

Human Rights Center (HRIDC)

TAKING LIBERTIES, MISUSING POWER

ANNUAL HUMAN RIGHTS REPORT FOR 2011

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

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

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

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

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Introduction

This report chronicles the human rights situation in Georgia in 2011, and includes some events of early 2012. It relies mainly on the work of Human Rights Center, as well as other partner NGOs, international organizations, and the Ombudsman of Georgia. It shows the main human rights trends as observed in legislative amendments, assemblies and manifestations, freedom of the media and civil society, political freedom, penitentiary and judiciary systems, internally displaced persons (IDPs), and the situation after the Georgian-Russian conflict of August 2008.

2011 marked another year of adopting legislative amendments falling short of international standards and threatening to restrict the rights of Georgian citizens. If legislative amendments made in 2009 restricted the right to peaceful assembly, increased police powers and intensified sanctions because of protests in the spring of 2009, amendments made in 2010 and early 2011 intruded on the lives of ordinary citizens. The new wave of legislative amendments seen in 2011 anticipates the upcoming 2012 parliamentary and 2013 presidential elections. They leave room for broad interpretation, impose unreasonably strict sanctions and threaten the rights of voters and civil society representatives.

The latest amendments to the Law on Assemblies and Manifestations go against a decision by the constitutional court, questioning the Georgian government's commitment to the rule of law. In addition, new developments in laws governing data protection and communication caused concern regarding citizens' right to privacy. Vague terminology introduced in the new Law on Personal Data Protection jeopardizes the protection afforded to sensitive individual data by the Constitution of Georgia. Moreover, operative-investigative bodies are given the right to monitor closed internet communications without court approval.

The right to freedom of expression and peaceful assembly continued to suffer in 2011. Law enforcement agencies used excessive force to disperse demonstrators, most notably during the widely covered May 26 political protests in Tbilisi. Legally sanctioned rallies were also interfered with and participants often routinely charged with minor offences, for instance during a protest by war veterans on January 3 in Tbilisi.

The May 26 rally also raised questions regarding freedom of the media. During the dispersal, journalists were targets of physical and verbal abuse from the side of law-enforcement. Following the protests, six subsidiaries of Palitra Media, which had reported on alleged killings and disappearances during the May 26 protests, were subjected to surprise financial audits resulting in several of its storehouses being temporarily sealed. In a high-profile case, four Georgian photographers who had taken pictures during the May 26 rally were charged with espionage. Suspicions were raised that the journalists had been framed when the official investigation failed to reveal any links to foreign governments. Overall, media reporting remained biased, with the nationwide television channels generally backing government interests and opposition interests chiefly represented on channels available mostly in the capital.

The political climate in 2011 grew tense as businessman Bidzina Ivanishvili expressed his desire to join politics in October. Ivanishvili was stripped of his Georgian citizenship and the sphere around him faced legal problems, economic restrictions and fines, detentions and dismissals in what many analysts feared were politically motivated acts to intimidate a political opponent. Under the pretext of keeping business interests out of politics, but widely perceived as another step in the government's campaign against Ivanishvili, new regulations on party financing were introduced late in the year. The Chamber of Control, tasked with enforcing the new rules, summoned opposition activists for interrogations all over Georgia. The proceedings were fraught with intimidation techniques and pressure used against the summoned activists.

Problems reported in previous years continue to plague the Georgian penitentiary and judiciary systems and effectively questioning the government's interest in improving the situation. Ill, inhuman and degrading treatment, lack of access to qualified medical service, negligence in cases of prisoners with serious health problems, and overcrowding remain characteristic features of Georgian penitentiaries. In 2011, the number of Georgian prisoners dying behind bars increased to an alarming 140 cases. As for the judiciary, the worrying statistics on convictions show no sign of decreasing; instead, conviction rates went up from 99.8% to a

staggering 99.9% in 2011. Ungrounded court decisions and violations of right to fair trial still prevail.

The eviction processes of IDPs are continuing with violations of notification procedures and inadequate access for monitors. Concerns have also been raised regarding the condition and location of living spaces provided as compensation for the evicted IDPs. As for the investigation of crimes committed during the 2008 August conflict, research conducted by Norwegian Helsinki Committee (NHC) in cooperation with Human Rights Center, the Georgian Young Lawyers Association (GYLA) and Article 42 of the Constitution found that Georgian authorities are partly unable and partly unwilling to conduct an effective investigation into international crimes allegedly committed during and after the August 2008 war.

Legislative Amendments

Electoral Legislation

Organic Law on Political Unions of Citizens and Criminal Code

In December of 2011, the Georgian Parliament adopted various amendments to the electoral legislation. Restrictions imposed by new provisions of the Organic Law on Political Unions of Citizens and Criminal Code of Georgia raised serious concerns among Georgian NGOs and media organizations. A petition, signed by over 170 NGOs and media organizations¹, requesting changes to the new legislation was filed as a result in February of 2012.²

The new provisions give room to broad interpretation and impose unreasonably strict sanctions. Worryingly, the Georgian public has not been adequately informed about the possible impact that the new rules and restrictions could have on ordinary citizens. Moreover, the nature of the law and the manner in which it was quickly adopted raised fears that the Georgian government was in fact targeting people affiliated with and mobilized by businessman Bidzina Ivanishvili – who appeared on the political scene as a new opponent of President Saakashvili in the race for governmental power in the upcoming Parliamentary and Presidential elections.

With its broad formulation, newly adopted Article 26¹ of Organic Law of Political Unions creates the possibility of illegitimate intervention in the work of private organizations/NGOs by the Chamber of Control of Georgia³. In particular, the law states that the restrictions set for political parties⁴ (for instance, a 60 thousand GEL limit on donations, prohibition against receiving

¹ <http://humanrights.ge/index.php?a=main&pid=14515&lang=eng>

² Campaign “It Concerns you” was started by NGOs and media organizations of Georgia in February of 2012. The campaign does not support any political course. Through active involvement of citizens and civil society it aims to change the existing electoral legislation and promote democratic processes in the state. Official site of the campaign is available at: <http://esshengekheba.ge/?menuid=25&lang=1>;

³ The Chamber of Control of Georgia is a supreme institution of the state financial and economic control authorized to oversee the expenditure and usage of public funds and other state material values, national wealth, state property and other state resources. It is also authorized to oversee the financing of political parties. <http://www.control.ge/eng/about-the-ccg/history/>

⁴ Article 26 of Organic Law of Political Unions of Citizens; text is available at: http://esshengekheba.ge/contentimage/kanonebi/____.pdf

grants) also apply to the “legal entities which are in direct or indirect connection with the political party, are under the control of a political party, or have declared political goals and objectives.”⁵ Thus, the control mechanisms set in regards to political parties apply to these legal entities as well. Direct or indirect connection is defined as follows: “Legal entity is in direct or indirect connection with the political party when its expenses are directly or indirectly connected to the work and goals of a political party.”⁶

Concerns are raised that the existing formulation is too broad and can be applied to any legal entity. What is implied by “indirect connection” needs to be explained more precisely so as to avoid an uncertain climate wherein private entities/NGOs shy away from any contact with political organizations in fear of reprisals. It should be noted that the Chamber of Control already conducted financial monitoring of two Georgian NGOs: New Generation New Initiative and Republican Institute⁷. Though sanctions were not enacted, the mere fact of examining the financial credentials of NGOs without clear legislative grounds is an alarming trend.

Restrictions determined for political parties also apply to any “legal entity, which calls on the voter to support or restrain from supporting a political party through the representative or some other individual.”⁸ This formulation gives legislative ground to unfair and unreasonable sanctions against NGO, e.g. by stopping transfers of grants⁹ simply because its employee expressed support of a certain political party.¹⁰

Another problematic provision is Article 164¹ of the Criminal Code of Georgia. The article stipulates that receiving and even requesting money, securities (including financial instruments), property, property rights, services and other privileges from a political party or a politically active individual is a criminal act and envisages sentences up to three years in prison.

⁵ paragraph A, Part I of Article 26¹ of Organic Law on Political Unions of Citizens, *ibid*

⁶ Part II of Article 26¹ of Organic Law on Political Unions of Citizens, *ibid*

⁷ <http://humanrights.ge/index.php?a=main&pid=14448&lang=eng>;
<http://humanrights.ge/index.php?a=main&pid=14443&lang=eng>

⁸ Paragraph B of part I of Article 26¹ of Organic Law on Political Unions of Citizens, text is available at:
http://esshengekheba.ge/contentimage/kanonebi/____.pdf

⁹ Prohibition to receive grants is one of the sanctions determined for political parties, Article 26 of Organic Law of Political Unions of Citizens, *ibid*

¹⁰ Text of the address of campaign “It concerns you” available at:
<http://humanrights.ge/index.php?a=main&pid=14469&lang=eng>

Assessments by experts and NGOs deem this penalty inappropriately extreme.¹¹ The fact that voters might be oblivious to this kind of strict sanction is a serious cause for concern.

The new amendments also place an unfair burden on political parties and electoral contestants. Particularly, Article 27 of Organic Law of Political Union of Citizens states, “If the income of physical persons who contribute donations derives from one source (physical or legal entities or persons related to them) in total or in part, then the total number of donations made throughout a year for one electoral contestant must not exceed 500 000 GEL. Besides, total number of the donations made by each must not exceed 60 000 GEL.” The concern here is that it would be too hard for a political party to ascertain whether or not the drawn funds derive from one source in total or in part.¹²

Another questionable responsibility imposed on political parties is paragraph I of Article 34² of the Organic Law on Political Unions of Citizens. According to the article, “if the political party receives or hides financial or material donations prohibited by law these donations will be transferred to the state budget and the party will be fined by ten times of the received financial or material donation.” However, political parties cannot always have information as to whether their donor transferred money in violation of the law.¹³

Furthermore, a tricky provision that could deprive contestants of the chance to continue the electoral race is paragraph VII of Article 34² of the Organic Law on Political Unions of Citizens. The paragraph states that a year before the election, the Central Electoral Commission of Georgia is authorized to cease the electoral registration of the contestant. Authorization to do so follows on the basis of a request by the Chamber of Control of Georgia, and the cessation can be undertaken on the following grounds: violation of the requests of the Organic Law on Political Unions of Citizens more than once, deliberate violation of legal request of the Chamber of Control of Georgia, or if the violation caused significant damage.¹⁴ The main problem with

¹¹ Ibid

¹² Article 27, Organic Law on Political Unions of citizens;
http://esshengekheba.ge/contentimage/kanonebi/____.pdf

¹³ For instance, political parties might know not that i.e. the donor made donation to several electoral contestants and in sum exceeded the maximum requirement set by law.

¹⁴ Article 34², ibid

this provision is time-related: considering the terms of judicial proceedings, if a political party addresses the court with an appeal and goes through all court instances, the elections might be over by the time the final decision is made and registration is restored.

Finally, paragraph VIII of Article 34² of the Organic Law on Political Unions of Citizens authorizes the “Chamber of Control of Georgia [to sequester] property of a political party, physical person or legal entity (including their bank accounts). This decision can be appealed to the court along with the regulation concerning the violation. Appealing does not stop the operation of sequestration.” This provision comes in contradiction with Georgian legislation, namely the Civil Code of Georgia’s Article 356⁴ which states that for crimes like human trafficking, drug selling and racketeering¹⁵ it is the Court that sequesters the property of the offender. Granting the Chamber of Control the right to sequester property of political parties, physical persons and legal entities, thus applying harder conditions of legal protection towards them than towards the offenders of grave crimes mentioned above, is an undue restriction violating their property rights.

It should be noted that the Venice Commission¹⁶ issued an official statement regarding the version of the draft law it received for an official opinion: “In reply to questions by Georgian journalists the Secretary of the Venice Commission, Thomas Markert, noted that the text of the Law on Political Union of Citizens adopted by the Georgian parliament included a number of significant amendments in comparison with the text submitted to the Venice Commission. These amendments contained additional restrictions on party financing. He was not able to assess whether these restrictions were positive or negative since this would require an in-depth examination of the adopted text by the Venice Commission which had not taken place.”¹⁷

¹⁵ Article 356⁴, Civil Procedural Code of Georgia, Code is available at:

http://www.tcc.gov.ge/uploads/kanonebi/samoqalago_saproceso_kodeqsi.pdf

¹⁶ The European Commission for Democracy through Law, better known as the Venice Commission, is the Council of Europe’s advisory body on constitutional matters. Established in 1990, the commission has played a leading role in the adoption of constitutions that conform to the standards of Europe’s constitutional heritage. Georgian government has been submitting draft laws to the Commission for official expert opinion.

http://www.venice.coe.int/site/main/Presentation_E.asp

¹⁷ The statement available at: <http://www.venice.coe.int>

Maina Kiai, UN Special Rapporteur on the rights to freedom of peaceful assembly and association, published a preliminary report during his visit in Georgia in February of 2012. In regards to the new provisions of electoral legislation he noted: "I have observed that these amendments, which at times use ambiguous language, are fuelling an overall climate of distrust, and appear to largely violate international human rights law. NGOs and any legal entity and person must have the right to support any candidate, or political persuasion of their choice. It would appear that these recent amendments have been motivated by a desire to control political activities of a specific individual, rather than for objective and sustainable reasons."¹⁸

Election Code

According to the new Election Code of Georgia, adopted on December 27th of 2011, officials of state and local government agencies are allowed to campaign in support of certain political candidates whilst they are not fulfilling their official duties.¹⁹ At the same time, the law states that if ordinary citizens campaign, no matter when, the organizations they work for become subject to sanctions set for political parties as discussed above. Human rights defenders expressed concern that ordinary citizens face heavier restrictions than government officials.

The new election code also grants convicts of minor crimes (penalty for which is no more than five years imprisonment) the right to vote.²⁰ However, the code does not envisage the presence of election monitors in penitentiary departments. Questions were thus raised among human rights groups about how to ensure free and fair voting inside the penitentiary system.

Law on Protection of Personal Data

On December 28th of 2011, the Georgian parliament adopted Law on Protection of Personal Data.²¹ The aim of the law is to ensure the protection of the inviolability of private life whilst

¹⁸ Statement of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association at the conclusion of his visit to Tbilisi, February 13 of 2012; statement available at: <http://www.ohchr.org/EN/Issues/AssemblyAssociation/Pages/SRFreedomAssemblyAssociationIndex.aspx>

¹⁹ Paragraph H of part 4 of Article 45, Election Code of Georgia; http://www.parliament.ge/index.php?lang_id=GEO&sec_id=69&kan_det=det&kan_id=5177

²⁰ Paragraph G of Part A of Article 3; http://www.parliament.ge/index.php?lang_id=GEO&sec_id=69&kan_det=det&kan_id=5177

²¹ <http://humanrights.ge/index.php?a=main&pid=14291&lang=eng>

processing personal data.²² However, the law fails to meet this objective and creates the danger of violating privacy rights instead. In particular, paragraph B of the Article VI, which envisages processing data of a special category (so-called sensitive data) without the consent of the data subject when “significant public interest” is at stake. The special category data is defined as follows: “personal data associated with the individual’s racial or ethnic background, political views, religious or philosophical beliefs, membership of a professional organization, state of health, sex life, criminal history and biometrical data that can identify abovementioned characteristics.”²³

The corresponding provision does not fully comply with the Georgian Constitution which already draws out the concrete public interests that can give rise to the dissemination of sensitive information. Specifically, paragraph II of Article 41, states that in order to restrict a fundamental human right, one of the following goals must be met: “when it is necessary for ensuring the state security or public safety, for the protection of health, rights and freedoms of others.”²⁴

Thus, the term “significant public interest” carries an unduly broad meaning and the legitimate interests meant under it should be clearly defined.

Another problematic provision inconsistent with the Constitution is Article V, paragraph C of the Law, according to which personal data can be processed if it is necessary for “fulfilling an obligation granted by law”. If Article VI contradicted the Constitution with its overly broad and ambiguous formulation, the problem here is of specific character. “Fulfilling an obligation granted by law” cannot be grounds for processing personal data. Constituting these grounds, Article 41 of the Constitution does not envisage such a provision.²⁵

Moreover, the Draft Law fails to reach a balance between the right to private life and freedom of information. According to Article III, paragraphs G and D of the Draft Law, it does not apply to

²² Article 1, Law on Personal Data Protection of Georgia; text is available at:

https://matsne.gov.ge/index.php?option=com_idmssearch&view=docView&id=1561437

²³ Paragraph B, Article 2, Law on Personal Data Protection of Georgia; text is available at:

https://matsne.gov.ge/index.php?option=com_idmssearch&view=docView&id=1561437

²⁴ <http://humanrightshouse.org/Articles/15920.html>

²⁵ <http://humanrightshouse.org/Articles/15920.html>

the “aims related to the public or state security (including economic security), defense, operative-investigative activities, as well as criminal investigation activities” and “processing information of state secrecy.” Article XIX Global Campaign for Free Expression negatively assessed the fact that no harm test is required and there is no provision for a public interest override.²⁶ “With regard to the second exception - protecting data processed in relation to criminal investigations - this would allow police or judicial authorities to shield serious wrongdoing within their departments. This is not only contrary to international standards, inasmuch as it fails to incorporate a harm test or public interest override,” – states the memorandum of Article 19^{27,28}.

Law on Operative-Investigative Activities

In December of 2011, amendments were made to the Law on Operative-Investigative Activity. New provisions give law enforcement bodies a right to copy banks of database system of communication channels (mobile operators, internet providers, etc...)²⁹ Operative activities are carried out by court authorization. However, in urgent situations it is possible to do without the court's permission.³⁰ Human rights defenders raise concern that law-enforcement is authorized to copy entire banks of database systems and not just concrete data.

It should be noted that in September of 2010 an amendment was made to the Law on Operative-Investigative Activity according to which operative-investigative bodies were authorized to monitor internet communications – i.e. observe open and closed internet communications.³¹ However, this provision does not envisage the requirement of a court decision nor the case of urgent necessity. According to experts, it violates the Constitution of

²⁶ Memorandum on the Draft Law of Georgia on Protection of Personal Data, p.3; Article 19 Global Campaign for Free Expression; memorandum is available at: <http://www.Article19.org/data/files/pdfs/analysis/georgia-note-on-draft-data-protection-law-feb-.pdf>

²⁷ p 7, ibid

²⁸ ibid

²⁹ Paragraph G of Article 14 of Law on Operative-Investigative Activity; text is available at: http://www.parliament.ge/index.php?lang_id=GEO&sec_id=69&kan_det=det&kan_id=5110

³⁰ Paragraphs 3, 3¹ and 4 of Law on Operative-Investigative Activity, ibid

³¹ paragraph H of part II of Article VII of Law on Operative-Investigative Activities; http://www.parliament.ge/index.php?lang_id=GEO&sec_id=69&kan_det=det&kan_id=4361

Georgia according to which any restriction of the right to private life shall be permissible only by a court decision unless in the case of urgent necessity.³²

Criminal Procedural Code

A new amendment made to the Criminal Procedural Code in November of 2011 grants the Office of Prosecutor the right to monitor bank accounts.³³ In case of reasonable doubt, the Office of Prosecutor can address the judge to receive permission for conducting such monitoring. In case of court approval, banks may become obliged to cooperate with the investigation and share information regarding the financial transfers performed on the account. Monitoring of the bank account lasts for the period needed to obtain evidence in the criminal case. According to human rights defenders, a time limit for such monitoring needs to be specified, otherwise it threatens the inviolability of private life.³⁴

This novelty also raises the problem of duplication of functions, as the Financial Supervisory Agency existing at the National Bank of Georgia already has the obligation to supervise bank activities³⁵. Thus, granting the Office of Prosecutor the same functions is seen to be an extra control mechanism from the side of law enforcement, the need of which is not thoroughly explained.

Criminal Code

According to Article 353¹ adopted in July of 2011, murdering policemen or other government representatives is punishable by an imprisonment sentence of up to 16-20 years or life in

³² <http://humanrightshouse.org/Articles/16548.html>

³³ Article 124¹ of Criminal Procedural Code, text is available at:

http://www.parliament.ge/index.php?lang_id=GEO&sec_id=69&kan_det=det&kan_id=4985

³⁴ Statement of Human Rights Center (HRIDC); statement available at:

http://www.humanrights.ge/admin/editor/uploads/pdf/HRIDC%20statement_legislative%20changes%20in%20Georgia2.pdf

³⁵ Article 3, Functions of the Agency, Decree on Approving Provisional Regulation of the Financial Supervision Agency of Georgia. The Decree is available at:

<http://www.ebrd.com/downloads/legal/securities/regulators/geo.pdf>

prison.³⁶ Introducing different guarantees of protection for people of different professions was met with skepticism from the side of the Georgian civil sector.³⁷

Human rights defenders raised concern in regards to one more legislative change made in the Criminal Code. In July of 2011, Article 223 introduced the vague term “illegal formation”³⁸ replacing the former wording “illegal armed formation.” According to the existing formulation, creation, leading and membership of an illegal formation are criminally punishable acts. Illegal formation is defined as follows: “any formation which is armed with guns, combative items, explosives and easily inflammable items, explosive devises, tear-gas, radioactive, neuroparalytic or poisoning substances, side-arms or any other device or item which can be used to damage the alive or other objects or destroy them.” “Any device or item” is assessed to be too broad of a formulation giving room to different interpretations.³⁹

Code on Imprisonment

New provisions adopted in November of 2011 impose strict disciplinary sanctions on prisoners. The sanctions can last up to three months and include prohibiting the offending prisoner from making phone calls, receiving/sending personal correspondence, and buying things in the prison shop.⁴⁰ Human rights defenders express concern that these restrictions will further isolate prisoners who are already experiencing severe conditions in the Georgian penitentiary system. Particularly worrisome is the prohibition on buying things in the prison store as some prisoners might have special needs due to the state of their health.

³⁶ Article 353¹, Criminal Code of Georgia, text is available at:

http://www.probation.ge/cms/site_images/pdf/samart.pdf

³⁷ http://www.humanrights.ge/admin/editor/uploads/pdf/HRIDC%20statement_legislative%20changes%20in%20Georgia2.pdf

³⁸ Article 223, Criminal Code of Georgia, text is available at:

http://www.probation.ge/cms/site_images/pdf/samart.pdf

³⁹ Statement of Human Rights Center (HRIDC);

http://www.humanrights.ge/admin/editor/uploads/pdf/HRIDC%20statement_legislative%20changes%20in%20Georgia2.pdf

⁴⁰ Paragraphs H, I and J of Article 82 of Code on Imprisonment of Georgia, text is available at

http://www.parliament.ge/index.php?lang_id=GEO&sec_id=69&kan_det=det&kan_id=5005

Concerns are raised that these sanctions will restrict the right to interact with a lawyer that contradicts 2010 Recommendations of CPT to Georgia.⁴¹

It should be noted that the restriction to send/receive personal correspondence does not apply to interactions with Ombudsman of Georgia. Human Rights organizations were also requesting to be excluded from this prohibition.

Law on Assemblies and Manifestations

In 2010 various amendments were made to the Law on Assemblies and Manifestations which raised concerns among human rights groups. As a result, Georgian Ombudsman filed a constitutional complaint to the Constitutional Court of Georgia⁴² in September of 2010. Among others, the following provisions of the Law on Assemblies and Manifestations were disputed: prohibition on holding protest actions in 20 meters from the entrances of certain governmental departments and prohibition on non-citizens of Georgia to organize assemblies.⁴³

Among others, the Constitutional Court of Georgia found these provisions unconstitutional and in its final decision, declared their annulment. In regards to the rights of non-citizens of Georgia to organize action, the Constitutional Court stated: "Disputed provision represents blanket prohibition meaning that it prohibits non-citizens of Georgia to initiate and organize assemblies without considering any exception. Therefore, the Constitutional Court establishes that the component of disputed provision which prohibits non-citizen of Georgia to be organizer of assembly/manifestation responsible for its conduction does not comply with Article 25 of Constitution."⁴⁴ However, on July 7th of 2011, the Georgian Parliament adopted amendments to the Law on Assemblies and Manifestations part 3 of Article 5 of which states: "Citizens of other countries cannot be individuals responsible for organization and conducting of assemblies

⁴¹ 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), p18, report is available at <http://www.cpt.coe.int/documents/geo/2010-27-inf-eng.pdf>

⁴² The Constitutional Court of Georgia is judicial body of constitutional review. Among other functions, it adjudicates upon the conformity of laws of Georgia with the Constitution of Georgia, http://www.constcourt.ge/index.php?lang_id=ENG&sec_id=13

⁴³ Decision of Constitutional Court of Georgia, p 5, paragraphs 13 and 14, 18/04/2011, text available at: http://www.constcourt.ge/index.php?lang_id=GEO&sec_id=22&id=640&action=show

⁴⁴ Paragraphs 4, 5 and 9, p 70, ibid

and manifestations.”⁴⁵ Clearly this provision contradicts the decision of the Constitutional Court. It presents the same blanket prohibition, which was once annulled by the Constitutional Court due to not envisaging any exception.

As for conducting assemblies and manifestations within twenty meters from certain governmental departments, the Constitutional Court found that such blanket restriction may apply only to “military departments, pre-detention police departments or penitentiary departments.”⁴⁶ Yet again, the new amendments presented blanket provision which prohibits conducting assemblies or manifestations within twenty meters from the entrances of inter alia the following buildings: the Office of Prosecutor, railway stations, airports and ports.⁴⁷

Liberty Charter

The so called Liberty Charter bill was passed in June of 2011 and included new anti-terror efforts, most notably visible in the increased usage of CCTV systems throughout the country. It also introduced provisions against public display of Soviet and Nazi symbols in addition to limiting access to certain public offices for former Soviet officials.⁴⁸ A State Commission under the Ministry of Internal Affairs (MIA) will oversee this lustration law and have exclusive access to the lists of individuals concerned by the new regulations.⁴⁹

The Georgian Young Lawyers Association (GYLA) criticized the provision according to which people who cooperated with the Special Services of the Soviet Union are barred for life from holding governmental posts, arguing that life-long prohibition violates the rights of those affected by the lustration provision.⁵⁰ GYLA also raised concerns that the Commission tasked with handling issues of lustration will be created under the Ministry of Internal Affairs (MIA).⁵¹ According to recommendations, such commissions should be independent from state

⁴⁵ Amendments available at:

http://www.parliament.ge/index.php?lang_id=GEO&sec_id=69&kan_det=det&kan_id=4910

⁴⁶ Paragraph 59, p 39, Decision of Constitutional Court of Georgia:

http://www.constcourt.ge/index.php?lang_id=GEO&sec_id=22&id=640&action=show

⁴⁷ Paragraphs A and B of Article 9 of Amendments to Law on Assemblies and Manifestations:

http://www.parliament.ge/index.php?lang_id=GEO&sec_id=69&kan_det=det&kan_id=4910

⁴⁸ <http://www.civil.ge/eng/Article.php?id=23560>

⁴⁹ <http://humanrights.ge/index.php?a=main&pid=13457&lang=eng>

⁵⁰ <http://www.radiotavisupleba.ge/content/Article/24210559.html>

⁵¹ <http://humanrights.ge/index.php?a=main&pid=13725&lang=eng>

agencies.⁵² Concerns are also raised that documentation, which could prove that certain individuals had collaborated with the Communist Party, virtually does not exist. Thus, it is unclear how the Commission will make decisions.⁵³

Draft Law on Informational Safety

In February of 2012, majority members of Parliament presented a draft law on informational safety to the Parliament, according to which the state will oversee the protection of informational safety of significant state and private departments.

The Draft Law on Informational Safety introduces the vague term “critical infrastructure” which refers to legal entities, state bodies and other spheres of state activity the “steady functioning of which is important for the defense and economic safety of the state and normal functioning of government and public.”⁵⁴ According to the legislative initiative, any entity considered “critical infrastructure” is obliged to present an informational safety plan and any subsequent changes to the Agency of Data Protection; a state body under the authority of Ministry of Justice. According to the draft law, the President will determine the list of critical infrastructure entities six months after the adoption of law.

Critics of the new draft law warn that the law could make sensitive information from private organizations accessible to the state and create possibilities for state intervention in the work of private legal entities. Protection of information is the prerogative of these private entities and the state should not assume this authority.⁵⁵

⁵² *ibid*

⁵³ *Ibid*, see also <http://www.radiotavisupleba.ge/content/Article/24210559.html>

⁵⁴ <http://humanrights.ge/index.php?a=main&pid=14492&lang=eng>

⁵⁵ *ibid*

Assemblies and Manifestations

May 26th Protest Action

On May 26, 2011, the government violently disrupted anti-government protests staged by Public Assembly⁵⁶ in Tbilisi within 15 minutes after the rally permit expired. Policemen used force even when the resistance of demonstrators had already been suppressed.⁵⁷ Rubber bullets were fired from close distance and force was used against all demonstrators whether or not they resisted riot police.⁵⁸ Special police officers tied the hands of demonstrators, forced them to lie on the ground and beat them with rubber truncheons.⁵⁹ Witnesses confirm that cordons of riot police blocked all exits from the rally scene, depriving demonstrators of any chance to escape.⁶⁰

Tbilisi-based Kavkasia TV released video footage showing Special Forces officers beating a juvenile. The latter was crossing the street when dozens of Special Forces officers formed a circle around him, knocked him to the ground, kicked and beat him with truncheons.⁶¹

About 50 demonstrators found shelter in a movie theater located near the rally scene on Rustaveli Avenue. In about ten minutes Special Forces appeared, blocking both exits of the theater. Anyone unable to show a ticket was forced to stay inside the theater. According to the testimonies obtained the Georgian Young Lawyers Association (GYLA), the remaining people were violently beaten by approximately 200 Special Forces Officers.⁶² Video footage broadcast

⁵⁶ Public Assembly is civic-political organization led by the former Parliament Chair Nino Burjanadze who left government in 2008 and joined opposition. Currently, she is a head of opposition political party Democratic Movement – United Georgia.

⁵⁷ Human Rights Center Monitoring Team witnessed the disruption; Report Monitoring Freedom of Peaceful Assembly in Georgia, Legislation and Practice, p 58, report is available at:

http://humanrights.ge/admin/editor/uploads/pdf/02%20English_final.pdf , see video:

<http://www.youtube.com/watch?v=aFcOKvv2g9A&feature=share>

⁵⁸ *ibid*, see videos http://www.youtube.com/watch?v=1vPcOkHYaug&feature=player_embedded#!,
http://www.youtube.com/watch?v=W0crOzbZPW0&feature=player_embedded

⁵⁹ Georgian Young Lawyers Association (GYLA), Report 26 May, Analysis of Human Rights Violations during and Related to the Dispersal of the May 26th Assembly, p 55, report is available at:

http://gyla.ge/attachments/1166_angarishi%2026%20maisi%20ENG.pdf

⁶⁰ p 38, *ibid*

⁶¹ See the video; http://www.youtube.com/watch?v=NZHlqVy2M6U&feature=player_embedded

⁶² p 57-58, http://gyla.ge/attachments/1166_angarishi%2026%20maisi%20ENG.pdf

by Palitra TV showed officers beating handcuffed detainees, who offer no resistance, in their faces and on their heads while taking them out of the theater.⁶³

Tbilisi city court charged over 90 of the protestors detained on May 26 with disobeying police orders. They were sentenced up to 30 days in administrative detention.⁶⁴ Detainees were not allowed to contact their family for days nor were they allowed to meet with a lawyer until the time of the trial, and then exclusively in the courtroom.⁶⁵ Lawyers could only access case materials 15 minutes before the start of the trial and in most cases the court relied exclusively on police testimonies to convict demonstrators and did not take any action in response to the visible injuries of defendants.⁶⁶

UN Special Rapporteur on the rights to freedom of peaceful assembly and association Maia Kiai released an official statement at the conclusion of his visit to Georgia in February of 2012. In regards to the May 26th events he noted:

All elements suggest that the reaction of the Government was clearly disproportional. In fact, there are credible allegations that there were beatings after the protest was dispersed and that protesters were chased by the police and beaten up thoroughly. This raises the suspicion that the intention was not so much to disperse protesters as it was to punish and spread fear.⁶⁷

Loss of Life during May 26th Protest Dispersal

According to official information, four people died in connection to the May 26th protest action. On May 26, 2011 the Ministry of Internal Affairs (MIA) disseminated a statement that two persons had died during the dispersal: Vladimer Masurashvili - police lieutenant – and citizen Nodar Tskhadadze.⁶⁸ According to the statement, both died when the motorcade of protest organizer Nino Burjanadze was driving at high speeds through a corridor created specifically for protesters to leave the area. On August 21, after the conclusion of the investigation and the

⁶³ <http://www.youtube.com/watch?v=IGKQiURpSQO>

⁶⁴ Human Rights Watch, World Report 2012, p 459, available at: <http://www.hrw.org/sites/default/files/reports/wr2012.pdf>

⁶⁵ GYLA, Report 26 May, p. 7 and p 104 http://gyla.ge/attachments/1166_angarishi%2026%20maisi%20ENG.pdf

⁶⁶ Ibid, p 104

⁶⁷ See statement at:

<http://www.ohchr.org/EN/Issues/AssemblyAssociation/Pages/SRFreedomAssemblyAssociationIndex.aspx>

⁶⁸ See statement at: <http://www.palitravt.ge/akhali-ambebi/shemthkhveva/5048-shss-s-akhali-operatiuli-videomasalabitsadzis-eskortis-shesakheb.html>

trial, the MIA released complete video footage of the motorcade's movement along with a statement describing the movement.⁶⁹

The court found two escort drivers guilty of causing the deaths of Masurashvili and Tskhadadze. Georgian civil society representatives were not granted access to the case materials to thoroughly investigate the case. Georgian Young Lawyers Association (GYLA) conducted an independent investigation based on the supplied video material and court judgment.

The investigation questioned the facts presented in the statement of August 21st wherein the MIA states that defendant Alexander Bibiluri's car hit Vladimer Masurashvili and refers to a car marked as #7 in the video.⁷⁰ GYLA pointed out that this car is not visible in the video and thus fails to show the circumstances of Masurashvili's death.

In regards to the death of Nodar Tskhadadze who was later identified as a demonstrator⁷¹, GYLA notes: "the judgment of July 29, 2011 makes reference to video recordings as evidence, yet the content of the judgment, as well as the released video recording, does not shed light on the actual circumstances of the case. In reality it depicts merely the fact of an up and down movement by the car [#7] driven by Nikoloz Zautashvili and the fact that the car ran over some object on its left side."⁷²

The facts of deaths of the two other demonstrators emerged on May 27th when the MIA released a statement that the bodies of two men – Nika Kvintradze and Suliko Asatiani – were found on the roof of a shop located near the area where the demonstration took place.⁷³ According to the official version, the two had died from electrocution after coming into contact with electric wires.⁷⁴

Controversial circumstances emerged on May 29 when journalist Nana Lezhava interviewed Kvintradze's friend, Rezo Rekhviashvili. He confirmed that he and his friend were both participating in the demonstration during the police attack and even identified Kvintradze in a

⁶⁹ See video footage at: <http://droni.ge/?m=3&AID=3754>

⁷⁰ Car #7, see video: <http://droni.ge/?m=3&AID=3754>

⁷¹ p 54, GYLA Report 26 May, Analysis of Human Rights Violations during and Related to the Dispersal of the May 26th Assembly, http://gyla.ge/attachments/1166_angarishi%2026%20maisi%20ENG.pdf

⁷² Ibid, p 67

⁷³ <http://police.ge/index.php?m=8&date=2011.5.27&newsid=2516&lng=eng>

⁷⁴ Ibid

photo where the latter was pictured lying on the ground among other arrested participants with his hands tied. Rekhviashvili's statements imply that Kvintradze was alive at the time of detention.⁷⁵ The MIA did not follow up on Rekhviashvili's statement and denied the fact of Kvintradze's arrest, claiming that the detained person shown in the images was Giorgi Bakradze, currently living in the Kareli district. Giorgi Bakradze confirmed this version.⁷⁶

GYLA subsequently submitted photos of Nika Kvintradze and the detained person that Rekhviashvili had identified as his friend to UK based company DABS Fingerprint/Forensics Ltd for forensic examination.⁷⁷ By means of morphological comparison, it was determined that no important differences could be found between Nika Kvintradze's post-mortem photos and the detained person shown in the images. The morphological comparison also found seven apparent similarities between the images, including a significant swelling on the left temple, possibly resulting from a blow. According to the forensic experts' analysis, the position, shape and size of the swelling were consistent.⁷⁸

The Georgian state's response to the human rights violations committed in connection to the May 26th dispersal was deeply inadequate and showed little interest in the principles of rule of law. No criminal prosecutions against MIA officials took place and the MIA limited itself to only imposing disciplinary sanctions.

Veterans' Hunger Strike

Veterans of the first war in Abkhazia and the 2008 armed conflict with Russia started a protest at Heroes' Square in late December of 2010 with demands for the improvement of social protection for veterans. The action had a peaceful nature and went in accordance with the Georgian Law on Assemblies and Manifestations. A week into the protests, on the 3rd of January 2011, police forces approached and tried to coerce the demonstrators sitting at the Heroes' Square monument to leave the area. Upon refusal from the protestors, who stated that

⁷⁵ p 60, Report Monitoring Freedom of Peaceful Assembly in Georgia;
http://humanrights.ge/admin/editor/uploads/pdf/02%20English_final.pdf

⁷⁶ Ibid, p 61

⁷⁷ DABS Fingerprints/Forensics Ltd is a member of British Association for Human Identification, registered in the UK register of Expert Witnesses and is a member of the British Institute for Professional Photography:
<http://www.dabsltd.com>

⁷⁸ p 79, GYLA, Report May 26; http://gyla.ge/attachments/1166_angarishi%2026%20maisi%20ENG.pdf

they were not intimidating anyone by demonstrating, the police begun detaining the participants.⁷⁹ According to official information, 11 protest participants were detained and charged with minor hooliganism and disobedience to the demand of law-enforcement bodies.⁸⁰ Video recordings from the police intervention showed excessive force being used. For instance, footage shows a policeman beating Eka Matiashvili, wife of one of the veterans, in the face even though she offers no resistance.⁸¹ When Malkhaz Topuria, another demonstrator, expressed his disapproval of the treatment of Matiashvili, he was detained. The video shows that he is subjected to physical abuse that cannot be explained by the necessity of control since he is already under the effective control of the police.⁸² It should be noted that the law-enforcement officers present at the venue included a large number in civilian clothes who ill-treated the demonstrators.⁸³

The Ombudsman of Georgia conducted an investigation into the case based on the video footage from the rally and explanatory notes received from the demonstrators. The investigation resulted in the following findings:

The protest was proceeding in full compliance with the Law of Georgia on Assemblies and Manifestations. The protest participants did not occupy part of the road, did not block the traffic and did not violate the requirements for holding assemblies and manifestations established by the Georgian legislation.

In addition, it cannot be established that the protest participants violated the requirements of Articles 166 (minor hooliganism) and 173 of the Administrative Code of Georgia (disobedience to the lawful order of law-enforcement).

When the Patrol Police arrived at the protest scene, the protest participants were sitting at the memorial on Heroes' Square. The patrol police demanded not that the minor hooliganism be stopped for which the demonstrators were detained later, but that the protest be ended which was a groundless demand in itself.⁸⁴

⁷⁹ p 39, Report Monitoring Freedom of Peaceful Assembly in Georgia;

http://humanrights.ge/admin/editor/uploads/pdf/02%20English_final.pdf

⁸⁰ <http://ombudsman.ge/index.php?page=1001&lang=1&n=0&id=1355>

⁸¹ See Video: <http://www.youtube.com/watch?v=YuFMFYfbXhU&feature=related>

⁸² See video: <http://www.youtube.com/watch?v=FQnlfJ2miFI>

⁸³ p 40, Report Monitoring Freedom of Peaceful Assembly in Georgia;

http://humanrights.ge/admin/editor/uploads/pdf/02%20English_final.pdf

⁸⁴ See statement at: <http://ombudsman.ge/index.php?page=1001&lang=1&n=0&id=1355>

Hercules Strike

On September 15th police disrupted a protest action of workers from Georgian-Indian Hercules Steel Plant in Kutaisi, Western Georgia.⁸⁵ Four metallurgists had been on hunger strike for several days requesting improvement of working conditions and the restoration of 17 dismissed workers to their jobs.⁸⁶ Two days later, a demonstration was held by the entrance to the plant and even though protesters acted in accordance with Georgian law, the police broke up the demonstration, detaining several strikers. Upon release, some strikers alleged that police had made them sign agreements not to protest again.⁸⁷ Overall, 40 protestors were detained, among them the four workers who had been on hunger strike – Gocha Darjania, Ramaz Gogiava, Kakha Tsertsvadze and Iuza Kakhidze.⁸⁸ Lawyers and family members were not informed on where the detainees were taken and had to search for them in various police departments and detention cells throughout the night following their arrest.

On September 18th, Irakli Iobidze, Emilo Gumberidze and Malkhaz Gogiava, three Hercules plant workers who participated in the September 15th protest were detained on charges of disobedience to lawful order of law-enforcement and were handed a ten day custodial sentence⁸⁹. According to information from Trade Unions of Georgia, the detainees were actively involved in preparing to file complaints against unlawful disruption of their protest action. They were planning to leave for Tbilisi on the next day to meet with NGOs and representatives of the diplomatic community to present their case.

March 25th Protest Action

On March 25 of 2011, a protest action against hazardous conditions in the prisons of Georgia was held in front of the Ministry of Corrections and Legal Assistance.⁹⁰ Though the action went

⁸⁵ <http://humanrights.ge/index.php?a=main&pid=13853&lang=eng>

⁸⁶ ibid

⁸⁷ Human Rights Watch, World Report 2012, 462, report is available at:

<http://www.hrw.org/sites/default/files/reports/wr2012.pdf>

⁸⁸ <http://liberali.ge/politsiam-kutaisshi-gapitsuli-mu>

⁸⁹ <http://www.humanrights.ge/index.php?a=text&pid=14578&lang=eng>

⁹⁰ p 21; http://humanrights.ge/admin/editor/uploads/pdf/02%20English_final.pdf

in accordance with the Law, it was violently dispersed and seven participants – Merab Chikashvili, Giorgi Kharabadze, Akaki Chikovani, Giorgi Burjanadze, Otar Bekauri, Vladimir Sadgobelashvili and Besik Tabatadze - were arrested on charges of breaching administrative law.⁹¹ Among others, this was one of the cases that gave rise to a call of international human rights organizations on Georgian authorities to ensure and respect freedom of peaceful assembly and expression.⁹²

May 7th Protest Action

On May 7 the youth activist group “Ara” (No) associated with the opposition group Public Assembly was protesting in front of the house of the head of Rustavi police department. According to the monitors from Human Rights Center who witnessed the action, at one moment an unidentified person physically assaulted a female police officer and ran away. In response the policemen arrested twelve demonstrators while suspiciously letting the initial offender get away. Three activists, including the organizers, Levan Chitadze and Vasil Balakhadze, were sentenced to administrative detention for thirty days.⁹³

June 5th Protest Action

On June 5th, the Hollywood movie “Five Days of August” about the Russia-Georgia 2008 August war premiered in Rustaveli cinema in Tbilisi. Georgian opposition activist Lasha Chkhartishvili together with family members of opposition leader Irakli Batiashvili, who at the time was missing following the May 26 protests, decided to hold a protest action and deliver a message on the lack of democracy in Georgia to arriving guests. All four demonstrators – Lasha Chkhartishvili, Teona Kardava, Irina Batiashvili and Maia Batiashvili were arrested by police.⁹⁴ According to monitors from Human Rights Center, the demonstrators were not violent, did not hinder traffic movement or violate other norms of the Law on Assemblies and Manifestations.⁹⁵

⁹¹ <http://humanrights.ge/index.php?a=main&pid=13278&lang=eng>

⁹² ibid

⁹³ p 27, http://humanrights.ge/admin/editor/uploads/pdf/02%20English_final.pdf

⁹⁴ p 35-36, http://humanrights.ge/admin/editor/uploads/pdf/02%20English_final.pdf

⁹⁵ ibid

Freedom of the Media

Targeting of Journalists on May 26th

2011 was marked by alarming attempts at suppressing independent media. During the protest rally dispersal on May 26th of 2011, journalists were subject to acts of physical and verbal abuse from the side of law-enforcement.⁹⁶ Although journalists showed badges that verified their profession, it did not stop the offenders.⁹⁷ Most of them were injured when they tried to leave the epicenter of the protests and/or tried to capture the developments on camera.⁹⁸ A total of twenty-four verified incidents occurred.⁹⁹

In addition to the aforementioned violations, on May 26th reports confirm nine verified cases in which law enforcement personnel also engaged in seizing and destroying of professional equipment of journalists. Neither the cameras nor the recordings were returned.¹⁰⁰ Under Article 154 of the Criminal Code of Georgia, illegal interference in the professional work of a journalist, i.e. coercion to disseminate or refrain from disseminating information, is a criminally punishable act. Victimized journalists addressed the Ministry of Internal Affairs (MIA) and requested information on whether legal responsibility had been placed on concrete individuals for the infringements. The Ministry never honored the request.¹⁰¹

Arrest of Photo Reporters

In July of 2011, four Georgian photo reporters who had taken alarming photos of the May 26th action crackdown were arrested on charges of espionage. They were later released under

⁹⁶ Analysis of Human Rights Violations during and Related to the Dispersal of the May 16 Assembly, p 91, Georgian Young Lawyers Association (GYLA), report available at:

http://gyla.ge/attachments/1166_angarishi%2026%20maisi%20ENG.pdf

⁹⁷ p 93, 94, ibid

⁹⁸ ibid

⁹⁹ p 92, ibid

¹⁰⁰ p 94, ibid

¹⁰¹ p 95, ibid

conditional sentences.¹⁰² The Human Rights Center defended interests of one of the detainees, Zurab Kurtsikidze.

Though the photo reporters were sentenced for working for an “organization acting for foreign intelligence services,” no such organization was ever revealed during the investigation.¹⁰³ None of the evidence disseminated by the Ministry of Internal Affairs (MIA) revealed the photo reporters’ connection to Russian intelligence services.¹⁰⁴ It is believed that false information was deliberately fed to the media in order to influence public opinion and tarnish the image of the photographers.¹⁰⁵

Zurab Kurtsikidze worked for the European Press Photo Agency (EPA), a global news photo agency that disseminated some of the most graphic photos showing brutally beaten demonstrators on May 26th.¹⁰⁶ Giorgi Abdaladze had also taken photos on that night. These were later disseminated through the Associated Press and appeared in numerous European and American newspapers and magazines¹⁰⁷. Concerns were raised that the detentions of Zurab Kurtsikidze, Giorgi Abdaladze and Irakli Gedenidze¹⁰⁸ were motivated by the photographers’ exposing of police brutality on the night of May 26th. Their release can be attributed to the extraordinary support of the Georgian civil sector and media organizations. An unprecedented campaign, “No Pictures – No Democracy”, uniting the majority of Georgian civil society organizations and independent media outlets had been carrying out daily protest actions requesting that the photographers be released.

On 18 July of 2011, international human rights organizations - International Federation for Human Rights (FIDH), World Organization Against Torture (OMCT), Netherlands Helsinki

¹⁰² No Pictures, no democracy, Article available at: <http://www.opendemocracy.net/od-russia/nino-tsagareishvili/georgia-no-pictures-no-democracy>

¹⁰³ “Charges and the “evidence,” ibid

¹⁰⁴ ibid

¹⁰⁵ ibid

¹⁰⁶ “The link to May 26 Protest”, ibid

¹⁰⁷ Giorgi Abdaladze was photo reporter of the media company Alia Holding and a Ministry of Foreign Affairs contract photographer.

¹⁰⁸ Irakli Gedenidze was a personal photographer of President Saakashvili who was also seen working during the night of May 26th and had the easiest access to the scenes of crackdown as law-enforcement recognized he was President’s photographer.

Committee, Norwegian Helsinki Committee and Index on Censorship - called on the Georgian government to carry out an impartial and transparent investigation in accordance with international human rights standards.¹⁰⁹ The groups' joint statement read:

We do not consider that the known evidence against the photographers is sufficiently convincing and compelling. Taking the timing and circumstances of the confession of Irakli Gedenidze into account, we are concerned that his testimony may have been given under duress.¹¹⁰

Other Cases of Media Suppression

In another case of intimidation of independent media, six companies in the Palitra Media sphere were hit by simultaneous unexpected and unscheduled financial audits.¹¹¹ The audit, carried out by the Revenue Service of Georgia on June 7th of 2011, resulted in the temporary sealing of several company storehouses.

Palitra Media news outlets systematically covered stories of people who were allegedly killed and disappeared during the May 26th protest crackdown. The fact that a simultaneous, unscheduled field audit took place in six independently registered companies, which are subject to different terms of tax audit,¹¹² raised the possibility that the real aim was to hinder their professional activity. On September 20th, the Revenue Service stopped the audit indefinitely. According to the Tax Code of Georgia, both planned and unscheduled field audits may last no longer than 2 months.¹¹³ If necessary, a tax agency is entitled to extend this period for no more than one month.¹¹⁴ The law does not foresee the possibility of postponing the audits indefinitely.

¹⁰⁹ <http://www.fidh.org/The-right-to-a-fair-trial-for-the>

¹¹⁰ *ibid*

¹¹¹ Palitra Media is an independent multimedia company which works on several media platforms: radio broadcasts in FM frequency as well as broadcasts in the internet-TV format. It also comprises print media, which publishes around 20 newspapers and magazines.

¹¹² Part 6 of Article 113 of Tax Code of Georgia lists grounds when the unscheduled field audit can be carried out towards a taxpayer. Independent Ltd is an independent taxpayer. Thus, it is illogical that six independent taxpayers were simultaneously subjected to one unscheduled field audit. The text of the Tax Code is available at: <http://www.lexadin.nl/wlg/legis/nofr/oeur/arch/geo/TCE.pdf>

¹¹³ Part 7 of Article 113 of Tax Code of Georgia, *ibid*

¹¹⁴ *ibid*

Another troubling case in this regard was the announcement by Tbilisi City Hall, in November of 2011, that it would be auctioning off property on which press booths were located throughout the city.¹¹⁵ By January 15th, 2012, 46 newspaper booths had been taken down and subsequently replaced by food stands.¹¹⁶ With profits from press sales lagging behind other merchandise, media analysts feared that the booths' new owners would opt out of selling newspapers and magazines. Decreasing the papers' availability to the public could potentially jeopardize the sustainability of many publications, as subscriptions are rare.¹¹⁷ Some independent media representatives considered this effect intentional, designed by the government to restrict the distribution of printed media.¹¹⁸

In addition to the cases of overt acts aimed at restricting free media, a syndrome of impunity for offences against journalists also continued in 2011. On November 6th of 2011, Gela Mtivlishvili a journalist with Human Rights Center received a death threat to his personal e-mail allegedly from the former Prosecutor of the Kakheti Region, Levan Sachishvili. Mtivlishvili linked the threat to his covering the news of Sachishvili's imprisonment and subsequent release on bail. Journalist presented print screen that shows details such as content and the sender of the e-mail.¹¹⁹ On November 11th, Mtivlishvili addressed the Office of the Prosecutor with a request to start an investigation. The office never responded to his letter.¹²⁰

On November 24th of 2011, the Ombudsman of Georgia requested detailed information whether an investigation into the case had been started, saying that "it is essential to take swift and effective measures for objective investigation of this case."¹²¹ Again, the Office of the Prosecutor failed to respond.

On August 2nd of 2011, Human Rights Center filed a complaint to the chief Prosecutor of Georgia on behalf of Mari Otashvili, a journalist for the newspaper Rezonansi, who claimed

¹¹⁵ <http://humanrights.ge/index.php?a=main&pid=14235&lang=eng>

¹¹⁶ *ibid*

¹¹⁷ http://www.irex.org/system/files/u105/EE_MSI_2012_Georgia.pdf, p 186-7

¹¹⁸ http://www.messenger.com.ge/issues/2492_november_25_2011/2492_press_scanner.html

¹¹⁹ *ibid*

¹²⁰ <http://humanrights.ge/index.php?a=text&pid=14084&lang=eng>

¹²¹ Address available at: <http://www.ombudsman.ge/index.php?page=1001&lang=1&n=0&id=1437>

that her professional activity was being hindered.¹²² The complaint was based on false allegations directed at Otarashvili by the Governor of Akhalgori,¹²³ Zurab Pitskhelauri on the TV program Without Accreditation. Governor Pitskhelauri stated that he had evidence, such as photos and documents, which prove that Otarashvili is a spy¹²⁴. No such evidence was ever presented by Governor Pitskhelauri. Otarashvili had previously published several articles critical of the government's policies in Akhalgori and concerns were raised that Governor Pitskhelauri's accusations were meant to discredit these reports.¹²⁵ An investigation is underway, without concrete results so far.

Pressure on Civil Society

Smear Campaign against GYLA

Officials of the MIA and parliamentarians representing the ruling majority did their best to discredit GYLA's investigation into the death of demonstrator on May 26th – Nika Kvintradze discussed above. Echoing smear campaigns seen in previous years, the organization was charged with deliberately distorting facts surrounding the case. TV channels Rustavi 2 and Imedi, two outlets with a track record of biased reporting favoring the government, both aired the accusations against GYLA without questioning them.¹²⁶

¹²² Details on the complaint available at: <http://www.humanrights.ge/index.php?a=main&pid=13758&lang=eng>

¹²³ The town of Akhalgori remained under Georgian jurisdiction after most of South Ossetia broke away from the central government's control during the 1991–1992 South Ossetia War. It came under the control of South Ossetian secessionist authorities as a result of the 2008 South Ossetia War^[3] on August 17, 2008. Currently, Akhalgori as well as South Ossetia, are controlled by Russian forces and South Ossetian militia. Legitimate Government of Akhalgori resides in the neighboring village Tserovani under jurisdiction of Georgia; <http://en.wikipedia.org/wiki/Akhalgori>

¹²⁴ Program available at: <http://maestro.ge/?address=akredit5&id=3503&page=7>

¹²⁵ Articles described the problematic situation created in the disputed region and that Georgian government was prone to empty the town from Georgian population,

<http://humanrights.ge/index.php?a=main&pid=13535&lang=eng>

¹²⁶ <http://www.humanrights.ge/index.php?a=main&pid=13828&lang=eng>

Pressure on Lawyers

Georgian lawyers face increasing difficulties in their profession as shown in a report¹²⁷ issued by the International Observatory of Lawyers(IOL) following a visit to Georgia at the end of 2010. The IOL mission pointed to several factors that effectively put defendants' right to due process in danger, for instance lawyers who take on 'sensitive cases' are subjected to threats and sometimes even imprisonment. In addition, disagreements between lawyers and their clients on financial compensation often result in charges of fraud brought against the lawyer, in the case of Mariana Ivelashvili, described by IOL: "sentenced to 5 years and 9 months of imprisonment for having allegedly received 170 Euros from clients without having provided adequate services in return."¹²⁸ IOL expressed concern that the ease with which these charges can be brought coupled with resulting hefty prison terms could be used by the government to put pressure on lawyers.¹²⁹

Political Freedom

Detentions of Opposition Supporters

Public Assembly/Democratic Movement – Unified Georgia

In May of 2011, a series of detentions against activists of opposition groups Public Assembly and political party Democratic Movement – Unified Georgia took place.¹³⁰ The nature of the detentions, documented in a detailed report by the Georgian Young Lawyers Association (GYLA)¹³¹, raise suspicions that they were politically motivated and served the aim of intimidating the detainees and hinder their efforts to organize protest actions.

¹²⁷ Available at: <http://www.observatoire-avocats.org/wp-content/uploads/Version-anglaise1.pdf>

¹²⁸ <http://humanrights.ge/index.php?a=main&pid=12775&lang=eng>

¹²⁹ <http://www.observatoire-avocats.org/wp-content/uploads/Version-anglaise1.pdf> , p 22

¹³⁰ ibid

¹³¹ Georgian Young Lawyers Association (GYLA), Report 26 May;
http://gyla.ge/attachments/1166_angarishi%2026%20maisi%20ENG.pdf

On May 19, a supporter of Public Assembly, Emzar Akhvlediani was detained when he was posting fliers at a bus station in Tbilisi's Isani district.¹³² According to Emzar Akhvlediani, he had been involved in organizing rallies since early May, mostly distributing newspapers and booklets. At the police station, Emzar Akhvlediani was told that he had physically assaulted a police officer. Subsequently, he was sentenced to 30 days of administrative imprisonment.

On May 20, at Puri Square in Tbilisi, four supporters of Public Assembly – Misha Namicheishvili, Davit Arghvliani, Vladimer Shakhpazidi and Murtaz Kharziani – were simultaneously detained.¹³³ According to the detainees, they were transporting banners for the May 21 rally¹³⁴ to the party office.¹³⁵ The detainees were sentenced to 30 days of administrative imprisonment for resisting and disobeying police officers.¹³⁶ The minibus that was used for transporting the banners was taken by the police to a special holding lot.¹³⁷

Another Public Assembly supporter, Aliosha Orujov was detained outside his home in Karajala village on the morning of May 26. In the official report on the detention, the police officer stated that the detainee was swearing without addressing anyone in particular. The court based its judgment on the testimony of the policemen and sentenced Aliosha Orujov to 90 days of administrative imprisonment under Article 173 of the Code of Administrative Offences. The detainee himself states that he participated in organizing the May 21 rally, and planned to leave Telavi to attend the rally together with other activists.¹³⁸

The head of the central office of Democratic Movement – Unified Georgia, Gocha Tsiklauri was detained by patrol police at Bakhtrioni Str. on May 21¹³⁹. According to the protocol of

¹³² Georgian Young Lawyers Association (GYLA), Report 26 May, p. 14;
http://gyla.ge/attachments/1166_angarishi%2026%20maisi%20ENG.pdf

¹³³ *ibid*

¹³⁴ On May 21st Public Assembly simultaneously held protest rallies in Tbilisi and in other regions of Georgia

¹³⁵ Georgian Young Lawyers Association (GYLA), Report 26 May, p. 14;
http://gyla.ge/attachments/1166_angarishi%2026%20maisi%20ENG.pdf

¹³⁶ *ibid*

¹³⁷ *ibid*

¹³⁸ *ibid*

¹³⁹ *ibid*

detention, he verbally abused a patrol-inspector and maliciously disobeyed lawful order.¹⁴⁰ Gocha Tsiklauri was actively involved in organizational issues relating to the May 21 rally.¹⁴¹ On May 26-28, representatives of the Ombudsman's office carried out monitoring in the Georgian Ministry of Internal Affairs' (MIA) temporary detention facilities throughout the country. The monitoring team found 162 detainees who were serving sentences related to participation in the protests during the month of May.¹⁴²

Kintsvisi Case

At a press-conference held on March 14th, 2012, hosted by Human Rights Center, thirteen Georgian NGOs demanded the release of 24 prisoners who had been arrested as a result of the so-called Kintsvisi special operation in May of the previous year.

On the morning of May 26th of 2011, Ministry of Internal Affairs (MIA) officials detained a group of 24 people in the territory surrounding Kintsvisi Monastery in the village of Kintsvisi¹⁴³. According to MIA statements, the detainees – members of the opposition party National Religious Movement of Georgia – were preparing to overthrow the government and were thus arrested on charges of conspiracy to overthrow the constitutional order of Georgia. The special operation was widely covered by various TV channels and video footage aired showing weapons allegedly seized during the raid.¹⁴⁴

During the March 2012 press conference, the human rights NGOs wanted to raise awareness regarding subsequent developments in the Kintsvisi case. The official website of MIA contained information saying that on May 26th of 2011 its officials detained an armed group comprised of 24 members who offered resistance to the police during the detention operation.¹⁴⁵ Currently, this information is no longer available on the Ministry's website and the Prosecutor's Office

¹⁴⁰ Georgian Young Lawyers Association (GYLA), Report 26 May, p. 15;
http://gyla.ge/attachments/1166_angarishi%2026%20maisi%20ENG.pdf

¹⁴¹ *ibid*

¹⁴² <http://humanrights.ge/index.php?a=main&pid=13394&lang=eng>

¹⁴³ <http://www.youtube.com/watch?v=Fd6Geg0aWek>

¹⁴⁴ *ibid*

¹⁴⁵ <http://humanrights.ge/index.php?a=main&pid=14627&lang=eng>

entirely denies that a special operation took place in Kintsvisi, instead stating during the trial that the defendants were detained in Tbilisi.¹⁴⁶

Preliminary reports on the case said that the suspects had been detained together with a whole arsenal of guns.¹⁴⁷ However, according to the case materials presented at the trial, out of 24 detainees, only one, former policeman Mikheil Tsilikashvili actually had a gun.¹⁴⁸ As a security services representative, he had a legal right to keep a service firearm and no other gun was mentioned at the trial.¹⁴⁹

Some detainees also suffered severe bodily injuries at the hands of the arresting authorities, particularly Nikoloz Gogvadze whose injuries¹⁵⁰ were clearly visible in the so-called confession video disseminated by the MIA.¹⁵¹ According to human rights defenders, injuries and signs of possible torture were observed on other defendants as well. In the plea-bargain agreements that they entered, however, their testimonies explained their injuries as accidentally sustained in Kintsvisi, for example “by hitting the leg on [a] tree, the head on [a] car, [or by] falling”.¹⁵²

According to the MIA, the Kintsvisi group was led by former interior and security ministers of Georgia, Temur Khachishvili and Igor Giorgadze.¹⁵³ However, the case materials do not prove any links between the former governmental officials and the people detained in Kintsvisi.¹⁵⁴ Taken together, the circumstances surrounding the case raise suspicions that the aim was to discredit a politically active opposition group.

Georgian Party

According to the statement released by the Ministry of Internal Affairs (MIA) on June 23rd, group of men affiliated with opposition Georgian Party¹⁵⁵ were arrested and charged with the

¹⁴⁶ ibid

¹⁴⁷ <http://www.youtube.com/watch?v=Fd6Geg0aWek>

¹⁴⁸ <http://humanrights.ge/index.php?a=main&pid=14627&lang=eng>

¹⁴⁹ ibid

¹⁵⁰ ibid

¹⁵¹ See video: <http://www.youtube.com/watch?v=Fd6Geg0aWek>

¹⁵² <http://humanrights.ge/index.php?a=main&pid=14627&lang=eng>

¹⁵³ ibid

¹⁵⁴ <http://humanrights.ge/index.php?a=main&pid=14627&lang=eng>

¹⁵⁵ Georgian Party was founded in November of 2010 by ex Ombudsman Sozar Subari, exiled ex-defense Minister Irakli Okruashvili; Levan Gachechiladze, an opposition presidential candidate in 2008 elections and Erosi

offence of formation of illegal armed group.¹⁵⁶ According to the charge, the group was intending to provide military back-up to the return of ex-defense Minister Irakli Okruashvili (leader of Georgian Party who found political asylum in Paris) back to Georgia during the street protest rallies in late May.¹⁵⁷ According to the MIA, Irakli Okruashvili was going to enter Georgia through Tskhinvali where he would be met by armed allies and proceed to disarm police posts.¹⁵⁸ Among others, the following individuals were detained: Leri Beritashvili, member of Georgian Party; Besik Beritashvili, driver of an official Georgian Party car; Gocha Chikhladze, personal driver of Irakli Okruashvili; Gocha Licheli, former guard of Irakli Okruashvili; Bondo Kakashvili, former employee of the Defense Ministry; Zaza Betlemidze, former guard of former Governor of Shida Kartli; Khvicha Macharashvili, member of Georgian Party; Davit Jarmelishvili, former head of military police; Shalva Sabashvili, former employee of Defense Ministry; Levan Terashvili, regional coordinator of Georgian Party and former department head within the Defense Ministry; Kakha Terashvili, former official of the MIA and former employee of Defense Minister Giorgi Saatashvili.¹⁵⁹

The leadership of the Georgian Party claimed that guns and explosives confiscated from the detainees were planted in their houses by the law-enforcement¹⁶⁰.

Shota Iamanidze, leader of the youth branch of the Georgian Party was arrested in May of 2011 on the charge of illegal purchase, storage and usage of drugs. Former leader of the Georgian Party Levan Gachechiladze labeled the detention of Iamanidze as an attempt to discredit their political party.¹⁶¹

Kitsmarishvili, Georgia's ex-ambassador to Russia; <http://www.civil.ge/eng/article.php?id=22892>. In 2011, Sozar Subari and Levan Gachechiladze left the party.

¹⁵⁶ <http://www.civil.ge/eng/article.php?id=23658>

¹⁵⁷ *ibid*

¹⁵⁸ <http://humanrightsge.org/index.php?a=text&pid=13563&lang=eng>

¹⁵⁹ *ibid*, see also <http://humanrights.ge/index.php?a=main&pid=13633&lang=eng>

¹⁶⁰ <http://humanrights.ge/index.php?a=main&pid=13633&lang=eng>

¹⁶¹ <http://www.humanrights.ge/index.php?a=main&pid=13355&lang=eng>

Bidzina Ivanishvili – New Political Opponent

Loss of Citizenship

Georgian philanthropist and businessman Bidzina Ivanishvili, ranked 153rd on Forbes magazine's annual list of the world's wealthiest people with an estimated worth of USD 6.4 billion¹⁶² expressed aspirations to form a political party for the 2012 parliamentary elections in October of 2011.¹⁶³ Two days after this announcement, Ivanishvili was stripped of his Georgian citizenship.¹⁶⁴

Ivanishvili was born and raised in the village of Chorvila in the Sachkhere region of Georgia. After the collapse of the Soviet Union, Bidzina Ivanishvili became a citizen of the Russian Federation where he had been living for some time.¹⁶⁵ Due to this fact, as of April 1993, he was no longer considered a Georgian citizen, as stipulated by Article 3 of the Organic Law on Georgian Citizenship of 1993.¹⁶⁶ In 2004, Bidzina Ivanishvili and his wife Ekaterine Khvedelidze (who at that time had French citizenship too), both citizens of the Russian Federation, were granted Georgian Citizenship by Georgian Presidential decree (#284, 22.07.2004) issued pursuant to Article 12, paragraph 2, of the Constitution of Georgia - for special merits to the country.¹⁶⁷ After having been granted Georgian citizenship, Bidzina Ivanishvili also obtained French citizenship. Thus, he became, concurrently, a citizen of the Russian Federation, Georgia and France.¹⁶⁸ Bidzina Ivanishvili's and Ekaterine Khvedelidze's citizenships were revoked by Presidential decree on October 11th of 2011.¹⁶⁹ On the same day, The Civil Registry Agency at the Georgian Ministry of Justice announced that the move was carried out based on Article 32 of the law on Georgian citizenship, according to which obtaining citizenship of another state by a Georgian citizen results in the loss of Georgian citizenship.¹⁷⁰ The decision was clearly unlawful

¹⁶² <http://www.civil.ge/eng/article.php?id=24529>

¹⁶³ <http://humanrights.ge/index.php?a=main&pid=13946&lang=eng>,

¹⁶⁴ <http://civil.ge/eng/article.php?id=24298>

¹⁶⁵ <http://dfwatch.net/legal-review-of-the-case-of-bidzina-ivanishvili-and-ekaterine-khvedelidze-56712>

¹⁶⁶ *ibid*

¹⁶⁷ *ibid*, see also: <http://www.civil.ge/eng/article.php?id=24316>

¹⁶⁸ *ibid*

¹⁶⁹ <http://civil.ge/eng/article.php?id=24298>

¹⁷⁰ <http://civil.ge/eng/article.php?id=24298>

in the case of Ekaterine Khvedelidze who already had Russian and French citizenship when she was granted Georgian citizenship in 2004. The court later ruled in favor of Ekaterine Khvedelidze, calling the part of the President's decree revoking her citizenship illegal.¹⁷¹ However, with regard to Bidzina Ivanishvili's citizenship, the Tbilisi City Court upheld the presidential order and referred to Article 32 of the Organic Law on Georgian Citizenship as legal ground for its decision.¹⁷²

According to constitutional law expert Vakhtang Khmaladze, Article 32 of the law on Georgian citizenship, which says that obtaining a citizenship of another state by a Georgian citizen results in the loss of Georgian citizenship, could not have been grounds for stripping Ivanishvili of his citizenship. Since Ivanishvili was granted citizenship by an exceptional rule of the Constitution that allows a person to hold dual citizenship for particular merits to the country or due to the government's interests, Khmaladze contended that "this right does not depend on which or how many countries' citizen this person may be. The Constitution does not say anything like that after having being granted the Georgian citizenship this person may be prohibited from obtaining another country's (or countries') citizenship."¹⁷³

Misha Sharashidze, lawyer of Human Rights Center states that this exceptional rule deliberately compromises the principle of unconditional loyalty to one country.¹⁷⁴ Thus, Article 32 of the Law on Georgian Citizenship could not be used in this case. It should be noted that this legal case was unprecedented in Georgian judiciary.

Non-Georgian citizens are banned by law from establishing or financing political parties. Fears were thus raised that stripping Ivanishvili and his wife of Georgian citizenship was a politically-motivated decision aimed at excluding opponents from the political process.

¹⁷¹ <http://www.civil.ge/eng/article.php?id=24309>

¹⁷² Ibid, see also; <http://www.humanrights.ge/index.php?a=main&pid=14282&lang=eng>

¹⁷³ <http://dfwatch.net/legal-review-of-the-case-of-bidzina-ivanishvili-and-ekaterine-khvedelidze-56712>

¹⁷⁴ <http://humanrights.ge/index.php?a=main&pid=14297&lang=eng>

Raid on Cartu Bank

Two million USD and one million EUR in cash was seized in a October 18 police raid on an armored van belonging to Bidzina Ivanishvili's Tbilisi-based Cartu Bank – less than two weeks after the billionaire announced his plans to form a political party and run for parliament.¹⁷⁵ The cash transit van was on its way from Bank of Georgia's office from where the cash had been withdrawn to Cartu Bank when it was stopped by the police.¹⁷⁶

Law enforcement agencies stated that the seizure was made in connection with a money laundering probe.¹⁷⁷ They called the Cartu Bank cash transfer "suspicious" and said it was carried out in violation of standard procedures.¹⁷⁸ These allegations were denied by Cartu Bank, who condemned the seizure of cash as politically motivated and considered it retaliation against a political opponent.¹⁷⁹

On January 10th of 2012, the confiscated money was returned to the bank. In conjunction with the return of funds, the chief prosecutor's office released a brief written statement saying that the cash had been confiscated under article 194 of the Criminal Code [legalization of illicit income] and that "investigation into the case continues," without adding further details.¹⁸⁰

Cartu Group Properties Facing Problems

Cartu Group is a holding company uniting Bidzina Ivanishvili's Georgia-based companies and charitable organizations. On October 28, Ivanishvili's press center reported that the Supervision Service of Tbilisi City Hall would not allow Cartu Group to continue work on the King Rostom's Palace building at King Erekle's Square in Old Tbilisi. A Cartu Group lawyer clarified that New Capital, a company within the Cartu Group, purchased the building in 2009 and finished the reconstruction activities for a multifunctional business-center late in August of 2011. On September 1, 2011 the company requested City Hall to inspect the reconstruction work before

¹⁷⁵ <http://civil.ge/eng/article.php?id=24348>

¹⁷⁶ *ibid*

¹⁷⁷ *ibid*

¹⁷⁸ <http://www.civil.ge/eng/article.php?id=24059>

¹⁷⁹ <http://civil.ge/eng/article.php?id=24348>

¹⁸⁰ *ibid*

opening the building. According to the law, representatives of the Supervision Department of City Hall were to inspect the building before October 13 but did not arrive until October 26 and, when they did, ordered the work to be stopped. According to the Supervision Department, it suspended the construction activities in the business-center because of incorrectly implemented construction works.¹⁸¹

Cartu Group also faced problems with regards to King Erekle's Square itself, a 3,000 square meter property owned by the company. In 2010, New Capital signed a 59 year lease with the state, intending to construct an underground parking area on the site. Preliminary permission for the construction was issued by Tbilisi City Hall. The construction of the tunnel finished on May 26, 2010.¹⁸² On October 26, 2011, New Capital received an email stating that the agreement between Tbilisi City Hall and New Capital had been annulled.¹⁸³ Consequently, Tbilisi City Hall requested the company to leave the property.¹⁸⁴

Persecution of Ivanishvili's Supporters and Their Relatives

On October 11, the former head of Kakheti Regional Police Department Tamaz Tamazashvili – father-in-law of Irakli Garibashvili, director of Bidzina Ivanishvili's foundation - was detained in Tbilisi and his house searched by police.¹⁸⁵ Subsequent charges on illegal keeping of firearm were disputed by Tamazashvili's lawyer who claimed that the police had planted a gun on the scene.¹⁸⁶

Irakli Gharibashvili's father, Tariel Gharibashvili, Governor's representative in Tsiteltskaro village was later dismissed from his job.¹⁸⁷ The Governor of Dedoplistskaro municipality, Nikoloz

¹⁸¹ <http://humanrights.ge/index.php?a=main&pid=14235&lang=eng>

¹⁸² <http://www.humanrights.ge/index.php?a=text&pid=14028&lang=eng>

¹⁸³ <http://humanrights.ge/index.php?a=main&pid=14235&lang=eng>

¹⁸⁴ ibid

¹⁸⁵ <http://humanrights.ge/index.php?a=main&pid=13969&lang=eng>

¹⁸⁶ ibid

¹⁸⁷ <http://humanrights.ge/index.php?a=main&pid=14235&lang=eng>

Shanshiashvili confirmed Taniel Gharibashvili's dismissal and attributed it to a resignation letter personally filed by Gharibashvili.¹⁸⁸

On October 22, Valeri Levin, Bidzina Ivanishvili's Moscow office representative was detained at the Tbilisi International Airport. Levin was released late at night after several hours of interrogation. The Ministry of Internal Affairs (MIA) released a statement saying that Levin had carried "strange minerals and printed materials" with "occult purpose and ... used for prophecy".¹⁸⁹ The statement went on to say that the minerals had been tested, deemed safe and accordingly the goods had been returned to Ivanishvili.¹⁹⁰ Reports later showed that Levin had brought the magazine "Stone Energy" for Ivanishvili's 14-year-old daughter Gvantsa who likes collecting mineral stones. The magazine is sold together with color crystals which law enforcement officers confiscated from Levin.¹⁹¹

On October 24, a member of the Akhmeta municipal board and member of the Georgian Republican Party, Zakaria Kinkladze was requested to vacate a commercial space he had rented for his stationery business.¹⁹² The following day, Kinkladze's son Levan was dismissed from his job with the Kakheti regional Social Agency. Zakaria Kinkladze, a member of the Georgian Republican Party¹⁹³ had published an address and formed a group in support of Bidzina Ivanishvili in Akhmeta municipality.¹⁹⁴

In December of 2011 Georgian news agency Pirveli reported that the head of the police department and several police officers were dismissed from their jobs in Ivanishvili's native Sachkhere region.¹⁹⁵ Locals told Pirveli that the police chief, Bakhturidze was fired due to his being considered a "protégé" of Ivanishvili. The police officers in turn allegedly refused to carry out "activities against Ivanishvili" and were thus also fired.¹⁹⁶ Later the same day, the director

¹⁸⁸ *ibid*

¹⁸⁹ <http://humanrights.ge/index.php?a=main&pid=14004&lang=eng>

¹⁹⁰ <http://humanrights.ge/index.php?a=main&pid=14004&lang=eng>

¹⁹¹ <http://humanrights.ge/index.php?a=main&pid=14002&lang=eng>

¹⁹² <http://humanrights.ge/index.php?a=main&pid=14235&lang=eng>

¹⁹³ The Republican Party is an opposition political party which became a member of the oppositional public movement Georgian Dream led by Bidzina Ivanishvili.

¹⁹⁴ <http://ick.ge/ka/rubrics/politics/8483-2011-10-24-08-14-40.html>

¹⁹⁵ <http://humanrights.ge/index.php?a=main&pid=14192&lang=eng>

¹⁹⁶ *ibid*

of the public school in Ivanishvili's native village Chorvila, Nukri Gogatishvili was also fired.¹⁹⁷ Allegedly, Gogatishvili had made a toast to Ivanishvili at a party that resulted in his dismissal.¹⁹⁸

Chamber of Control Imposes Fines on Georgian Dream

In early 2012, Bidzina Ivanishvili's public movement Georgian Dream suffered further setbacks when the Chamber of Control accused it of trying to evade new restrictions on funding of political parties. In February, according to the state audit agency, Cartu Group subsidiary Cartu Mshenebeli had given a 40,000 GEL bonus to one of its employees who proceeded to donate half of that amount to the Georgian Dream movement. While not a registered political party, the audit agency considered Georgian Dream's "declared political goals" enough to put it under the jurisdiction of the new party financing law¹⁹⁹ and imposed fines of 200,000 GEL against each of the three parties involved in the transaction.²⁰⁰

March saw further crackdowns with employee bonuses within Ivanishvili's Cartu Group being seized by authorities on similar grounds. Cartu Bank was fined 822,040 GEL when two employees purportedly admitted to having received bonuses (44,400 GEL and 37,804 GEL respectively) intended for redistribution to the Georgian Dream movement.²⁰¹ The case of Cartu Group affiliated construction firm Elita Burji, brought an additional 1.5 million USD fine against Ivanishvili's campaign for donating 150,000 USD worth of promotional t-shirts to the Georgian Dream. By mid March, the fines levied against Ivanishvili and his associates amounted to an estimated 3.9 million GEL.²⁰² In addition to this, On March 20th, Bidzina Ivanishvili was fined with another GEL 2.72 million for the transfer of GEL 272,597 to his public movement.²⁰³

¹⁹⁷ <http://humanrights.ge/index.php?a=main&pid=14194&lang=eng>

¹⁹⁸ *ibid*

¹⁹⁹ Article 26 and 26¹ of Law on Political Unions of Citizens;

http://esshengekheba.ge/contentimage/kanonebi/____.pdf

²⁰⁰ <http://www.civil.ge/eng/article.php?id=24490>

²⁰¹ <http://www.civil.ge/eng/article.php?id=24545>

²⁰² <http://www.civil.ge/eng/article.php?id=24560>

²⁰³ <http://www.civil.ge/eng/article.php?id=24572>

Mass Summoning of Opposition Activists and Supporters

Under the Law on Political Unions of Citizens, the Chamber of Control of Georgia is authorized to “request information about the origin of transferred and received property” from “persons with declared political and electoral goals and objectives”, or persons related to them.²⁰⁴ Following the mandate from these new party financing regulations, the Financial Monitoring Service of the Chamber of Control staged what amounted to mass interrogations on March 12, 13, and 14, 2012. Throughout Georgia, in Lanchkhuti, Chokhatauri, Ozurgeti, Batumi, Khelvachauri, Kobuleti, Poti, Zugdidi, Kutaisi, Zestaponi, Gori, Kareli, Kaspi, Gurjaani, Sagarejo, and Signaghi, over 150 individuals were interrogated.²⁰⁵ The Chamber of Control stated that the proceedings were part of an ongoing investigation into the financial report submitted by Bidzina Ivanishvili's Georgian Dream coalition for the period of January through February of 2012.

Human rights organizations expressed concern about the nature of interrogations as well as the manner in which they were carried out. Instances of aggressive and intimidating behavior from interrogators, including denial of the right to legal representation raised alarm among human rights groups.

In Poti City Hall, Tamar Zhvania was searched before being questioned for 90 minutes. The questions related to Zhvania's political activities, distributing newspapers and collecting signatures for a petition to restore Ivanishvili's citizenship. According to Zhvania, the interrogators asked how many signatures she had collected, how much she had been paid for her work, and if she had forced anyone to sign the petition. She said the interrogation lasted 90 minutes and she was strictly searched before it started.²⁰⁶

In Lanchkhuti, Lili Ebralidze, a member of the Republican Party, was summoned on the morning of March 12. Her interrogation lasted for five hours and questions again revolved around monetary compensation for collecting signatures and distributing newspapers with Georgian Dream's messages. After denying having been paid and instead presenting her party

²⁰⁴ Paragraph G of Articles 34¹ of Law on Political Unions of Citizens;
http://esshengekheba.ge/contentimage/kanonebi/____.pdf

²⁰⁵ <http://liberali.ge/statia/zurab-vardiashvili/es-she>

²⁰⁶ <http://humanrights.ge/index.php?a=main&pid=14600&lang=eng>

membership and support of the coalition's plans for Georgia as incentive enough, Ebralidze recalled the interrogator's reaction: "he told me he had already arrested two persons and I could share their fate too."²⁰⁷

Mubariz Mamedov, a member of the Republican Party and Georgian citizen with ethnic Azeri origin, was questioned for three hours on March 12 at the Sagarejo Municipality building. In the presence of several police officers, Mamedov was made to take off his clothes during a search prior to his questioning. In the interrogation, Mamedov denied having received any form of payment for his political work. To Kakheti Information Center, Mamedov described what happened next: "[The interrogator] asked me to sign some paper. I said no. He threatened me that I would go to prison ... Then a young boy came in [another official of the Chamber of Control] and said that if new President came I would be kicked out of the country because I am Tatar. I told him not to say nonsense, that I am not Tatar and that I am citizen of Georgia ... Then I was given another protocol. They made it themselves. They asked me to sign it and that I was going to be transferred to Office of Prosecutor."²⁰⁸

Amnesty International also reported on the Georgian Chamber of Control's procedures, saying that their nature "suggests that the operation is politically motivated and aimed at intimidating current and potential opposition party sympathizers."²⁰⁹ The organization called on Georgian authorities to ensure practices in accordance with Georgian law and the respect of human rights.²¹⁰

Penitentiary System

Problems plaguing the Georgian penitentiary system continued to be neglected in 2011. Ill, inhuman and degrading treatment, lack of access to qualified medical service, negligence in cases of prisoners with serious health problems, and overcrowding remain characteristic features of Georgian penitentiaries. Access to penal facilities continues to be restricted for

²⁰⁷ <http://humanrights.ge/index.php?a=main&pid=14591&lang=eng>

²⁰⁸ <http://humanrights.ge/index.php?a=main&pid=14614&lang=eng>

²⁰⁹ <http://amnesty.org/en/library/asset/EUR56/001/2012/en/be86a86b-c775-44e4-afb7-c3a238b7a99e/eur560012012en.html>

²¹⁰ Ibid

domestic non-governmental organizations, the Ombudsman's Office still being the only entity authorized to conduct monitoring.²¹¹

Overcrowding, Ill, Inhuman and Degrading Treatment

As of December 31st, 2011, Georgia ranked at an alarming first place among European countries in prison population per 100,000 people, and fourth among 216 countries with total of 24.000 prisoners.²¹² The Increase in the number of people on probation raises further cause for concern. In February of 2012, 32 750 people were under conditional sentence, while this number increased to 33 985 in March.²¹³

Overcrowding remains a problem in several prisons, with two square meters of space allocated to each prisoner. This represents half of the minimum space per prisoner recommended by the European Committee for the Prevention of Torture.²¹⁴

In December of 2011, the Ombudsman of Georgia presented the results of monitoring conducted in the first half of 2011 in a report describing the situation of prisoners in Georgian penitentiaries and temporary detention facilities. The report relied on findings gathered over approximately 400 visits to detention facilities by the representatives of the Department of Prevention and Monitoring at the Ombudsman's Office.²¹⁵

The report shows numerous cases of ill-treatment in Georgian penitentiary facilities. Prisoners endure systematic beatings and physical assault as well as threats, and incidents are found throughout the system. Punishment is meted out by prison officials in response to legitimate requests from inmates. One example cited in the report chronicles a prisoner asking for medical attention being beaten, stripped of his clothes and subsequently sprayed with cold water. In

²¹¹ p 32, Restricted Rights, Annual Human Rights Report for 2010, available at:

<http://caucasusnetwork.org/admin/editor/uploads/files/reports/RESTRICTED%20RIGHTS%20-%20HRIDC%202011.pdf>

²¹² http://www.prisonstudies.org/info/worldbrief/wp_b_stats.php?area=all&category=wb_poprate ; see also;

http://www.prisonstudies.org/info/worldbrief/wp_b_country.php?country=122

²¹³ http://www.tribuna.ge/index.php?option=com_content&task=view&id=2549&Itemid=102

²¹⁴ <http://humanrights.ge/index.php?a=main&pid=14236&lang=eng>

²¹⁵ Report available at: <http://www.ombudsman.ge/files/downloads/ge/pjcleymmvenuflpcifq.pdf>

follow-up interviews, there were instances of prisoners retracting statements previously made to the monitors, possibly indicating fear of reprisals.²¹⁶

In August of 2011 prisoner Mamuka Zerekidze died in his cell in Rustavi prison department. Prison officials stated he died due to electrocution.²¹⁷ Mamuka Zerekidze was the father of juvenile convict Giorgi Zerekidze whose case was appealed to European Court of Human Rights (ECHR). After the appeal, Mamuka Zerekidze was arrested on the charge of drug trafficking and was sentenced life to prison. The Official version of his death raised some questions as the deceased had apparent injuries on his face and neck.²¹⁸

In August of 2011, the lawyer of prisoner Malkhaz Arkania addressed executive director of Human Rights Center Ucha Nanuashvili with the request to examine alleged fact of torture used against his client.²¹⁹ The lawyer submitted a letter from Malkhaz Arkania wherein the prisoner described torture methods used against him in order to force a confession out of him. Arkania's letter states that investigating officers forced him to write a confession and, when they did not like it, made him eat it. Arkania also relates how he was made to watch the rape of an unidentified prisoner by a masked man and threatened that he would be treated the same if he did not confess to the crime. According to his lawyer, Malkhaz Arkania tried to commit suicide several times while in prison and has signs of cutting on his left wrist and a wound in the chest area inflicted by a pen. Human Rights Center addressed the Office of the Prosecutor to investigate the case.²²⁰

Lack of Medical Help

Despite some positive changes, prisoners still lack access to qualified medical services. This is considered a key reason for the increase in the mortality rate among prisoners as recorded by human rights defenders. Overall, 140 prisoners died in Georgia during the year of 2011

²¹⁶ <http://humanrights.ge/index.php?a=main&pid=14236&lang=eng>

²¹⁷ <http://humanrights.ge/index.php?a=main&pid=13777&lang=eng>

²¹⁸ *ibid*

²¹⁹ <http://humanrights.ge/index.php?a=main&pid=13782&lang=eng>

²²⁰ *ibid*

according to National Service of Statistics.²²¹ While 56 prisoners died in custody during the first half of 2010, the number increased to 77 in the first half of 2011.²²² Tuberculosis accounted for half of the deaths and in many cases the illness was only found out after the death of the prisoner. The Ombudsman rightly called into question the authorities' interest in coming to terms with the problems seen in the prison system, pointing to recommendations made in 2010 and the lack of improvement seen in 2011.²²³

In March of 2012, Human Rights Center reported on the continued negligence on part of Georgian authorities in cases where prisoners suffering from fatal diseases died behind bars.²²⁴ By law, the Joint Commission of the Ministry of Corrections and Legal Aid and the Ministry of Labor, Healthcare and Social Welfare is responsible for examining cases of prisoners with fatal diseases and rule on their release if they meet established criteria. Order N72/M of the Ministry of Labor, Healthcare and Social Welfare lists those severe and incurable diseases which give grounds for release.²²⁵

According to paragraph one of Article 13 of this order, C3 category of AIDS, which prisoner Gocha Archaia suffered from²²⁶ belongs to the list of these diseases. Archaia's lawyer, Nino Andriashvili, notified the Joint Permanent Commission in September of 2011 and submitted the relevant medical documents proving Archaia's critical health state. Six months on, however, the Commission had still not made any decision. On the 22nd of February, 2012, Archaia died in his cell. Nino Andriashvili had been calling the Commission inquiring about Archaia's case but never received any concrete answers on the matter.²²⁷

Eka Kobesashvili, another of Human Rights Center's lawyers, defends the interests of prisoner Temur Akhmedov. According to Kobesashvili, Akhmedov suffers from a severe form of tuberculosis which, following the regulations stipulated by the N72/M Order, represents

²²¹ http://tribuna.ge/index.php?option=com_content&task=view&id=8014

²²² <http://humanrights.ge/index.php?a=main&pid=14236&lang=eng>

²²³ *ibid*

²²⁴ <http://humanrights.ge/index.php?a=main&pid=14561&lang=eng>

²²⁵ N72/M Order available at: <http://medportal.ge/mohsrv/lawfiles/1125.pdf>

²²⁶ <http://humanrights.ge/index.php?a=main&pid=14561&lang=eng>, see also: <http://netgazeti.ge/GE/95/law/8588/.htm>

²²⁷ *ibid*

grounds for his release.²²⁸ Akhmedov is unable to walk independently, hardly talks and breathes through a catheter. Kobesashvili addressed the Joint Permanent Commission in August of 2011 and has since inquired about it on numerous occasions, but no decision has yet been made.²²⁹

Suspicious Death of Soso Kimeridze

The circumstances surrounding the death of Solomon Kimeridze after being held by the police gave rise to further cause for concern regarding the treatment of people in detention. The police claim that Kimeridze, from central Georgia's Khashuri district, was brought into a police station on February 27, 2012, for questioning related to a robbery. Statements made by the police on what happened next explain Kimeridze's injuries sustained while in custody as accidental. Allegedly, Kimeridze fell over the railing into the foyer when walking downstairs from the police station's third floor, and died in the hospital.²³⁰

Human rights groups, however, questioned the credibility of the official explanation. Subsequent pictures released of Kimeridze's body raised further suspicions of foul play and possible torture.²³¹ The head of the Khashuri district police was later dismissed from his position²³² and several organizations requested a full and impartial investigation into Kimeridze's death.²³³

Judicial System

Alarming Conviction Rate and Ungrounded Decisions

Despite implemented reforms and several successful projects, the Georgian judicial system is still marred by problems. Notably, according to a report from the Parliamentary Assembly of Council of Europe (PACE), the conviction rate in Georgia has seen an increase from 99.8% to

²²⁸ Article 1 of N72/M Order; <http://medportal.ge/mohsrv/lawfiles/1125.pdf>

²²⁹ <http://humanrights.ge/index.php?a=main&pid=14561&lang=eng>

²³⁰ <http://www.civil.ge/eng/article.php?id=24503>

²³¹ See photos: <http://www.tspress.ge/ka/site/articles/11212>

²³² <http://www.humanrights.ge/index.php?a=main&pid=14560&lang=eng>

²³³ <http://www.humanrights.ge/index.php?a=main&pid=14584&lang=eng>

99.9% or, as the report puts it: “a person charged by the prosecution is practically certain to be convicted.”²³⁴ PACE further expressed concern that the high conviction rates might cause defendants, doubting the fairness of the justice system, to seek out plea bargain agreements; indeed, plea bargains make up an estimated 90% of cases.²³⁵

The Ombudsman of Georgia, Giorgi Tughushi, also expressed concern over the problems remaining in the Georgian judicial system during 2011. Findings from court monitoring revealed ungrounded court decisions and a lack of procedural equality between the prosecution and the defense, in addition to violations committed by judges. Complaints were filed against eleven judges and the High Council of Justice launched an investigation into the matter. Out of the eleven cases, ten were dismissed while in the last case one judge was reproached but let off without a warning.²³⁶

The head of the Georgian Young Lawyers Association (GYLA), Tamar Chugoshvili, also referred to ungrounded court decisions, in an interview with Netgazeti, stating that violations of the right to a fair trial still remain a worrying trend in 2011. Chugoshvili also mentioned the problems surrounding administrative imprisonment – that the right to defense is not ensured and that courts make decisions mostly based on policemen’s testimonies.²³⁷

Administrative Detentions

According to the Code of Administrative Offences of Georgia, a person can be imprisoned for up to 90 days for certain administrative offenses or misdemeanors. During 2011, Human Rights Watch conducted research into Georgia’s practice of administrative detentions issuing its conclusions in a report on January 4th of 2012.²³⁸

²³⁴ p 4, Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe, Honouring of obligations and commitments by Georgia, issued on January 26, 2012; report available at:

http://assembly.coe.int/CommitteeDocs/2012/amondoc24rev3_2011.pdf

²³⁵ *ibid*

²³⁶ <http://humanrights.ge/index.php?a=main&pid=14135&lang=eng>

²³⁷ <http://netgazeti.ge/GE/83/News/7369/.htm?tpl=2142>

²³⁸ <http://www.hrw.org/reports/2012/01/04/administrative-error-0>

The report is based on interviews with administrative detainees and their lawyers, people fined by the courts for administrative violations and senior government officials.²³⁹ Almost all of the interviewed individuals who had been charged with administrative violations had been detained in relation to opposition political protests, according to the report.²⁴⁰

According to findings of Human Rights Watch, Georgia's Code of Administrative Offences does not set requirements for police to inform defendants of their rights promptly or to provide reasons for their detention;²⁴¹ as the report states: "Detainees often are not allowed to contact their families. Lawyers have difficulty finding detainees in custody. Trials are often perfunctory. Detainees often serve their sentences in facilities that were not intended for stays longer than 72 hours and where conditions do not meet international standards."²⁴²

Draft Amendment to Law on Disciplinary Responsibility and Disciplinary Prosecution of Judges of Common Courts of Georgia

Human rights defenders raised concern over the new draft amendment to the Law on Disciplinary Responsibility and Disciplinary Prosecution of Judges of Common Courts of Georgia, presented in early 2012. The draft law removes certain terminology that specifies the violations that warrant administrative proceedings against judges. In effect, this means that judges committing a 'gross violation of law' or a 'violation of official duty', terminology removed by the proposed amendment, would enjoy impunity.²⁴³

Ruling on Girgvliani Murder Case in the ECHR

Five years after the murder of Sandro Girgvliani, the European Court of Human Rights delivered a ruling on the case in April, 2011. Criticizing the investigation, the Court said it was "struck by how the different branches of State power... acted in concert in preventing justice from being

²³⁹ <http://www.hrw.org/news/2012/01/04/georgia-flawed-misdemeanor-system>

²⁴⁰ *ibid*

²⁴¹ <http://www.hrw.org/reports/2012/01/04/administrative-error-0>

²⁴² *ibid*

²⁴³ <http://humanrights.ge/index.php?a=main&pid=14455&lang=eng>

done in this gruesome homicide case,²⁴⁴ ordering 50,000 EUR in non-pecuniary damages to be paid to the Girgviliani family by the Georgian government.²⁴⁵

Pressure on ECHR Applicants

Following developments in previous years, reports on pressure being put on prisoners to force them to withdraw their ECHR complaints have persisted in 2011 as well. Prisoner Giorgi Okropiridze addressed the Ombudsman and spoke about threats and physical assault carried out against him in a prison medical department with demands that he withdraw his complaint from the ECHR.²⁴⁶ Similarly, lawyer Mamuka Nozadze reported on torture being used against his clients to force them to withdraw their ECHR complaints as well.²⁴⁷

IDPs

The Georgian Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees (commonly MRA) adopted new Standard Operating Procedures (SOPs) on evictions in October of 2010 and the year drew to a close with a moratorium on evictions. Those hoping that this would bring increased professionalism and international standards to the eviction process in 2011 were soon disappointed. After heavy protests, a scheduled December 2010 eviction operation in Tbilisi was postponed until January. The MRA followed SOPs, informing the residents ten days in advance of the initial date for the planned eviction and provided information on available options. However, after the December date had been moved, the MRA failed to give another ten days notice before the new January date. Instead, police officers arrived on January 19, informing the residents that the re-scheduled operation would start the following morning, leaving IDPs without ample time to find

²⁴⁴ Paragraph 276 of the judgment; http://www.univie.ac.at/bimtor/dateien/ECHR_2011_girgviliani_vs_georgia.pdf

²⁴⁵ <http://www.civil.ge/eng/article.php?id=23376>

²⁴⁶ <http://humanrights.ge/index.php?a=main&pid=14450&lang=eng>

²⁴⁷ <http://liberali.ge/patimrebs-strasburgidan-sarcheli>

sustainable alternatives. In some cases, notification was given only on the morning of the actual eviction.²⁴⁸

Human Rights Center expressed its concern with the timing of the evictions and proceeded to monitor the operation but was not granted full access. In Tbilisi suburb Bagebi for example, monitors from several organizations were barred from accessing the housing facilities, which led to a quarrel breaking out and the arrest of some ten people.²⁴⁹ Reports from Amnesty International revealed, in addition to the neglect in the notification process and inadequate access for monitors of the proceedings, IDP families left without compensation before eviction. Concerns were also raised regarding the condition and location of living spaces provided as compensation for the evicted IDPs. In total, the January round of evictions encompassed twenty-two buildings with around 600 families of IDPs from both the 2008 war and conflicts in the 1990s.²⁵⁰

Another round of evictions, in July, saw some improvements. Civil society representatives reported that the notification procedures were largely complied with. It was still unclear, however, if the authorities had adequately addressed the problems facing IDPs whose alternative housing option moved them far away from their established lives.²⁵¹

Situation after the Georgian-Russian Conflict of August 2008

Four years after the August 2008 war with Russia, Georgian investigations into crimes committed during the conflict leave things to be desired. Given that the crimes on both sides of the 2008 war, as documented in the Georgian context by Human Rights Center²⁵² among others, in some cases amount to war crimes and crimes against humanity, the International Criminal Court (ICC) monitors both the Georgian and Russian investigations. Should the local

²⁴⁸ <http://humanrights.ge/index.php?a=main&pid=12871&lang=eng>

²⁴⁹ <http://humanrights.ge/index.php?a=main&pid=12863&lang=eng>

²⁵⁰ <http://humanrights.ge/index.php?a=main&pid=12871&lang=eng>

²⁵¹ See, for instance: <http://transparency.ge/en/blog/idp-evictions-continued> and <http://www.civil.ge/eng/article.php?id=23763>

²⁵² See, for example,

http://www.nhc.no/no/land_og_regioner/europa/georgia/Documentation+of+warcrimes+handed+over+to+the+ICC+Prosecutor+in+The+Hague.9UFRHOOb.ips

inquiries fail to satisfy the Court, it may launch an investigation of its own. In light of this, in 2010, the Norwegian Helsinki Committee²⁵³ (NHC) in cooperation with Human Rights Center, the Georgian Young Lawyers Association (GYLA) and Article 42 of the Constitution set out to follow up on a previous NHC fact-finding mission carried out in the wake of the war to evaluate the Georgian investigation efforts thus far. The research findings were presented to the Office of the Prosecutor of the ICC in The Hague in May 2011 as a report entitled *Unable or unwilling? Georgia's faulty investigation of crimes committed during and after the Russo-Georgian war of August 2008*.²⁵⁴

As alluded to in the title of the report, despite official claims to the contrary, it is not clear that investigations live up to the standards of the Rome Statute. The Georgian government did not respond to requests for information and, accordingly, the research mission relied on the results of interviews with victims and witnesses, European Court of Human Rights (ECHR) applicants, and site visits carried out by the four organizations. The report concludes that "information provided by the survey of the ECHR applicants and site visits indicated an absence of comprehensive investigative efforts by Georgian authorities; demonstrating that Georgian authorities are partly unable and partly unwilling to conduct an effective investigation into international crimes allegedly committed during and after the August 2008 war."²⁵⁵

A follow-up report, *Impunity Syndrome in the Caucasus*, was published by NHC in cooperation with aforementioned Georgian NGOs in December of 2011.²⁵⁶ The new report investigated the latest developments in the conflict and reiterated that both Russian and Georgian investigations in relation to the August 2008 war have proven ineffective.²⁵⁷

²⁵³ The Norwegian Helsinki Committee is a non-governmental (NGO), non-profit organisation which monitors compliance with the human rights provisions of the Organisation for Security and Cooperation in Europe (OSCE) within all OSCE signatory states and supports initiatives to strengthen democracy and civil society, see official website: <http://www.nhc.no>

²⁵⁴ Report available at: http://www.humanrights.ge/admin/editor/uploads/pdf/Report_2_11_web.pdf

²⁵⁵ *Ibid*, p. 22

²⁵⁶ http://nhc.no/filestore/Publikasjoner/Rapporter/2011/Report_3_11_web.pdf

²⁵⁷ <http://nhc.no/no/nyheter/The+Impunity+Syndrome+in+the+Caucasus.9UFRDUWE.ips>