



CONFERENCE  
**100 DAYS IN POWER:  
RULE OF LAW AND HUMAN RIGHTS**

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## PART I: THE NEW GOVERNMENT CHALLENGES IN THE TRANSITION PERIOD

### **Transitional and Restorative Justice**

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Speaker: Kakha Kozhoridze, *Georgian Young Lawyers' Association*

There are many aspects of the administration of transitional and restorative justice that can be discussed. Here, we would like to focus on some of the most important ones:

#### *Release of citizens arrested during the pre-election period*

In late September 2012, dozens of people – representatives of the then-opposition party or civil activists - were subject to administrative arrest. In cases examined by GYLA, the arrests were allegedly made on political grounds.

In the first week of October, after an appeal by the prosecutor, the court reduced the term of administrative arrest to the time already served, and consequently the detainees were released from prison. By acting this way, the prosecution and the court implicitly acknowledged the political motivations behind these arrests, which was a first step towards restoring justice. Notably, despite the frequent use of administrative imprisonment throughout recent years, in no cases that we are aware of had the court previously reduced a prison term based on a prosecutor's appeal.

#### *Recognition of political prisoner status*

During 2011-2012 GYLA published two pieces of research in which, following detailed analysis of individual cases, dozens of people were identified as possible political prisoners. This problem was also highlighted by other NGOs.

On November 1, 2012, a working group on political prisoners and exiles was set up under the human rights and civil integration committee of the Parliament of Georgia. The group was made up of representatives of civil society, including GYLA. However, the process was poorly administered. For instance, the group format and timeframes did not allow for assessing cases comprehensively. Recognition of an individuals' status as a political prisoner without then analyzing and examining each case undermined trust in the process, as well as in the final result. Therefore, two NGOs - GYLA and Article 42 of the Constitution - left the working group. Eventually, the Parliament of Georgia recognized 200 individuals as having political prisoner status, including 70 identified by GYLA's research. Clearly, we haven't assessed the other cases, and therefore we are unable to evaluate whether they had been arrested on political grounds.

We do not welcome the initiative of the Parliament of Georgia to continue developing a new list of prisoners. On the other hand, we believe that the initiative by the Ministry of Justice to set up a commission to study any shortcomings in the justice system is a positive step. The reassessment of the cases of individuals given political prisoner status can be carried out within this framework.

#### *Amnesty*

In recent years the judicial system has been heavily criticized by civil society on a number of occasions. Regrettably, the judiciary was turned into a mechanism for implementing the so-called 'zero tolerance policy', which in practice made it impossible to realize the right to a fair trial for defendants. Politicization of the law enforcement authorities, the poor substantiation of decisions, an extremely small number of not guilty verdicts, the introduction of consecutive sentencing, excessively harsh sanctions, 'systemic failure' in the penitentiary system and other factors rightfully generated a strong sense among the public that justice was not being delivered. Because of these factors, we believe that the recent amnesty was justified. A separate paragraph containing the list of political prisoners was included in the law on amnesty, which could be controversial from a legal point of view.

#### *Trials of former officials*

Generally, it is safe to say that the number of criminal and administrative trials where proceedings are administered in favor of natural persons has increased. With respect to substantiation of court's decisions, due to a lack of time it is impossible to provide a comprehensive and in-depth analysis.

Notably, following the elections there has been a drastic improvement in the courts use of preventive measures in criminal proceedings. The reports of GYLA's monitoring suggest that in previous years motions by the prosecution for preventive measures were granted exactly as the prosecution demanded, without exception. Motions filed by the defense were granted only when the prosecution agreed.

#### Arrest and investigation of former officials

Investigations launched against former officials have aroused much controversy. We believe that without proper examination and analysis of the case files in question it is impossible to determine whether political motivation really was the basis for the arrest of an individual. We are currently in the process of examining these cases, and that which raises most question marks is Tengiz Gunava's illegal carriage of arms and his acquisition and storage of drugs.

We believe that people who have committed a crime must be held liable regardless of their former or current office; however, investigations should not raise questions about the political motivations behind them. Further, each and every single individual must cooperate in the process, as fair and effective investigation is in everyone's interest.

Furthermore, without hindering the effectiveness of the investigation or compromising the presumption of innocence, the public should be regularly updated on developments in cases of high public interest, where the perpetration of mass crimes by law enforcement authorities, special forces or other individuals is in question (for instance, the case of November 7, 2007; the case of May 6, 2009; the case of June 15, 2009; the case of May 26, 2011; the cases of torture and inhuman treatment in penitentiary institutions; the invasion of election precincts in Khashuri Election District by Special Forces on October 1, 2012; the mass unlawful appropriation of property by the government, etc.)

#### Investigation of crimes in the post-election period

We believe that during the post-election period law enforcement officers failed to take proper actions in some cases, including:

- Various criminal acts alleged to have occurred in local municipalities: coercion; threats; abuse of power; illegal dismissals from work etc.
- The incident in the Wrestling Federation (especially as the crime was allegedly committed by Prorector of the Police Academy)
- The questioning of Beka and Lasha Gochiashvilis in the police department, where they allege that they were forced into testifying against their will.

#### The ad-hoc state commission for studying failures in the justice system

Important problems in the justice system have resulted in a number of illegal and unsubstantiated verdicts and other court decisions. These decisions have come into force, and there are no legal mechanisms to repeal them. Therefore, we welcome the idea of establishing an ad hoc state commission for examining failings in the justice system, reflected in the draft law produced by the Ministry of Justice. GYLA has certain reservations about the draft law; however, the idea is important and must be pursued. One of the important advantages of the draft law is that decisions of the commission will not be binding, and instead the final decision will be made by the court.

### **The New Government and Human Rights: Challenges and Priorities**

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Speaker: Giorgi Gogia, *Human Rights Watch*

Georgia's new government has inherited a rather difficult situation in the field of human rights. The restoration of justice is one of the key public demands. The authorities assert that they have received over 7,000 complaints regarding human rights violations by the previous government. The prosecutor's office is investigating dozens of criminal cases, and more than twenty people have been detained. When investigating cases of abuse of power and violations of rights, the authorities should eschew politically motivated prosecution; they should ensure maximum public oversight and input, and declare the investigation of the gravest violations as the number one priority.

The key priorities of the new government should include eliminating the practice of torture and inhumane treatment in prisons. The complete transparency of ongoing investigations, civil society involvement, criminal indictment of culprits, and the psycho-social and legal rehabilitation of victims are paramount tasks of the government, in accordance with the responsibilities imposed by international norms.

It is also essential to carry out an immediate reform of the administrative code which sets a 90-day-long maximum administrative imprisonment period, in gross violation of international standards of due procedure.

It is extremely important to address the existing shortcomings of the justice system. Given that more than 87 per cent of cases used to result in plea bargaining arrangements, and over 98 per cent of judgments were guilty verdicts, a large percentage of the convicted persons may regard themselves as victims of shortcomings in the justice system. It is vital that the government creates an institutional mechanism capable of eliminating these deficiencies, and ensuring equal opportunities for justice. This could include, for example, setting up a specialized agency equipped with the power to examine instances of procedural shortcomings in the courts, and refer cases in which fair trial standards are compromised to the Court of Appeal.

### **Staffing Changes in Public Service after Elections**

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Speaker: Levan Natroshvili, *Transparency International Georgia*

Following Parliamentary elections, changes have taken place, and are still ongoing in the public service sector throughout the country. In a number of public institutions a lot of people have already lost jobs. Dismissals have occurred both in the capital and regions. We have observed several unfavorable trends and facts about this process, in particular:

- A large number of public service employees have submitted resignation letters. Considering that the unemployment rate is very high in Georgia, this trend raises doubts;
- On many occasions these individuals are pressured into turning in the resignation letters by their supervisor officials. Some officials have confirmed to have done so publicly as well;
- The dismissals in the regions occurred as a result of the contests-certification commissions' failure to be impartial or failure to establish such commissions at all.
- Hiring of new personnel often happens without announcement of positions and it is unclear what the selection criteria are.

In order to avoid such doubts and trends, the following recommendations must be taken into consideration:

- Heads of local self-government should implement changes in staff recruitment only through the contest and certification process and decisions should be justified as much as possible. Also, they should provide more information on the professional qualifications of newly recruited employees for the interest of society.
- It is necessary that law enforcement agencies take appropriate measures on illegal dismissal from public offices, including the increased number of cases as a result of written resignation letters made under duress.
- It is highly desired that a monitoring group be established within the Prime Minister's Administration to oversee the ongoing processes in public offices, and amongst others, to pay special attention to the regions.

## **Events Which Unfolded in Local Governments in the Aftermath of the Parliamentary Elections: A Brief Overview of the Situation**

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Speaker: Nino Lomjaria, *International Society for Fair Elections and Democracy*

Despite the fact that the change of government was not in theory supposed to concern local government bodies, the replacement of senior officials began to take place in different municipalities across the country as soon as the elections were over. In most cases, these changes in the local governments occurred amidst protests. The local population, comprising predominantly *Georgian Dream* supporters and activists, organized protests demanding the resignation of the local self-government senior officials and the appointment of candidates acceptable to them.

Over the period between the 1 October 2012 elections and the present, 46 governors and 24 city council chairmen have vacated office. So far, protest rallies have been held in 28 municipalities, escalating into illegal actions in 24 cases. These actions included violence, blocking entrances to buildings, breaking into offices, and disrupting city council sessions.

The newly appointed officials started to implement changes of personnel in the municipality boards and city councils. Massive changes have been observed in 21 municipalities. Employees generally gave notices of resignation, often preceded by meetings with senior officials.

### Our assessments and recommendations:

We do not endorse the acts of illicit pressure and violence observed in a number of municipalities. This trend, unfortunately, continues to persist and the government has not responded with effective preventative measures. We believe that the process of power transition in local government bodies should be conducted solely in accordance with the procedures established by the law, and the Georgian government should ensure that local government bodies operate in a pressure-free environment.

It is important to bring the coercion and malpractice surrounding the voluntary resignations of staff members to an end, and dismiss employees only after valid and adequate justification is provided.

We think that this situation has once again demonstrated the need for local government reform to be carried out in the near future, in order to ensure the genuine independence of local government bodies and non-interference in matters within their competence. It is important that the reform process be transparent to the maximum degree possible, and that all stakeholders be given the opportunity to engage with it in a timely manner.

### **Judicial reform**

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Speaker: Kakha Kozhoridze, *Georgian Young Lawyers' Association*

The Ministry of Justice has prepared, and submitted to the parliament for consideration, a draft law on Amendments to the Law of Georgia on Common Courts. The draft law reflects various recommendations of NGOs that have accumulated over the years regarding the judicial system. We would like to highlight several aspects of the reform:

- The role of individual judges will be strengthened
- Journalists will have the right to broadcast trials live on air
- The rules for staffing the High Council of Justice (HCoJ) will be amended
- The degree of self-government of judges will be expanded

- Under the current provisions of the law, the right to nominate a candidate for HCoJ membership is exclusively delegated to the chairperson of the Supreme Court; under the proposed draft, this right will be delegated to all judges;
- Voting for the election of a member of the HCoJ will be secret

Under the proposed draft, the authority of all members of the HCoJ will be suspended. For the systemic development of the HCoJ - one of the most important components of the judiciary - the authority of members elected by the Conference of Judges should not be suspended.

## **Media Environment in Georgia**

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Speaker: Mathias Huter, *Transparency International Georgia*

Since the elections, the extent of partisan bias, especially in broadcasting, has decreased. The majority of households has access to a plurality of TV channels.

There have been no reported cases of undue government interference in the media sector in recent months. Furthermore, there have been no reported incidences of journalists and media workers being beaten, detained, threatened and intimidated.

Access to public records has significantly improved after the change of government, with journalists and civil society organizations experiencing more responsive government entities that answer to freedom of information requests.

Draft amendments to the Law on Broadcasting were introduced to parliament in December, aiming to a) introduce permanent must-carry and must-offer rules (requiring network operators to show TV channels with news programming and requiring TV channels to make their signal available on non-discriminatory terms); b) introduce more disclosure requirements on the activities and finances of TV stations; c) change the appointment mechanism for the Board of the Georgian Public Broadcaster (GPB); and d) transform Adjara TV from local government department to a public service broadcaster.

The Ministry of Economy in December, with several years of delay, has launched a process to prepare the switchover to digital terrestrial television, which has to be finalized by June 2015, leaving very little time for complex and costly transition. The process so far has been inclusive but lacks structure and leadership.

The Internet in Georgia is free from government censorship but people's privacy is not respected and the authorities apparently continue to have direct access to the infrastructure of mobile phone and Internet service providers, allowing for a systematic, unchecked and thus illegal monitoring and recording of communication and usage data.

For the purposes of improving media environment in the country, Georgian Government should pay a special attention to the following issues:

- The draft law introduced in Parliament should be subject to a broad and inclusive discussion, and the feedback of stakeholders should be taken into account in order to ensure that law will achieve the declared goals;
- The envisioned disclosure requirements might put a significant and expensive compliance burden on broadcasters – more transparency and accountability should be achieved without imposing too much regulation on media outlets;

- The minority and the majority in Parliament should support a strong, professional and politically independent GPB by allowing for the nomination of board members that have relevant expertise and experience and are not representative of the respective political blocs;
- while there is wide agreement that Adjara TV should become a public service broadcaster, support from stakeholders in Adjara is necessary to implement this reform;
- The government should dedicate more attention to the digital switchover process and allow the GNCC to play more active role in moderating the process. A fair, transparent and well-managed transition to digital terrestrial television will be crucial to ensure a pluralistic, sustainable and independent broadcasting landscape.
- The government should ensure that peoples' rights to privacy are respected in practice. The authorities' direct technical access to companies' communications infrastructure should be revoked, as it undermines any practical oversight by oversight by courts, which is required in the law.

### **Legal Regulation of Media: Imminence of the Reform**

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Speaker: Lasha Tughushi, *Rezonansi*

Amendments made to the media legislation in 2004 were acknowledged by Georgians and internationally as a revolutionary step. These amendments completely changed the approach to the right of expression, which moved toward the implementation of a European standard. However, new regulations need to be adopted in order to strengthen the media environment and encourage pluralism, due to the rapid development in this field. It is becoming impossible to improve the media environment and promote pluralism without such changes.

The Coalition for Media Advocacy prepared a complex package of legislative changes, which aims to solve short-term and long-term problems in a new way.

Current changes that have been made includes: the transparency in the financing of broadcasting corporations; raising effectiveness in the public broadcaster's leading structures; and defining the status of the TV-Radio department in the Autonomous Republic of Ajara.

The changes need to be considered and addressed comprehensively, insofar, as their partial regulation will not ensure the positive results intended by this package.

If the changes are adopted, Georgian residents will have an opportunity to watch "all Georgian channels", and obtain information pertaining to media finances. Also, they will be provided with adequate information about the entities that buy TV time.

## **PART II: CURRENT AND FUTURE REFORM INITIATIVES**

### **Tolerance: Minority Rights and Challenges**

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Speaker: Sopo Benashvili, *Public Defender's Office*

Following the 2012 elections, the new government is faced with serious challenges. It is obvious to everyone that although the UNM government often claimed that human rights represented one of their priorities throughout the years, the reality was far from ideal. Human rights defenders witnessed violations of these rights every day, in almost all aspects of life.

Accordingly, it should be a priority for the new government to vigorously uphold these rights. Prohibition of discrimination and defending the rights of minorities has always represented a major aspect of adequately safeguarding human rights. Georgia, as a multiethnic country, is obliged to promote tolerance, and defend the rights of all minorities.

Unfortunately, some very regrettable incidents took place during the early stages of the transition of government, which received the attention of the Ombudsman as well as International and non-governmental organizations. The cases of Nigvziani and Tsintskaro, where there were religious confrontations, particularly stand out.

It is also important to remember, when discussing the rights of minorities, that not only religious and ethnic minorities should be considered. We should not forget the rights of sexual minorities. Unfortunately, society's attitude in this respect is still clearly negative. We can think of many cases from the recent past that demonstrate this.

Accordingly, we think that government should carry out effective policies, both to prevent any violation of minorities' rights' and also to continue moving forward with the process of developing and entrenching a wider culture of tolerance.

### **Main Areas of Electoral Reform**

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Speaker: Nino Lomjaria, *International Society for Fair Elections and Democracy*

Due to our involvement in making improvements to the election legislation, coupled with our experience in monitoring elections for many years, gives us the knowledge in identifying key parts of electoral reform. Identifying and implementing these parts of reform will help to make real positive changes and create an equal electoral environment.

It is important to start working on these issues as soon as possible, in order to carry out these changes before future elections in a reasonable time.

First of all, the current electoral system needs to be reviewed within the framework of electoral reform, in order to ensure the one vote equality principle. Also, to ensure that the will of citizens is expressed proportionally in Parliament. It is a very important aspect of the reform to rid election administration from political influence. Election law should prohibit using administrative resources for the purposes of political parties, which should be achieved by creating a decent normative base.

The work on improving election lists should be continued. General population description needs to be carried out. It is also necessary to enhance legislation regarding the political entities. As well as a normative base, the state audit body should also guarantee fair, rational and equal law enforcement.



Specific procedures of voting have to be reviewed, which will provide more effective and high-tech methods for avoiding election falsification. More emphasis has to be placed on all aspects of election awareness for ethnical minorities. Furthermore, the persons entitled to vote in special electoral districts have to be limited.

## **Competition Policy**

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Speaker: Erekle Urushadze, *Transparency International Georgia*

The current competition legislation (the Law on Free Trade and Competition) was adopted on 8 May 2012. The adoption of the law was a requirement under Georgia's negotiations with the European Union over the Deep and Comprehensive Free Trade Agreement (DCFTA). The Competition and State Procurement Agency was also established last year through a presidential decree, although this body has not implemented any tangible activities in the competition sphere so far.

In a report published last summer, TI Georgia noted that the new law was a step forward and contained the basic regulations necessary for the implementation of competition policy. At the same time, TI Georgia highlighted a number of gaps in the new law, concerning the agency's independence and powers, threshold for de minimis agreements, prevention of anticompetitive actions, and other issues.

After the October parliamentary elections, representatives of the new government expressed their readiness to improve the competition law. Meanwhile, the Georgian Development Research Institute prepared a draft of amendments to the competition law. TI Georgia collaborated actively with the Institute's experts in the process of preparing the draft and was also involved in consultations with Georgian Parliament members on this subject. The draft has now been sent to the Parliamentary Committee on Sectors of Economy and Economic Policy.

## **Reforms in the Area of Competition**

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Speaker: Ketevan Lapachi, *Georgian Development Research Institute*

Adequate competition law reform needs to be introduced urgently due to the fact, *inter alia*, that there is an increasing role for competition regulations in the welfare of society, tendencies of monopolizing the markets of goods in recent years, clear signs of cartels, as well as major disregard for consumer rights. Georgia needs to ensure that the appropriate reforms to competition policies are made, in order to fulfil its international obligations.

Due to the European Union's persistent demands, in terms of implementing better competition policies, the following steps have been taken: the implementation of a competition strategy; the creation of a formal independent agency; and the adoption of the legislation, "Independent Trade and Competition", in May 2012.

However, the existing competition law fails to ensure that there is a competitive environment in Georgia.

The reforms made to the competition policies have become the primary focus of the Georgian Development Research Institute (GDRI). Thus, several analytical works have been prepared by the GDRI. In May 2012 a presentation was held, *Competition Policy and Sectoral Regulation in Georgia*, and subsequently an analysis on the existing competition law was published. In December 2012 the

public was introduced to a new draft law on competition, along with a concept of the regulatory agency. The project was submitted to Parliament as a legislative initiative.

GDRI is working towards increasing the compliance between Georgian legislative regulations and international norms, by formulating regulations in a way made possible to effectively execute them. The political will and desire needs to be present in order to carry out this mandate.

## **Labor Legislation**

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Speaker: Levan Natroshvili, *Transparency International Georgia*

Since the adoption of the Labor Code, it has been a topical discussion in Georgian society. The predominant claim made was the fact that it had a major focus on the rights of the employer, leading to little consideration for the rights of the employee. For this reason, the government's initiative to implement reforms in this area of law is very logical and positive.

The implemented changes made by the Ministry of Justice includes important innovations that will substantially change many aspects of labor relationships. First of all, it's worth mentioning that a step forward has been made in terms of balancing the powers and obligations of the parties. The following changes should be noted: the protection for the employee is strengthened; the period required for leave of absence has increased; it is harder to conduct certain time period contracts, which promoted the vicious practice of conducting one-month long contracts; it is made impossible to dismiss someone without a legally determined basis; minimal pay for overtime work is defined, and so on. The changes are extensive and need a detailed analysis, but we would emphasize several issues that we think should be better scrutinized, e.g. the new procedure pertaining to the advance notice of dismissal that must be provided to employees, which proves more disadvantageous for the employee. In the case of collective labor, the right to strike is unjustifiably restricted. Furthermore, the section on collective dismissals not only contains vague elements, but also unreasonably increases the obligations of employees.

The regulation of labor relationships is one of the main issues of public policy, and during its reform the interests of employees and employers should be greatly taken into consideration. This should be done in such a way that will not cause damage to, the labor environment, creation of new jobs, investment climate, human rights and other important factors of the country.