the State Chancellery. The letter demanded the public information on salaries for the former high ranking officials of the Interior Ministry, who have been interrogated as witnesses on the case of murder of Sandro Girgvliani. These people are Dato Akhalaia, Alexander Melnikov, Guram Donadze and Vasil Sanodze. At present they are fired from their posts, though, there is information that unofficially they still continue working in the Interior Ministry. A friend of murdered Sandro Girgvliani recognized one of those persons – Vasil Sanodze and at a trial declared that when Sandro

⁷¹ <http://www.humanrights.ge/index.php?a=article&id=1695&lang=en>.

was tortured, Sanodze also was there. Though after this declaration, Sanodze was only fired from his post.

For more than a year, family of the murdered Girgvliani is urging that those people are the participators in the murder. The family is demanding their punishment, but in vain. Some days ago, Sandro Girgvliani's family sent the case to the European Court for Human Rights in Strasbourg. Since the murder that happened on 27 January, 2006, "Egalitarian Institute", oppositional parties, NGOs have been holding permanent protest actions demanding the punishment of the murderers. Every action has ended with the arrest and imprisonment of the activists. Among them are the members of "Egalitarian Institute".

For now, their imprisonment is connected with the case of politic prisoner Irakli Batiashvili. After the members of "Egalitarian Institute" brought the letter to the State Chancellery, they moved to the office of General Prosecution and held Irakli Batiashvili's supporting action. Police demanded to clear up the territory, though, the participants did not give in and after that, they have been arrested.

Representatives of NGOs and opposition parties estimate the fact as the violation of freedom of expression and appeal to international organizations to become more active to protect politic prisoners and freedom of Expression in Georgia.

Gela Nikoleishvili, a lawyer of the NGO "Former Politic Prisoners for Human Rights" declares that freedom of the expression is seriously violated in Georgia: "These persons have been arrested for their opinion. These persons did not violate the law. If the attempt of painting on the asphalt is violation of the law, then they have to remember the pre revolution period, when their activists from "Kmara" ("Enough") were sprinkling with the paints in the face of high officials, or when they really blocked the entrance of the Parliament and they were jumping on the tables in the Parliament. Under the Georgian Constitution, everybody has right to express their opinion and protection of the freedom of word has to be the main obligation of the state."

Imprisonment of those young men has political motives, - declares the representative of the "Egalitarian Institute" Lasha Chkhartishvili. According to him, they are not frightened and they will do their best to protect political prisoners and freedom of word and they will continue protest actions permanently.

Representatives of the parliamentary opposition parties evaluate this fact as the limitation of free opinion. According to them, the government, with such imprisonments, tries to frighten society. As Phikria Chikhradze, the representative of “Rights” declares: “At present it is difficult to protect political prisoners and freedom of word. When people are arrested for the non-violation words -- “No Violation”, this is the restriction of freedom of word.”

Member of “Conservative Party” Kakha Kukava hopes that international organizations will support their appeal: “Representatives of the “Egalitarian Institute” has been arrested for three times. It means that they can’t be active. Expression of free opinion is forbidden and it is punished with custody. Georgia is the member of those countries which have political prisoners. We will work with the international organizations to evaluate all those facts adequately.”

Participants of the Demonstration Organized by the United Opposition are Still Being Abused⁷²

Has the Department for Constitutional Security (DCS) prepared the list for the people who should be detained?!

Siblings Eka and Guram Khvichias attended the demonstration organized by the United Opposition on October 28 in Zugdidi. They were not afraid of being detained and applied to the Human Rights Centre’s Zugdidi office for help. The Khvichias are the first who have not kept silent and accused Fridon Antia, a high ranking official of the regional department of the DCS, of abusing them.

Eka and Guram Khvichias are residents of Refa in the Gali District and they have lived in the village of Kortskheli in the Zugdidi district as IDPs for 13 years. Their steady life was disturbed after October 28. Having returned home after the demonstration on October 28, the Khvichias encountered negative and insulting attitudes from their friends and neighbors for the first time. Eka Khvichia: “People were meeting us in the street, at our house and in the village centre and laughed at us saying “Don’t you want Saakashvili?! Are you opposition?! Do you want to overthrow the authority?! Were you bribed for thirty lari?!” The representatives of the village council told us that we could not change anything, Saakashvili would stay on as president.”

⁷² <http://www.humanrights.ge/index.php?a=article&id=2076&lang=en>.

Eka Khvichia attended the opposition demonstration together with her brother and friend. She was standing there and was listening to the leaders of the political parties. Eka Khvichia: “We have not made statements on the demonstration. We did not say anything when they threw eggs at us and poured water from high buildings on us. We did not protest the quarrels initiated by the members of the National Movement in front of the administrative building. Consequently, if a person takes part in a peaceful demonstration s/he becomes a traitor.”

Representatives of the government and law enforcement bodies remembered the Khvichias again after the famous events of November 7. On November 9, Guram Khvichia was invited by the village governor, Mamuka Lashkhia, to the administration office. There he saw the list of the people who should be detained.

Eka Khvichia: “The village governor warned my brother to be quiet because both he and I were on the list of people of those who should be arrested. The accusation against us was anti-national agitation. I do not know what is going on. A lot of people from our village attended that demonstration; should they arrest hundreds of people?! I am an unemployed historian and attend church to pray. I have neither called anyone, nor discussed politics with anybody.”

Mamuka Lashkhia does not deny that he had spoken with Khvichia, but categorically denies having threatened him. Lashkhia mentioned the name of an official from the DCS who called him at the department; however it was quite accidental that he mentioned his name and confirmed the meeting. Mamuka Lashkhia: “They were asking me about the village and then mentioned the Khvichias too. They wondered what kind of people they were and I answered they were from a decent family and they had attended the demonstration unpremeditatedly. The officials did make any threats against Khvichias. I have known Guram for many years; I taught him at college. I told him that he was recorded while being at the demonstration and asked how he ended up there.”

Fridon Antia denies his meeting with Lashkhia, the village governor, and stated in his conversation with the Human Rights Centre that he had not spoken about Khvichias with anybody and he did not know them at all. However, he can easily discuss the mental problems of the Khvichias. “They are mad. Do not listen to them unless you want to go crazy as well. They are lying and I do not know them at all. Who are they?! I have not threatened anyone and what kind of list are you talking about? How can I find time for such matters?”

Fridon Antia does not have time for such matters, however on October 29, the day after the opposition demonstration, the members of the National Movement could find several hours in their schedule to watch the video-recording of the demonstration. The new governors of the district villages were invited to the show to recognize the people from their villages on the video-recording. As a result of the show, they drew up a so-called Black List of people who would be detained.

Eka Khvichia is not afraid of being detained; however she is worried about her brother. “My brother is 36 and he has three children under the age of 18. He is a man and it would be easier for law enforcement officials to provoke him. My brother does not work; in the past he worked for security service office “Artsivi”. He has never committed a crime. If it is a crime to attend a protest demonstration and express one’s opinion, then we are ready to go to prison.”

Police Revenges the Leaders of Youth Movement⁷³

Dachi Tsaguria, leader of the “Youth Front” was accused for parking a car in a wrong place during the demonstration on November 25.

On November 25 the peaceful demonstration organized by the United Opposition in the area of Rike in Tbilisi centre did not finish peacefully for every demonstrator. Twenty-five-year-old Dachi Tsaguria was pushed into a police car. His car was taken to an impound lot and the young man was tested on drugs. Dachi Tsaguria is grateful to the representatives of the Public Defender’s office who supported him to rescue the grave punishment. Tsaguria considers that unless those people had involved his case, the events would have had more dramatic ending.

Dachi Tsaguria: “I was at the demonstration when my friend Dima Svanidze called me and said that Irakli Kodua, the head of the Special Operative Department had arrived by an expensive car. Svanidze had legally bought that car several months ago; but the law enforcers seized it from him illegally. Shota Khizanishvili, the head of the Administrative Department of the Ministry of Internal Affairs, Bacho Akhalaia, the chairman of the Penitentiary Department and Gegechkori, the chief of the City Patrol Police Department were sitting in the car. Journalist Marika Kadagishvili came up to me; she wanted to take photos of those people in the car so we sat into my car and drove towards them. Having approached the expensive car of the high ranking official Marika got out of the car but I drove forward to find good place to turn my car back.”

⁷³ <http://www.humanrights.ge/index.php?a=article&id=2043&lang=en>.

Marika Kadagishvili, an independent journalist: “Having shot several pictures, I saw nearly eight policemen were coming towards me. They wanted to seize my camera. They were hitting me in the back so hard that I still have bruises all over my back. I recognized Bacho Akhalaia and Shota Khizanishvili in the car. Dachi saw they were hitting me and went towards me to help but I heard how Akhalaia cried out “Arrest that Tsaguria!” Afterwards I could not see what happened. They took only my cassette and returned my camera in such terrible conditions that it will not work again.”

Dachi Tsaguria said in his conversation with the Human Rights Centre that Gegechkori ordered “Do not let that bastard Tsaguria run away; charge him for resistance, hooliganism and disobedience.” Tsaguria said that the patrol policemen immediately implemented the order.

“They arrested me and took in a strange direction. All the time they were calling some people over the phone, who were giving directions to them. As I guessed from their conversations my kidnappers did not agree with the people who gave orders to them and stated they would not do it. Finally they stopped the car in front of the Hotel “Metekhi”; another patrol car arrived and I sat in it. Then I was tested on drug addiction and of course they could not detect anything wrong on me. The Public Defender’s Office learned about my detention immediately; my friend had informed them. I am sure that the policemen did not dare to take me to another direction because the Public Defender was already informed about my situation. However, they fined me for 40 lari; my car was taken to the impound lot which I got back on the second day. The car was damaged; the right window has fallen down. I had some documents in it and they were all checked.”

It is not first fact when law enforcers harassed Dachi Tsaguria. Several days ago when Rule of Emergency was declared in Georgia, Dachi Tsaguria became a victim of armed people in the “Coffee House”. Although there were a lot of people in the café, five people beat Tsaguria severely. Besides that they wanted to drag him out of the café but the friends of the young leader resisted them. Tsaguria said that the investigator visited him only once after the criminal case was launched.

Dachi Tsaguria connects the recent incidents to the November demonstrations. “When they hang caricatures of Badri Patarkatsishvili and opposition leaders on the building of the Post Office, several provocateurs appeared and called upon the people to enter the building and pull down the caricatures. My friends and I guessed that it was a well-planned provocation and resisted the people. It was the government’s trap for us and if we were caught in it, they would have claimed afterwards that demonstrators had rushed into buildings forcibly. One of my friends who is a member of the

National Movement told me that my that-time behavior caused serious concern of the government. Thus I think that the harassment on me is the result of my activities on November 7,” said Tsaguria. Nino Eremeashvili, Spokeswoman of the Public Defender’s Office, stated that the Ombudsman studies the incident and will make official statement about it in the nearest future.

The Human Rights Centre got in touch with Shota Khizanishvili. “Representatives of the TV stations also called me today. Dachi Tsaguria was not harassed at all. He was fined for having parked the car in a wrong place and as usually he was taken to be tested on drug addiction. I cannot add anything more.”

Children's Rights

The information highlighted in this section contains extracts from the report *Violence against children in Georgia - An Alternative Report to the UN Committee on the Rights of the Child on the implementation of the Convention on the Rights of the Child* prepared for the 47th session of the UN Committee on the Rights of the Child, published January 2008. The organisations involved in the preparation of the alternative report were the World Organisation Against Torture (OMCT), the Public Health and Medicine Development Fund of Georgia (PHMDF) and the Human Rights Centre (HRIDC).

1 Introduction: Overview of children's situation in the country

1.1 Consideration of the child and place in the society

Not more than 5 years ago, Georgian society was proud of cultural traditions, including the so-called “child cult”, which is a traditional sense in the Georgian society of considering children as objects of special care and with high respect. However, during the recent years, those values have been put under suspicion and the attitudes of the State, the society, and the families towards children have changed.⁷⁴

Therefore, their place and importance are clearly expressed in the following phenomena: street children; the number of children in care institutions and the conditions in childcare institutions; types of penitentiary facilities and conditions for the development of the sentenced minors there, number of those minors; dramatic growth of violence among school adolescents; attitude towards deviant children and etc. The abandonment of children for economical reasons has also increased dramatically.

Children suffer from violence, whether physical or psychological, in many situations and locations: in the family, at school, in detention, etc. and generally on a daily basis.

⁷⁴ This may be partly attributed to the collapse of the Soviet Union and consequently the split of the welfare system which contributed to worsen the situation of children.

Legislation regulating child protection is rather poor (with gaps, incomplete, non-comprehensive, incoherent with other laws, etc.) and effective implementation of the law is quasi-inexistent. There is a clear lack of executive mechanisms. Protection of children is definitely not a priority issue for the current government.

1.2 Legal status of the child

1.2.1 Definition of the Child (article 1 of the CRC)

Article 12 of the Civil Code of Georgia defines a child as a person from birth to the age of 18, the age of majority. The same provision set the rules of legal capacity divided in three age categories: a) persons under age of 7 are incapable; b) persons from 7 until 18 have restricted capability; c) adults from the age of 18 are presumed capable.

a) Minimum age for being employed

Contracts to employ persons under 14 years can be concluded only in the sphere of sports, arts and culture, and for performance of advertisement services. Employment capability of a person under 16 years is effective under the consent of the authorized representative or the agency assuming guardianship provided that the employment relations do not contradict the interests of the under age person, do not impair his/her moral, physical and mental development and do not preclude the right and ability to get elementary and base education.

Employment agreement shall not be concluded with the under 16 years old person for performance of labour associated with gambling, night entertainment establishments, production, transit and sale of erotic and pornographic products, pharmacy and toxic substances. Employment agreement shall not be concluded for night work (from 10 p.m. to 6 a.m.) with a person below 16 year-old.

b) Age of sexual consent

According to article 140 of Georgian Criminal Code “sexual intercourse (...) with someone under 16 years shall be punishable by restriction of freedom (...) or by deprivation of liberty (...)”.

c) Minimum age for getting married

Article 1108 of the Civil Code of Georgia establishes the marriageable age at 18 years old. In exclusive cases, marriage is allowed from 16 with the prior written consent of the parents or other legal representatives. If the parents or legal representatives withhold their consent, marriage may be authorized by a court for valid reasons and on the basis of a declaration by the spouses.

d) Conscription into armed forces

Article 9 of the Law on Military Service and Military Obligation defines that enlistment and conscription into armed forces starts from age of 18 to 27.

e) Minimum age for criminal responsibility

Article 33: “Criminal liability for the illegal action provided under this Code shall in no way be imposed upon the person who has not reached 14 years before the perpetration of this action.”

It should be emphasized that the Parliament of Georgia has amended the Criminal Code of Georgia (article 33) on May 23, 2007, lowering the age of criminal responsibility from 14 to the age of 12 for the commitment of especially severe crimes. This amendment is intended to enter into force on 1 July, 2008 (for details, see section 9.1).

1.2.2 Main legislation with respect to the rights of the child

Chapter 2 of the Constitution of Georgia is “Georgian citizenship. Basic rights and freedom of individuals”, is a list of fundamental rights and liberties, which applies to children. Few articles beyond articles 30 and 36 expressly mention the particular protection of children. Article 36 of the Constitution advances certain children’s rights and guarantees the protection of these rights: “the rights of mothers and children are protected by law” and article 30 details the working conditions required for minors.

A comprehensive legislative act concerning child rights protection has not been adopted yet in Georgia. Along with other legislative acts, the child’s right to be protected from acts of violence is regulated by the following laws:

- Violence (including domestic violence)
 - Law on the Protection of Minors from Harmful Effects enacted on September 28, 2001 and entered into force on January 1, 2002;
 - Law on the Elimination of Domestic Violence, Protection of and Assistance to the Violence Victims, entered into force on May 25, 2006;
 - Some provisions of the Criminal Code which envisage aggravating circumstances when the crime is committed against a child.

- Administration of juvenile justice, children in conflict with the penal law
 - Georgian Criminal Code, Section 5 on “Juvenile Criminal Liability” and article 33 on the “Release in responsibility due to age”; adopted on July 22, 1999;
 - Georgian Criminal Procedural Code adopted on February 20, 1999 and particularly Chapter 63 regarding the procedures regarding crimes committed by children aged 14 and above;
 - Order #635 on the Approval of the Instruction on Organizing Activities to Prevent Crimes Committed against and by Juveniles; it was enacted on May 17, 2006 by the Minister of Interior.⁷⁵

The main and current law reforms focusing on children, concern the child welfare reform project and the reform of the juvenile justice system (see section 9.3).

➔ *Georgian legislation on the rights of the child remains mostly non-comprehensive and generally ineffective.*⁷⁶

Despite recently passed laws and reforms which will deal, not specifically but at least partly, with the question of abuse, neglect and violence of children, it is obvious that a global law on the protection of children and their rights is still lacking in the Georgian legislation.

1.2.3 Law enforcement organs implementing the legislation protecting children from violence

➔ *The largest problem regarding the rights of the child concerns their concrete effectiveness. Indeed, the implementation of the legislation on the rights of the child is quasi-inexistent (maybe except regarding the trafficking issue). This is partly due to the fact that effective mechanisms are lacking and only very few State bodies work on the rights of the child and even fewer on violence against children because of a clear lack of interest from the State authorities.*⁷⁷

No mechanism has been created to implement the recommendations of the UN Study on Violence against Children, with the exception of some issues about child abuse, which have been addressed by the so called EU Technical Assistance to the Commonwealth of Independent States (TACIS) project.

⁷⁵ This Order is a binding normative act. Its purpose is to instruct inspectors in their activities against crimes committed by and against juveniles.

⁷⁶ This was stressed during an interview with Meri Maglaperidze, staff member of the Child Rights Centre, Tbilisi, July 2007.

⁷⁷ Ibid.

2 Non-discrimination (article 2 of the CRC)

2.1 The worrying situation of children living or working in the streets

There are no accurate statistics on children living in the streets in Georgia. The issue of street children has been admitted by Georgia in its Third State Party Report to the UN Committee on the Rights of the Child.⁷⁸

According to a recent study on children living in the streets in Georgia,⁷⁹ the reason why children end up on the street is mainly because of “family-related issues associated with poverty and social problems such as fighting and beating, alcoholism, and poor family relations that push and keep children in the streets.” It may also be due to “social issues related to street life that lure them to and keep them in the streets once they are there.” Comparing the situation of children in institutions and those living in the streets, the studies have found that although the family problems facing children in institutions and street children are largely overlapping, the children in institutions have a life style which more closely resembles a family structure and therefore are less likely to engage in destructive behaviour.

The Centre for Social Adaptation of Children is a public open institution in Tbilisi receiving street children. Though no manifestations of torture or abuse have so far been reported in the Adaptation Centre, it is still far from what a rehabilitation facility for street children should be. This is not only due to a lack of good will and expertise from the staff, but also attributable to the weakness of Georgia’s child protection system, namely, its resources and legislation. For instance, the Centre receives both street children and children accused of, or having infringed the law even if, technically, the latter should not be received by the Centre. Children are mixed with no regard to their reasons for coming to the centre, their age or their sex. From May 2005 through January 2006, 110 street children were registered in the Centre.

According to an interview given by Maya Kurtsikidze, communication officer at UNICEF’s Tbilisi office, with a journalist, Eka Gulua from HRIDC, there is a need to conduct a survey in order to have an idea of the number of children living or working in the streets in Georgia and to have a

⁷⁸ Implementation of the Convention on the Rights of the Child, Third periodic report, Georgia, February 2007, para. 274.

⁷⁹ Laura Murray et al “Causes of Children Living on the Street in Urban Georgia: A Qualitative Assessment; Problems of Children in Urban Georgia: A Qualitative Assessment of Centres and Orphanages” (2006). The study was supported by the Applied Mental Health Research Group of Boston University’s School of Public Health, in partnership with Save the Children.

clear and comprehensive picture of the situation of street children in Georgia. According to Mrs. Kurtsikidze, many of those children are engaged in begging which has become a real source of income. There are even reported cases where parents themselves force their children to beg money in the street and then ask for the “earned” money. An additional problem is that children in the street might have their rights easily violated and are at higher risk of being trafficked.

Furthermore, many reports show that street children suffer from various types of violence: physical, emotional and sexual; despite repressive treatment by the police is becoming lower and lower.

3 Protection from all forms of violence (article 19 CRC)

3.1 Overview of the legal framework

Children’s protection from violence is covered both by ordinary legislation under the Criminal and Civil Codes of Georgia (with some provisions protecting children especially) as well as by some specific laws like the Law on the Protection of Minors from Harmful Effects and the Law on General Education.

Although there are no specific provisions in the Criminal Code on child abuse and violence, ordinary assault laws do apply. Violence against the child is addressed in the Criminal Code under the general provisions on assault offences, particularly under chapter 30 “Crimes against Health”. Some provisions provide for heavier penalties when the act has been perpetrated against a child⁸⁰ (aggravating circumstance).⁸¹ Articles 125 and 126 of the Criminal Code provide punitive sanctions for beating minors without causing serious damage to health, also for regular beating or other violence that has resulted in the physical and psychological suffering of the victim but has not produced the physical injury which is dangerous for life, or produced less severe intentional damage to health, which is not dangerous for life. The sanctions are more strict for the same action perpetrated against a minor than against an adult. Articles 131 and 132 of the Criminal Code define the punitive sanctions for infecting a minor with AIDS or Especially Dangerous Infectious

⁸⁰ The articles refer to minors with no minimum age limit, meaning that all children benefit from an equal legal protection under the Criminal Code.

⁸¹ Aggravated crimes under Criminal Code of Georgia include: Premeditated killing against a minor; Intentional grave injury to health against a minor; Intentional less grave injury to health against a minor; Beating of a minor; Violence against a minor; Rape against a minor; Sexual violence against a minor; Coercion of sexual relations against a minor; Taking a minor hostage; Torture against minor; Inhuman or degrading treatment towards a minor; Coercion against a minor; Involvement of a minor in prostitution; Persuasion of a minor into abusing narcotics, its analogy, psychotropic substance or its analogy.

Diseases. The sanctions are also more strict in those cases where the same action is perpetrated against a minor as compared to against an adult.

3.1.1 Legislation on domestic violence, abuse, and neglect

a) Civil Code - Parental rights and duties

The Civil Code regulates relations between parents and children: parents have duties to protect and raise their children. The Civil Code (articles 1205 and 1210) establishes child protection mechanisms in case of parents' maltreatment and abuse such as the annulment and restraint of parental rights. The extinction of parental rights is the ultimate sanction and can only be ordered by the court against parents if they do not respect their parental duties relating to their upbringing.

Adequate implementation of those provisions remains problematic because there is no organ to ensure their implementation. Further, there are no qualified specialists (social workers) who are enabled to supervise parents in the period of restraint of parental rights to establish conclusions to be used by the courts to pronounce fair verdicts. In practice, the extinction of parental rights rarely occurs, and criminal or administrative sanctions are even rarer.⁸²

b) Law on the Elimination of Domestic Violence, Protection of and Assistance to the Violence Victims (25.05.2006)

This law aims at preventing family violence, providing the victims with social and legal protection, assistance and rehabilitation, as well as access to the justice system. In this regard, all family members have equal rights. One of the means the law provides to prevent and tackle family violence is the cooperation of various institutions. The law does not target only child victims but all victims of violence within the family sphere (mostly women and children in practice).

According to article 3 of the law, family violence legally occurs when one member of the family violates the constitutional rights and basic freedoms of another member through physical, psychological, economical, sexual harassment.

⁸² Implementation of the Convention on the Rights of the Child, Third periodic report, Georgia, February 2007.

Concrete and positive devices have been created under this law to combat family violence:

- the possibility to issue a warrant to react to an act of violence: it may be issued by a court (protection warrant) or a police officer (preventive warrant, should be confirmed by a court), and is always on a temporary basis. The aim is the protection of the victim. The protection warrant may also be demanded by the victim, a family member, or any other person providing legal assistance or medical, social and psychological care to the victim;
- the possibility to isolate the victim from the perpetrator: the primary aim is the protection of the victim of course, but this provision also aims at getting evidence more easily;
- the relationship (affective links, financial dependency, etc) between the victim and the perpetrator is assessed and, depending on the results of this evaluation, the perpetrator may be deprived of his/her right to be the child's representative and his/her rights to see the child will also be restricted.
- the victim benefits from several guarantees: interrogation in private, information about his/her rights, transfer to a hospital or an asylum if the urgent situation requires, etc.

➔ *Despite improvement in the legislation, the Law on the Elimination of Domestic Violence is criticized by many Georgian NGOs and organs, particularly because of the clear lack of an efficient mechanism to implement the law and therefore make it effective in the protection of child victims.*

For instance, according to this law, when violence occurs in the family, the victim and the perpetrator should be separated; this separation should be based on a protection warrant of a court. However, at least two problems prevent the full and appropriate implementation of this provision: 1) there is no maximum definite time limit to issue the warrant and sometimes, it takes time to issue it and during this time period there is no legal obligation for the perpetrator to be separated from the victim; 2) it seems that there is no adequate shelter able to receive child victims of family violence.⁸³

Moreover, despite the fact that there are some provisions on the rehabilitation of victims in the law, no mechanism has been created or provided for in practice.

There is also a lack of mechanisms to enforce the right to complain to the department of the children's rights under the Ministry of Education.⁸⁴

⁸³ This was stressed during an interview with Meri Maglaperidze, staff member of the Child Rights Centre under the Office of the Public Defender of Georgia, Tbilisi, July 2007.

⁸⁴ This was stressed during an interview with Mari Chokheli from the NGO Article 42 of the Constitution, Tbilisi, July 2007.

➔ Gaps in the law

Georgian legislation does not actively create a safe environment for children, nor does it provide efficient protection against all forms of violence and abuse, especially when the authors of abuse are the children's parents or other caregivers.

There are only few government agencies in Georgia that deal with child abuse. Except the Child Care and Guardianship Body in the framework of domestic violence, no official agency is in general responsible for taking action on following up on cases of child abuse and neglect and none have policies regarding these issues (i.e. via a child protection plan or a formal set of expectations about how to respond to the problem of child abuse). There is no governmental agency which maintains an official record of all child abuse cases reported in Georgia.

In practice, the rights of the child will not be fulfilled if they are not strengthened by parents' obligations with strict controls in monitoring these obligations by relevant State organs. Unfortunately, this is not mentioned in the current legislation. Due to the absence of any State control over parents' negligence and the lack of measures sanctioning this kind of behaviour, in practice, the existing provisions do not yield proper protection.

Legislation which is lacking includes the establishment of social programmes to provide necessary support for the child victims of abuse and neglect and for those who have the care of the child, as well as other forms of prevention and identification mechanisms, reporting, referral, investigation, treatment and follow-up, including judicial one, of instances of child maltreatment.

3.1.2 Legislation addressing school violence

According to the Law on General Education (April 8, 2005), school discipline must be conducted according to the methods that are based on the respect for a child's freedoms and dignity (article 19 of the law). Moreover, violence against a pupil or any other person shall not be allowed in the schools. In case of a physical or verbal insult, a school is obliged to react immediately and adequately according to the observance of legislative provisions (article 20 of the law).

3.2 Occurrence of violence against children in Georgia

Different forms of abuse and violence towards children are very frequent in Georgia and this phenomenon is accentuated in rural areas. However, this issue remains taboo in Georgian society.

3.2.1 Child care institutions

A 2005 study on child care institutions shows that the two main reasons why abuse and neglect may occur in such institutions are: inadequate training of the personnel working with children and the excessive use and misuse of child institutionalisation. The report recommended re-evaluating children in institutions, studying their family conditions, establishing a strict control over admittance, and training staff on child care.⁸⁵ (For further information on child institutions, see section 7.2.)

3.2.2 Domestic violence

It appears from several recent studies and reports that child abuse and violence used as a form of discipline in the family is more often committed by the mother and that slapping is the most common form of discipline used.⁸⁶

It seems that case-law on domestic violence does not exist; allowing us to think that domestic violent acts against children are weakly prosecuted in Georgia.

3.2.3 School violence

Nowadays, in the cities, violence is prevalent among pupils whereas, in the villages, violence is more often perpetrated by teachers themselves. Some reports have been made of collective punishment and those forms of violence are widely accepted by parents and society in general.

3.3 Denouncing child violence

3.3.1 Child abuse reporting

There is no State system or service which attempts to prevent and identify the facts of violence and which aids in the appropriate treatment of the victims of abuse. There is no obligatory reporting

⁸⁵ Laura Murray et al “Problems of Children in Urban Georgia: A Qualitative Assessment of Centres and Orphanages” (2006).

⁸⁶ Dr. Selim Iltus produced “Early Childhood Development and Preschool Education in Georgia: Research Findings and Recommendations”, August 2005: “discipline was primarily the responsibility of the mother (75%) and that slapping was the most common form of discipline used”; UNFPA reproductive health survey of males: 55% of the respondents admitted that their children have been subjected to domestic violence perpetrated by one of the parents, and more often by the mother. 2005; <http://georgia.unic.org>.

body or system to receive referrals in cases of abuse and violence.⁸⁷ There is no system, which takes the responsibility of case management, treatment, or follow-up. According to the Law on the Elimination of Domestic Violence, the responsibility of supervision and responding to child abuse cases lies on the Child Care and Guardianship Bodies (violence committed by a parent, guardian, and foster parent), as well as with police officials who have an obligation to immediately respond to cases of physical abuse of children via the issuance of a restrictive order.⁸⁸

In practice, there are few investigations, although the police have the obligation to conduct them when there are signs of physical abuse and witnesses exist.

As far as the appropriate judicial involvement is concerned, the issue is very complicated as the person who can raise a complaint in the court regarding child abuse is the child's legal representative – a parent, and in the absolute majority of the cases a parent does not want to witness against a partner/spouse, or a teacher due to the fact there are no protection guarantees after raising the complaint. Other bodies which have the obligation to protect children's rights is the Child Care and Guardianship Bodies, which rarely carry out this responsibility due to the incompetence of the staff or lack of resources. Moreover, the statute of the Ministry of Education and Science does not define the exact responsibilities of the Child Care and Guardianship Bodies. That is why the personnel of the Bodies cannot determine its own obligations and responsibilities.

Finally, professionals are not educated on child violence and the appropriate reaction to have when such cases occur.

3.3.2 Complaint's procedures

Several provisions enable the child to file a complaint to guarantee his/her right to be protected from violence:

- 1) Article 42 of the Georgian Constitution: “everyone has the right to apply to a court for the protection of his/her rights and freedoms”;
- 2) Articles 14 and 15 of the Georgian Civil Code: a minor between the ages of seven and eighteen is of restricted capability and his/her legal capacity to apply to the court is valid only subject to his legal representative's consent;

⁸⁷ The only exception is the obligation of doctors to send a report to the police in case of traumas. This is emphasized in the law on Domestic Violence, 2006.

⁸⁸ A Restrictive Order is an act issued by the authorized police officer, which defines temporary protection measures of victims in cases of domestic violence and which shall be submitted to the court for approval within 24 hours. The court, in case of issuance of the restrictive order within 24 hours, shall be authorized to decide on extension of the restrictive order until the decision of the issuance of the Protective order.

- 3) Article 1198 of the Civil Code: “children have the right to defence from their parents (or from other legal representatives) if they are abusing their duties;
- 4) Article 27 of the Criminal Procedure Code requires the victim to initiate charges. It also provides for termination of proceedings based on the reconciliation of the victim and the perpetrator in all but the most severe levels of crimes.

According to the above-mentioned provisions, every child in Georgia is conferred the right to lodge complaints on any question somehow impacting his/her legal rights and interests prescribed by Georgian legislation. This can be done even individually without interference of any other person. For instance, the rights and legal interests of children have been violated by parents who have not fulfilled their responsibilities regarding the child’s education or have infringed their parental duties, the child has right to independently apply to the Child Care and Guardianship Body and, from age 14, to the court (article 1198.1 of the Civil Code).

However, the difficulty again remains with the implementation of this right because it appears that, in practice, even where cases of child violence and abuse in the family or at school are reported, there is generally no prosecution, disciplinary nor administrative penalties. As evidence, there is no case-law on this issue.

4 Protection from all forms of sexual exploitation and sexual violence (article 34 CRC)

4.1 Sexual violence against children

4.1.1 Legislation

Chapter XXII of Criminal Code of Georgia is dedicated to “Crimes against Sexual Freedom and Inviolability”.

Two articles focus on sexual acts that are prohibited when perpetrated especially against a child, i.e. under sixteen years old according to the law in question: article 140: “Sexual Intercourse or other action of sexual character with one under sixteen” (also determining the age of sexual consent) and article 141: “Perversion.” Penalties might amount up to three years of imprisonment.

Other sexual offences are not expressly directed towards the particular protection of children, but include the commission of the offence against a child under fourteen as a ground for more severe penalties. This is the case for the crime of rape (article 137.4 of the Criminal Code) and sexual abuse under violence (article 138.3.a) for which the penalties could extend up to twenty years of imprisonment.

The third category of sexual offences do not provide for particular penalties when the victim is a child (article 139: “Coercion into sexual intercourse or other action of sexual character). This is the same schema regarding the production, distribution, showing or promotion of pornographic material.

4.1.2 Rehabilitation and reintegration of child victims of sexual violence

The rehabilitation and reintegration for the victims, including children, of sexual violence unfortunately is not functioning in Georgia. The victim of physical abuse is provided with medical support, but nobody cares for the victim’s psychological rehabilitation or for his/her further reintegration in the society. No governmental structure is working on the improvement of the aforementioned problem, which is supported by the fact that no obligation is imposed on any group within the framework of existing legislation.

4.2 Sexual exploitation of children

4.2.1 Prostitution

Prostitution in and of itself is not an offence. What is punishable however, is engaging someone into prostitution (article 253 of the Criminal Code). Worth noting is that there is no more severe penalty for the pimp nor does any particular protection exist for under-age prostitutes.

4.2.2 Sex tourism

The Law on Tourism and Holiday Resorts does not ban sex tourism of children. This should be included in the legislation as a type of trans-national organized crime in accordance with relevant international standards.⁸⁹

⁸⁹ Human Rights violations in Georgia, An alternative report to the United Nations Committee Against Torture, 36th session, May 2006, p.33.

It is difficult to assess the existing legislation because of a lack of attention on this field from governmental and non-governmental structures. There are no entities dealing with this issue in Georgia.

Apart the fact that prostitution and sexual exploitation are themselves degrading treatments, children in those situations suffer from both physical and psychological abuse.

5 Prevention of abduction, sale and trafficking (article 35 CRC)

5.1 Legislation on child trafficking

There are many children in Georgia who do not have family care and who are living in unbearable living conditions. These children often become the victims of trafficking. This is also the result of poverty and lack of social awareness, with a particular lack of attention from the government. The main reasons behind child trafficking are forced labour, adoption and mainly sexual exploitation.

During the period under review, amendments to the Criminal Code criminalizing trafficking in persons and trafficking in minors, and imposing relevant sanctions for this crime (article 143 para. 1 and 2) were passed by the Parliament of Georgia. The law entered into force on July 10, 2003. Moreover, the view of ensuring the effective fight against human trafficking, the system of aggravating circumstances and sanctions were changed with amendments dated April 28, 2006.

In compliance with article 143 of the Criminal Code, trafficking in minors is defined as selling or purchasing a minor or carrying out any other form of illegal transactions, *with the purpose of exploitation*.⁹⁰ It is punishable with deprivation of liberty for a term from 8 to 12 years.

Article 143.2 also stipulates aggravating circumstances: abuse of power, repetition, commission by an organized group, and act which causes death or other grave results.

⁹⁰ According to article 143.1 of the Criminal Code, the term “exploitation” means the use of a person for the purpose of: (a) forced labour; (b) involvement in criminal or any other anti-public activity or in prostitution; (c) sexual exploitation or any other kind of service; (d) implementation or any other kind of the use of a human organ, part of human organ; (e) forcing a person to live in the conditions of modern slavery. The same provision also gives the explanation of the term “forcing a person to live in the conditions of modern slavery”. It is defined as follows: “The deprivation of identity documents of a person, restriction of the right to free movement, prohibition of contacts to one’s family including correspondence and phone calls, cultural isolation, coercion of a person to work in the conditions degrading his/her reputation and dignity or without any salary or inadequate salary”.

5.2 Implementation

As it is rightly stated in the State Party report, the Law on Combating Trafficking in Human Beings and the Action Plan regarding the Fight against Trafficking in Persons in Georgia provide for effective mechanisms for protection, rehabilitation and reintegration of victims of trafficking (among them for the victims of trafficking who are minors).

One should admit the positive changes in the legislation and rules of implementation regarding the fight against trafficking, although they are generally directed towards all types of victims, adults and children. The main concern here is that the legislation, and particularly the Law on Combating Trafficking in Human Beings considers only minimally the rights of the child within such context, for instance the issue of rehabilitation of a child in the shelters for the victims of trafficking which is not thought-out separately.

6 Protection from torture and other cruel, inhuman or degrading treatment (article 37-a)

Capital punishment and life imprisonment

The death sentence is not allowed under Georgian legislation: both for adults and children. According to article 51 of the Georgian Criminal Code, the deprivation of liberty for an indefinite term cannot be imposed on a person who has not reached the age of eighteen while committing the crime.

6.1 Legal framework

6.1.1 Definition of torture: a definition in compliance with article 1 CAT, but no particular definition of torture when the victim is a child

Based on several shortcomings of the criminal legislation of Georgia, in respect to the definition of torture, the UN Committee against Torture, as well as the Special Rapporteur on Torture, recommended that Georgia “*amend its domestic penal law to include a definition of torture which is fully consistent with the definition contained in Article 1 of the Convention, and provide for appropriate penalties.*”⁹¹

⁹¹ See preliminary Note by the UN Special Rapporteur on Torture, Mission to Georgia, 2005,

With the aim to comply with those recommendations, on 23 June 2005, the Parliament of Georgia adopted amendments to the Criminal Code regarding the definition of the crimes of torture and ill-treatment.

According to the amendments, article 144.1 of the Criminal Code now defines the crime of torture as:

“subjecting a person, his/her relatives or financially or otherwise dependant persons to such conditions, such treatment or punishment, which by their nature, intensity or duration cause severe physical or mental pain or suffering, and have the purpose to obtain information, evidence or a confession, to intimidate, coerce or punish a person for an act she/ he or a third party committed or is/are suspected of having committed.”

As for the Committee Against Torture, this new legislation is “in line with international norms with regard to the definition of torture.”⁹²

There is no specific definition of torture where the victim is a child, nor is there a trend to accept a broad interpretation of torture by the courts where the victim is a child. However, although the definitions of torture and of inhuman and degrading treatments have been broadened by the 2005 amendments,⁹³ there are still concerns and doubts with regard to the way the courts might interpret and adequately apply them in practice to cases of child victims (in practice and until now, no court has had to decide on such a case of child torture).

In addition, attacking a child is considered to be an aggravated circumstance in cases of torture and cruel, inhuman or degrading treatment or punishment and other forms of violence (when the victim is a child, the person responsible is punishable with deprivation of liberty for a term of 9 to 15 years, deprivation of the right to hold office or pursue activity for a term not exceeding 5 years instead of 7 to 10 years of deprivation of liberty when there is no aggravated circumstance; article 144 paragraphs 1 and 3 of the Criminal Code).

⁹² Committee Against Torture, Conclusions and recommendations, Georgia, May 2006, CAT/C/GEO/CO/3, para. 7.

⁹³ Indeed, the new definition of torture applies to both public and private individuals and does not consider torture as an act committed at the instigation or with the consent or acquiescence of a public official or other person acting in an official capacity.

6.1.2 Prohibition of torture

The prohibition of torture and other cruel, inhuman and degrading treatment or punishment is enshrined in the Constitution of Georgia. Chapter 2 of the Constitution dedicated to the basic rights and freedoms of the individual contains articles (articles 17.2, 18.4, 42.7) prohibiting torture and coercion of an arrested person and provides for the inadmissibility of evidence obtained through illegal means.

Moreover, according to article 46 of the Constitution, in cases of a state emergency or martial law, the President of Georgia shall be authorized to restrict some rights and freedoms either throughout the whole country or a certain part thereof. However, in compliance with the relevant international standards, the prohibition of torture is not included in this list of possible restricted rights.

By virtue of the 2005 amendment, the Criminal Code additionally criminalizes the threat to torture (Article 144.2) and inhuman or degrading treatment or punishment (article 144.3). Criminal responsibility is also imposed for attempted torture based on article 144.1.

6.2 Implementation of the law

In September 2003, top government officials agreed on a Plan of Action against Torture in Georgia. Due to be implemented in 2003-2005, this plan, which was drawn up in cooperation with the OSCE, includes, among other things, bringing the Georgian legislation up to par with OSCE and other international commitments regarding torture, improving investigation mechanisms of alleged torture, enhancing the control of police and prison facilities, training officials as well as establishing regular monitoring by adequate bodies.

International organs, including the UN Committee against Torture and the Council of Europe's Committee for the Prevention of Torture (CPT), issued highly critical reports about the use of torture and ill-treatment in Georgia in the past, and demanded that the government take decisive measures to combat this problem.⁹⁴ Similarly, in its last concluding observations and conclusions, the Committee on the Rights of the Child "urge[d] the State party to take all necessary measures for the expeditious and effective implementation of the Plan of Action against Torture, ensuring full

⁹⁴ Committee Against Torture, Concluding observations: Georgia, CAT/C/GEO/CO/3, May 2006. Report to the Georgian Government on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 18 to 28 November 2003 and from 7 to 14 May 2004, Strasbourg, June 30, 2005; available at <http://www.cpt.coe.int/documents/geo/2005-12-inf-eng.pdf>. In April 2007, the CPT carried out a new visit in several detention facilities, including where children are kept, in Georgia. Its report is not yet public: <http://www.cpt.coe.int/fr/etats/geo.htm>.

protection of children from all forms of violence, proper interrogation, prosecution and sentencing of perpetrators, and the provision of care, recovery and compensation for all child victims".⁹⁵

6.3 Effective legislative, administrative, judicial and other measures to prevent acts of torture⁹⁶

One should welcome governmental significant actions during the year 2006 to address torture and ill-treatment. Positive steps include legislative, administrative and judicial measures.

6.3.1 Legislative measures

The Parliament has agreed on amendments to the Criminal Code to bring the definition of torture in line with international standards (see section 6.1.1), amendments to the Criminal Procedure Code to discourage abuse (the new law requires that confessions given by detainees during their detention must be confirmed in court before being admissible as evidence), and alternative to detention (see section 7.1.2).

On 8 July 2005, the Parliament of Georgia delivered a resolution⁹⁷ on acceding to the Optional Protocol to the UN Convention against Torture (OPCAT).

6.3.2 Administrative measures

The main effective mechanism is the monitoring of places of detention. Various entities exist and are generally composed of NGO representatives with possible governmental representatives.

During recent years, there have been several attempts to create entities in charge of monitoring the places of detention. For instance, the Public Monitoring Council of the Ministry of Justice created in 2004 collapsed few months after its establishment. Moreover, standing commissions under penitentiaries have been provided for in article 93 of the Law on Imprisonment but their starting and application did encounter difficulties. In addition, in October 2004, the General Prosecutor and the Minister of Interior reached an agreement about the monitoring of police departments and pre-trial detention aimed at preventing torture and other inhuman treatments. Following this agreement,

⁹⁵ Committee on the Rights of the Child, Concluding observations: Georgia, CRC/C/15/Add.222, 27 October 2003, para. 35.

⁹⁶ Human Rights violations in Georgia, An alternative report to the United Nations Committee Against Torture, 36th session, May 2006.

⁹⁷ N° 1889.

several public monitoring groups (composed of NGO representatives) were created and reported violations in Tbilisi,⁹⁸ whereas this monitoring was hardly conducted in the rest of the country. Moreover, according to the requirements of article 93 of the Georgian Law on Imprisonment and article 62 of the Administrative Code, the Minister of Justice established the Commissions of Penitentiary Facilities.⁹⁹ The Commissions are set up in 14 penitentiary facilities in the whole country, and particularly in two facilities receiving juveniles: the prison #5 for women and juveniles in Tbilisi and the Juvenile Correction and Education Institution in Tbilisi, Avchala district.¹⁰⁰

However, the way those entities function in practice is of concern regarding at least two points:

- Aside to some NGO representatives who are active, many NGOs composing the public monitoring groups and commissions abovementioned remain pro-governmental, leaving doubts on the full independence of those bodies which remain accountable to the Minister;
- Moreover, there are cases of violations' denunciations that have been reported to the commissions who refused to follow-up and monitor the cases. As an example, when HRIDC's Batumi branch informed the competent commission about violations in Batumi prison against one of HRIDC's client, they refused to react.

Regarding specifically the places where children are deprived of their liberty, it seems that the Office of the Public Defender, Child Rights Centre, is planning to start the monitoring of children's houses soon.

6.3.3 Judicial measures

There are instances of courts providing longer imprisonment and suspension of public office for abuse by officials; the general prosecutor is become more active in investigating and prosecuting abusers; serious abuses and police misconduct, such as the fabrication or planting of evidence, are reportedly decreasing. This is a general evolution that might positively affect children.

6.4 Practice of torture or other cruel, inhuman or degrading treatment or punishment perpetrated against children

Different forms of violence against children committed by teachers, parents and other caregivers might amount to torture or other cruel, inhuman or degrading treatment or punishment; however,

⁹⁸ As an example, the Monitoring Commission of Tbilisi was established recently on November 27, 2006.

⁹⁹ Order #21901.

¹⁰⁰ <http://www.justice.gov.ge/Penitentiary%20commision.html>.

the reporting of incidents of cruel treatment is not often encountered. There are also reports where violence is committed by public persons: children experience ill-treatment from the police and staff of state institutions. However, this kind of treatment is rarely reported by the police. For instance, during 2000-2004, there were no registered instances of torture or other inhuman or degrading treatment of juveniles.¹⁰¹

Officially registered cases

In its Third Periodic State Party Report to the Committee on the Rights of the Child, Georgia states that “in 2005-first half of 2006, six criminal cases related to torture and ill-treatment of minors were initiated”. However, considering the repressive policy and the fact that, in practice, legal procedures and guarantees are respected only infrequently in Georgia, this is only an incomplete picture of the actual situation. Moreover, in instances where law enforcement officials are themselves lawbreakers, it remains very difficult for victims to get justice. Having a clear and true picture of the child torture situation in Georgia supposes to get comprehensive statistics with disaggregated data.

6.5 Legal assistance to the child victim

It is obligatory to involve an attorney if the claimant/victim is under age and cannot defend his/her interests. In this case the litigation body is obliged to ensure the involvement of the attorney in the case. The expenses for the attorney will be reimbursed by the State.

The victim can refuse to have the representative, but the litigation body can override this refusal if the victim is under age.

7 Protection of children deprived of their liberty (article 37-b, c, d)

Introduction:

There are five detention centres holding children in Georgia:

- Avchala juveniles correction and educational institution or colony, receiving boys;
- Batumi prison n°5, receiving boys;
- Kutaisi prison n°2, receiving boys;
- Zugdidi prison n°4, receiving boys;

¹⁰¹ According to the Ministry of Internal Affairs of Georgia.

- Prison n°5 for women and children, receiving boys and girls, the latter being detained with female adults.

Both children in conflict with the penal law and those in need of care and protection may be deprived of their liberty, i.e. held in a place where they are not allowed to leave at will. These two categories of children are kept in separated premises: the former in detention centres and the latter in specialised institutionalised facilities like childcare institutions, boarding schools or other children's homes and shelter. However, there are few cases where both categories of children have been kept together: the Centre for Social Adaptation of Children in Tbilisi for instance.

Even though the various types of existing premises face different problems, low level of living conditions is a trend common to the majority of the places.

7.1 Deprivation of liberty of children in conflict with the law

7.1.1 Legal framework, procedure and conditions and limits of the detention of a child

a) Arrest (legal grounds)

The following rules are applicable to all persons, including children.

According to the Georgian Constitution, article 18, "An arrest of an individual shall be permissible by a specially authorized official in the cases determined by the law." Nobody can be arrested without the resolution of a judge or some other court decision. Children, like other persons, may be arrested under the following legal conditions depending on the type of offences:

- for having committed a crime charged with at least 2 years of imprisonment;
- for having committed a crime carelessly which is charged with at least 3 years of imprisonment;
- if the accused infringes procedural measures like pre-trial detention, bail, custody, transfer, supervision, etc.

Moreover, a teacher or a legal representative of the child accused shall take part in his/her very first interrogation by the police.

b) Police custody (time period and place)

According to article 18 of the Georgian Constitution, "(...) Everyone arrested or otherwise restricted in his/her liberty shall be brought before a competent court not later than 48 hours after the arrest. If within next 24 hours the court fails to adjudicate upon the detention or another type of restriction of

liberty the individual shall be immediately released.” Therefore, the maximum time for police custody is 72 hours.¹⁰² There is no specific and shorter time period for arrested children.

As a rule, a detainee is placed in a temporary cell while in police custody.

c) Pre-trial detention

As soon as a juvenile is taken to court, the decision on his release on bail or under supervision or to be placed in a pre-trial detention setting must be discussed.

Before trial, the court may impose on the accused some procedural forcible measures such as pre-trial detention. They can be imposed under the following circumstances: to prevent the avoidance of the preliminary investigation and trial, to eliminate further criminal activities, to ensure the criminal investigation to find the truth is not impeded, or to enforce the verdict. Moreover, valid proof, stating that a person might disappear or will not appear before the court, or might annihilate proofs, threaten participants of the proceeding, or commit a new crime, shall be used as a basis for such measures.

An accused shall not be sentenced to pre-trial detention, or some other prosecution, if the above-mentioned goals can be easily accomplished with less restrictive activities.

The detention measure (before trial) is used only for a person who is charged with a crime punishable with imprisonment from two years according to the law. This form of detention could be used with juveniles only where the law envisages the imprisonment of more than 3 years for the crime.

The prosecutor's decision on detention will have to be confirmed by a court. However, in practice, the court's decision on detention is simple formality. Indeed, it appears that the court assesses the prosecutor's decision as a legal one and mostly satisfies it without discussing the possibility of using a less grave penalty.

Furthermore, when a decision is being made about the possible deprivation of liberty, the examination of the concrete situation of the child, his or her social and familial background, is usually not taken into consideration.

¹⁰² In case of administrative arrest, police custody might last up to 3 hours.

Following amendments to the Criminal Procedure Code in 2005 which came into force on 1st January 2006, the maximum term of pre-trial detention has been reduced from nine months to four months. When a prosecutor seeks an order for pre-trial detention, the judge may make an order for 2 months. However, the time period may be extended twice, each for a further period of one month¹⁰³ if the case is returned for additional investigation.¹⁰⁴ Therefore, a juvenile may stay up to 4 months in pre-trial detention. Furthermore, the total period of time that a juvenile can be detained up until the end of the trial has also been amended. Article 18 para. 6 of the Constitution of Georgia, reflected in article 162 of the Criminal Procedure Code (which came into force on 28th April 2006), provides that the total period of time in detention (including both pre-trial and pending trial) should not exceed 9 months. The 9 months-period begins on arrest, or where there has not been an arrest (i.e. detention prior to court appearance) at the moment when a judge decides on the conviction.

Some figures about places where children may be kept in pre-trial detention:

On 27th October 2006, there were 184 juveniles (under 18) held in pre-trial detention¹⁰⁵, divided into the following places: Prison No. 2: (Kutaisi): 16; Prison No 3 (Batumi): 28; Prison No 4 (Zugdidi): 9; Prison No. 5 (Women's and Delinquents' Institution of the Penitentiary Department): 105; Prison No. 6 Rustavi: 20; Hospital for prisoners of the Penitentiary Department: 6.

On July, 3rd, 2007, juveniles were 178 in pre-trial detention in Georgia (out of 378 child detainees in total).¹⁰⁶

d) Detention after conviction

A distinction between 14 and 16 years of age is made in article 88 of the Criminal Code relating to the “imprisonment for a particular term”:

- deprivation of liberty of a juvenile for less than 10 years should be served in an educative institution;
- a juvenile between 16 and 18 years old may be sentenced to a deprivation of liberty from 10 to 15 years, however, this sentence is only available for an especially grave crime.¹⁰⁷

¹⁰³ See Article 162. The period may be extended if after the expiration of the detention period, the accused has violated a less restrictive measure, a graver charge has been brought against him, the complexity of the case or the parties have not had sufficient time to get familiar with the case files after the completion of a pre-trial investigation. In addition, if the case is returned for additional investigation from the court of trial, a judge of this court may prolong the detention up to 60 days. At the expiry of this term, the person should be immediately released unless the case has been transferred to court (see NORLAG report).

¹⁰⁴ Article 162.4 Criminal Procedure Code.

¹⁰⁵ This term includes children held in pre-trial and pending trial detention.

¹⁰⁶ Figures given by the International Centre for Prison Studies, 3 July 2007.

e) Legal principles, guarantees and rights of child detainees

Unless otherwise mentioned, the following principles apply to both adults and children.

As a principle and individual legal guarantee, the accused shall be protected against the use of methods which shall be dangerous to his or her life and health or degrade his or her honour during the time of the investigation or the possible evaluative process or expertise.

Legality of the deprivation of liberty

As for article 12 of the Criminal Procedure Code, “restriction in liberty shall not happen without legal basis and regulations. Detainee and arrested shall immediately be introduced with the reasons and basis of his/her detention as well as the crime s/he is accused for.”

Legal assistance

The person shall demand the assistance of the lawyer and the demand shall be satisfied.

The detainee, arrested or medically-examined person shall have the right to meet his/her lawyer (without restriction on the number and length of the meeting) unless some other conditions are envisaged in the Code, shall enjoy legal materials and literature, and shall have paper and stationary staff to write suits, mediations or some other documents (Criminal Procedure Code, articles 182, 73(1-v), 11).

Information regarding the family or legal representative

The investigator and prosecutor, as soon as they apply detention as procedural measure or place a person in a medical institution for evaluation, shall inform the family members, or any relative or legal representative of the detainee, within five hours if s/he is an adult and within 3 hours if detainee is juvenile.

Conditions of detention respecting human dignity

Conditions of the place of detention shall guarantee honourable existence of the person, respect his/her dignity and conscious, his/her personal integrity, main his/her health, and retain the ability to defend his/her interests. Inhuman treatment, physical and moral torture of the detainee and arrested are prohibited under the law.

¹⁰⁷ Especially serious offences include those intentional offences, for which a person shall be sentenced to more than 10 years or life imprisonment under the Criminal Code, such as premeditated murder (art. 109) and premeditated severe injury to health (art 117).

Restriction of his/her liberty shall not be more severe than necessary for the avoidance of his/her escape or prevention of ascertaining the truth in a criminal case.

A detained, arrested or medically-examined juvenile shall have the right to receive compulsory education according to the school program.

7.1.2 Misuse of deprivation of liberty

a) Lack of alternative measures to detention

Supervision

Currently, the court can make a decision on supervision of the child or of availability of bail for the child, which can be viewed as alternative penalty. In practice, projects implementing a court decision on supervision are only few and therefore restrain the possibility for the courts to choose such a solution.

Conditional sentence

One of the opportunities for a person, including a child, to avoid a prison sentence provided by the Criminal Code is a conditional sentence.¹⁰⁸ If the court decides to impose a conditional sentence, it sets a probation period for the convicted person throughout which s/he must not commit any additional crimes and discharge the obligations assigned. Conditional sentences are mainly used with respect to less serious crimes, taking in mind the character of the crime and the personality of the convicted individual. If during the probation period, by his or her proper behaviour, the convicted person proves that he or she has reformed, the court will abolish the conditional sentence and annul the record of conviction.

However, there is a tendency from the government to challenge conditional sentences. Indeed, on 14 February 2006, during the annual speech of the plenary session of the Parliament, the concept of “zero tolerance” was introduced to small crimes. The President stated:

I am introducing a new draft law “Zero Tolerance to small crimes”. I am introducing amendments to the Criminal Code aiming at full abolishment of the conditional sentence, no conditional sentence, every criminal to jail. No judge will be able, based on human considerations, to release the person... Zero tolerance to every small crime,

¹⁰⁸ If the convicted individual can be corrected without serving the awarded sentence of corrective labour, restriction of freedom, jailing or imprisonment, the court shall rule that the awarded sentence be deemed to be conditional.

for everybody's note, for the note of the judiciary, Parliament, executive branch and the police, this is our new, strong policy.

The President's speech can be considered as a direct order to judges not to impose conditional sentences, also showing the lack of independence and impartiality of the judiciary in Georgia.

Non-custodial sentences as an alternative to pre-trial detention

Before the amendments introduced to paragraph 1 of article 152 of the Criminal Procedure Code,¹⁰⁹ it provided for several non-custodial preventive measures,¹¹⁰ though pre-trial detention was a measure mainly used.¹¹¹ After the amendments mentioned above, the list of alternative non-custodial measures was quite reduced and only bail and the personal guarantee remain. Moreover, if a person cannot afford to post a bail or find a reliable person who will agree to be his or her guarantor, the individual will be destined for imprisonment no matter how unreasonable the application of this preventive measure is in the given case. These rules also apply to children.

b) Practice: misuse and overuse of detention against children

It is very clear from the figures that imprisonment is increasingly used as sentence for juveniles. While in the year 2000, imprisonment was only ordered by the court on 14.9% of convicted juveniles, by 2006 it was used for 37.4% of convicted juveniles.¹¹²

Despite the fact that the law frames detention with legal conditions, such as the reasonability of the measure and the impossibility to use other less grave penalty, it appears in practice that the court, frequently, does not order the deprivation of liberty only when it is an urgent necessity. Indeed, most of the offences committed by juveniles are minor and could be addressed with a probation term (which is a non-custodial sentence) for instance.¹¹³

¹⁰⁹ December 16, 2005.

¹¹⁰ Placement under police surveillance, written undertaking not to Leave Place and behave properly, house arrest, etc.

¹¹¹ For a clear illustration of the practice here, statistics are available providing information on how many motions were submitted before the court to impose pre-trial detention as a preliminary measure to the defendant and how many were granted. Statistics cover the period from January 2004 to January 2005:

Didube-Chugureti regional Court: From 361 motions 289 were granted;

Gldani-Nadzaladevi regional Court: From 515 motions 481 were granted;

Vake- Saburtalo: From 401 motions 384 were granted;

Krtsanisi-Mtatsminda regional Court: From 500 motions 451 were granted;

Isani-Samgori regional Court: From 471 motions 337 were granted;

Tbilisi District Court: From 139 complaints of the persecutor 77 were granted and from 832 complaints of the lawyer on abolishing/replacing pre-trial detention as a preliminary measure imposed on the defendant 61 were granted;

The Supreme Court of Georgia: Collegium of criminal cases: From 22 complains of the prosecutor 21 were granted.

¹¹² UNICEF Georgia – Analysis of the Juvenile justice system in Georgia.

¹¹³ According to the Director of the Georgian Centre for Psychological and Medical Rehabilitation of Torture Victims.

Moreover, in general, the system is reluctant to release a child on bail.¹¹⁴

Furthermore, as an example of misusing detention for children, one can mention the fact that mentally disabled children who commit offences rarely benefit from an expert evaluation and therefore are frequently sent to detention centres instead of appropriate health facilities.¹¹⁵

It is obvious that CRC's recommendations stated in 2003, with regard to the examination of the second periodic report of Georgia, have not been enforced. This is particularly true regarding the use of detention as a measure of last resort and the development of preventive and alternative measures to detention.

7.1.3 Conditions of detention: treatment of child detainees

a) Separation according to the age and reason of the detention

In pre-trial detention facilities, juveniles are rarely separated from other inmates. This is different in post-trial detention places where strict separation between adults and children is effective in the whole country.

The fact that pre-trial minor detainees are often kept with convicted prisoners results in overcrowding.

b) Treatment in detention

According to an interview with a member staff of the Child Rights Centre, when representatives visit the pre-trial detention facilities, they find a limited number of cases of violence against the children. The person interviewed believes that violations in pre-trial detention are decreasing.

However, it seems that this assessment of the situation is not shared by other stakeholders. Indeed, during an interview with OMCT in July, the former head of the juvenile colony, Mrs. Khatuna Japava, stated that once they arrived in the colony, some children said they had been beaten while in pre-trial detention for disciplinary reasons and while in police custody in order to force them to confess.

¹¹⁴ This view has been presented by Mrs. Khatuna Japava, former head of the Juvenile Colony during OMCT's mission in July 2007.

¹¹⁵ This view has been presented by Mrs. Khatuna Japava, former head of the Juvenile Colony during OMCT's mission in July 2007.

c) Overcrowding

The official (planned) capacity of the Georgian prison system is about 15040 detainees. Actual number of prisoners in Georgia by:

- 1) May 10, 2007: Total: 17371
 - 16235 men prisoners;
 - 746 women prisoners;
 - 390 juvenile prisoners.¹¹⁶
- 2) July 3, 2007: Total 18138
 - 17053 men prisoners;
 - 707 women prisoners;
 - 378 juvenile prisoners.¹¹⁷

As an example, according to recent figures, the juvenile colony in Tbilisi is overcrowded. Indeed, as of early July 2007, there were between 218 and 220 convicted child detainees (aged between 15 and 19) where the colony measures only 230 m² and was built to receive a maximum of 56 to 60 juveniles.¹¹⁸ All of the detainees sleep in the same dormitory. Here, overcrowding clearly affects the conditions of detention which do not meet minimum child rights standards.

Moreover, in August 2007, 120 juveniles were transferred from the Achvala colony to Rustavi jail n°2, as a result of a riot attempt. The special operation forces were even mobilised. When HRIDC representatives tried to enter the colony to monitor the situation, they were refused to enter and to interview the head of the colony by the penitentiary department.

7.2 Deprivation of liberty of children in need of protection and care

Deprivation of liberty of children in need of care and protection is generally named institutionalisation. Anyway, both determine situations or places where children are held and cannot leave at will.

Two main issues are related to the institutionalisation of children in need of care and protection:

- institutionalisation of children in need of care and protection is clearly overused;
- the living conditions in the institutions do not meet international standards.

¹¹⁶ Figures from the Ministry of Justice.

¹¹⁷ Figures given by the International Centre for Prison Studies, 3 July 2007.

¹¹⁸ Even if the government, using a “special” calculation decided it was suitable for 160.

7.2.1 Overuse of institutionalisation of children in need of care and protection

Recently, the government has made certain progress at legislative and policy levels by starting the de-institutionalisation process. Governmental policies are developing with the aim at preventing institutionalisation and accelerating de-institutionalisation of children based on the promotion of alternative and family-based care practices. In 2005, the government even declare that children de-institutionalisation is one of the country policy priorities.¹¹⁹

Although it is noticeable that there is a political will to improve the situation, a clear understanding of the issue and a systematic approach to resolve the complex and multiple problems are lacking. Even the law is not comprehensive: for instance, it states that children who attain 16 years old should leave the shelters; but there is no other place to go and therefore, most of them are at risk of going and staying in the streets.¹²⁰

It also appears that socio-economically vulnerable children are numerous in institutions. This has been admitted in the Third Period Report of Georgia to the Committee on the Rights of the Child. Indeed, many needy parents abandon their children who are then sent to institutions and shelters. Residential care has become the main answer to poverty and family distress.¹²¹ Despite good initiatives by Georgia (see the State Party Report, para. 111 to 114) to treat the causes of this phenomenon in assisting families, the number of poor children in institutions remains too high. Efforts should be continued and developed.

7.2.2 Poor living conditions in institutions and homes receiving children

All residential institutions face serious problems at different levels: education, health and sanitary issues are particularly problematic and need deep and urgent changes. The situation in homes holding socio-economically and handicapped children as well as in the rural and mountainous regions is even worse. Children in boarding schools generally do not have the possibility to communicate with persons from outside. Moreover, monitoring of the places and assessment of the current situation and the needs and interests of the children is missing as well.

¹¹⁹ For examples, see UNICEF in Georgia 2006, p. 22.

¹²⁰ Report of the Public Offender of Georgia on Defence of Human Rights and Liberties in Georgia, Second half of 2005, p. 85-87.

¹²¹ UNICEF, office in Georgia: www.unicef.org/georgia/protection.html . Report of the Public Offender of Georgia on Defence of Human Rights and Liberties in Georgia, Second half of 2005, p. 85. “Most of over 5400 children in Georgia’s residential institutions actually have parents. This long-standing problem is in part related to poverty”: UNICEF in Georgia 2006, p. 27.

The existing main problems remain the lack of standards for childcare, the unqualified and low paid staff and the seriousness of the issue in the regions.¹²²

➔ *Although efforts exist, they remain very formal and mainly focus on time and scope limited projects. Stable and significant funding and effective implementation of alternative solutions to residential institutionalisation are urgently needed.*

8 Rehabilitation of child victims (article 39 CRC)¹²³

Georgian law is very poor in regulating the psychological rehabilitation and social integration of child victims as well as child offenders.

8.1 Social reintegration of juvenile offenders

Only one initiative exists in Tbilisi where the Tbilisi Municipality Resolution # 1-2 (January 17 2001) was enacted to implement the UN Convention on the Rights of the Child in Tbilisi. The principal goal of the resolution is that relevant bodies must establish mechanisms for juvenile employment, allocate the regional funds for child and juvenile social protection, and implement the activities in order to raise the responsibility of the parents. The Georgian Ministry of Education was ordered to establish an open or semi-open special institution in Tbilisi for decriminalization and psycho-social rehabilitation of the juvenile offenders. The Ministry must discuss the establishment of the above-mentioned institutions together with the Tbilisi authorities. At the moment, the question has not been resolved.

8.2 Recovery of child victims of family violence and trafficking

One of the objectives of the Law on the Elimination of Domestic Violence was the development of the rehabilitation of victims of domestic violence through the establishment of a temporary shelter for such victims. The same applies for child victims of trafficking under the Law on Combating Trafficking in Human Beings. Although the establishment of shelters for child victims is a good measure, the system of child victims' recovery remains incomplete. There are still gaps in the psychological rehabilitation system.

¹²² Report of the Public Defender of Georgia on Defence of Human Rights and Liberties in Georgia, Second half of 2005, p. 87.

¹²³ Implementation of the Convention on the Rights of the Child, Third periodic report, Georgia, February 2007.

9 Administration of juvenile justice (article 40 CRC)¹²⁴

9.1 Minimum age of criminal responsibility

Until 1999, the age of full criminal responsibility in Georgia was 16, with 14-16-year-old children only having criminal responsibility for certain, more serious offences.¹²⁵ Due to amendments to the Criminal Code in 1999, the age of criminal responsibility in Georgia is currently 14 for all crimes.¹²⁶ All children aged 14-18, who have criminal responsibility, are according to both the Criminal Code¹²⁷ and the Criminal Procedure Code¹²⁸ to be treated as minors.

Even if this does not fall in the period of examination, it is significant to mention that, on May 23, 2007, Georgian President Mikheil Saakashvili signed into law a set of amendments to three laws (Criminal Code, Criminal Procedural Code and Law on imprisonment),¹²⁹ lowering the minimum age of criminal responsibility for children from 14 to 12 for certain crimes: premeditated murder, including under aggravated circumstances, intentional damage to health, rape, most types of robbery, assault, and possession of a knife. Under the amendments to the Criminal Procedure Code, minors will be prosecuted and tried by “*judges, prosecutors and investigators who have had special training in pedagogy and psychology.*” If convicted, minors would face the same punishment as adults, but under the amendments to the Law on Imprisonment, they would serve their prison terms in separate penitentiary institutions from adults, which Georgia has yet to build. At the same time the relevant Ministries should create programs and provide retraining for judges, prosecutors and investigators, who examine the juvenile cases.

Taking into account the recent amendments and statistics showing that the number of children being prosecuted increased almost 50% from 2005, and the fact that, although children enter the criminal system generally for petty property offences, they also enter it at an earlier age, there is a clear risk for more children to be introduced to the criminal system for grave crimes and thus to be subject to the ordinary procedure and sentences. In addition, a high proportion of children spend time in

¹²⁴ Implementation of the Convention on the Rights of the Child, Third periodic report, Georgia, February 2007.

¹²⁵ Crimes are categorised under the Criminal Code into minor crimes (a minor crime is a deliberate or unintentional crime for which the maximum punishment is 5 years of imprisonment – article 12 of the Criminal Code), serious crimes (defined as an intentional crime for which the maximum punishment provided by this Code is 10 years of imprisonment, or an unintentional crime for which the maximum punishment provided by this Code is 5 years of imprisonment) and grave crimes (defined as an intentional crime for which the sentence is more than 10 years of imprisonment or life imprisonment).

¹²⁶ Article 33 of the Criminal Code.

¹²⁷ Article 80 of the Criminal Code.

¹²⁸ Article 37 of the Criminal Procedure Code.

¹²⁹ It should enter into force on July 1, 2008.

detention, and for some children this is a significant amount of time. This is particularly worrisome when we know that the conditions in the detention centres do not, at present, meet international minimum standards (see section 7). Moreover, the risk also exists that the number of children placed in detention will increase and thus will worsen the situation of overcrowding in these facilities.

According to NGOs, the amendments directly contravene article 40 of the Convention on the Rights of the Child as well as the recent General Comment on Children's Rights in Juvenile Justice of February 9, 2007, where the UN Committee on the Rights of the Child explicitly states that countries already setting their minimum age of criminal responsibility over 12, "should not lower their minimum age of criminal responsibility to 12," and encourages state parties to progressively increase the age of criminal responsibility.¹³⁰

9.2 Applicable law

9.2.1 Lack of a genuine juvenile justice system

Juveniles aged 14-17 should be treated as under aged persons according to the relevant provisions of the Criminal Code and Criminal Procedure Code.

The Georgian criminal justice system does not have juvenile courts, specialist juvenile judges or a separate form of court procedure for children accused of having infringed the penal law. There are no professionals within the criminal justice system dedicated to dealing specifically with children, whether as offenders, victims or witnesses.

In addition, while judges are required to undergo some training in pedagogy and psychology before hearing juvenile cases, there is no system of specialized training for other professionals working in either the law enforcement agencies or in the bodies administering justice. Moreover, the training provided appears to be a short course, and one which does not amount to systematic training in juvenile justice and human rights. This does not conform with the Beijing Rules, Rule 22.1 which requires all those personnel dealing with juvenile cases to receive specialized training.

¹³⁰ Committee on the Rights of the Child, General Comment n°10 on Children's rights in juvenile justice, CRC/C/GC/10, 9 February 2007, para. 16 and 17; available at <http://www.ohchr.org/english/bodies/crc/docs/AdvanceVersions/GeneralComment10-02feb07.pdf>.

One concern throughout the rules on juveniles involves the people associated with the case. Article 416 of the Criminal Procedure Code discusses the participation of teachers and psychologists in this process. It is unclear if this means (1) any teacher or a teacher for an age appropriate class and (2) any psychologist or one who is specially trained. It is also unclear who chooses these individuals and whether the "legal representative of a minor" is a defence attorney, a parent, or an appointed guardian. The roles of a defence attorney and a guardian are vastly different, and this section needs to make clear what is contemplated. A defence attorney is responsible for protecting all the rights of a juvenile, while a guardian should be interested in what is in the "best interest" of the child. Those are clear gaps in the law regarding assistance to children in conflict with the law.

It is vitally important that a criminal justice system recognize that juveniles do not commit crimes for the same reasons as adults, and, therefore, the punishments should not be the same. It is correct that the Criminal Code provides for particular sentences when the person responsible of the offence is a child. However, social reintegration is far from being the ultimate aim of the juvenile justice system and educational sentences and measures are lacking in the Georgian system (see below).

9.2.2 Modalities of the trial

Article 656 of the Criminal Procedure Code envisages the closed discussion of the juvenile case. While discussing the case, the judge can conduct completely or semi-closed court hearing if the party demands it in order not to ensure the intimate and private life of a juvenile does not become public. Similar provisions shall be applied in order to protect the security of accused child's family members or relatives. However, article 16.7 of the Criminal Procedure Code states that all kind of verdicts, resolutions or decisions passed by the court must be published. It is worrisome that none of the resolutions prevents the court from making the names of the tried juveniles public and thus contradicts the UN Convention on the Rights of the Child, article 40.2(b)(vii).

If a juvenile participated in committing a crime with adults, if possible, his/her case should be discussed separately according to the requirements of the article 246 of the Criminal Procedure Code, except in the event where the separation of the documents of juvenile case might cause a significant obstruction to the objective and complete investigation of the whole case.

9.2.3 Procedural guarantees for children

Many of the rights which can be enjoyed by those children in conflict with the penal law are stated in the Criminal Procedure Code (i.e., most are common to both adults and children):

- presumption of innocence (article 10 of the Criminal Procedure Code);
- the person must immediately and personally be informed about the accusations against him/her. S/he must be provided with legal or other kind of support in order to prepare and provide the defence (Criminal Procedure Code, articles 11, 12 and 13); in practice, there is a gap in the implementation of this right: many accused children do not have access to legal representation and assistance during the criminal procedure;
- the case must be immediately evaluated by competent, independent and impartial officials or some other legal institution and it must be carried out in accordance with the law through honest discussion with legal or some other kind of assistance. The court hearing must be attended by the parents or official guardian of the accused (Criminal Procedure Code, articles 15, 644, 646);
- the accused must not be prevented from giving testimony or pleading guilty (articles 73, 75 and 114 Criminal Procedure Code);
- right to challenge the verdict (Criminal Procedure Code, articles 21, 234 and 659);
- right to be assisted with an interpreter if necessary (Criminal Procedure Code, article 17);
- right of no interfering in the personal life of the accused during the court discussion;
- legal assistance: a teacher or a legal representative of the accused juvenile shall take part in the very first interrogation by the police. The first hearing of the suspected or accused minor must be held with the presence of a teacher or legal representative. The accused possesses the right to choose his/her own legal counsel and in case s/he does not know nor appoint any defender, the prosecutor is obliged to engage a defender in the case;
- other types of assistance: in the process of interrogation the accused minor may see a psychologist on demand of the investigator or prosecutor or by the petition of the defender;
- children accused of having infringed the penal law must appear before the investigator, prosecutor or the court, accompanied by his or her parents or legal representative or administrator of the institution where s/he studies or is being raised;
- other particular rules: cases where the legal representative violates the child's interest: according to the investigator or the prosecutor's resolution, or judge's decision, the legal representative of the juvenile's criminal case shall be dropped or shall have his/her rights restricted during the investigation if it shall be proved that the representative violated the juvenile's interests. If the initial legal representative is dropped, the juvenile accused shall be defended by another legal representative and a representative of the tutorial institution;

- the Criminal Code clearly defines the duration of the questioning process. Particularly, the interrogation must not last more than 2 hours without break, and must not proceed longer than 4 hours in one day. If the minor gets tired the questioning may stop before the aforementioned period expires. Those terms are common for adults and children.

9.2.4 Types of measures applicable to a convicted child

When sentencing a juvenile offender, the court shall consider the offender's living and upbringing conditions, level of mental development, health condition, other personal peculiarities, or possible influence of seniors.

Both coercive measures of educative effect and punishments may be applied to juvenile offenders (articles 81 and 82 of the Criminal Code).

- Coercive measures of educative effect:
 - caution;
 - transference under supervision;
 - assigning the obligation of restitution;
 - restriction of conduct;
 - placement into a special educative or medical-educative institution.
- Types of punishments:
 - a fine shall not exceed 400 minimum daily payments;
 - deprivation of the right to pursue a particular activity: from one to three years in length;
 - socially useful labour: it should be executed during spare time from studies or main employment and shall not exceed two hours per day for juvenile up to 15 years old and three hours per day for those between 15 and 18 years old;
 - corrective labour: from two months to one year;
 - jail term: from one to four months and only against male juvenile offenders who are sixteen or over when the sentence is delivered;
 - imprisonment for a particular term: imprisonment for a term not in excess of ten years shall be awarded against a juvenile offender that he/she will serve in an educative institution. Imprisonment in excess of ten but not in excess of fifteen years may be awarded against the juvenile between the ages of sixteen and eighteen for any especially grave crime.

9.2.5 Absence of diversion programme and alternative measures to the criminal system

The current system places too little emphasis on prevention and diversion from the criminal justice system.

The police, prosecutors and judges have no power to divert children from the criminal justice system into community-based programmes that address the offending behaviour and work with the child and his/her family. The lack of judge's independency from the executive linked with an absence of political will leads to the non-use of alternative mechanisms by the judges. Nevertheless, the establishment of such schemes for under-aged offenders would ensure that children are not taken to court for minor offences and suffer all the disadvantages that prosecution causes. It would enable children to stay with their families, in educational settings and allow them to receive relevant support.

9.3 Comments on the situation of children in conflict with the penal law

➔ *It is obvious that the juvenile justice system itself needs to be reviewed as a whole. In this regard, the development of diversion programmes and alternative educational measures to detention are of key importance. Creating mechanisms to avoid any child rights' violation and, particularly, any act of violence is essential. Moreover, the Georgian government should also prevent juvenile delinquency by addressing the various causes leading children to infringe the penal law and establishing policies and adequate mechanisms. To be comprehensive, the system would have to address the effects of the system on children and give priority to the social reintegration process.*

➔ *Since 2005, several interesting initiatives to reform the juvenile justice system have been set up. For instance, the joint project of UNICEF and HRIDC "Support of the Reform of Administration of Juvenile Justice in Georgia" trained justice and law enforcement officials on international standards of juvenile justice and worked towards rehabilitation of juvenile offenders. Moreover, the Ministry of Justice built the capacity of the staff working in the penitentiary and probation systems in social work. Finally, in July 2007 the project to reform the juvenile justice system in the country started.¹³¹ Both governmental and non-governmental entities were consulted. A Strategy and Action Plan on Juvenile Justice should be prepared, leading to the adoption of legal amendments in full compliance with international standards.*

¹³¹ It is supported by the Embassy of the Kingdom of Netherlands and UNICEF. Source: http://www.unicef.org/georgia/media_7019.html.

In the framework of this reform, systematic training of juvenile judges, diversion and alternative measures should also be established.

➔ *The NGOs welcome these initiatives and hope the initiated reform will effectively fully comply with the Convention on the Rights of the Child as well as other relevant international standards ([UN Rules for the Protection of Juveniles Deprived of their Liberty](#), [UN Standard Minimum Rules for the Administration of Juvenile Justice \(The Beijing Rules\)](#), [Guidelines for Action on Children in the Criminal Justice System](#), and the [UN Guidelines for the Prevention of Juvenile Delinquency \(The Riyadh Guidelines\)](#)) both in the legislation and in practice.*

10 Recommendations

OMCT, HRIDC and PHMDF recommend the Georgian authorities to:

- **reform the legal system protecting the rights of the child so that it becomes comprehensive and in full compliance with international standards;**
- **reform, create and develop child rights' implementation mechanisms in order to get a complete and effective protection of children;**
- **develop a system to prevent children from living or working in the street, to assist and care of them once they are in the street, to help them to get off the street and to work towards social rehabilitation;**
- **reform the existing legislation so that it fully protects child from violence (including torture or other cruel, inhuman or degrading treatment) and create adequate assistance mechanisms as well as systems to stop impunity of the perpetrators (either public or private);**
- **develop the child violence reporting process both by the victims, the representatives and relevant professionals, as well as the complaints' system;**
- **develop the de-institutionalisation and alternative types of care of children in need of care and protection;**

- **ensure that no child is kept in custody or detention with adults;**
- **develop procedures and mechanisms so that detention, including pre- and pending trial detention, is used as a measure of last resort and for the shortest period of time;**
- **develop and effectively apply alternative measures to detention as well as diversion programmes;**
- **improve the conditions of detention and the life in detention of children both in prisons or similar penal centres receiving children and residential care institutions (primary eliminate overpopulation);**
- **develop the rehabilitation of child victims of violence as a priority;**
- **withdraw the recent amendments to the Criminal Code lowering the minimum age of criminal responsibility to twelve years for particularly serious crimes;**
- **continue the reform of the juvenile justice system in compliance with relevant international standards.**

*Rights of Chechen Refugees*¹³²

Introduction

The report covers the conditions of refugees in Georgia in 2006-2007. It is based on information received from governmental bodies as well as domestic and international NGOs.

The Human Rights Centre published its first report on refugee rights in 2006.¹³³ The report covered the period of 1999 to 2006 and examined the situation of Chechen refugees in Georgia. The report focused on whether the Georgian government met international standards codified in human rights law on refugees, and highlighted examples of abuse of Chechen refugees in Georgia. The report made recommendations to relevant governmental bodies in order to ensure the protection of the rights of Chechen refugees in Georgia.

This report and the previous one give an overview of the situation of refugees residing in Georgia for the governmental bodies and the non-governmental organizations working on the problems and status of refugees. This report of the Human Rights Centre, like the report of 2006, aims to reveal to what extent the Georgian government complies with the requirements of the 1951 Convention relating to the Status of Refugees.

In 1999, Georgia acceded to the Convention relating to the Status of Refugees (Georgian Parliament's Decree # 1996-2S, dated May 28, 1999).

In 1998, the Parliament of Georgia enacted the Law on Refugees.¹³⁴ The law regulates the legal status of refugees and those seeking refugee status in Georgia and the grounds and rules for granting, suspending and depriving the refugee status. The law also envisages legal, economic and social guarantees. The law is based on the Georgian Constitution and generally acknowledged principles of the international law.¹³⁵

¹³² Nino Andriashvili, Human Rights Centre, "Rights of Chechen Refugees", Tbilisi, February 2008.

¹³³ Silence Kills: Abuse of Chechen Refugees in Georgia, Human Rights Centre, Tbilisi 2006.

¹³⁴ Georgian Law on Refugees, enacted on February 18, 1998 (Article 1236-II).

¹³⁵ Georgian Law on Refugees, Introduction.

The law was far from perfect when it was enacted. It required some amendments.

It was impossible to protect the rights of refugees under the Law on Refugees. According to the law the refugees had no right to travel within the territory of the country, had no right to choose a place of residence, no right to have a bank account, to buy real estate, etc. The problem of travel documents for the refugees is still pressing. That is why they cannot leave the country!

The Georgian Constitutional Court made a decision¹³⁶ regarding the suit HRIDC brought to the court on July 11, 2006 giving the instruction to the Parliament of Georgia to make amendments to the Law on Refugees to comply with the international Refugee Convention.

However, the Georgian Government has not introduced amendments to the law yet!

There is no legal act enabling the refugees residing in Georgia to resettle to a third country.

Early in 2007 the Department of Migration, Repatriation and Refugees of the Ministry prepared a draft law on the Refugees and People Temporarily Residing in Georgia. The aim of the draft law was to define the legal status of refugees and those who temporarily reside here.¹³⁷

According to the draft law:

- A seeker of refugee status must apply to the Ministry or a Georgian Consulate abroad. He can also apply to regional departments of the Georgian Ministry of Internal Affairs and to the Border Police within 24 hours after crossing the Georgian border. The abovementioned bodies must send the application within 3 days to the Ministry of Refugees and Accommodation.
- A special article is dedicated to seekers of refugee status, to the definition of a refugee and to temporary residency documents.

¹³⁶ On July 11, 2006, HRIDC appealed to the Georgian Constitutional Court and claimed that article 3, paragraph I, paragraph II-a, and paragraph III-b of the Georgian Law on Refugees, enacted on February 18 1998 (number 1236-II), does not comply with article 14; article 22, paragraphs I and II, article 39; and article 47, part I of Chapter II of the Georgian Constitution, enacted on August 24 1995 (amended on May 13 2006) and demanded the court to declare the articles unconstitutional and to annul them. On October 27 2006, the Georgian Constitutional Court passed a verdict on the appeal.

¹³⁷ See the report of the Department for Migration, Repatriation and Refugees prepared in January-February 2007 published on the website of the Georgian Ministry of Refugees and Accommodation www.mra.gov.ge.

On April 27, 2007 amendments were introduced to the law. On the grounds of these amendments and mutual cooperation between the Ministry of Justice and the Ministry of Refugees and Accommodation in May, 2007 in the village of Duisi, the field office of the Ministry started issuing temporary residency documents.

The temporary residency documents enabled a refugee to open a bank account, conduct business deals, purchase land and other kinds of properties and travel within the Georgian territory. In the past, refugees did not have any residency document and the state was unable to give them allowances. The refugees also were unable to start legal proceedings.

During the distribution of temporary residency documents, some problems arose regarding **deprivation of refugee status:**

The refugees from Chechnya residing in the Pankisi Valley accuse the representatives of the Georgian Ministry of Refugees and Accommodation (MRA) of incompetence. They say that the Ministry illegally suspended the status of approximately 200 refugees. That is why they were unable to receive the temporary residency documents. Consequently, they will not receive a 14 lari allowance and remain without food and medical aid after the suspension of the food program implemented by the UN High Commissioner for Refugees (UNHCR).¹³⁸

According to the notification of the Department of Migration, Repatriation and Refugees of the MRA, a person shall only be deprived of refugee status and the accompanying allowances received based on Article 1, Paragraph 1 of the Georgian Law on Refugees. Article 1, Paragraph 1 of the Law on Refugees reads:

A refugee is a person who entered the territory of Georgia and for whom Georgia is not his/her country of origin and who, owing to a well-grounded fear to become a victim of persecution for reasons of race, religion, membership of a particular social group or political opinion, left the country of his nationality or permanent residence, entered the territory of Georgia and cannot or, due to this fear, does not want to enjoy protection of his country.

¹³⁸ See archive on www.humanrights.ge, article “Chechen Refugees Have Lost Status”, 6 July 2007 .

This part of Georgian law does not correspond with the international Convention relating to the Status of Refugees. The Convention does not impose limits on defining the status of refugee while the Georgian Law on Refugees states that a person cannot be considered a refugee if Georgia is a country of his origin. The status of a refugee was taken away mainly from those people who were born in Georgia. It must be highlighted that these people left Georgia a long time ago and returned as citizens of the Russian Federation because they “were forced to leave the country of citizenship or permanent residence for being persecuted of race, religion, nationality, membership of a particular social group or political opinion” and were “unable or unwilling to avail themselves of the protection of that country for the threat of persecution”. Despite the above-mentioned issues, Georgia grants them Georgian citizenship taking into account the interests of refugees, Georgian Constitution (Article 12) and Georgian Law on Georgian Citizenship (Article 10). According to Georgian legislation “Georgian citizenship shall be acquired by birth and naturalisation”.

1. It is possible that a person was *a born citizen* of Georgia but s/he denounced the citizenship years ago and obtained the citizenship of another country (the citizenship of the Russian Federation in this case);
2. As for *Naturalization*, it means receiving Georgian citizenship, which requires claiming for citizenship. In our case, the claims do not exist, as the refugees did not express the desire of citizenship.

In Georgia there is a problem regarding one right granted by the Convention:

On April 27, 2007 the Georgian Parliament adopted additional paragraphs (amendment # 4702-1s) to the Georgian Law on Refugees, on the bases of which (Article 2(2)) the Ministries of Refugees and Accommodation and Justice received the instructions to issue a **general decree before July 1, 2007 to endorse a decree on the transportation of refugees beyond Georgian borders.**

The decree has not yet been issued. The Georgian Ministry of Refugees and Accommodation and the Ministry of Justice brutally violate the law. However, according to the Ministry of Refugees and Accommodation,¹³⁹ they sent a draft Decree on Registering, Granting and Changing Travel Documents to Parliament in July 2007. The document is being adjudicated.

¹³⁹ see reply #01/01-17/5837, 24.08.07 of the Georgian Ministry of Refugees and Accommodation to petition #OL-315 of the Human Rights Centre, 17 August 2007.

According to the information of the Ministry of Justice¹⁴⁰ the draft law on Registering, Granting and Changing Travel Documents sent by the MRA to Parliament is not registered in the Correspondence Department within the Ministry of Justice.

It is difficult to ascertain which of these Ministries lie!

It is unclear whether the draft law really exists, or if travel documentations are really being worked out?!

The resettlement of refugees to a third country is possible only with the assistance of the UNHCR. From January 2002 to December 2006, 305 refugees resettled with the assistance of the UNHCR from Georgia to a third country. The majority of them left for Sweden and Canada. UNHCR also spoke with more than 500 refugees but they did not meet the criteria for resettlement and consequently their documents were not submitted for consideration by third countries, states the UNHCR.

Based on the information from Chechen refugees, the UNHCR invites refugees and the members of their families to individual interviews for the resettlement to a third country. After an interview, the UNHCR submits documents of individual applicants to a third country for further discussion if a person has the refugee status and his case meets the criteria of the third country. The UNHCR at its own discretion chooses the country to which it sends the application of the refugee. Of course the organization takes into account the quotas for resettlement of third countries, the criteria for granting the allowances and personal and professional experiences of a refugee.

The UNHCR defines that submitting an application does not mean automatic resettlement of a refugee. Sometimes it requires several months to make a decision. The time depends on the procedures for discussing a case of a third country. Even if the case is discussed and approved by the third country it is possible that several years will pass before a refugee travels to that country. Sometimes medical examination, preparation of further documentation and an interview on security are required.

¹⁴⁰ see reply #01/23101-7844, 18.09.07 of the Ministry of Justice to petition # OL-326 of the Human Right Centre, 3 August 2007.

Case of Taus Erznukaeva

Taus Erznukaeva has 9 children. She has been on the list of seeking resettlement to Canada, but the Erznukaevas are disappointed. They do not believe that their application is still being considered, but they have not received a refusal on resettlement.¹⁴¹

Case of Edris Alkhanashvili

Edris Alkhanashvili has an 11-month-old child, Gaziev Ilis Khan, who is in need of urgent medical treatment. Approximately two months ago Edris applied to the UNHCR for resettlement, but was rejected notwithstanding that he could produce a recommendation of the TAG and a doctor's note stating that his child needed an urgent operation before he turns one. If not operated on, the child will remain disabled for the rest of his life. The recommendation clarified that it was impossible to operate the child in Georgia. HRIDC has information that the UNHCR sent the documents of this family to the host country without the recommendation and doctor's note.

The doctor is of the opinion that because of seriousness of the health condition, host countries will not believe in the necessity of the resettlement of the family. Therefore, the third country is more likely not to accept the family of Edris Alkhanashvili and consequently, the child will not be receiving the operation he so desperately needs.

The country that accepts a person and grants him/her refugee status takes the responsibility to protect the rights and basic freedoms of the refugee.¹⁴²

On the grounds of this case, we can say that the rights of refugees are not protected in Georgia.

- *The refugees cannot be resettled to a third country. This problem was pressing in 2006 and maintains its significance up to present time.*
- *Refugees have faced new problems in 2007. One of the biggest problems is mass deprivation of refugee statuses and forcible naturalization in Georgia.*

¹⁴¹ see information on www.humanrights.ge.

¹⁴² Georgian Law on Legal Status of Foreigners, article 27.

Refugees in Georgia

Currently, 1096 people with refugee status reside in Georgia.¹⁴³

According to the Penitentiary Department¹⁴⁴ within the Georgian Ministry of Justice, seven refugees serve their terms at Georgian penitentiary establishments. Two of them are placed in the Tbilisi Women and Juvenile Penitentiary Institution #5.

Based on Article 4 of the Resolution on “the Procedure to Grant Refugee Status”, May 29 2003, the Department for Refugee Status and Asylum Seekers within the Ministry carries out the registration of the compulsory registration of refugees every year. According to paragraph IX of the same article the commission of the Ministry discusses the refugee status of a person who does not register during the next compulsory registration.

The Georgian Ministry of Refugees and Accommodation reported¹⁴⁵ that in the period 2003-2006, based on the above-mentioned situation and Article I and Article 10-paragraph I-II of the Georgian Law on Refugees Status, the Ministry of Refugees and Accommodation ceased the process of granting refugee status to people fleeing the Chechen Republic of the Russian Federation. Consequently, in 2003, 324 people had their status suspended; in 2004 another 1319 Chechen refugees were deprived of their status; in 2005 their number was 68 and in 2006 there were 1402.

The Ministry of Refugees and Accommodation reported¹⁴⁶ that their office in the village of Duisi in the Akhmeta District still provides the Ministry with photos and necessary documentation of the people who were unable to get a Temporary Registration Cards issued by both the Ministry of Justice and the Ministry of Refugees and Accommodation.

However, the refugees state that some of the refugee men were in the pastures when the procedure was carried out and consequently they could not apply for temporary residency document and they still have not received them.

¹⁴³ see reply # 01/01-17/5818, 23 August 2007 of the Georgian Ministry of Refugees and Accommodation to petition # OL-322, 22 August 2007 of the Human Rights Centre.

¹⁴⁴ Reply # 01/23/01-7841, 18.09.07, of the Georgian Ministry of Justice, reply #10/6/10-15313, 14 September 2007 of the Penitentiary Department, reply # 10/24/6-2372, 10 September 2007 of the Tbilisi Women and Juvenile Penitentiary Institution #5.

¹⁴⁵ Reply # 01/01-17/5870, 29 August 2007 of the Georgian Ministry of Refugees and Accommodation to the Human Rights Centre's petition #OL-324. 24 August 2007.

¹⁴⁶ Reply # 01/01-17/4531, 26 June 2007 of the Georgian Ministry of Refugees and Accommodation to the Human Rights Centre's petition # OL-304, 10 June 2007.

According to article 3 (1) the Georgian Law on Refugees, a refugee is granted with a temporary residency ID by the relevant office authorized by the Public Registry within the Ministry of Justice. The permit on temporary residence can be issued within ten days after the application.

The card on temporary residence confirms the citizenship, identity, permanent residence in Georgia (the refugee indicates the place of his/her residence) and status of the refugee. “Refugee” is mentioned in the ID alongside the citizenship.

The ID is valid during three years throughout the Georgian territory.

In order to receive a temporary residency document, an applicant should submit documents confirming refugee status issued by the Ministry and a photo.

However, despite the submitted documents, in most cases, refugees face serious problems - the Georgian Ministry of Refugees and Accommodation refuses them to issue an ID demonstrating refugee status. The reason for refusal is the applicants are also seeking resettlement to a third country (**Case on Taus Erznukaeva**). In doing so the Ministry blatantly breaches the right guaranteed by the Georgian Law on Refugees. More precisely, according to the Georgian Law on Refugees, article 3 (1), “a person bearing the refugee status shall be granted with the document on temporary residency”. The law does not envisage restrictions. In accordance to the Article 5-d, a refugee shall have right to “enjoy the rights as envisaged in the Georgian Law on the Legal Status of Foreigners.” Chapter 5, article 27 of the law states that “Foreigners in Georgia shall be equal before the law irrespective of their origin, social and material status, race, nationality, sex, education, language, religion, political or other beliefs, field of activity, other conditions.”

Regarding the situation two circumstances shall be considered:

- * With the support of the UNCHR it might take several years for a refugee to resettle to a third country and consequently, the refugee shall not be able to enjoy the rights that are granted to him/her by the Georgian Legislation;
- * The refugee status is suspended after a person leaves Georgia.¹⁴⁷

¹⁴⁷ Georgian Law on Refugees, Article 10.

Allocation of State Budget of Georgian Ministry of Refugees and Accommodation in 2007

In accordance to the Georgian Law on “Georgian State Budget of 2007”, Article 51, Paragraph III, allocations for the Georgian Ministry of Refugees and Accommodation in 2007 were estimated 60 862,60 lari (in 2006 the budget of the same Ministry was 56 949,30 lari). In 2007, 33 120 lari out of total budget was dedicated to the allowances for refugees and IDPs (in comparison to the budget of the previous year the allocation for allowance is much less; in 2006 36 754,20 lari was apportioned for allowances and in 2005 the total amount of the allocated sum was 37 763,70 lari); 22 120,4 lari was allocated to support refugees and IDPs in densely populated areas, this is much more in comparison to previous years (more precisely, in 2006 15 571, 3 lari was allocated for this purpose and in 2005 it amounted to 16 177,80 lari); as for other expenses for the assistance of refugees and IDPs; it is demonstrated in the following figures: in 2007 741,60 lari is apportioned for this purpose; in 2006 it was 1 625, 7 lari and in 2005 1 421 lari.

By 2007, an IDP residing in the areas densely populated by refugees, received an allowance of 11 lari; but an IDP and a refugee living in the private sector received an allowance of 14 lari.

In Tbilisi, an IDP and a refugee living in the areas densely populated by refugees received an allowance of 13,48 lari to pay the electricity bills; but in other districts of Georgia similar people received only 12,98 lari.

An IDP and a refugee received an allowance of not more than 4 lari for the expenses of communal and household services, as well as utilities (among them are bills for water supply, cleaning, sewage and disinfection expenses for on-going repair works and service activities). The funds for the above-mentioned purposes are apportioned in accordance to contract responsibilities.

According to Article 10, Paragraph IV of the Georgian Law on State Purchases and Article 51 of the Georgian Law on the Georgian State Budget of 2007, the following contracts are signed between the Ministry of Refugees and Accommodation and the administrations of the residential buildings of refugees and IDPs and communal service organizations: contracts on transporting the garbage, water supply, canalization, sewage, disinfestations and electricity supply.

The Ministry of Refugees and Accommodation reported¹⁴⁸ that the electricity supply is provided to the buildings inhabited by refugees and IDPs without any delay based on the contracts they have signed with the Kakheti Power Distribution Company; JSC EnergoPro-Georgia and JSC Telasi. Consequently, IDPs residing in similar buildings throughout Georgia receive allowances for their electricity bills; its amount is envisaged by the Georgian legislation.

Contracts on water supply are signed with the following communal organizations: Kuttskalkanali Ltd; Rustav Tskali Ltd; Khashirtskali Ltd; Borjomi Water System Ltd; Abasha Tskalkanali Ltd; JSC Telavtskalkanali; Tsalenjikha Tskalkanali Ltd; and Khobi Tskalkanali Ltd. The above-mentioned organizations supply buildings inhabited by refugees and IDPs with water without any delay and the bills are paid in accordance with the law. Contracts are also signed with the organizations which supply residential areas from their own wells. In total, 34 contracts are signed with communal service organizations.

In parallel, contracts are signed with other communal service organizations. For example: sewage - 6 (for the buildings without canalization system); disinfection - 2; transportation of garbage - 14. These organizations are JSC Resort “Akhtala”; resort-house “Surami”; Residential Exploitation Enterprise, Ltd; “Komunalservisi 2003, Ltd”; Borjomisenaki Amenities Ltd; Abasha Enterprise for Residential Communal Husbandry, Ltd; Union of Communal Husbandry of Zugdidi, Komunremshenservisi 2002 Ltd; Communal Ltd; Nakaduli Ltd; JSC Balneology Resort Samtredia; and Avtomobili 2003 Ltd.

Contracts are being signed with the administrations of the buildings densely populated by IDPs and refugees in order to reimburse administrative expenses. 118 Contracts have been signed so far. The sums envisaged in these contracts are allocated for administrative expenses only and administrations of the compactly inhabited buildings have the right to spend the sums.

Basis for Deprivation and Suspension of Refugee Status

According to article 4 of the resolution on “Granting Refugee Status”, dated May 29 2003, the Department for Asylum Seekers within the Ministry of Refugees and Accommodation carries out compulsory registration of refugees every year. According to paragraph 9 of the same article, the commission of the Ministry discusses the refugee status of the people who did not register for inexcusable reasons.

¹⁴⁸ reply # 02/01-17/5841, 24 August 2007 of the Georgian Ministry of Refugees and Accommodation.

Based on the above-mentioned situation and articles 1 and 10, paragraph I and II of the Georgian Law on Refugees, the Georgian Ministry of Refugees and Accommodation suspended the granting of refugee status to people fleeing the Chechen Republic within the Russian Federation in the period 2003-2006.¹⁴⁹

While granting the temporary residency documents the Georgian Ministry of Refugees and Accommodation and the Ministry of Justice discovered that certain refugees, more precisely ethnic Kists who had lived in Georgia and resettled to the Chechen Republic within the Russian Federation in 1980-1990, were still registered as Georgian citizens. According to article 1, paragraph I-a of the Georgian Law on Refugees, a Georgian citizen cannot be a refugee in Georgia.¹⁵⁰ The situation of those children who were born in Georgia and whose parents are Georgian citizens, must be discussed separately.

Case of Asmat Machalikashvili

Family of Asmat Machalikashvili has four children and three of them were born in Georgia. The fourth child was born in Russia; the husband is a Georgian citizen. Consequently, because of the father's citizenship (article 18 of the Georgian Law on Georgian Citizenship states that if at least one parent is Georgian citizen, a child becomes a Georgian citizen), the children who were born in Georgia have no right to refugee status. In this particular family only the mother and the child, who was born in Russia, are considered refugees.

Case of Tamaz Kushanashvili

Tamaz Kushanashvili has four children. All four were deprived of refugee status; Tamaz is a Georgia-born citizen, later he went to Russia and became a citizen of the Russian Federation. But he is still registered in the database of Georgian citizens of the Georgian Ministry of Justice.¹⁵¹ Consequently, he is considered to be a citizen of Georgia. However, when Tamaz Kushanashvili addressed the Ministry of Justice to receive a passport, he was rejected, as he did not have necessary documents. It must be indicated that Kushanashvili left the territory of Georgia out of his own free will and became a citizen of the Russian Federation. His act was in accordance with the law (article 31 of the Law on Georgian Citizenship). According to the Law on Georgian Citizenship a person's application on declining Georgian citizenship can be rejected only if the person has the responsibilities towards the country to which he must adhere, military (serving in Georgian army)

¹⁴⁹ Reply # 01/01-17/5871, 29 August 2007 of the Georgian Ministry of the Refugees and Accommodation to the Human Rights Centre's petition # OL-324, 24 August 2007.

¹⁵⁰ Reply # 01/01-17/5871, 29 August 2007 to the Human Rights Centre's petition # OL-325, 27 August 2007.

¹⁵¹ Reply # 01/01-17/5871, 29 August 2007 of the Georgian Ministry of Refugees and Accommodation to the Human Rights Centre's petition # OL-325, 27 August 2007.

or property obligations that are tied to the vital interests of the country, public institutions, and the citizens of Georgia.

The law bans the denouncement of Georgian citizenship if a person is charged with a crime or is bound by a court verdict. Kushanashvili neither had any responsibilities to the Georgian state, nor was he charged for a crime.

According to article 32 of the Law on Georgian Citizenship a person is no longer a citizen of Georgia the moment he becomes a citizen of another state. (Officially, Kushanashvili is a citizen of the Russian Federation.) However, the Ministry of Justice did not follow the requirements of Georgian legislation by not annulling Kushanashvili's citizenship.

If a person is still registered in the Ministry of Justice database, despite accepting the citizenship of another state, it is a mistake of the Ministry of Justice. The Ministry thereby breaches the Law on Georgian Citizenship - they do not remove a person, who has accepted a citizenship of another state, from the list of Georgian citizens as is required by the law!

The Ministry of Refugees and Accommodation has the power to revoke refugee status, when a person claiming refugee status forges documents and information (article 10, section II of the Georgian law on Refugees). The Ministry of Refugees and Accommodation states¹⁵² that the majority of refugees lost their refugee status for the breaking the above-mentioned law.

However, it is ambiguous to deprive a refugee his/her status when a criminal investigation has not been launched on him/her.¹⁵³ The MRA states that Interpol, the Georgian Ministry of Internal Affairs, the Ministry of Justice, the Ministry of Foreign Affairs and the UNHCR are their source of information regarding refugees and they rely on them.¹⁵⁴

Case of Vahid Borchashvili

On September 9, 2006 at 6 a.m., representatives of the Duisi Patrol Police Department took Vahid Borchashvili, a Chechen refugee, to the Military Department of the Duisi village council. The Georgian Law on the Legal Status of Foreigners states that citizens of foreign countries do not have the obligation of serving in the Georgian army. Though Borchashvili presented his refugee

¹⁵² Reply # 01/01-17/5870, 29 August 2007 of the Georgian Ministry of Refugees and Accommodation to the Human Rights Centre's petition # OL-324, 24 August 2007.

¹⁵³ see footnote 14.

¹⁵⁴ Reply # 01/01-17/6475, 02 October 2007 of the Georgian Ministry of Refugees and Accommodation to Human Right Centre's petition # OL-349, 28 September 2007.

document, the police took him to the barracks where he had to remain for about one month. He was not allowed to contact his lawyer.

Borchashvili's father asked the Human Rights Centre for help. HRIDC held a press conference on this case and demanded the release of Borchashvili. When the illegal conduct of the law enforcement was publicized, the government made concessions.

The Human Rights Centre and Borchashvili's father addressed the Office of the Prosecutor General and the General Inspection of the Ministry of Internal Affairs with the request to study this case in detail. The organization and Borchashvili's father submitted all necessary documentation. Consequently, a preliminary investigation was conducted and Borchashvili was released from military service. Either way, the Georgian law enforcement was to provide a lawyer for Borchashvili. Representatives of the Military Department should have sent a notification form to Borchashvili before his arrest.

Case of Muhamed Mahaev

Muhamed Mahaev, a citizen of Chechnya, was arrested on December 30, 2005. In 2003, he established the organization Imedi in Pankisi Gorge to provide Chechen refugees with financial support. Imedi was funded by international humanitarian organizations. An investigation into the organization was launched. The investigation focused on the origins of the organization, how it was funded, and if there were any connections between Imedi, the Taliban or Al-Qaeda. Initially, the investigators thought that two funding organizations of Imedi, Muslime Helfen and Muslim Hands, were somehow connected with money laundering organizations and even terrorist acts. In fact, these organizations cooperate with the Red Cross and Red Crescent.

The investigation did not bother to contact Imedi's donor organizations, which is a requirement according to Georgian legislation.¹⁵⁵ The investigator took all the financial documentation and hard disks from the office of Imedi which made it impossible for the organization to continue working. After the investigation was terminated, the Prosecutor's Office indicted Mahaev for minor charges - forging documentation and appropriating 137,325 lari of the organization's money together with the accountant of the organization. Mahaev had no access to court records in the Chechen language and he was unable to hear the court decision in the Chechen language.

¹⁵⁵ Articles 18, 58, 131 of the Georgian Criminal Procedural Code.

Article 17.3 of the Criminal Code of Georgia demands all investigative and court documents to be translated into the native language of the accused. The state of Georgia breached the Refugee Convention when it did not provide a translator for the accused.

Ethnic Kist Refugees in Georgia and their Rights

Pankisi Valley is mostly populated by ethnic Kists and most of them are refugees. Both Kists and Chechens speak the Chechen language. However, Kists have been living in the Kakheti region of Georgia (Pankisi Valley) for a long time. Most of the Kist refugees were born in Georgia before the Soviet Union collapsed, then a large number of them resettled to Russia and only in 1999, after the Chechen-Russian conflict flared up again, Kists returned to Georgia.

Kist refugees residing in Georgia enjoy the same rights as Chechen refugees. The Convention relating to the Status of Refugees prohibits their discrimination on the basis of their race, religion or country of origin.¹⁵⁶ And Georgia protects the rights and fundamental freedoms of the people who reside in its territory.¹⁵⁷

Despite all these protective measures, Kists are being discriminated against in Georgia on the grounds of their origin. Kists are delayed at the border and they are arbitrarily detained, which lasts several hours in most cases.

Case of Meka Khangoshvili

On September 8, 2007, frontier officers arrested Meka Khangoshvili, an ethnic Kist and citizen of Georgia, in the neighbourhood of the Lagodekhi district; he was travelling to Azerbaijan. Khangoshvili is a severely disabled person and travels to Azerbaijan each year (for the last nine years) to receive medical treatment there. After a three-hour detention, Khangoshvili was released; however he was not informed of the reasons for his detention.

The Border Police officers reported that they check the passports of all travellers at customs; they check IDs and travelling documents.¹⁵⁸

¹⁵⁶ see Article 3 of the Convention relating to the Status of Refugees.

¹⁵⁷ see Article 27 of the Law on the Legal Status of Foreigners.

¹⁵⁸Reply # 38-2/1-678, 21.09.2007 of the Press and Public Relations Department of the Georgian Border Police to Human Rights Centre 's petition # OL-330, 11 September 2007.

However, according to information of the HRIDC, every ethnic Kist is delayed at customs before crossing the border!

Future Prospects

In the future, Chechen refugees only have three options in Georgia:

- * Voluntary repatriation. Refugees should return to the Russian Federation voluntarily;
- * Naturalization;
- * Resettlement to a third country. With the support of the UNHCR and third countries refugees should resettle to a third country on a case-by-case basis.

Voluntary Repatriation

It is still unsafe for Chechen refugees to return to the Russian Federation, and it is not advised by third parties either. The UNHCR does not advocate that refugees return to the Russian Federation. Moreover, it is highly unlikely that the situation in Chechnya will improve in the near future. Therefore, voluntary repatriation is currently not a viable solution for the remaining refugees in Georgia.

Naturalization

Naturalization would be an acceptable long-term solution for those refugees of Kist ethnicity who have close ties to Georgia. Some Kist refugees were actually born in Georgia and now live with family members, who are Georgian citizens, in the Pankisi Valley.

Unfortunately, naturalization is lengthy process in Georgia with many requirements. Because of red tape many refugees we interviewed had already lost interest in becoming Georgian citizens. They told us that when they first arrived, naturalization seemed to be an acceptable solution. However, after years of waiting and poor treatment by officials, they have little hope they will ever become Georgian citizens.

Article 34 of the Convention relating to the Status of Refugees says:

The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite

naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.

To meet its obligations under article 34 of the Convention and to enable refugees to become citizens of Georgia sometime in the near future, the Georgian Parliament must re-examine its current laws for granting citizenship to refugees.

Resettlement to Third Countries

Resettlement to a third country is generally dependent on a decision which ultimately rests with the host government and not with Georgia or the UNHCR.

Between 2003 and 2005, nearly 300 refugees were resettled to third countries with the help of UNHCR - mainly to Sweden, Canada and elsewhere.

However, since the War on Terror began, there have been few countries eager to accept refugees from Chechnya. In addition to this shift in demand for Chechen refugees, changes in UNHCR policy have placed a greater burden on UNHCR's field offices in identifying countries willing to accept refugees and in facilitating asylum procedures with countries that often do not have embassies in countries such as Georgia. The reluctance of third countries to accept refugees from Chechnya, combined with changes in UNHCR policy on resettlement, suggest that only a small number of refugees will eventually be resettled. Of these, the HRIDC believes the remaining Chechens in Georgia should receive priority, since this group is the least willing to become participating members of Georgian society. Their reluctance might be caused by degrading living conditions in Georgia.

1. Chechen refugees cannot receive social security from the government that might be enough to live on;
2. Several people, bearing the refugee status in Georgia, together receive an allowance and other humanitarian aid that is apportioned for one refugee.
3. Humanitarian assistance for refugees is monthly provided by the Akhmeta Office of the UNHCR on the basis of food stamps. In the framework of the UNHCR humanitarian assistance, refugees also receive food. In most occasions, cans of food, distributed by the UNCHR, are produced in 2003 as it is indicated on the can. Later it was found out that the UNCHR receives the food from the OSCE and they remain edible for twenty years. There are some problems with the provision of food though. The UNHCR provides the refugees with pork, but Muslims are

not allowed to eat pork for religious reasons. Moreover, the text on the cans is in English and the refugees do not speak English. Consequently, they were unable to know they received cans of pork.

The Kavtarashvili sisters

Three sisters (Zeinab, Sima and Khatuna) are married and live separately with their children and husbands. They each receive one allowance for refugees that is apportioned for one person only. Consequently, the women have to support themselves and their children with the allowances which are only enough for one person.

However, according to the Georgian Law on Refugees, if a person meets the requirements of the article 1 of the law, s/he is granted refugee status and can enjoy all rights that are guaranteed by the Georgian Law on Refugees.

The Kavtarashvili's are deprived of the above-mentioned rights that are guaranteed by the law. Only after the Human Rights Centre intervened and applied to the relevant governmental bodies was the problem solved.¹⁵⁹

Recommendations

- * **The Georgian Parliament should make sure article 1 of the Georgian Law on Refugees corresponds to the Convention relating to the Status of Refugees;**
- * **The Georgian Parliament should respect any verdict passed by the judiciary and observe the recommendations of the verdict passed by the Constitutional Court on October 27 2006;**
- * **The Ministry of Refugees and Resettlement and the Ministry of Justice should respect the Georgian Law on Refugees and observe its requirements in accordance with the amendment made to the Georgian Law on Refugees on April 27 2007 (amendment # 4701-Is); the Ministries should immediately issue a joint decree on the “confirmation of the regulation for the travelling of refugees beyond Georgian borders”;**

¹⁵⁹ Reply # 01/01-17/7543, 26 November 2007 of the Georgian Ministry of Refugee and Accommodation to Human Rights Centre's petition # OL-380, 20 November 2007 and replies of UNHCR to Human Rights Centre's petition # OL-389, 11 December 2007.

- * **The Ministry of Refugees and Resettlement and the Ministry of Justice should clarify or start working on the draft law on the “regulation of registering, issuing or changing the travelling documents”;**
- * **The Ministry of Justice should correct its mistakes - people having renounced Georgian citizenship once must be omitted from the list of Georgian citizens;**
- * **The Ministry of Refugees and Resettlement should start working on re-granting the status of refugees to the people who had been deprived of the status because of a mistake of the Ministry of Justice; as well as granting a residency permit to refugees;**
- * **The Ministry of Refugees and Resettlement should provide a justification for the deprivation of the status of refugee based on the article 10, paragraph II of the Georgian Law on Refugees;**
- * **The Ministry of Refugees and Resettlement should make its office in the village of Duisi in the Pankisi Valley more active: the Ministry should employ more qualified lawyers who will provide the refugees with legal aid; and who will provide the Ministry with all the necessary documentation on those refugees who were unable to take part in the process of issuing temporary residency documents;**
- * **The Ministry of Refugees and Resettlement should control the activities of the UNHCR - the latter should be responsible to the state for the implemented activities with regard to the people who reside in Georgia and have the status of refugee;**
- * **The UNHCR should make its activities regarding the resettlement to a third country more transparent;**
- * **The UNHCR should cooperate with the NGOs who monitor human rights violations in Georgia;**
- * **The UNHCR should be more attentive to the responsibilities they have assumed regarding refugees. The UNHCR should not distribute food products to the refugees before they are checked and should respect the religion of the refugees;**

- * **The Public Registry, a subordinated legal entity to the Ministry of Justice, should issue the temporary residency documents to those people who have applied for resettlement to a third country;**

- * **The Human Rights Centre calls upon the personnel of the Georgian judiciary to respect domestic laws as well as the conditions of the Convention relating to the Status of Refugees;**

- * **The judiciary should support non-Georgian accused individuals in understanding the court hearings properly. The judge is obliged to provide the accused with a translation of all necessary documents and the verdict in his/her mother tongue;**

- * **The Human Rights Centre calls upon the Prosecutor's Office and investigative bodies to inform accused individuals about all rights guaranteed by Georgian legislation and to support them in contacting an attorney.**

