



SPOTLIGHT ON GEORGIA

EDITED BY ADAM HUG

PREFACE BY COMMISSIONER BENITA FERRERO-WALDNER



The Foreign Policy Centre



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Edited by Adam Hug

With a Preface by Commissioner Benita Ferrero-Waldner

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23–28 Penn Street
London, N1 5DL
United Kingdom
Website: www.fpc.org.uk
Email: policy@fpc.org.uk
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Preface

Commissioner Benita Ferrero-Waldner
European Commissioner for External Affairs

Since regaining its independence in 1991 following the collapse of the Soviet Union, Georgia has been struggling to establish itself as a modern, market-oriented democracy and to affirm its territorial integrity within its internationally recognized borders. Twelve years later, on the eve of the November 2003 "rose revolution", the situation of the country was precarious. Georgia was riddled by endemic corruption, high levels of poverty and unemployment, a stagnating economy, a huge external debt and a dysfunctional democratic system. The unresolved conflicts with the breakaway Abkhazia and South Ossetia regions in the early '90s had displaced hundred of thousands of people and deprived the Tbilisi central authorities of effective control over one fifth of Georgia's territory.

The challenges faced in spring 2004 by the newly elected President Saakashvili were daunting. The new, dynamic Georgian leadership that won the 2004 presidential and legislative elections had to take swift and difficult decisions to steer the country away from the verge of becoming a failed state. President Saakashvili must be given credit for launching, in 2004, of one of the most comprehensive and ambitious programmes of political and socio-economic reforms among the new independent States.

Together with other international actors, the EU has provided crucial support for Georgia in this difficult endeavour. Stability and security throughout the European continent can only be achieved incrementally. A more democratic, stable and prosperous Georgia, within a more stable, secure and prosperous Southern Caucasus is an essential element of this strategy. As Georgia makes genuine progress in implementing political and economic reforms, EU Georgia

relations will become deeper and stronger. This is why the European Commission proposed in 2004 to include Georgia, Armenia and Azerbaijan in the European Neighbourhood Policy, and, more recently, in the new Eastern Partnership. The August 2008 war between Russia and Georgia has further heightened awareness within the EU of the risks of instability in the South Caucasus for the EU's own security, including for our efforts to diversify EU energy supply.

So, more than ever, Georgia matters for the EU. This young country is at the cross-road of important geo-strategic interests, a laboratory of democratic and market reforms against the backdrop of a difficult and complex security context. The success of this experiment is very much linked to the success of the EU neighbourhood policy, to the EU's capacity to project its fundamental values and its regulatory system beyond the EU frontiers, while full respecting the sovereignty and the specificity of each of our partner countries. The EU's swift, crucial reaction to the August 2008 war and our efforts to help find a solution to the continuing internal political crisis reflect the EU's commitment to providing political, financial and practical support to Georgia at this difficult juncture.

The challenges that President Saakashvili and the Georgian government faced in these past four years have made hard choices inevitable. How to reconcile the promotion of a genuine democratic culture and separation of institutional powers, with the perceived need for a strong executive to accelerate state building and curb corruption and criminality? How to end decades of mistrust with the breakaway regions while achieving a swift and peaceful settlement of conflicts? How to address the broader challenges of international security? How best to handle relations with a complex and sometimes difficult neighbour like Russia? Which model of economic development to choose for Georgia to ensure the country completes its economic transition toward a market economy? Four years after the rose revolution, Georgian society has started questioning some of the choices made on

these vital issues. The articles included in this review of the FPC provide a wide range of contributions to the ongoing debate over Georgia's future.

Introduction: Georgia in flux

Adam Hug

Policy Director, Foreign Policy Centre

The outlook for Georgia is more uncertain than at any time since the 2003 Rose Revolution. The diplomatic fallout from the August 2008 conflict with Russia and the economic impact of the global financial crisis have combined with domestic unrest to create a significant challenge to the current Georgian Government.

The optimism and excitement generated by the revolution and the first few years of rapid reform has dissipated. On the whole Georgia today is a better governed country than in 2003, but there are real and growing fractures in society and improvements made in many key human rights areas are stagnating or being reversed. The events of November 2007 on the streets of Tbilisi and August 2008 in Tskhinvali have dramatically shaken the West's previously almost reflexive support for President Saakashvili, prompting international soul-searching about the road ahead.

Even setting aside last summer's conflict with Russia, Georgia has been wracked with instability in recent years as relations between the government and opposition have deteriorated dramatically. Since coming to power in 2003, President Saakashvili's habit of removing key cabinet members and ambassadors, including five Prime Ministers¹ and six Foreign Ministers, has not only created considerable instability in government, but it has also filled the pool of disgruntled opposition politicians. Discontent built to a crescendo on November 7th 2007 when government forces "used violent and excessive force to disperse a series of largely peaceful demonstrations in Tbilisi".² Since this point, with the exception of a brief period of national unity brought about by Russian tanks seemingly *en route* to the capital, the two sides have been at loggerheads, with regular street protests,

notably big demonstrations in April 2009 that have extended at somewhat lower intensity into the summer.

Georgia's decline in the eyes of the international human rights community has been marked by falling rankings in a number of key areas. According to the 2009 Freedom House "Nations in Transition" report, Georgia today is less democratic than it has been in any period in the last ten years,³ with rankings for national democratic governance, electoral process and civil society declining since 2008.

The decline in freedom of the press has been a particularly worrying trend in recent years. Reporters without Borders ranked Georgia 120th in its 2008 Press Freedom Index, a significant fall from its highest ranking of 66th in 2007.⁴ Freedom House made a similar assessment, placing Georgia 128th in its annual Freedom of the Press World Ranking, with a score of 60 Partially Free.⁵ Freedom House noted that while there have been some positive moves, including decriminalizing libel and freedom of information legislation building on a positive constitutional and legislative position, in practice, the government's willingness to implement this legislation has decreased.⁶ Their concerns included illegal searches of media premises, opaque licensing decisions, restricted media access to public institutions and membership of the Georgian National Communications Commission (GNCC) decided by the Presidential appointment.

The closure of the largest independently owned (and pro-opposition) channel, Imedi TV during the November 2007 crisis and the subsequent legal wranglings over its ownership and transformation into an ostensibly pro-government station have been perhaps the most high profile example of recent restrictions on media freedom.⁷ The events surrounding the closure and subsequent changes at Imedi are discussed in several contributions to this pamphlet and although the channel is currently on air, issues of ownership and editorial policy remain matters of significant contention. In light of the continuing controversy at Imedi, appointing Nana Intskirveli,

the Head of Press at the Defence Ministry, as Imedi's new Head of News does little to quell fears that its editorial independence is being undermined.⁸ However, on a more encouraging note, Maestro TV, an opposition station that was the victim of a grenade attack in May 2009, was awarded a 10 year licence to broadcast on satellite in July 2009, expanding the potential audience for the previously cable-only channel.⁹

The Georgian Government has been internationally congratulated for its public response to the April 2009 and subsequent street protests. The security forces should take some credit for avoiding the confrontations that destabilized the country in 2007. However, there are increasingly widespread reports of beatings and other confrontations with demonstrators led by unidentified, masked groups, as noted by the Parliamentary Assembly of the Council of Europe.¹⁰ It is imperative that these incidents are investigated properly if the Georgian government is to regain public trust.

Despite growing disillusionment in Georgia and abroad about the performance of the government, the opposition has yet to convince observers that they are able to offer a credible alternative. Many Western and some Georgian observers put great faith in the potential of former Abkhazia negotiator and UN Ambassador Irakli Alasania to develop into a credible alternative leader. Alasania has taken a less confrontational approach towards the government than the many other opposition leaders over recent protests and demands for the removal of the President. He has finally announced the launch of his new party, Our Georgia-Free Democrats, to strengthen his position at the head of the Alliance for Georgia (with the Republicans and New Rights Parties) but he now needs to balance his pragmatic approach with showing the public that he has the drive and desire to be an alternative leader. Regardless of how attractive Alasania may seem it is important that the international community does not repeat the error that was made with Saakashvili of over

personalising its support, particularly as he does not yet have a formal position in the Georgian political system.

What our contributors say

The Foreign Policy Centre is delighted to have drawn together such a high calibre of contributors to help assess the state of Georgian human rights and governance and to suggest what the international community can do to strengthen the cause of reform. In her preface, Commissioner Ferrero Waldner very eloquently sets out the EU's view on current events in Georgia and the challenges facing the new Eastern Partnership.

We start our pamphlet with a detailed and illuminating analysis, by Hans Gutbrod and Koba Turmanidze, of Georgian public opinion data collected by the Caucasus Research Resource Centers. They argue that systematic research is the best way to understand Georgia's ongoing democratization. Accordingly, their data suggests that an overwhelming amount of Georgians prefer democracy to a more authoritarian system. However, currently only 33% of Georgian's feel their country is a democracy. Their data on perceptions of freedom of speech is more positive with 71% Georgians stating they could speak openly about what they thought. Taken together, their paper advocates a nuanced and evidence-based approach to understanding political development. They also argue that greater civil society development is needed to mobilise the public before a moment of crisis or anger that currently seems to be needed to galvanise it for action.

The Deputy Public Defender of Georgia, Giorgi Chkheidze, argues that the judiciary in Georgia still lacks public trust and independence by being subordinated to the Prosecutor's Office and the state administration. He welcomes the removal of the President's power to appoint judges and chair the High Council of Justice (HCJ). He discusses the "new wave of democratic reforms" including life terms for judges, opposition representation on the HCJ and the introduction

of jury trial both welcoming the potential benefits and highlighting concerns over implementation.

Elsa Vidal from Reporters Without Borders argues that political tension in 2007 and the war with Russia in August 2008 had a negative impact on journalists and free expression. She discusses the closure of the Imedi and Kavkassia TV Channels during the November 2007 protests and the problems Imedi has faced since that point. She identifies international community pressure as playing a key role in getting the station back on air but notes that its coverage since has become considerably more pro-Government. Her article also addresses the challenges journalists face working in and around South Ossetia and Abkhazia. Vidal concludes that while Georgia has the most liberal media legislation in the Caucasus, there are significant problems in its implementation and she identifies where international pressure could help to improve performance.

Giorgi Gogia of Human Rights Watch argues that Georgia needs to find a better balance between developing a strong state and strong rights for its citizens. He believes law enforcement officials need to be made more accountable for their actions and draws on the experiences of two incidents, a prison riot in 2006 and the November 2007 protests to illustrate this point. He believes lack of accountability is actually a sign of state weakness and that it must be addressed to fully achieve Georgia's transition away from being a failed state.

The authors from the National Democratic Institute's (NDI) Georgia office, O'Hagan, Brown and Woodward, analyse improvements in the reporting of election results and the role that technology can play to support these changes. Despite improvements in 2008, NDI note continuing issues with the electoral process, including unrealistically high voter turnout in some areas, errors in reporting results and problems with voter lists, including the use of supplementary lists on polling day. They note improvements in performance of the process

between the January 2008 Presidential and May 2008 Parliamentary elections, held under significant international scrutiny. Their piece also examines the results of both elections in terms of party support and its regional spread.

Marco Kubny, who until recently served as the Organisation for Security and Cooperation in Europe (OSCE)'s Policing Adviser in Georgia, gives an overview of the support the international community has given to help reform the police and other security services. He argues that significant progress has been made, but there are several areas where further improvement is necessary, including better training, improvement of crowd control capabilities and reorganisation of the Ministry of Internal Affairs.

Peter Semneby, the EU's Special Representative for the South Caucasus, gives a clear overview of Europe's engagement in Georgia, in particular how it supports the development of human rights, democracy and governance, both in practical and political terms. He looks at how the Eastern Partnership will change the way in which the EU works with Georgia, in particular the development of good governance and human rights conditionality or benchmarks. He argues that political reform criteria will need to be met to enable movement on EU Association Agreements and trade liberalisation. His contribution outlines some of the challenges faced by the EU monitoring mission in dealing with the problems with South Ossetia and Abkhazia. The Special Representative described his public diplomacy work, support for media development and mediation between the Georgian Government and opposition.

The former US Ambassador to the USSR, Arthur Hartman, gives us the US perspective on current developments in Georgia and the recent changes in relationship between Washington and Tbilisi. He casts a critical eye over the Georgian Government's performance on media freedom and rule of law. He calls on the US to demand a better return on the financial investment it has made in supporting reform in

recent years and to push for improvements in human rights standards.

Sir Malcolm Rifkind, former UK Foreign Secretary, urges Georgia to focus on priorities within its borders rather than looking externally in order to enhance its long-term security. He gives an overview of the efforts Georgia has made to move closer to the West, in particular its efforts to join NATO. He argues that the August 2008 war highlighted how unlikely it was that NATO allies would come to Georgia's aid in the event of conflict with Russia over its territorial integrity. He notes the markedly cooler relationship with Georgia under the Obama Administration as it seeks to improve relations with Russia. Sir Malcolm believes that EU membership is a more realistic goal than NATO membership and should become the primary goal of Georgian foreign policy. Like other contributors, he highlights the problems Georgia has experienced in the areas of media freedom and rule of law.

Thomas de Waal's contribution focuses on the challenges Georgia has faced over South Ossetia and Abkhazia and how they have impacted on the development of the Georgian state under President Saakashvili and its relations with the international community. He notes several actions, including reducing Ajarian autonomy after the return of central government control in 2004, the closure of Ergneti market and the boost in Georgian military spending that undermined efforts at peaceful reconciliation with the two breakaway regions. De Waal sees Saakashvili's state reforms as more about a modernisation of old structures than about democracy. He argues that Georgia's desire for NATO membership further unsettled the two regions, particularly combined with the inflammatory rhetoric used by Saakashvili. He is deeply concerned by the withdrawal of the OSCE mission to Georgia and the United Nations Observer Mission in Georgia (UNOMIG) and calls for creative solutions from the international community.

Bruce George MP, Chair of the UK Parliament's Georgian All

Party Parliamentary Group, and his assistant Simon Kimber give a UK perspective on the situation and outline how Britain can assist bi-laterally. They mark the progress Georgia has made since the Rose Revolution and give an overview of the UK NGOs who have helped contribute to that progress. He notes the investment of the UK's Department for International Development (DfID) between 1991 and 2008 and the active inter-Parliamentary cooperation that exists between Westminster and Tbilisi. George and Kimber argue that, although delayed, NATO membership has provided the biggest incentive for reform since the Rose Revolution. They highlight the dependency of NGOs on international donor support and discuss areas of human rights concern.

Summary of recommendations

- EU Eastern Partnership and other international actors should develop tough benchmarks on a wide range of human rights issues and good governance goals. These benchmarks should be publically available to assist the monitoring of compliance by civil society.
- The signing of EU-Georgia Association Agreements and other free trade agreements should be contingent on partner countries' good performance against the human rights benchmarks.
- Donor funding levels should be linked to performance against benchmarks. Funding should be increased if targets are met and cut back if are not.
- The EU should increase the funding available across ENP for the Governance Facility to provide a greater incentive for good performance in all partner countries.
- The EU should explore the possibility of basing a permanent human rights and governance monitoring team in Tbilisi.

- Debate on a Georgian NATO MAP should focus on the need to meet political criteria. Membership must be conditional on sustained improvement in human rights and a permanent resolution to territorial disputes.
- The international community should support reform of the Georgian National Communications Commission. Reforms should include Commissioner appointments no longer requiring final Presidential approval and enhanced parliamentary and international scrutiny.
- Georgia should be encouraged to improve police training and create an independent police complaints authority and an operationally independent National Police Commissioner.

A more detailed list of recommendations can be found in the conclusion.

“Is Georgia a Democracy Now?” — Views of the Georgian Electorate

Hans Gutbrod, Regional Director Caucasus
Research Resource Centers and Koba
Turmanidze, Director, CRRC Georgia¹¹

Discussions of Georgian democratic development are often highly polarized. Critics have long charged the current government with being authoritarian, and if Freedom House ratings are believed, Georgia was more democratic in 1999/2000 than it was in 2008.¹² Conversely, some commentators have called the people in the current government “impeccable democrats”, and even more cautious commentators have often praised the sizable progress Georgia has made since the Rose Revolution in November 2003.

This commentary mirrors the polarization of the Georgian political debate. The opposition has described the government as a “bloody regime”, or “serious terrorists”, and likened their bloc to the anti-Nazi coalition. The government, in turn, has hailed its democratic credentials, vigorously defending its record, and highlighting each success, saying that “Georgia is really a successful democratic state in this region; democracy is our wealth”.¹³

So where then to place Georgia’s democratic credentials? How can we best assess Georgia’s development? Arguably, there is a powerful and compelling answer to this question, offered by the Georgian people themselves. National surveys show that the Georgian electorate has a fairly balanced view on this issue. While a majority do not think that Georgia is already a full democracy, there is surprisingly little cynicism and an overwhelming agreement that it is developing in this direction.

To analyze Georgian public opinion, we use the data collected

by Caucasus Research Resource Centers' Georgia office between 2007–2009.¹⁴ The data was gathered using face-to-face interviews. All surveys are representative at the three macro-strata level: urban, capital and rural. These findings represent just one snapshot of many possible analyses that can be conducted with these freely available data sets.

Although we do not develop this argument in more detail, an analysis of the data also suggests that Georgia would be well served by a public debate that engages its citizens in policy issues, and moves away from polarized collisions. The ongoing discourse, construed to demonstrate a legitimacy that supposedly flows from the shortcomings of one's political opponents, holds limited attraction for the Georgian electorate.

Attitudes to democracy and government

Georgians express their preference for a democratic political system associated with public freedom, equal political and civil rights, balance of power, accountability and transparency. Over 70 percent of respondents think such a system is good or very good for the country. Only 13 percent believe that a strong, non-democratic leader would do a good job.¹⁵

While democracy is the preferred system of government, voters generally believe that their country is still in transition. Only 33 percent of respondents view Georgia as a democracy right now. However, Georgians are optimistic about their country's democratic future: a further 33 percent believe that while the country is not a democracy yet, it is developing in that direction. And in an even stronger finding, only 4 percent of respondents have no hope that Georgia will ever become a democracy. This underlines that there is deep confidence in Georgia about the eventual success of a democratic transition and these numbers remained fairly stable since May 2008, throughout various surveys.

It is worth noting that males and females, as well as different

age cohorts, have very similar perceptions about the state of democracy in Georgia. But the type of settlement has a significant impact on respondent's perceptions: rural voters are more likely to assess Georgia as a democratic country (39 percent) compared to urban (32 percent) and Tbilisi (28 percent) voters.¹⁶

Georgians' assessment of freedom of speech in the country is more positive than their assessment of democracy: 71 percent of respondents agreed with the statement that citizens could openly say what they thought. Freedom of speech was considered as a necessary condition for treating Georgia as a democracy: only 7 percent of those who agreed that people in Georgia do not have rights to openly say what they think said there is democracy in Georgia. At the same time, two-thirds of those who agreed that people had the right to openly say what they thought also declared that there was no democracy in Georgia.¹⁷ This illustrates that some of the more extreme characterizations of the Georgian government don't actually match the views held by the majority. Not every shortcoming in democracy automatically translates into a curtailment of freedom.

However, there are ambivalent attitudes towards government, in which demands for accountability run up against paternalism. Almost a half of respondents agreed with the statement that government was like a parent and, therefore people should be treated like children. The other half supported the statement that government was like an employee and thus, it should be controlled by the people. This trend stays stable across three surveys in 2008 and 2009.¹⁸ [See Chart 1]

The population is split on how fair it considers the government to be. In May 2009, about 40% believed that "people like you" were treated fairly by the government, while 43% thought that this was not the case. There is a slight downward trend in perceived fairness. In 2008, about 50% respondents thought that they were being treated fairly.

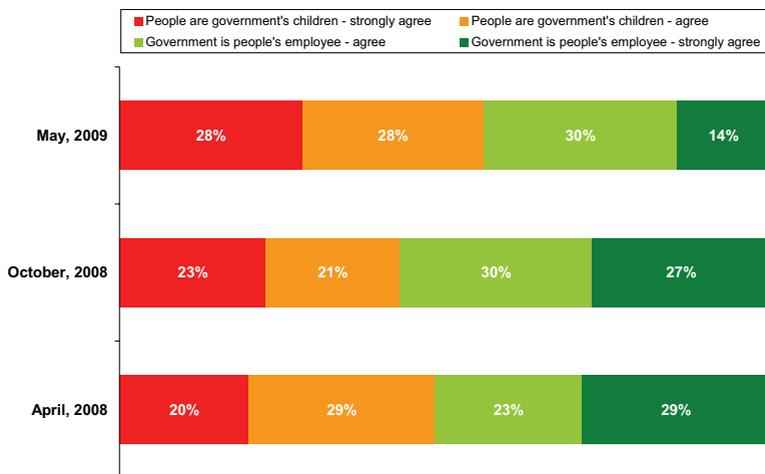


Chart 1. "People are like children; the government should take care of them like a parent" vs "Government is like an employee; the people should be the bosses who control the government"

However, those that believed the government to be unfair stayed the same over this time. There was increased uncertainty, not an increase in the view that the government was unfair. Again, in aggregate this indicates that there are those that believe that the government treats them fairly, even if Georgia is not yet fully democratic.

Attitude to elections

Despite the context of an unstable political background in Georgia 61 percent of respondents agreed with the statement "every vote counts". Their voting behavior is usually consistent with this belief. Almost 80 percent of respondents in 2007 and 2008 said they took part in the last national elections (78% in 2007, 77% in 2008).¹⁹ Accordingly, around 94 percent of respondents find elections the only acceptable way to change the president in the country. Approximately the same percentage of respondents are against changing presidency through protests leading to revolution (91%),

military coup (97%), foreign government appointing a president (95%) or the current president leaving a successor (94%).²⁰ Older data showed very similar findings, suggesting that the constituency for radical change was and continues to be very limited.

Georgians' reasons for not voting vary from not being in their registered place of residence, not being interested in politics to considering the voting useless. About 10 percent of those respondents who said they did not vote in the last national elections explained their behavior by not trusting the fairness of elections. This result was consistent for 2007 and 2008.²¹ It is noteworthy that although the number of people who did not vote because of the belief of the elections to be unfair is rather low, they are more likely to reside in the capital. So while the capital has more opposition supporters, it also has more people that are actively disenchanting with politics.

Presidential, parliamentary or local self-government elections have occurred quite frequently in Georgia after 2003. For most of these elections, manipulations have been alleged. However, only 3% say that the fairness of elections is the most important issue facing the country. Georgia's territorial integrity (21 percent) and relations with Russia (18 percent) remain the highest concerns.²² Policy issues therefore dominate, suggesting that the type of "legitimacy discourse" described above only has limited purchase. There are other pressing issues that the electorate wants to discuss.

When directly asked to rate fairness of the last national elections almost half of the respondents (49.3%) agreed that elections were to some extent held fairly. Up to 14 percent were confident the elections were held completely fairly, whereas 17 percent took a rather radical position and stated that elections were not conducted fairly at all. This latter figure resonates with the view that about one fifth of the population is more radically opposed to the current government. As many as 19 percent say they "don't know" whether elections were held fairly, a group that may contain

a mix of those who didn't go to elections (and therefore genuinely don't know), don't have any views, but likely also some that are reluctant to commit themselves to a public evaluation on their doorstep. Having said that, generally Georgians are fairly willing to state their views openly, as various experiments have illustrated.

Similar to the figure above, 50 percent of respondents agree that voting was kept secret during the last national elections (May 2008 Parliamentary Elections). About 20 percent disagree, and openly state that voting was not secret. Almost 30 percent of people say they "Don't know", again likely for the same set of reasons outlined above.

Since 2007 Georgia witnessed three waves of widespread protests. According to the 2008 data, attitude to protests is highly influenced by respondent's assessment of elections. People who do not believe that elections were conducted fairly and votes cast secretly are more likely to approve of participation in protest actions. 62 percent of voters, who believe that parliamentary elections of 2008 were unfair and 59 percent of voters, who think that ballots were not secret also believe that "people should participate in protest actions against the government to demonstrate that people are in charge". In contrast, 55 percent of respondents, who consider elections fair and 39 percent of those, who believe in the secrecy of vote, claim that "people should not participate in protest actions, since it threatens stability in the country".²³ [See Chart 2]

People's evaluation of the fairness of most recent national elections also depends on the level of education that respondents have (measured by the years of formal education). The more educated the respondents are the more they tend to doubt fairness of elections. Arguably, one conclusion from these findings is that to de-polarize politics in the future, government needs to do even more to run fair elections and to actively demonstrate that these elections are fair, avoiding any shortcuts. A separate question to be tested

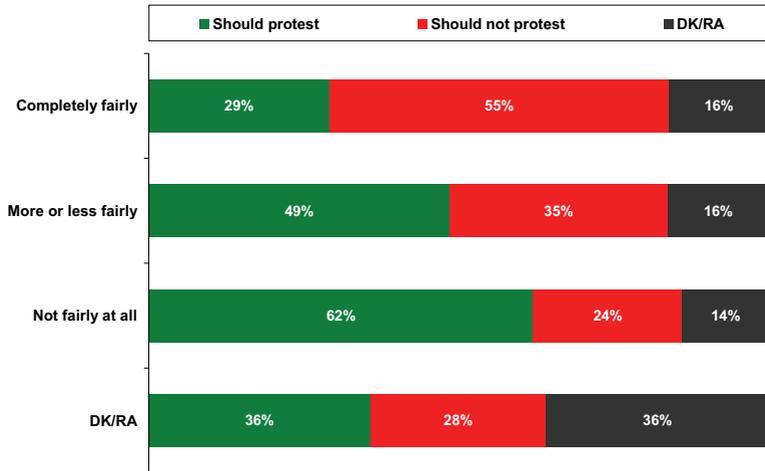


Chart 2. Attitude to protests **by** assessment of elections' fairness

in future elections is whether an entirely clean election campaign by the governing party itself is a viable part of a campaigning strategy.

Dispersed social capital and its impact

There is, however, also another important dimension to democratic development. Often this development is only conceived as an institutional challenge, or, alternatively, as a task to be executed top-down (or, in a romantic variant of this view, democratic determination is like an ecosystem that governments should not interfere with).

But there is also a powerful bottom-up component, since democratic development requires overcoming dilemmas of collective action, i.e. engaging in long-term cooperation when this risks disadvantages in the short term. As has been widely established in scholarly debate, social capital can play a critical role in enabling collective action. In this paper we apply two aspects of social capital. One aspect deals with resources available in interpersonal relations that can be

potentially used for actors for their actions.²⁴ This type of social capital is referred as network-based. The second aspect of social capital captures de-personalized, institutional trust.²⁵ This type of trust has two versions. Institutional trust: 1) toward political institutions, such as parliament, president and government, and 2) toward private institutions, such as NGOs and media. In all cases social capital is measured as a computed index from multiple questions, on the basis of the DI 2008 data (October–November 2008).

So, to repeat, we can form three indexes from these two aspects of social capital: network-based social capital; institutional trust in political institutions; institutional trust in private institutions. It is worth noting that all three indexes have similar distribution: around 50% of respondents have a high level of network-based capital, as well as high trust to political and private institutions. The remainder are distributed fairly evenly between the two groups with a moderate and a low level of social capital/trust [see table 1]. In other words, in Georgia there are more people who are connected to trusted individuals and their resources than people who lack ties with others and are left on their own if some help is needed. Likewise, more people trust rather than distrust political and private institutions.

Table 1. Distribution of social capital

	Network-based capital (%)	Trust to political institutions (%)	Trust to private institutions (%)
High	47	47	51
Moderate	29	24	29
Low	23	29	20

The two forms in institutional trust have surprisingly similar impacts on other variables, but we observe no statistically significant relations between the network-based capital and institutional trust. Yet, both forms have their own designated “sphere of influence”. Settlement type has no impact on the

network-based capital, but institutional trust is significantly higher in rural and urban areas compared to the capital.

Network-based social capital is an important factor for personal well-being. Individuals with higher level of social capital can borrow money more easily than those with a low level of social capital. The same trend is apparent in personal safety: individuals with a higher level of social capital believe that there are people who can nurse them without any payment if they are ill. Moreover, the higher the level of social capital, the lower the individuals' expectations that they will need to restrict basic expenditures on food and everyday consumables. Network-based social capital also affects personal optimism about Georgia's direction: 32% of respondents from the capital-rich group believe that the country is going to the right direction, whereas groups with moderate and low level of social capital have 21 and 17 percent respectively.

Network-based social capital also has a statistically significant impact on the attitude to government. The higher the level of social capital, the more respondents think that "government is employed by people and therefore, people should control it" (59%). Conversely, individuals with a lower level of social capital believe that "people are like children and government should take care of them like parent does with his/her children" (46%). [See Chart 3]

The level of institutional trust is not relevant to personal well-being. Yet, it has statistically significant impact on attitudes toward the state. Respondents with a higher level of institutional trust are more active citizens: their absolute majority voted in the May 2008 Parliamentary elections. The impact of institutional trust is even more compelling in the assessment of the parliamentary elections: respondents with a higher level of institutional trust believe that the ballot was secret and the results were fair. [See Chart 4 and 5]

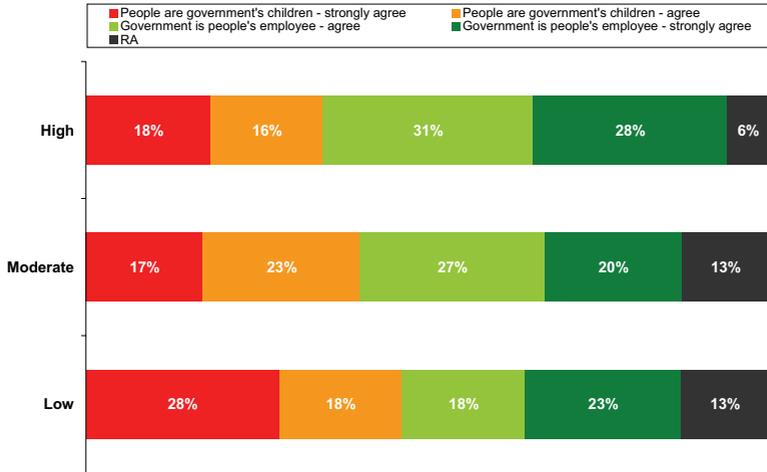


Chart 3. "People are like children; the government should take care of them like a parent" vs "Government is like an employee; the people should be the bosses who control the government" BY Level of social capital

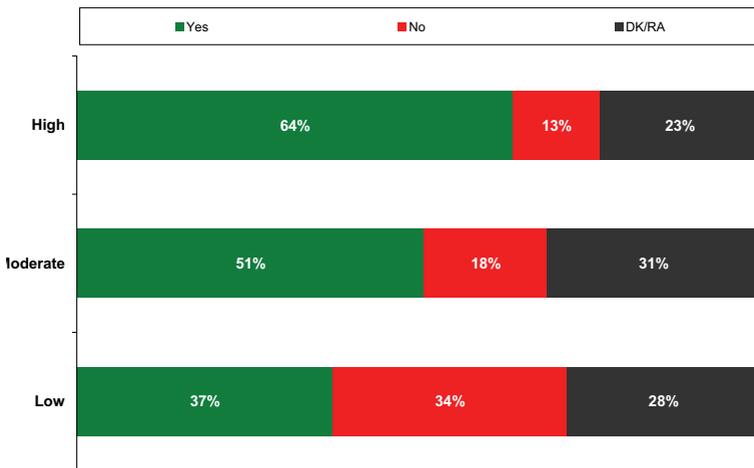


Chart 4. "Do you believe that the voting during the last elections was actually kept secret, and nobody was able to find out whom a person voted for?" by Level of trust to political institutions

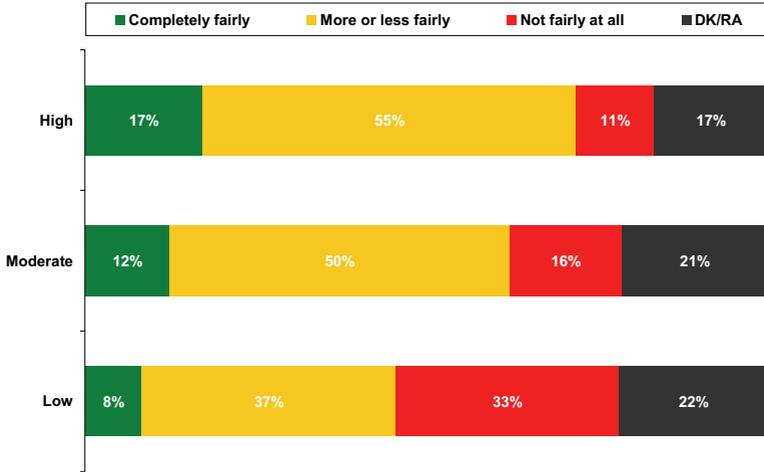


Chart 5. How fairly were the most recent elections conducted **by** Level of trust to private institutions

Respondents with a higher level of institutional trust are more expected to believe that government treats its citizens fairly and grants them freedom of expression. Around 50 percent of individuals with a high level of institutional trust claim that government is fair to the citizens and 62 percent believe that citizens can openly say what they think. In sharp contrast to that latter figure, around 50 percent of people with a low level of institutional trust tend to believe that the government is unfair and people cannot express their opinion openly. [See Chart 6 and 7]

In summary, according to our data network-based social capital not only helps individuals to improve their personal well-being, but also promotes individual's independence from the state. However, institutional trust promotes active citizenship and belief in the democratic functioning of the government.

If this analysis appears complex, consider also the following findings from a survey to illustrate that there remains a

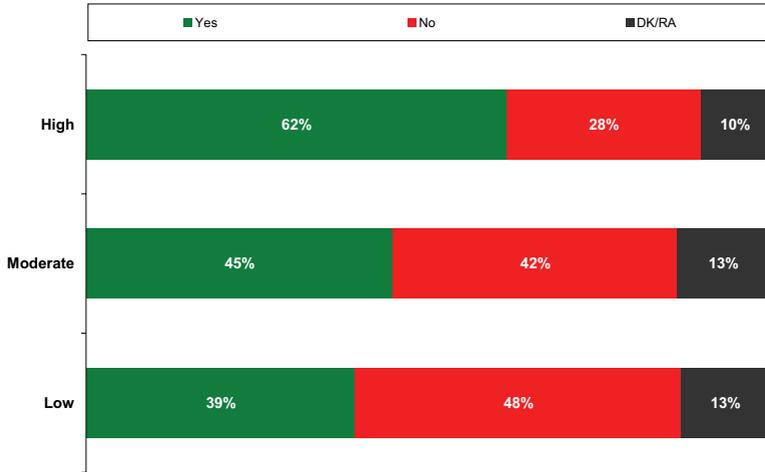


Chart 6. "In Georgia today, do you think or not that people like yourself have the right to openly say what they think?" **by** Level of trust to private institutions

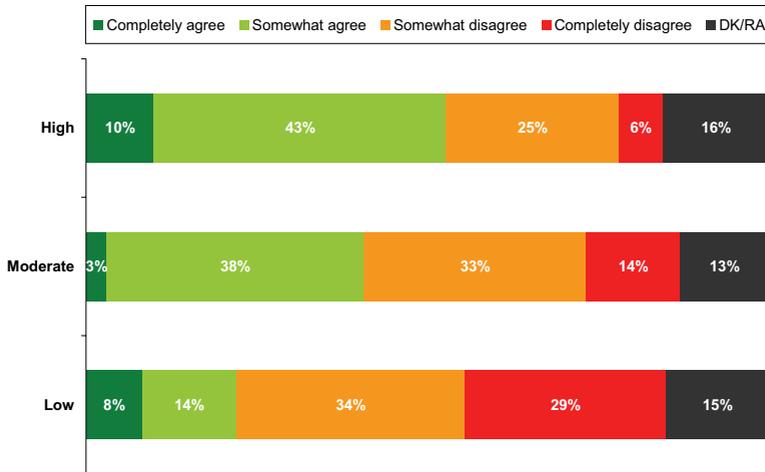


Chart 7. "Under the present system of government in Georgia, do you completely agree, somewhat agree, somewhat disagree or completely disagree that people like yourself are treated fairly by the government?" **by** Level of trust to political institutions

challenge of aggregating interests. In December 2007, 47% agreed with the notion that the government only listens when people organize in large groups to show that they are angry. (Only 26% disagreed with the statement, with the rest distributed across "Neutral" and "Don't know".)²⁶ But people don't yet organize *before* they are angry. A survey done a few weeks earlier showed that only 0.7% had gone to a meeting of a club or civic organization in the previous 12 months. In other words, much needs to happen in terms of civic development, and in generating membership-based organizations, to aggregate views and interests and give them a voice.

While surveys and focus groups offer a powerful additional instrument for actually listening to people before they get angry, they only test for fragmented views that typically will be relatively unsophisticated. More sophisticated views can only be developed within structured endeavors that systematically develop their views and proposals.

Conclusions

This chapter offered a brief overview over some of the views on democracy, and was intended to illustrate that the population actually has sophisticated views on Georgia's political evolution. As we write this, Georgia is still trying to overcome the latest political standoff. If all politicians, from 2004 onward, had engaged more systematically with survey findings to find out what the Georgian people think, the country and its democracy would have moved further than both have.

Judicial reform initiatives: results oriented?

Giorgi Chkheidze

Deputy Public Defender (Ombudsman) of Georgia

Introduction

The Judiciary in Georgia remains one of the least trusted public institutions despite the ongoing reforms. The courts' impartiality is popularly contested and the judges are believed to be constantly pressured by the executive, especially the prosecution.

According to the Transparency International Global Corruption Barometer, published on 3rd June 2009, most Georgian citizens rank the judiciary as the most corrupt institution in the country, while most of them assess positively the government's efforts to reduce corruption.²⁷

The Georgian Ombudsman and human rights groups argue that basic pre-condition for the effective protection of human rights at national level – independent and efficient judiciary require reform initiatives which make actual change.

The fact that an independent judiciary has not been formed is the origin of a lot of serious problems facing Georgia today. In the last ten years, a third reform is already under way in the judiciary – the legislation is being changed, the court buildings are being technically equipped at the modern level, and the judges are trained and retrained, though the situation in this sphere still does not improve. According to recent opinion polls, the public confidence in the judiciary does not exceed 14–15 percent. The main reason for this is that the judiciary in Georgia is not independent and is entirely subordinated to the Prosecutor's Office and the state administration. The finely renovated and equipped buildings fail to fulfill their major objective – guarantee the protection of human rights.

Recent developments with regard to the judiciary in Georgia have been the changes in the Constitution in late 2006, according to which the President does not have the right to appoint judges. The composition of the supreme body of judicial self-governance and discipline, the High Council of Justice (HCJ), has been altered diminishing the number of Presidential appointees. Further, the President no longer chairs the HCJ, with the President of the Supreme Court assuming this position. This is especially important since the HCJ is the body appointing all lower court judges. Despite these important constitutional changes, there is still a need for the High Council of Justice of Georgia to act as an independent body and to ensure disciplinary proceedings against judges conducted on the grounds of fairness.

Georgia faced two major elections in 2008, Presidential and Parliamentary. Role of the judiciary was of utmost importance for gaining trust in the election system. One might argue that political parties and non-party observation organizations did not find effective remedy during election adjudications. The year of 2009 is marked with wide public protests, political and civic activists demonstrating on the streets and exercising their freedom of expression in forms which might not be perceived as pleasant ones for the wider public, but democracy and pluralism tolerates these forms. The judiciary had another challenge to ensure protection of the freedom of expression, ensure just public order and not to allow political persecution. One might argue that administrative courts played an important role in legalizing arrests of activists and prosecution motivated by political persecution.

So, why is it that various reforms in the field of justice and rule of law cannot provide change which we need, or is it actual change that does not influence public attitude towards judiciary? Something must be wrong in the form of how these reforms are planned and implemented.

“New wave” initiatives – public consulted?

There have been a number of initiatives proposed by the present Government in the field of the rule of law and judiciary. Publicized late in 2008 important initiatives under the heading of the “new wave of democratic reforms” included a number of interesting changes regarding judiciary. Thus, according to the new initiatives: a) judges should be appointed for a life term; b) representative of the opposition party should become the member of the HCJ and c) jury trial should be introduced.

These initiatives have been publicized by the President of Georgia during his address to the UN General Assembly in September 2008 and a month later in his address to the Parliament. The government did stress major attention towards these initiatives as an ultimate key to the success in the field of the judicial reform. In essence, these initiatives cannot be considered as a self-complete. While appointment of the judges for a life term might be an important precondition for independence, the effectiveness of the stated guarantee can be ensured only in case of the change of procedure for the disciplinary prosecution against judges, to ensure that life term appointed judges will not be easily removed from their positions. *Furthermore*, appointment of the member from the opposition party to the HCJ can be seen as a step forward to make activity of the council more transparent. However, for more cross-sector involvement and building trust and feeling of ownership over judicial reform, one might consider the possibility of bringing representatives of the Bar (practicing lawyers) to the activities of the supreme council of justice. *Finally*, Jury trials cannot have a dramatic influence on the fairness of the process if all the elements of the due process are not observed in the pre-trial and trial stages. In addition to this, this reform alone will not bring real results for one simple reason – the institution of jury functions more or less effectively in countries where the society is free and the corresponding traditions are in place. In an autocratic society, where law enforcement bodies –

police, financial police, prosecutor's office – control not only every sphere, but also every family and business, every state and private organization, there is no way members of the jury can escape the government's pressure. At the same time, in a country which hasn't held a single unriggered election, it is impossible to build trust in the system of selection of jury members. In January 2008, several days after the presidential elections, Mikheil Saakashvili acknowledged that the law enforcement bodies were politicized and even talked about the necessity to depoliticize them, but this promise was not followed by any results. In a society where law enforcement bodies are politicized it is difficult to pin great hopes on the jury.

Basic amendments to the law on the appointment of judges for a life term and inclusion of members of the political opposition to the High Council of Justice have been carried out. However the public still awaits results of the "new wave" reforms. The question is asked whether these and related reform initiatives are born as a result of the wide public consultation and shortcomings indicated by the National Human Rights institution – Ombudsman's office are taken into account? Unfortunately not. The above stated initiatives are result of the political will from the top to the bottom.

One might question the ability and desire from the side of the Ombudsman and non-state actors to provide specific initiatives in the field of the justice reform. According to the Constitution, the Ombudsman of Georgia submits periodic and biannual reports to the Parliament on the state of Human Rights in Georgia. The latest reports do contain specific chapters on the judiciary. These Chapters include information on the trends of human rights violations from the side of judiciary, analysis of the specific cases, as well as, scrutiny of the specific systematic problems on which reform initiatives might be based. This is up to the legislative body, which is entrusted by the constitution to shape and adopt domestic and foreign policy, to take into account reports presented to them.

Furthermore, a number of important initiatives have been launched by civil society organisations in this regard. Periodic reports from the watchdogs should be seen as a source for scrutiny. As an example, initiatives from November 2007 can be named, when civil society organisations with the participation of the experts from the number of fields elaborated set of specific recommendations for the implementation of the European Neighbourhood Policy Action Plan (ENP AP) – “Civil Society on priorities of the European Neighbourhood policy action plan for Georgia for 2007–2009”. This document has been presented to the Georgian Government as well as to the European Commission authorities in Brussels. This paper contained *inter alia* specific recommendations for the reform of the justice system.

Despite the above-stated initiatives, no wide consultation is being done with the non-state actors, practitioners, Ombudsman and other actors involved when specific reform initiatives are shaped by the executive in the field of the judiciary.

Inconsistent steps

Lack of public trust in the judiciary is one of the major problems in Georgia. A clear illustration of inconsistent reform steps are decisions of 2006 and 2007 with this regard. On one hand, Parliament amended the constitution and as it was described above, transferred major powers from the President to HCJ, thus providing formal independence to the system and positive message to the society. However, as it was apparent from the beginning, this message would not be enough. Opinion polls of 2007 indicated dramatic lack of trust from the side of the public towards the judiciary. Despite this reality, by May 2007 Parliament had amended legislation and restricted camera and audio recordings inside the court rooms. Although accepted in a number of western European democracies, with a major lack of trust in Georgia this reform step has been criticized by civil society organizations as a

counterproductive. As well-known British dictum provides: *"justice not only must be done, it must be seen to be done"*.

Causes of the weakness not examined

Since the election of the current Ombudsman in 2004, he has stressed in all of his reports that the judiciary in Georgia is not independent and considered the political will as the main cause. The government, on the contrary, claimed that judicial reform was proceeding successfully and accused the Ombudsman of being biased and trying to discredit the judiciary. However, after the lack of judicial independence became the object of international criticism, the Georgian government also acknowledged the existence of the problem. In July 2008, the Chairman of the Supreme Court of Georgia Konstantine Kublashvili declared at an international conference in Tbilisi that the judges were not independent and named their lack of principles and the absence of the tradition of an independent judiciary as the reason. In the autumn of the same year, the problem of lack of judicial independence was acknowledged by President Mikheil Saakashvili and the Minister of Justice Zurab Adeishvili. The only thing in which Georgian Ombudsman disagrees with them in this case is the causes, since the lack of tradition cannot be blamed for the fact that a judge elected just recently cannot dare to make an independent decision and it is politicians or prosecutors that are making decisions instead of him.

Generally, the Georgian government only acknowledges problems of human rights violations when they are indicated by the West. For example, the 2006 US State Department report on human rights practices talks about judicial independence. It reads: "Ex parte communications between lawyers and parties with judges were common, which facilitated Soviet-style "telephone justice". Lawyers, including prosecutors, and parties to litigation reportedly used this avenue to pressure judges to decide cases in ways favourable to their interests."

The reaction of the Georgian government to this criticism was silly: the Parliament hurriedly passed a law prohibiting judges from communicating with the parties by phone or otherwise. Formally, the criticism was given a reply while, in reality, everything remained the same, which was acknowledged even by the top-ranking representatives of the government in 2008, this time after critical remarks by the Secretary General of NATO.

This became a rule for Georgian governance not to have full study of the previous reform actions, while new steps are planned. Unfortunately this is also the case with judicial reform. This is easily possible with no availability of the consultations on the reform initiatives.

There was no full study of the causes of the lack of trust from the side of the public towards the judiciary, when in 2007 law was adopted to ban cameras inside the court room.

According to the European Committee Against Torture 2007 report – *the rate of acquittals remains problematic and severe prison overcrowding undermines the basic human rights standards for the inmates.*²⁸ This problem still is faced by the Georgian society nowadays. The CPT did refer to the need of the reform of the justice and law enforcement system to ensure protection of the rights of the prisoners. While considering causes of the prison overcrowding, policy makers had to take it into account effectiveness of the changes in criminal Legislation carried out over the last three years: justification of the “zero tolerance” criminal policy; limitation and in many cases denying judges with discretion to use lenient sanctions, the possibility to use alternative – non custodial measures; introduction of the rule on multiplying, instead of merger of the criminal sanctions (when minor sanction is merged with grave one). Thus, providing gravely excessive sanctions to be mandatory used by the judges when sentencing.

One might argue whether greater discretion can have positive

effect on the independence of judges. The opposite effect might appear. However, it should be acknowledged that without real study of the causes of the weakness of the judiciary and identification of the areas which should be named and reformed no effective changes can be expected.

Conclusions

The present situation differs from previous years in one aspect only – the government has acknowledged the existence of problems, though it did not go beyond that. Traditionally, the authorities have started talking about one more, new reform, but reform in itself doesn't mean results.

For reform to have real effect, the judiciary, government and public should be ready to analyze mistakes which were made previously. To see whether a specific policy or legislative change played a positive or negative role for the independence and effectiveness of the justice system. Reform shaping in the field of justice cannot be a closed process. There should be the political will to involve not only the judiciary and government, but also non-state actors, the Ombudsman, wider society. This will ensure ownership over the process from the side of the various actors; provide the possibility for the government to legitimize systematic and positive reform steps and give more tools into the hands of the public to demand clear and consistent political will for independent and efficient justice.

Georgia: News media and press freedom badly hit by partisan struggles

Elsa Vidal

Former USSR and Europe Desk Officer,
Reporters without Borders

Thanks to the growth of its privately-owned media and to liberal legislation, Georgia used to get the best marks in the Caucasus on its respect for press freedom. But everything has changed in the past two years. Political tension in 2007 and the war with Russia in August 2008 has had a very negative impact on journalists and free expression.

Georgia has many national and local TV stations and, in all, has about 200 registered news media. But this does not offset the lack of objectivity displayed by most of them and the difficulties experienced by opposition TV stations.

The November 2007 protests can be seen as the beginning of the decline in relations between the government and news media. Back then, the TV station *Imedi*, owned by millionaire businessman and presidential candidate Badri Patarkatsishvili, was the most popular of Georgia's three leading privately-owned stations. But it has now changed beyond recognition, having suffered more than any other media outlet as a result of President Mikhail Saakashvili's state of emergency.

On 7 November 2007 the authorities closed two stations – *Imedi* and *Kavkassia* – that had broadcast footage of the police using force to disperse protesters who were demanding Saakashvili's resignation and early elections. *Imedi's* head of programmes announced on the air at 8:50 p.m. that special troops had just burst into the studios. A few minutes later, *Imedi* and *Kavkassia* went off the air.

After nine days of a state of emergency in which the state

media had a monopoly of news reporting, the authorities allowed the privately-owned media to go back to work – except *Imedi*, which was the target of a court order stripping it of its licence. It only went back on the air after 34 days and without its political programmes.

It is clear that the decision to allow *Imedi* to resume broadcasting was due largely to the international community's intervention. In particular, Adam Michnik, acting as the European Union's mediator on press freedom issues in Georgia, and Miklos Haraszti, the Organisation for Security and Cooperation in Europe's representative for media freedom, argued that the presidential election that had been brought forward to 5 January 2008 could not be considered democratic if the most popular TV station had been silenced.

Imedi resumed broadcasting on 12 December 2007, but stopped again two weeks later on its own initiative, in protest against the charges that had been brought against its owner, Patarkatsishvili, who is now dead, and in protest against the political pressure being put on members of staff.

The result of the presidential election – won by Saakashvili with 52.8 per cent of the votes – did not defuse the political tension in Georgia. The main opposition candidate, Levan Gachechiladze, and dozens of supporters demonstrated outside the state TV broadcaster's headquarters on 9 January 2008 to demand the right to be able to speak live on the air. Their frustration was prompted by the lack of broadcast space for open political debate, which was the result of the media's excessive polarisation.

Imedi is now back on the air but the content changes mean that many Georgians have dubbed the former opposition station "Rustavi 3", after the pro-government *Rustavi 2*, one of the leading privately-owned TV stations. Criticism of the government has disappeared from *Imedi* and is now to be found on *Maestro* and *Kavkassia*, two privately-owned stations that give the opposition air-time.

Maestro has, since January 2009, been broadcasting a daily programme hosted by Levan Gachechiladze's brother, Giorgi Gachechiladze, a singer better known by the stage name "Ustnobi," who pretends to be broadcasting from a prison cell called "Cell 5." He has said he intends to stay there until Saakashvili resigns.

As a result of the deterioration in the media's relations with the government and press, attacks on media and media employees are unfortunately no longer isolated events. Earlier this month, after several weeks of opposition demonstrations on the capital's streets, *Maestro* was the target of a grenade.. A few days later, on 15 June, some 10 journalists were roughed up by police who were tearing down the shelters built by demonstrators in the centre of Tbilisi.

Maestro and *Kavkassia* briefly stopped broadcasting in protest against this kind of violence. They went back on the air on 16 June after the injured media personnel received an apology from David Bakradze, the spokesman of the parliament (in which pro-government representatives have the majority).

Mention must also be made of the acts of intimidation and other problems encountered by journalists in the breakaway regions of Abkhazia and South Ossetia, both before and since the war with Russia in August 2008. A delegation of journalists had already gone to see Abkhaz President Sergei Bagapsh in 2007 to talk about the media's problems , which include a lack of appropriate legislation, limited access to public information and draconian taxes applied selectively.

It has become even more difficult for both local and foreign journalists to work in the two regions since the war, where there have been countless cases of obstruction and other incidents. In September 2008, a crew working for Polish public television was detained by Ossetian militiamen and a reporter for a Georgian news website was physically attacked while covering a "Stop Russia" demonstration in Gori, a city

near the South Ossetian border. In the same month, Russian soldiers detained a *Rustavi 2* TV crew near the western city of Zugdidi, confiscated their equipment and leading them at gunpoint towards their base. They were only released after United Nations observers intervened.

Local militias and the Russian and Georgian armed forces were responsible for many incidents of this kind during the war itself. But such incidents were eclipsed by the deaths of three journalists – Giga Chikhladze of *Russian Newsweek* and *Alania TV*, Alexander Klimchuk of *Caucasus Press Images* and *Itar-Tass*, and Stan Storemans of *RTL4*. Dozens of media personnel were also injured, including a Turkish TV crew as they were trying to get back to Tskhinvali, news media premises were ransacked, access to many news websites blocked, and cable TV reception interfered with.

The two sides extended the war into the news and information domain. The main Georgian Internet Service Provider cut access to Russian websites, while Russian hackers attacked Georgian news media websites and government websites such as *Rustavi 2*, *Civil.ge* and *Media.ge*.

Georgia nonetheless has some of the most liberal media legislation in the Caucasus. Freedom of expression and information is enshrined in the constitution. Insult has been decriminalised and a freedom of information law has been adopted. But implementation of these laws is not guaranteed.

At the end of last year, ombudsman Sozar Soubari said the legal provisions governing the allocation of broadcast licenses violated Article 24 of the Constitution, which states: "Every individual has the right to freely receive and disseminate information, and to express and communicate their views verbally, in writing or by any other means."

But the allocation of licenses is still subject to murky negotiations. In the spring of 2008, for example, the National

Communications Commission refused *Maestro* permission to broadcast "Profession reporter" on the grounds that it was a political programme rather than a news show, and *Maestro's* license did not cover political programmes.

The media's polarisation, their involvement in political disputes and the lack of a popular press with truly independent editorial policies all militate against the prospects of press freedom taking a lasting hold in Georgia. The emergence of a less partisan media needs to be promoted, without undermining media diversity, which should, of course, be encouraged.

Work began this month on the drafting of an 11-point Journalists Charter spelling out the requirement for journalists to provide their public with objective news and information. We hope journalists of all colours will adopt it.

The international community's efforts on behalf of press freedom in Georgia must be continued and reinforced even if they depend on the current government's ability and readiness to accept criticism.

Strong States vs Strong Rights

Giorgi Gogia
Human Rights Watch

President Mikheil Saakashvili and his team, the majority of whom were civil society leaders before coming to power through the Rose Revolution, take pride in their commitments to the rule of law and human rights protection. Although the new leadership has had significant success in rebuilding crumbling institutions and implementing sweeping reforms that have transformed the economy, its human rights record has been uneven during the past few years. Some in the leadership believe that with two unresolved secessionist conflicts and the state-building project still incomplete, ensuring full compliance with human rights standards is subordinate to a greater cause if need be. However, this perception is misleading and dangerous, since respect for the rule of law is key to the foundation of a stable state, and with a shaky foundation the state itself becomes vulnerable to numerous inside and outside threats.

Georgia is trying to build a strong state – a state that is capable of monopolizing coercive means and using them when the state interests are at stake. The Georgian government acts decisively when it considers, rightly or wrongly, that the state interests require the use of force. Its crackdown on organized crime in the country and its fight against corruption are other examples in which President Saakashvili's government acted decisively and did not shy away from using force as a means to achieve the desired goal and prevent what they perceived as a greater threat. The government sent riot troops to disperse protesters during massive street protests in November 2007, and to quell a prison riot in March 2006. Many politicians in the Georgian government are quick to claim that that is exactly what many Western democracies do whether it is in the streets of Britain,

France, Italy or Greece when, for example, street protests get violent.

However, what is dramatically lacking is accountability for excessive use of force by law enforcement. A strong state should not only be able to deploy force but also be able to hold police and other security officials accountable when they use excessive force or otherwise violate the law. When a state is afraid to prosecute law enforcement agents out of fear that next time they are needed for decisive action they would feel demoralized and not act accordingly, that is a sign of a weak state. Although the situations in March 2006 and in November 2007 were different, the result was the same – one-sided pursuit of accountability of, respectively, inmates and protesters. If there was any effort to hold law enforcement agents accountable, it was ineffective, half-hearted and skin-deep.

The article singles out two incidents when Georgia's security forces used coercive means to prevent what they called a "prison riot" in 2006 and alleged coup attempt in 2007. Both times the state acted decisively and strongly against the perceived or real threat. Both incidents caused significant casualties – seven prisoners died and scores injured in 2006, and hundreds of demonstrators were hospitalized in 2007. More than three years later in the first case and over 20 months after the second one, accountability for excessive use of force by law enforcements has been lacking. This contributes to the climate of impunity for security forces and undermines public confidence in law enforcement.

President Saakashvili and his government invested heavily in police reform after the Rose Revolution to restore public confidence in law enforcement, an institution which was largely corrupt and considered by many to exist to protect the state leadership and its own interests rather than those of the public. The sweeping reforms indeed bore significant results. However, the public confidence in law enforcement has taken a serious blow with the March 2006 and November

2007 events. The only way to restore it, and not to let the painstaking reforms be squandered, would be for the state to conduct effective investigations into instances of excessive use of force and ensure accountability for them. This would only make Georgia a stronger state.

Excessive Use of Force in Prison, March 2006

Abuses in prison has been a long-standing issue in Georgia's penitentiary institutions, well documented by many local and international organizations, including Human Rights Watch,²⁹ the United Nations Committee Against Torture (CAT),³⁰ and the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT).³¹

Upon his election to the presidency in 2004, Saakashvili promised to rectify past abuses by confronting corruption and organized crime and establishing the rule of law and respect for human rights. In December 2005 the parliament passed new legislation to combat organized crime, and the government began to take practical and legislative measures to eliminate the power of crime bosses, known in Georgia as "thieves in law," due to their adherence to a strict set of criminal rules, or laws.

The crackdown on organized crime extended to the prison system, which the thieves in law had come to dominate.³² While the government's fight against lawlessness in the prison system is legitimate and necessary, the means used in this effort have not always been justified. After the announcement of the reforms, government forces undertook numerous operations to quell disturbances in several prisons, which the government characterized as riots organized to protest government efforts to combat the authority of the thieves in law. The most serious of these incidents occurred on March 27, 2006 in Tbilisi Prison No. 5. Much controversy exists over what exactly happened on this day, with many conflicting versions being reported, even among government agencies.³³

The government maintains that the riot was carefully designed and planned by several alleged thieves in law. Other evidence suggests that the disturbance erupted more spontaneously in response to the beating of some of the crime bosses in the Republican Prison Hospital, and then spread to the nearby Tbilisi Prison No. 5. In Prison No. 5, detainees shouted, banged dishes, and set fire to linens and threw them out the windows. At least some detainees escaped from their cells. The government claims that some detainees had guns, but no evidence has to date been made public to substantiate that. When government troops entered the facility to end the disturbance, they began their operation by opening fire using both rubber bullets and regular automatic weapons with live rounds, making no attempt to use nonviolent means of control. No attempts at other less extreme uses of force were made. Government troops also allegedly beat many detainees. As a result of the use of force, at least seven inmates died. The government maintains that the force used was justified, but it has failed to conduct an effective investigation to evaluate whether the force used was proportionate.

Despite immediate calls for an independent investigation into the March 27 incident, the government waited until three months after the violence to open an investigation into whether special forces troops exceeded their authority, and yet another four months to initiate investigations into the deaths of the seven inmates. More than three years after the incident, investigations into excessive use of force by special forces remains inconclusive, casting doubt on the government's genuine will to hold security officials accountable. The explanation in private conversations with government officials has been that the government fears the effects such a prosecution will have on morale of the security forces and their ability to act decisively in possible future operations.

Excessive Use of Force against Demonstrators and Violent Closure of Imedi TV, November 2007

The fragility of the Georgian state was once again revealed on November 7, 2007, when government forces used violent and excessive force to disperse a series of largely peaceful demonstrations in the capital, Tbilisi.³⁴ In the course of breaking up the demonstrations law enforcement officers hastily resorted to the use of teargas and rubber bullets. Police and other law enforcement personnel, many of them masked, pursued fleeing demonstrators of all ages, kicking and punching them and striking them with truncheons and wooden poles. Heavily armed special troops raided the private television station Imedi, threatening and ejecting the staff and damaging or destroying much of the station's equipment.

The violence capped several days of peaceful demonstrations by Georgia's opposition parties and supporters, who were calling for parliamentary elections to be held in early 2008 and for the release of individuals whom they consider political prisoners, among other demands.

Violence first occurred when, early on the morning of November 7 police without warning charged the approximately 70 people, some of them hunger strikers, who had spent the night on the steps of parliament, pulling them off the steps and beating several of them. Also beaten were a few other demonstrators and supporters who tried to resist police attempts to remove the hunger strikers. Policemen also confiscated the cameras and equipment of several journalists and detained several opposition activists.

Later that morning, when demonstrators gathered in front of parliament, some tried unsuccessfully to push through a police cordon on Rustaveli Avenue. Eventually protestors became too numerous to fit on the steps and sidewalk in front of parliament, and they forced their way through the police cordon and onto Rustaveli Avenue. There were some

altercations between police and protestors and incidents of police force against protestors. Police arrested some demonstrators.

Riot police and other law enforcement officers assembled on Rustaveli Avenue, ordered the crowd to disperse, and warned that legal means of crowd dispersal would be used. When most demonstrators did not heed the request, riot police briefly sprayed the front lines of protestors with water cannons. Most demonstrators still did not disperse. Without subsequent warnings, law enforcement officers then launched a volley of teargas canisters into the crowd and opened fire with rubber bullets, causing demonstrators to flee immediately in the few directions available and into nearby buildings. Riot police and other law enforcement officials, many in black masks and all without any identification, pursued the dispersing protestors and attacked them with fists, kicks, truncheons, wooden poles, and other objects.

As demonstrators dispersed through the side streets leading away from Rustaveli Avenue, some of them joined a large number of additional demonstrators to gather at the other end of Rustaveli Avenue, from the direction of Republican Square. When this crowd did not disperse, law enforcement officials again used large volumes of teargas and rubber bullets against the crowd. A few demonstrators damaged a police car and others threw stones and active teargas canisters at riot police. Police beat individual fleeing demonstrators.

Seeing that the majority of demonstrators were unwilling to disperse, opposition leaders called on people to go to Rike, a large open area several kilometers from the city centre with no through streets. Riot police and other law enforcement personnel essentially surrounded the protestors at Rike, fired teargas and rubber bullets at them, and again pursued and attacked individual demonstrators, many of whom were attempting to flee. At Rike there were several incidents of

attacks by demonstrators on police, some of them quite violent.

At approximately 8:45 p.m., after all demonstrators at Rike had been dispersed, hundreds of special forces troops armed with machine guns and other weapons entered the private Imedi television studios, and forced journalists and other staff members to lie on the floor with their hands behind their heads, deliberately intimidating them by pointing guns to their heads and with aggressive language. The government troops forced Imedi off the air, after anchors managed to describe the raid to viewers in the final minutes of broadcasting. Journalists and other staff were forced to leave the studios and troops damaged or destroyed much of the station's equipment.

After seeing Imedi forced off the air on live television, dozens of relatives and friends of Imedi staff members and Imedi supporters gathered outside the Imedi studios. As Imedi staff, forced by police to leave the property, also gathered outside the studios' main gate, riot police and other law enforcement agents fired teargas and rubber bullets into the small crowd and pursued people as they fled, attacking them with truncheons and fists and firing rubber bullets. During the operations on Rustaveli Avenue and Rike, law enforcement agents had also targeted journalists, including both Imedi journalists and others.

The Georgian government faced an enormous challenge in retaining law and order on November 7. Many demonstrators refused to follow initial police orders to disperse, and there were instances of protestors attacking individual police officers, particularly later in the day. The government also claimed that opposition leaders intended to use protestors to storm Parliament as part of an alleged Russian-backed coup attempt, in which Imedi television was playing an instrumental role. While it is difficult to assess whether such a claim is accurate, the Georgian government, as any other government, had a right and duty to stop such attacks.

However in doing so, it was obligated to respect basic human rights standards governing the use of force in police operations. While Georgian government showed strength in taking decisive steps to restore law and order, it displayed weakness in failing to hold law enforcement forces accountable for excessive use of force. Over 20 months after the November 2007 events, investigations into excessive use of force by security forces remain incomplete and no one has been held accountable for it.

November 2007 had a significant, negative impact on public confidence in police and the government. It also undermined Georgia's international image. In an attempt to restore his democratic credentials President Saakashvili held early Presidential elections. As recent protests in the capital Tbilisi have shown, early elections were not enough to repair the damage. Only full accountability could have restored the public's confidence in the police and eliminated the perception of selective justice. Furthermore, the lack of any consequences for those responsible for the abusive conduct risks fostering increasing abuses in the future because it sends a message that violations will be tolerated.

Conclusion

After the 2003 Rose Revolution President Mikheil Saakashvili and his government inherited a failed state, facing serious challenges of rampant corruption and a shattered economy. Saakashvili entered office as a liberal reformer and repeatedly stated his commitments to rule of law and human rights. One can credit the Georgian leadership for creating some sense of state legitimacy. However, it has a long way to go. While the Georgian government shows its strength by using its monopoly on the use of force to confront challenges, it also has an obligation to use that force lawfully and reasonably. And the failure to punish its own is not only wrong; it is also a sign of weakness. Only by holding its security forces to full account can the Georgian government fully overcome the "failed state syndrome."

Analysis of the 2008 Presidential and Parliamentary Elections in Georgia through Digital Mapping

*Mary O'Hagan, Michelle Brown
and Ian Woodward*

The National Democratic Institute, Georgia

Introduction

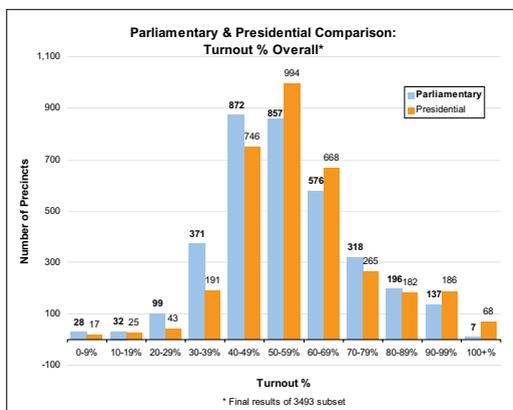
Tabulation and reporting of vote totals and adjudication of controversies related to vote counts were among the most contested aspects of the January 5th 2008 presidential election results. Election observers and other domestic and international actors closely watched similar processes for the May 21st parliamentary elections to see whether they would represent a step forward in Georgia's democratic development. One of the most notable successes of the parliamentary elections was increased efficiency and accuracy in the reporting of results from individual precincts. This, together with the development of digital mapping of election precincts and voters' lists have made it easier to analyze elections, identify improvements and locate specific areas where problems remain. This article presents evidence that some aspects of the parliamentary elections were improved. There clearly remains room for a further reduction in the range of performance of election precincts with regard to unrealistically high voter turnout, errors in reporting results, voters' list accuracy and other electoral process areas.

It is important to note that any analysis which depends upon official election results has certain limitations. Although the data NDI used to create maps of elections results excludes obvious anomalous cases, such as precincts where results were annulled and precincts that counted results from special police and military polling stations, many errors and irregularities in the electoral process cannot be captured by analysis which depends upon official election results.

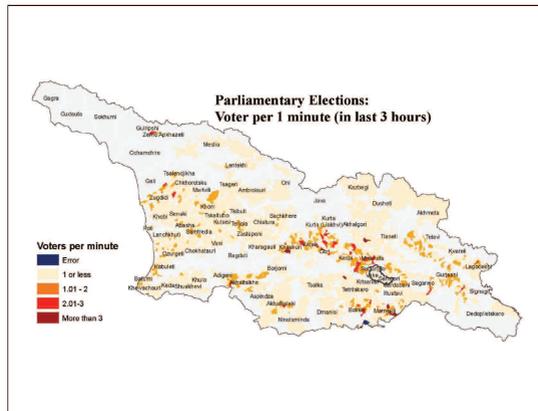
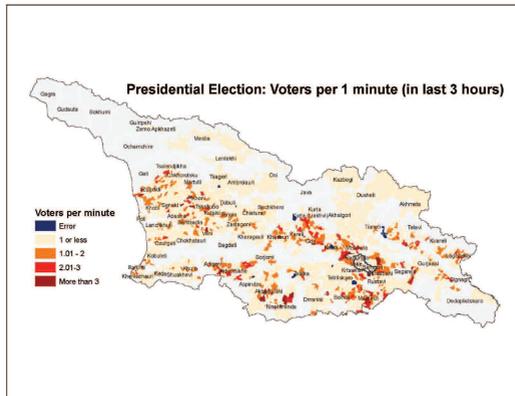
NDI is grateful for the support of the United States Agency for International Development for NDI’s work on the publication and analysis of election results. NDI is also grateful for the support of the Swedish International Development Agency for the development of digital maps which were created by Caucasus Research and Resource Center for NDI.

Voter Turnout

Overall, voter turnout was, as expected, lower in the parliamentary elections. 1.83 million votes were cast in the parliamentary elections compared with 1.97 million votes in the presidential election. However, from the point of view of assessing the conduct of these elections, it is more important to note that there were fewer precincts reporting abnormally high turnout. Diagram 1 below shows the percentage of voter turnout by precinct for both elections. This diagram is based on a subset of 3,493 polling stations that excludes annulled precincts and those that were counting results from special police or military precincts. The parliamentary turnout is still skewed, with more precincts reporting turnout above 80 percent than might be expected, but there is an obvious improvement compared with the January presidential election.



The following two maps provide further evidence of this improvement. They show the number of voters per minute in the last three hours of voting (5–8pm). This is based on dividing the time available by the number of voters reported for that time.



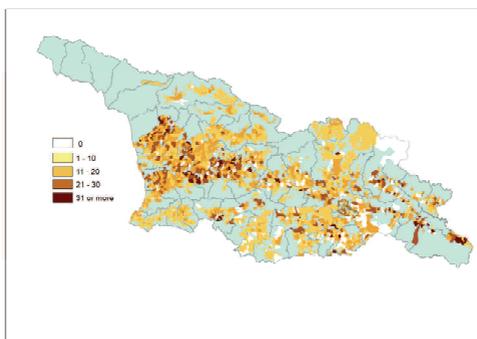
Voters' List

Following the presidential election, political parties, domestic nongovernmental organizations, and international non-governmental and governmental organizations expressed

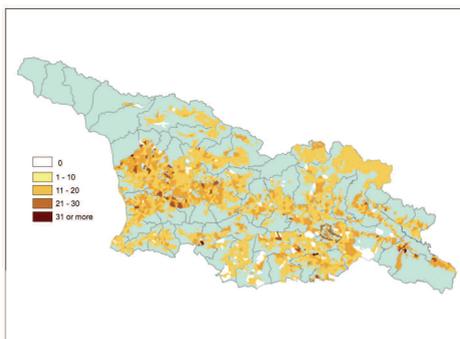
doubts about the quality of the voters' list. On election day, approximately 85,000 citizens voted through a supplementary list for those not registered prior to election day but possessing valid identification of residence in the precinct. Additional criticism of the list centred on instances of duplicate entries, in some precincts numbering more than 100.

The two maps below show the numbers of voters aged 85 and older in the presidential and parliamentary elections. As the average life expectancy in Georgia is 77, clusters of voters over the age of 85 raises questions regarding the

Voters Aged 85 and up (Presidential Elections 2008)

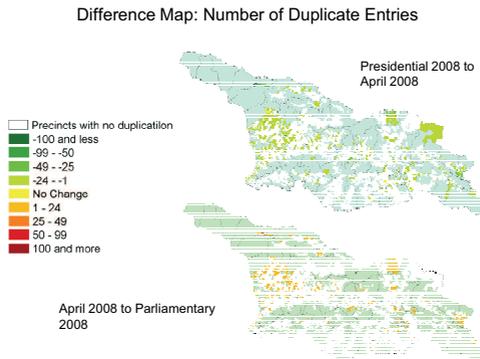


Voters Aged 85 and up (2008 Parliamentary Elections)



accuracy of the voters' list. There is a significant decrease in numbers between the two elections.

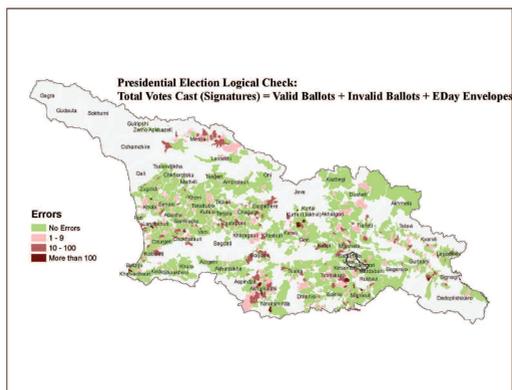
The following maps show an analysis of three iterations of the voters' list: the January 2008 list used in the presidential election, the April 2008 list produced prior to the parliamentary elections, and the May 2008 list used in the parliamentary elections. The number of duplicate entries (name and birth date) was calculated for each precinct. The change between the lists is mapped below. There is a general decrease in duplicates between the presidential election and April 2008, however there is an increase from April to the list used in the parliamentary elections indicating the need for further improvements.



Vote Tabulation

Improvements can also be noted in the preparation of precinct protocols. This might be explained by the abolition of provisions allowing registration of voters on Election Day. In the presidential election, this required separate counting of their votes and resulted in much confusion. Approximately one-quarter of polling stations made errors when performing logical checks (ensuring that the number of ballots cast matches the number of voters who received ballots) in January 2008. Far fewer errors were made in May 2008 and

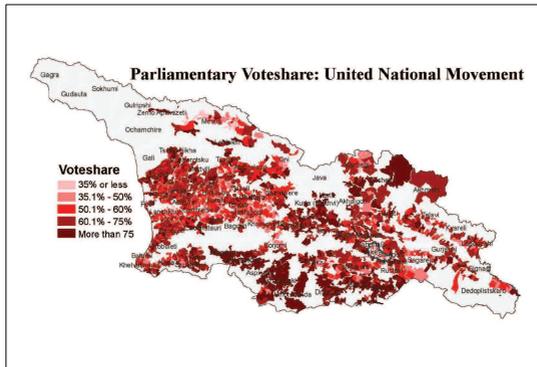
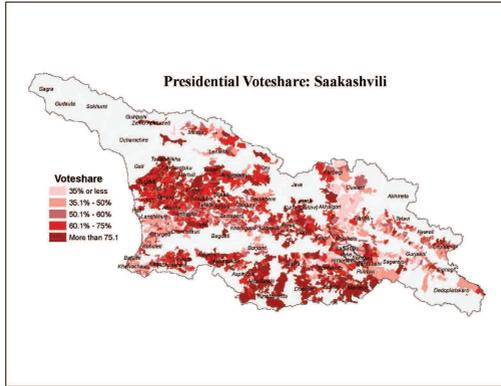
the errors that were made tended to be small. In the parliamentary elections, no discrepancies of more than 100 votes were found in any polling station protocol.



Support for Political Parties

NDI's public opinion research between the presidential and parliament elections, carried out by Caucasus Research and Resource Center (CRRC) and with support from the Swedish International Development Agency, showed that only approximately one in five respondents wanted or expected a constitutional majority in parliament for any party to emerge from the parliamentary elections. However, as the elections approached, it became apparent that, although the underlying popularity of the government had been relatively stable since January 2008, the United National Movement supporters were more motivated to vote than those of the opposition parties and this would significantly increase the lead of the largest party in the parliamentary elections (see maps below). The drop in voter turnout in the parliamentary elections, compared with January 2008 presidential election, was concentrated amongst supporters of the opposition. Both turnout and other factors, described below, contributed to a slight decrease for the opposition in May 2008. The total number of voters supporting candidates from the United

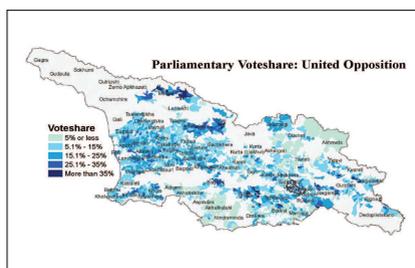
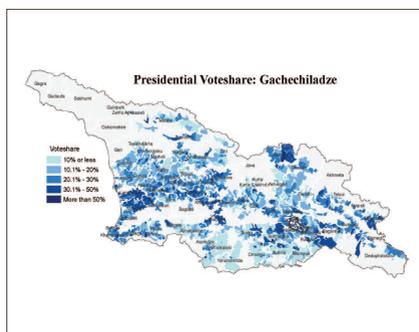
National Movement increased slightly from 1.03 million to 1.04 million. The number supporting the United Opposition decreased from about 500,000 to 381,000.



The opposition parties faced multiple challenges apart from the fact that their support was softer. They had far fewer human and financial resources compared with the governing party. For at least part of the campaign, coverage of the opposition on the national television channel with the largest audience was very limited (until the latter stages of the campaign, there was a stand off between the United Opposition and Rustavi 2 with each side blaming the other

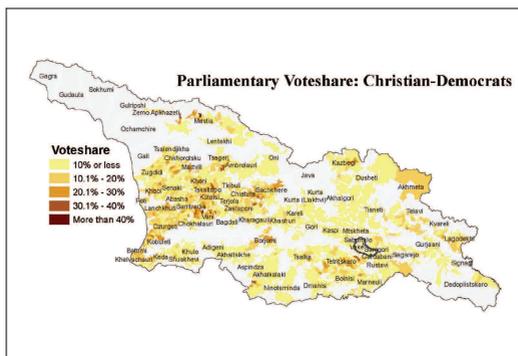
for a boycott). The electoral system was also likely to favour the largest party. Half of the parliamentary seats were decided in single-mandate contests, and the boundaries for the single-mandate districts under-represented larger urban areas where the opposition support was strongest. Opposition parties also suffered from an absence of agreement between them on which party was best placed to win marginal single-mandate contests. The result was that the governing party achieved an overwhelming majority in parliament, even though this did not correspond to their basic rating in most public opinion polls.

The following two maps compare election results for the largest opposition force, the United Opposition (this coalition of several opposition parties backed Levan Gachechiladze as its candidate in the presidential election and ran in a combined electoral bloc with the New Rights Party in the parliamentary elections):



Emergence of the Christian Democratic Movement

A new party emerged between the two elections, the Christian Democratic Movement, which performed well enough to pass the parliamentary threshold for representation. The arrival of the Christian Democrats onto the political scene in Georgia proved important. Polls carried out for NDI by CRRC in April and July 2008 (with funding from the Swedish Agency for International Development) showed that the party was able to draw support from all the other major parties as well as from some of those who had voted for independent candidate Badri Patarkatsishvili in the presidential election. The party leader, being a well-known journalist, was able to make an impact in a short time. However, as a new party, it lacked organizational capacity. It was not until late in the campaign when ratings enabled the party to obtain free air time for political advertisements. The following map shows the distribution of its support. This distribution indicates that there is the potential to develop some strongholds but in most areas of the country, particularly the capital, the Christian Democrats have yet to establish themselves.



Conclusions

The creation of an election results database and the development of digital mapping of election results and voter

list data should make it easier to assess and improve the quality of elections in Georgia. Representatives of the Central Election Commission have expressed to NDI in the aftermath of the parliamentary elections that they are interested in using these tools to enhance their own in-house analytical capacity. Over time, these tools could be used to instil a deeper culture of accountability within the election administration by making it easier to identify precincts with aberrant results and to compare the results of different elections. During the November 2008 elections of the regional legislature in Adjara, it was already noticeable that precincts with very high levels of turnout in a low-turnout election were identified quickly and scrutinized closely by the election administration. Several political parties used NDI's digital maps to focus their election campaigns. This type of planning was particularly valuable for smaller parties as it enabled them to direct scarce campaign resources to areas with the greatest potential for electoral support. International and domestic nonpartisan election monitors have these maps while planning observation of the parliamentary and Adjara elections. Over time, and used in conjunction with reports from individual observers, there is potential for these tools to assist nonpartisan election monitors to assess and improve their own observation efforts.

Policing and its reform in Georgia – A review and outlook

Marco Kubny

Former Senior Police Adviser, OSCE Georgia

Since the “Rose Revolution” and the consequent change of Government in 2004 Georgia has been pursuing a broad range of reforms aimed at introducing democratic governance. This strategic objective of the Georgian authorities is underpinned by the understanding that corruption and organised crime pose a direct threat to democratic governance, which is reflected in the Government’s action plans and Presidential decrees.

There is overwhelming evidence that good policing can play a vital role in conflict prevention, preservation of social stability during political crises and post-conflict rehabilitation. Without respect for the rule of law, effective law enforcement mechanisms and institutions responsible for upholding the law, the social, political and economic development of any state is likely to be significantly impaired.

Background and general considerations

The need for comprehensive reform of the Georgian police has been recognized by the government, civil society, international donors and the police itself. In particular, the clear intention to instigate national police reform was expressed by Georgian police officials at an international conference on “Democratic Policing in Georgia”, which took place in Tbilisi on 5–7 May 2004. The police reform should be seen as an opportunity to change the whole culture of policing in Georgia and to develop this culture towards European values, respect for people’s rights, and freedom, serving and protecting of communities rather than the Government. After Georgia’s admission to the Council of Europe, following the “Rose Revolution”, the process of democratization and the

establishment of respect for the principles of a democratic society and its democratic institutions began. At this stage the authorities might not have recognised that this process may well be irreversible.

The need for the reform of the police in Georgia has been clearly recognised. The effectiveness, efficiency and level of public support with which a police force operates, relates to its culture, structure, technical capacity and legislative powers. To achieve an optimum performance, all four elements have to meet on a level, which enables the police to prevent and detect crime and public disorder according to local needs and public satisfaction in general. Furthermore, all four elements need to be complimentary, thus a change in one will require modifications in the others. The process is perpetual but to achieve reform of a police service as a whole requires a substantial change in the management process to be initiated and co-ordinated at Ministerial level or above.

There are a number of international organizations and foreign embassies in Georgia, active in providing individual assistance to Georgian law enforcement bodies, including facilitating the creation of new organizational components, policies and procedures, which have to be considered as elements of the whole police reforming process.

The Organization for Security and Cooperation in Europe (OSCE) and its role in providing assistance to the police reform in Georgia

In February 2004, two Strategic Police Affairs Officers from the OSCE Strategic police Matters Unit (SPMU) conducted an early visit to Georgia. The purpose was to make a preliminary estimation of the general needs of the Georgian police as well as finding out how the OSCE may contribute to the Georgian police reform process.

A number of policing areas were proposed as priority areas for possible OSCE assistance. Following the successful

completion of this first visit, several further visits to Georgia were undertaken by a SPMU Police Affairs Officer in order to conduct working level discussions with officials in the Georgian Ministry of Internal Affairs (MIA), and to coordinate the planned OSCE assistance to the Georgian police with other ongoing and planned actions at multi- and bi-lateral level. Consequently, an in-depth needs assessment was implemented during February-March 2005, with participation of police experts from France, Estonia, Sweden, Germany, Canada, Bulgaria and the Netherlands.

On the basis of the experts' findings and recommendations, and in response to the dynamic pace of internal change in Georgia, a short-term Police Assistance Project (STAP) for the Georgian police was developed. Such an interim step permitted the utilisation of pre-existing extra-budgetary funding and ensured the continuity of OSCE support for police reform in Georgia. The project was funded by extra-budgetary contributions from Belgium and Norway and successfully completed in 2006.

As the continuation of STAP, the OSCE Mission to Georgia developed three projects embedded into a newly formulated Police Assistance Program (PAP). The project activities covered the areas of community policing (CP), human resources management (HRM) and police training (PT). These steps provided more detailed assistance; building upon the progress achieved thus far in these fields and expanded the Mission's activities to further regions of Georgia. All projects related to the three identified areas were implemented during 2006 and 2007.

Follow-up projects on building police-public partnership, introducing criminal prevention measures and further development of the Police Academy's capacities have been successfully implemented in 2008. In addition, the OSCE Mission to Georgia established and chaired the "International Police Assistance Group", which comprised representatives of

Embassies and international organizations active in the areas of police reform.

As an important step, the OSCE Mission developed a matrix on police assistance in Georgia which was continuously updated and made public by the donor parties. This matrix was a compilation of all ongoing police assistance projects. The constant maintenance of the matrix permitted to ensure that support efforts by different donors were complimentary and duplications of initiatives could be avoided.

A significant achievement was a national conference on community policing in 2007, which was facilitated by the OSCE Mission to Georgia. Stakeholders representing numerous government agencies, non-governmental organizations and civil society agreed to further develop a "National Strategy on Community Policing" which was initially proposed by the OSCE. This strategy is still under consideration and would clearly contribute to a change in the culture of policing in Georgia. Realistically it should also be noted that some decision makers on all levels are still resistant to the institutionalization of reforms and are unwilling to commit to change.

After five years of providing police assistance to Georgia, the OSCE Mission closed down due to a lack of consensus on a new mandate by the OSCE Permanent Council following the August 2008 armed conflict between Georgia and the Russian Federation. Suggested project activities for 2009 have been suspended or delegated to other international stakeholders with the aim of ensuring their implementation. With the closure of the OSCE Mission to Georgia, the Police Assistance Program, including its strategic implementation plan, came to an end.

As in many international organizations one of the major lessons learned was the lack of an exit strategy. As the organization, as well as the Georgian authorities were not prepared for such challenges, a rapid and gap leaving process

started. Without doubt, the OSCE has made significant achievements/progress in providing support to the police reform in Georgia. But since the OSCE is a multi-lateral international organisation and has a wider range of effective policy tools (greater resources) than a national organisation, it might be difficult for other actors in the country to fill the gap.

Law Enforcement in the Georgian-South Ossetian zone of conflict and its impact on the police reform

The main mandate of the OSCE Mission to Georgia, adopted by the OSCE Permanent Council on 13 December 1992, was to promote negotiations between the conflicting parties in Georgia which are aimed at reaching a peaceful political settlement of the conflict. For several years the OSCE Mission to Georgia has been providing assistance to law-enforcement and police-related activities in the Georgian-South Ossetian zone of conflict. The aim was to develop police cooperation between the Georgian and South Ossetian sides on operational issues such as exchange of information, regular meetings and the establishment of a joint operative communication centre in the zone of conflict. Therefore, the Mission held regular meetings with the de-facto Interior Minister of South Ossetia and the Chief of KGB to discuss the feasibility of the implementation of a "Capacity Evaluation" of the South Ossetian militia. The Mission agreed with the previous de-facto Minister of Interior on such an assessment but due to the armed conflict in August 2008, all respective agreements became inadequate.

Over the years the general security situation remained tense with increased numbers of Georgian police and Ossetian men in uniform being observed throughout the zone of conflict in areas under their respective control. There has also been an increase in intensity and frequency of day and night-time exchanges of fire in the zone of conflict. There have also been occasional explosions, including deliberately planted devices and incidents involving old and newly laid mines.

Throughout 2007, the Mission intensified consultation with the relevant stakeholders to ensure that the sides maintain a dialogue and search for solutions towards stability. Important tasks of the mission included monitoring both the compliance of the Joint Peacekeeping Forces with OSCE peacekeeping principles and the military and security situation in the zone of conflict, with timely reporting this information to the OSCE.

The Mission has carried forward several initiatives to build confidence between the sides in order to help stabilize the security situation and create a more favourable context for political dialogue. This included police co-operation between the two/opposing sides. Before the outbreak of the armed conflict in August 2008, the Mission was due to succeed to facilitate the first informal operational meeting between police station commanders of both sides. As the Georgian police had mostly deployed Special Forces personnel in and around conflict zone before the hostilities, it appears that since August 2008 new security elements have been deployed within the adjacent areas to South Ossetia. There is also remarkable evidence that the principles of police reform which apply to the police in the territory of Georgia proper, do not apply to the adjacent areas.

Criminal Situation

As in many other conflict areas, the criminal sphere always fills the vacuum in official and legal relations. Criminal groups are flexible and quickly build networks that are often international and include members from both conflicting sides. For example the de-facto Government of South Ossetia does not even raise the issue of smuggling between Russia and Georgia due to the massive benefits from these activities. Large volumes of illegal goods arrive in Georgia from Russia through the Roki tunnel and the previous Ergneti market, situated at the entrance to Tskhinvali. Before the outbreak of the armed conflict in August 2008, approximately 150 light cars moved daily from Ergneti to Tbilisi, bringing contraband goods worth 500.000 GEL (approximately. 225.000 EUR).

Smuggling is impossible if there is no criminal network that links different crime groups with corrupt law enforcement officers and government officials. There are Georgian and Ossetian crime groups in Tskhinvali and Gori operating regardless of their ethnic origins and political orientation. There are accusations that even high level officials of several Georgian ministries might be directly involved in these criminal activities.

It is also worth mentioning that the de-facto South Ossetian government is also highly motivated to control smuggling into Georgia, which is the main source of its official and unofficial income. These activities have not stopped after the armed conflict in August 2008 – only the modus operandi and transport routes have changed.

Mainly the issues of smuggling, from and into the conflict zone, are focused on:

- smuggling of illegal goods
- smuggling of radioactive materials
- smuggling of weapons
- smuggling of drugs
- human trafficking
- trafficking of stolen cars

The functions of law enforcement bodies on the Georgian side are still not clearly defined and frequent institutional changes and innovations are being witnessed. This can be seen partially as a struggle among different elements within the law-enforcement structures to secure their sources of illegal income. As a result, collaboration between law-enforcement bodies is either extremely weak, does not exist, or is transformed into an intentionally unhealthy competition, which clearly undermines any kind of achievement within the police reform process.

It is therefore difficult to assess the status of law-enforcement structures on the South Ossetian side after the

armed conflict. Structural changes have appeared within the law-enforcement agencies, which might have improved the professional abilities of the militia but could have also strengthened criminal networks operating in and around the conflict zone.

The way forward for the reform of policing in Georgia

According to the 2005 Police Development Strategy submitted by OSCE experts to the Ministry of Internal Affairs, the main objective of the police reform is to transform the police from a formerly repressive organization, into an organization that will be wholly responsible for the safety of citizens. The police should assist the community and should not be identified as a body that only implements the prosecution of criminals.

The second main objective of police reform is for it to become a modern, well-functioning organization. The existence of an organizational culture within the police system is essential as is the promotion of professionalism, a feeling of unity and mutual support which enhances the understanding of organizational structure. Moreover, the effective work of the system depends on a rational distribution of functions and an exact determination of the responsibilities for their implementation.

The following functions are identified as the principal areas for future reform of police activities, which would also consequently compliment all reform efforts achieved so far:

- **Crime prevention** – the main function of the Georgian police is to prevent crime. In the event of a crime, the police's task is also to detect and investigate. National programs covering the main directions of social policy improvements, cooperation with the community and various particular aspects relevant to dealing with juveniles should be introduced in the country. Tight cooperation between police and local government bodies

is essential in such implementation programs. Such relationships should have an organizational character and "Preventive Boards" created at the local level that will include local government and police organizations, representatives of schools, churches, media and other components of society. Crime prevention units should be created at all levels of the Georgian police to enable them to fight more effectively against criminality.

- **Suppression of organised crime** – the fight against organized crime is crucial for Georgia. Special operations to suppress certain phenomena of organized crimes need to be elaborated. Priorities are the fight against drug offences, trafficking, smuggling and corruption. For this purpose, the coordinated work of different national services, as well as the improvement of special technical work and an expert system should be planned. The protection of police officers, as well as witnesses should be ensured through altering personal data, establishing a proper normative base and the constant improvement of special police training. Cooperation between the police and these institutions would be seen as the prerequisite for their effective work.
- **Improvement of traffic safety** – the poor condition of roads and highways in Georgia in particular remain a major problem for the whole country. Ignorance, a lack of awareness of traffic rules and the poor technical condition of vehicles, are some of the causal factors related to many tragic accidents. To solve this problem the Patrol Police and local government organizations should conduct shared operations. Proper rules should be created to ensure the safety of drivers and passengers while driving. Administrative penalties should become stricter in case of infringements of any traffic rule, instead of decreasing those penalties to support political motivated purposes.
- **Separation of Police and non-Police functions** –

according to current strategic plans, police services in the new system are basically represented in the forms of extant but fully reformed Patrol and Criminal Police units. An amended "Law on Police" should include a list of ranks and rank issues and should also be regulated in detail. To attract well-trained staff and to ensure transparency of selection procedures in police organizations, the recruitment procedure was redefined and implemented with support of the OSCE. A professional assessment system for the activities of police officers would also need to be elaborated.

- **Structural re-organization of the Ministry of Internal Affairs** – after the merger of the Ministry of Internal Affairs and the former Ministry of State Security in 2005, there are currently strong indications of a possible re-separation of the two agencies. To achieve an organizational unity within the Ministry of Internal Affairs, it should be foreseen to distinguish clearly between pure police and intelligence agency functions. So far the police with all its branches have been used as a political instrument. Therefore, the leadership of the police services should still be transferred into the hands of a professional National Police Commissioner, who should work with and report closely to the Minister of Internal Affairs. In addition this could be seen as an essential measure to free the Georgian police service as much as possible from current political interference in operational matters. An additional issue would be to discuss the three management levels within the Georgian police structure. So far there exists a deficiency in the clear distinction between strategic, tactical and operational levels.
- **Public assembly management** – the Georgian police face a clear lack of skills and management tools related to the handling of public mass events, most notably the demonstration in Tbilisi on 7 November 2007. Currently, the Georgian police are accused of misusing their

authority by mistreating opposition politicians and their supporters. The political interference in operational police matters is currently made evident in observing the police actions during the opposition protests in Georgia. The international community, active in supporting the police reform in Georgia, should consider management and tactical training for special units to be defined within the organizational structure of the Georgian police. The awareness of human rights has to be given an absolute priority while training the Georgian police. In addition, respective legislation, such as the Law on Police, would need to be revised and amended. So far there has been resistance by international donors to implement such projects due to the fear of taking responsibility, although respective proposals were elaborated after the 7 November 2007 events.

- **Police education** – over the past years the Georgian Police Academy has faced radical changes and improvements with strong material and intellectual support by the U.S. Embassy in Tbilisi and the OSCE Mission to Georgia. Numerous physical improvements, as well as the establishment of new faculties and elaboration of new curricula, were achieved. To ensure an improved police education, the extension of the basic police training from the current six weeks to six months should be put in place as soon as possible. To support this improvement the Police Academy needs to employ police practitioners to deliver training to recruits and officers in in-service training. The further curriculum development should be advised by international experts.
- **Border policing** – after the insertion of the Border Police into the MIA structure, a painful reform process started taking into consideration the obligations of Georgia to the NATO Individual Partnership Action Plan (IPAP) and the EU Neighbourhood Policy (ENP) concerning border security. The establishment of a Border Faculty at the Police Academy, and with strong

support of the EU and OSCE in Georgia, a common modern education system has emerged. With international advice it should be envisaged to revise the structure of the service and to clearly define the distinction between Border and Patrol Police tasks in regard to border crossing and green border control.

Currently the police management in Georgia resists broader reform with clearly defined objectives. Therefore, the most efficient way to modernize the Georgian police is better tutoring of the senior management and the continued tenure of these professionals in their positions without political interference. The rapidly developing political environment in Georgia does not currently allow us predict the future of police reform in the country.

The international community would need to have a coherent approach towards the Georgian police authorities and would need to stress the necessity of setting reform objectives and benchmarks during the process itself. Apart from still partially required technical support, emphasis should be given to working together with the Georgian authorities on the content of further reform and also elaborating mechanisms to make those efforts sustainable.

The revision, implementation, monitoring and evaluation of the reformed plan should be transparent and widely available to ensure the participation and control of all possible stakeholders. This would additionally contribute to ensuring donor funding was well spent and ensure achievements were clearly demonstrated. At a future stage these indicators could be assessed to identify when the police reform process could continue without international involvement in Georgia.

Achieving lasting and effective reforms requires addressing the leadership, management and political will. The Georgian police leadership still needs to set the tone of their forces to work on strengthening the impact of previous reforms and on the public perception of the police. In addition, the police in

Georgia still require to be more open and transparent towards citizens and to involve the public in the reform process itself. At this stage almost no police “outsiders” are involved in the police reform process and no concrete external oversight tools exist. The control of police actions and the responsible citizen’s complaint body remains in the Ministry of Internal Affairs. Recently, the role of the Ombudsman and the Public Defenders office have increased but concerns from these institutions are mostly not appropriately followed up by the authorities.

Marking five years of police reform in Georgia, the author would strongly recommend assessing the police capacity to absorb change. The OSCE Mission to Georgia facilitated three public surveys in the country to assess the public perception of the police. Significant improvements have been noticed over the years. The suggested assessment should be extended to the police personnel at all levels, as well to assess their own perception of the organization, their management and their assessment of their own roles along with the understanding of their own roles and duties.

It is implicit that police reform in Georgia, as in any post-conflict and transformational environment, is a very challenging and difficult task. At the same time however it can be seen as an incredible opportunity for the most visible organization of the security sector to develop towards becoming a professional and accountable police service. The police in Georgia might face significant challenges in the near future due to the rapid political developments in the country, but with improved professionalism and attitude could help contribute to any peaceful and democratic development in Georgia.

The EU's democracy agenda in Georgia

Peter Semneby
EU Special Representative for the
South Caucasus

The past year has been a tumultuous one for the South Caucasus – not only in terms of the unresolved conflicts but also in terms of democracy-building in the region. Georgia has largely been at the centre of this turmoil with its war with Russia last August and the domestic stand-off between government and opposition.

The European Union has been actively engaged in the region, in particular, in working to cement stability in Georgia following the war and to promote progress in Georgia's democracy agenda. As part of my mandate as EU Special Representative for the South Caucasus, I contribute to efforts to find settlements for the conflicts in the region as well as to advance the cause of democracy in the region. Promoting human rights, the rule of law, and good governance is fundamental to my mandate. I carry out this task in close collaboration with the European Commission, the local Presidency of the European Union, and other EU actors.

This work has taken on greater strategic importance for the EU since the latest wave of enlargement in 2007. The inclusion of Romania and Bulgaria in the Union brought the EU to the shores of the Black Sea making the EU a direct neighbour of Georgia. The new proximity has meant that what happens in the South Caucasus has a direct impact on the EU. The region's security is today closely linked to the security of the EU. We can no longer afford to ignore what goes on in the region.

The war between Georgia and Russia in August last year brought this point home to all within the EU. It was therefore only natural that the EU's response to the crisis was

comprehensive and extensive. The EU reacted immediately to broker a ceasefire between Russia and Georgia, allocated humanitarian assistance to those in need, deployed a 200-strong monitoring mission, chaired a donors' conference, launched political talks between the parties, and initiated an enquiry into the origins of the conflict. This response is, if anything, testament to the realisation that what happens in the South Caucasus is of direct relevance for the EU. And the EU continues to be committed to stabilising and normalising the situation in Georgia and to ensuring respect for its territorial integrity within its internationally recognised borders.

But we are also committed to Georgia's democracy. Georgia has made impressive progress since the Rose Revolution in reforming its institutions, promoting good governance, and entrenching the rule of law. In many ways, Georgia is a different country to what it was only six years ago.

Notwithstanding this progress, Georgia still has some way to go on its democratisation path as has become clear in the standoff between the government and opposition. Much remains to be done to ensure an inclusive and constructive political culture. In many ways, the fabric and quality of Georgia's democracy depends on developing this culture. The EU is engaged on a number of different levels to assist Georgia in maintaining a positive trajectory at this important moment in the country's history.

Eastern Partnership

The launch of the Eastern Partnership in Prague on 7 May made it abundantly clear that the EU's commitment to the Eastern Neighbourhood, including Georgia, has been raised to a new level of ambition. Since the latest enlargement, the depth and intensity of the EU's relationship with the countries of the Eastern Neighbourhood proved to be insufficient. While the European Neighbourhood Policy offered a great deal to the Eastern Neighbours, it did not reflect the explicit

aspiration by some of these countries to move closer to the EU. The Partnership was therefore developed to accelerate political association and further economic integration between the EU and the Eastern partners.

Although many details of the Eastern Partnership are still being elaborated, the Partnership has clear strategic rationale: more security, stability, and prosperity in our Eastern Neighbourhood will be to the benefit of everyone. Democracy, the rule of law, good governance and respect for human rights are not only fundamental principles for the EU but also the principles that ultimately underpin security, stability, and prosperity.

In practical terms, the Eastern Partnership should at the bilateral level provide the foundation for Association Agreements between the EU and those partner countries who are willing and able to comply with the resulting commitments. These agreements, which amount to an upgrading of our relationship with our Eastern Neighbours, may also provide scope for free trade areas and visa liberalisation. But this upgrading does not come for free. There are political reform criteria that have to be achieved for there to be movement on the agreements.

For Georgia, negotiations on a visa facilitation and readmission agreement are advancing, and Georgia is in the process of preparing for eventual negotiations on a deep and comprehensive free trade agreement.

The philosophy underpinning the Eastern Partnership is differentiation, meaning that the depth of our bilateral relationship will depend on the will and ability of the EU, on the one hand, and the will and ability of each individual Eastern Neighbour on the other. Georgia will move closer to the EU depending on Georgia's capability to make progress in democratic reform and modernisation. The EU stands ready to assist Georgia in this endeavour.

Within the multilateral framework of the Eastern Partnership, four thematic cooperation platforms are being established. These platforms will focus on 1) democracy, good governance and stability; 2) economic integration and convergence with EU policies; 3) energy security; and 4) contacts between people.

These platforms will support the countries' efforts to approximate EU standards in the thematic areas, foster exchanges and best practices, and facilitate contacts between the EU and its Eastern neighbours. The platforms will also provide a forum for improving understanding of EU legislation and standards.

A number of so-called Flagship Projects and other joint initiatives will be launched within the platforms. It is partly within these platforms that the EU can provide support for Georgia's efforts to build strong democratic institutions, entrench the rule of law and respect for human rights.

The Eastern Partnership will also include a Comprehensive Institution-Building Programme for each partner country. This programme will improve administrative capacity, including thorough training and technical assistance, and ultimately contribute to good governance.

ENP Action Plans

The Eastern Partnership builds on the foundations laid by the European Neighbourhood Policy (ENP). At the heart of the ENP are individual Action Plans for each of the ENP countries. These Action Plans have been an important instrument for driving institutional reform in a number of areas.

The Action Plans are not only an instrument that provides clarity on priorities, challenges, and steps that need to be taken, they also provide useful political benchmarks upon which economic integration and political association can be pursued. This methodology is how the EU has furthered both

the approximation process with its neighbours and the enlargement process for candidate countries.

Moving closer to the EU means to a large degree reforming institutions. For its part, the EU stands ready to provide assistance where needed in order to work towards settlement of the conflicts, consolidate democracy, and promote respect for the rule of law. But the partner countries, on their part, need to firmly follow up on their commitments and deliver on their promises.

Strengthening the rule of law, especially through the reform of the judiciary in line with European standards through the implementation of a reform strategy, lies at the core of the ENP Action Plan's priorities. The strategy was developed with the assistance of the EUJUST Themis mission (2004-2005) and which recommended, *inter alia*, ensuring the proper separation of powers, independence and impartiality of the judiciary, prosecution, police and law enforcement agencies.

Reform of course requires sustained investment to be sustainable. The EU is therefore providing considerable funds to promote the approximation work under the ENP framework. The EU's bilateral programmes for Georgia amount to more than €120 million between 2007 and 2010 under the ENP Instrument. Additional funding of up to €500 million for Georgia to deal with the consequence of the August war has also been pledged by the EU.

Human rights dialogue

In parallel to the Eastern Partnership, the EU seeks to engage its neighbours in a regular Human Rights dialogue. The first such dialogue between the EU and Georgia took place in Tbilisi in April 2009. This structured dialogue represents a positive step forward in the EU's engagement with Georgia on human rights issues. Issues discussed at the first meeting included judicial reform, enforcement on national human rights legislation, freedom of association and assembly,

freedom of thought, conscience and religion, the media situation, minority rights and protection of refugees and IDPs. We also discussed the humanitarian situation in South Ossetia and Abkhazia and the war affected areas.

In this regard, the gravest situation in Georgia in the human rights field, and therefore of greatest concern for the EU, remains the human rights situation in South Ossetia and Abkhazia as well as adjacent areas. We are particularly concerned about the human rights situation in Akh'algori valley, Gali district, and Kodori valley.

The EU Monitoring Mission's lack of access to these areas remains a major point of concern for us. Without access, the EUMM is unable to contribute to a normalisation and stabilisation in these areas as well as unable to report on the human rights situation.

The EU continues to ask questions about the human rights situation in the separatist entities as well as raise the issue of EUMM gaining access to these areas with Russian counterparts. Although the EUMM has not been granted access, we hope that Russia and the de facto authorities will eventually see that they have an interest in allowing the EUMM to enter to monitor the situation, in particular the human rights situation and, thereby, contribute to the overall security situation.

Political dialogue

The EU maintains a regular dialogue with the Georgian authorities on issues relating to democracy, human rights and the rule of law. As EUSR, I together with representatives of the Commission, Presidency, and Council regularly meet with government representatives, up to the highest levels, to convey the EU's views and concerns and to exchange opinions on various issues. Ensuring a unified European voice is important for maximising our leverage and promoting the democracy agenda.

A large part of what I do as the EUSR for the South Caucasus is to act as the public face of the EU in the region. This includes frequent contacts with local and international media to express the EU's views and positions on key issues. It is also a way to communicate with the authorities the stance of the EU on democracy and human rights issues, and often raise questions unpleasant for the government, but essential for the sustainable development of democracy and civic culture in these societies.

Besides using the media for public diplomacy, I also work in promoting media development given that the media in Georgia still have some way to go to become fully depoliticised and independent.

In addition to the importance attached to media development, the issue of media transparency, including transparency of ownership of media outlets, is a key concern. In this regard there is a need to establish an independent media oversight mechanism in order to effectively address shortcomings in this area. There is more that can be done by the government to comprehensively address this issue.

Prior to the presidential elections in January 2008, I worked to establish the so-called Michnik Group. This group, led by the prominent Polish journalist and activist Adam Michnik, comprised of Georgian journalists and intellectuals who evaluated and assessed the media situation in the country, especially the reopening of Imedi TV. The group made a number of appearances on television to discuss the state of Georgian media and the coverage of the presidential race. The work of the group contributed to a public discussion about the state of Georgia's media.

Promoting a domestic political process

The domestic political situation in Georgia remains polarized and tense. There is a lack of confidence and trust between the government and the opposition.

For its part, the government has said that it is committed to implementing a new wave of democratic reforms, including constitutional amendments limiting the powers of the president, developing a new Election Code, and adoption of a new Criminal Procedures Code. In December last year, the Speaker of Parliament initiated a dialogue between the political parties on the new Election Code. Unfortunately, the non-parliamentary opposition parties have not participated in this dialogue.

Currently the main non-parliamentary opposition parties share the same strategic goal – presidential and parliamentary elections in 2009. Nevertheless, the opposition remains fragmented, and they lack a coherent political platform and unified tactics.

I have been closely engaged in these domestic developments and attempted to bring the sides closer together towards a meaningful political process. While this is fundamentally a Georgian problem requiring a Georgian solution, the complete lack of trust between the sides has required the international community to act as a go-between.

Democracy

The EU is deeply engaged in democratic reform in Georgia. The reason for this is that we sincerely believe that democracy is the best way to ensure that the rights of the citizens are respected. We do not have to go far back in our common history to see how critical this link is and how straying from the democratic path quickly leads away from respecting fundamental rights of the citizen.

We also believe that democracy and good governance is linked to economic growth and sustainable development. It is no coincidence that democracy and prosperity go hand in hand throughout the world.

Georgia is a multilingual and multi-ethnic society. In this

regard, the respect for the rights of persons belonging to national minorities is fundamentally important. The EU closely follows this issue through its regular reviews of Georgia's progress and supports a number of minority related projects in the Armenian and Azerbaijani minority populated areas of Georgia.

Georgia has still to sign and ratify the European Charter of Regional and Minority Languages (ECRML), a pledge it made to finalise within one year of acceding to the Council of Europe in April 1999. The government can still undertake further efforts to ensure the full respect for the rights of national minorities and pursue an inclusive civic integration policy. By paying more attention to minority rights, including use of second languages, the government will more effectively address potential ethnically related problems in the future.

But we also care about democracy because it is intimately linked to stability. This is of particular importance for the EU's Eastern Neighbourhood. It is a fundamental tenet in the EU's view of the world that stability can only be ensured over the long-term through legitimate and representative governments. Our experience has shown that the best way to ensure this is through democratic governance.

In Georgia's case, furthering the democratic agenda will also contribute to furthering conflict resolution. It will make Georgian society more attractive to the people living in the separatist entities.

So given the critical importance of democracy, more needs to be done to entrench and further democratic reform in the Eastern Neighbourhood. We hope that the Eastern Partnership will provide the necessary impetus for these reforms.

Democratic Governance in Georgia: Lost Promises and Missed Opportunities

Ambassador Arthur Hartman
Former U.S. Ambassador to the U.S.S.R.

"Because you acted, Georgia is today both sovereign and free and a beacon of liberty for this region and the world"

These words, spoken in Georgia by President Bush in 2005 after the historic Rose Revolution that brought democratic reform to that nation, symbolize the hopes and aspirations of Georgians and Americans. In that same speech, President Bush also said that Georgia "is building a democratic society where the rights of minorities are respected; where a free press flourishes; where a vigorous opposition is welcomed and where unity is achieved through peace. In this new Georgia, the rule of law will prevail and freedom will be the birthright of every citizen."

This was the promise and the hope for democracy in Georgia four years ago; however, history has shown otherwise. Georgia can no longer contend it is a beacon of democracy – its light has faded. It seems that these words of shared values between the United States and Georgia should be the centrepiece of Georgia's internal reform efforts, but unfortunately, they are not. Much of the pro-democratic, pro-reform agenda in Georgia has fallen by the wayside.

Freedom House, an international human rights non-governmental organization, has rated Georgia as less free than Ukraine and Moldova and all current EU and NATO membership candidates, and on par with nations such as Nigeria and Venezuela.

Rule of law is a fundamental element of democracy. Georgia's failure to consistently apply rule of law principles has severely undermined, if not reversed, its progress on democracy.

Nowhere is this more apparent than in supporting freedom of the press and freedom of political expression.

Freedom of the Press – A Fundamental Principle

Free media is, in many ways, the cornerstone of democracy. The framers of the U.S. Constitution made freedom of expression, assembly, speech and media the first and most profound rights in a free society to protect individuals from the “tyranny of the majority” represented by government power and authority or society at large. America’s founding fathers understood that to have a viable opposition, there must be a free press.

Yet Georgia’s current leadership does not appear to have learned this important lesson. According to a Reporters Without Borders 2008 Freedom Index Report, Georgia is ranked 120th among 173 countries for freedom of the press.

The 2009 U.S. State Department Human Rights Report noted that the OSCE’s report on the January 2008 Georgian Presidential election showed that, “campaign coverage in the news of most monitored TV stations, including public television, lacked balance.” The State Department report also shared the determination by respected NGO Freedom House that, “there was a significant decline in investigative reporting since the 2003 Rose Revolution.”

Some have gone further, suggesting that there is no viable free press in Georgia: “That Georgia is on the road to democracy and has a free press is the main myth created by Georgia that the West has believed in,” Sozar Subari, Georgia’s human rights ombudsman, told The New York Times in October, 2008. “We have some of the best freedom-of-expression laws in the world, but in practice the government is so afraid of criticism that it has felt compelled to raid media offices, to intimidate journalists, and to bash their equipment.”

Opposition parties and movements in any country cannot be viable without a free press. In an article for Radio FreeEurope/RadioLiberty, Lincoln Mitchell, a National Democratic Institute chief in Georgia from 2002–2004 and Andrew Sidamon-Eristoff, a tax consultant in Georgia noted: “The Georgian government must recognize that the demonstrations, regardless of their size, are a legitimate expression of significant popular discontent,” and that “on a larger scale, the government must be willing to create and sustain a political environment in which opponents of the regime can function and organize.” Perhaps their most profound observation was, “In a real democracy, winners must be willing to lose, so they might be winners again.”

The seizure by government authorities of Georgia’s foremost independent television station, Imedi TV, is a case in point on freedom of the press in Georgia. In November 2007, following the crackdown by Georgian authorities on opposition protestors and the seizure of Imedi TV, both the Bush Administration and the U.S. Congress, despite their support for Georgia, immediately expressed strong concerns about the actions of the Saakashvili government.

U.S. Deputy Assistant Secretary of State Matthew Bryza visited Georgia on November 10–11, 2007, and urged the Government of Georgia to reopen its private television stations, stating on Georgian state television “A cornerstone of democracy is that all TV stations should remain open.”

In a parallel effort, a resolution introduced and passed in December 2007 in the U.S. Senate by then Foreign Affairs Committee Chairman Joseph Biden (D-DE) and Ranking Republican Richard Lugar (R-IN) called on the government of Georgia to “permit all independent media to remain open and report on the elections.”

Former Georgian Foreign Minister under President Saakashvili and now a leading opposition figure, Salome Zourabichvili wrote in the New York Times earlier this year, “Demanding

that the Georgian leadership returns Imedi to its rightful owners, thus restoring its independence and permitting a voice of balanced journalism to again be heard, would be a clear signal that U.S. policy in Georgia will insist on development of the basis democratic institutions we so fervently seek.”

Judicial Independence and Respect for Rule of Law

A second necessary condition in supporting rule of law and democracy is an independent judiciary. Here, Georgia has also regressed. Freedom House reported that “in 2005 the judiciary was still not able to withstand political pressure, and courts rarely disagreed with the prosecution’s demands.” It improved its rating for “judicial framework and independence” slightly, from 5.00 to 4.75 (where 1.00 is the best and 7.00 the worst), but stressed that this was only because of improvements on issues of torture and religious freedoms,

The UN Human Rights Committee, in its “Concluding Observations” on the most recent report by Georgia under the International Covenant on Civil and Political Rights (ICCPR), adopted on October 19 2007, similarly “remains concerned at interference with the independence of the judiciary.”

U.S. Georgia Relations – Progress and Accountability

The United States should use its considerable and positive influence to demand progress, accountability and reassurance from Georgia in its pursuit of democracy.

In May of this year, U.S. Ambassador to Georgia, John Tefft, announced the release of \$53.3 million in aid to Georgia for a host of activities including good governance, civic participation, election and media reform, energy infrastructure and economic stimulus, health, education , counterterrorism and a number of other priorities. A key goal of the funding was to “improve public access to objective

news and information by strengthening media capacity and professionalism” and to “strengthen the independence of the judiciary and improving the rule of law.” The U.S. has poured hundreds of millions of money into Georgia in recent years and it must see a return on its investment, particularly in these pro-democracy areas. The U.S. needs to see progress and credibility.

Georgia’s relationships with the United States and Russia and its position globally must be conditioned in some measure on the strength (or weakness) of democratic development, including rule of law, civil and human rights, freedom of the press, judicial independence, free and fair elections, property rights, and economic opportunity, among other issues. The United States and more broadly the international community are providing significant political, economic, and military support for Georgia, and as a consequence, it must do its part to uphold, in word and deed, principles of democracy. This is particularly true in the case of Georgia’s pursuit of NATO membership, given that the protection of democracy in western Europe was a central force in NATO’s creation.

Georgia is of obvious strategic and symbolic importance to the United States. President Obama has yet to fully define his narrative and write the next chapter on U.S. efforts to support democracy in Georgia. However, regardless, one thing is clear – U.S.-Georgia relations and Georgia itself will be undermined if it fails to honour the promise of the Rose Revolution and not simply promote, but embrace and practice, fundamental principles of a true democracy.

Some in the U.S. have urged President Obama to take a more distanced and nuanced approach to Georgia, arguing that the nearly unconditional support for the Saakashvili Presidency may compromise the need for accountability in achieving a more open, pluralistic and better functioning democratic society. In retrospect, candidate Obama’s measured support for Georgian during the August 2008 war with Russia may have been an early sign of a more detached and pragmatic

approach to Georgia and a potential warning sign for President Saakashvili on his handling of internal affairs.

As the Obama Administration attempts to “reset” the U.S.-Russia relationship and take a more constructive approach in working with Moscow on key U.S. interests such as Iran, North Korea and nuclear non-proliferation, this emerging new U.S.-Russia relationship may come at Georgia’s expense, despite Georgia’s obvious political and strategic importance to the U.S.

There is a noticeable undercurrent of thought in the United States that President Saakashvili mishandled the decision making process leading-up to the August 2008 war with Russia, and as a result, helped to precipitate and not to defuse, a conflict with Russia. Leading opposition figures, such as Saakashvili’s former Foreign Minister Salome Zourabichvili, have attributed the mismanagement of the war by the President to the fact that too few decision makers were involved and too few opinions were considered, which resulted in a flawed, undemocratic and ultimately reckless process that led to war. Institutions, officials authority and laws, not individual relationships, should be at the heart of a decision making process in a democracy.

President Saakashvili wants to reunify and strengthen Georgia. The best way to do so is to concentrate on supporting democratic values and freedom – letting opposition voices be heard, supporting rule of law and an independent judiciary, improving the welfare and prosperity of his people – in all parts of Georgia – through job creation, infrastructure development, provision of good health care and education and developing the police and the military in the service of the people, not the state. When such actions are demonstrated, Georgian citizens will again have hope for a democracy that has not yet been realized.

The right path for Georgia

Rt Hon Sir Malcolm Rifkind MP

Former UK Foreign Secretary

Georgia has arrived at a crucial point in its short history as an independent state. Its international situation and domestic politics are now more heavily intertwined than any moment since its independence. Managing the interrelation of these overlapping challenges will be a key test for policy makers in Georgia and the West.

Like any country, Georgia's actions on the world stage are governed by its strategic position. In the case of Tbilisi, the overbearing concern is the threat posed by its Russian neighbour. Given the disparity between Moscow's capacity for offensive operations, and Tbilisi's capacity for self defence, it is natural for Georgians to look beyond their borders for assistance.

Since the "Rose Revolution", in an effort to strengthen its security, Georgia's strategic planners have made a concerted effort to orientate the country towards the West. Good relations were fostered with the United Kingdom and the countries of Eastern Europe, and Tbilisi went out of its way to strengthen ties with the United States. Prior to the war last August Georgia had the third largest contingent of foreign troops in Iraq, a colossal undertaking for a nation with a small military. President Saakashvili was also responsible for a number of measures aimed at liberalising the country's economy. Accordingly, the World Bank upgraded the country to the 15th best nation in the world to do business, up from 112th. So Georgia's efforts to integrate with the west have by no means been symbolic, reflecting a wholesale effort to integrate with the West.

Yet Georgia has longed to integrate with one organisation in particular. The American diplomat George Kennan once

remarked that the countries bordering Russia are forced to decide whether to be an enemy of the Kremlin or a vassal state. More than anything else, Georgia craves protection from this unenviable choice. Accordingly, the underlying aim of Georgian co-operation with the West and move towards a more liberalised system has always been admission into NATO.

Western European nations have long held a favourable view of Georgia's desire for good relations. Yet they have always held reservations about committing themselves to Georgia's defence. NATO is a collective security alliance after all, and with the Alliance's forces tied down in an Afghan conflict that has dragged on for nearly eight years, few are keen to take on additional burdens. As a result, whilst ties between Georgia and the West have been positive, there has always been a strong degree of tension.

Those tensions were aggravated last year by Russia's invasion and occupation, which clearly demonstrated the limits to the West's relationship with Georgia. Whilst there was never much likelihood of the US or the states of Western Europe going to war to preserve Georgia's territorial integrity, the sight of Russian tanks rolling through of South Ossetia and Abkhazia forced an end to Western ambiguity, which many had hoped would act as a deterrent to Russian action. Indeed as we approach the one year anniversary of open hostilities, the talk of NATO membership for Georgia has been all but extinguished.

Nowhere is that more the case than in Washington. The position of the United States, previously the strongest voice for Georgian membership of NATO, has changed considerably. President Obama has set aside the assertive Cold War mindset of the Bush administration in order to engage Russia on a host of new fronts. The much publicised efforts to "reset" relations have prompted a number of positive developments, including logistical cooperation with Russia regarding the supply of equipment to NATO forces in Afghanistan, and

serious discussions aimed at reducing the world's stockpile of nuclear weapons. In essence, the US now has too much riding on its new initiatives with Russia, above all the possibility of Russian diplomatic assistance in confronting Iran, to risk angering the Kremlin.

Where does that leave Georgia and its hopes of stronger ties with the West? It would be an exaggeration to say that relations have been fatally damaged. Yet it is the case that concerted efforts will be required in order to put the relationship back on track. Confronting uncomfortable truths, and accepting the realities of the post-war scenario, will be a priority for all involved. Policy makers in Europe and the United States must make it quite clear to their counterparts in Tbilisi that while the desire for good relations has not diminished, the prospect of NATO membership in anything other than the long term is off the table. Likewise, Georgian officials must indicate that they no longer identify NATO membership as a shortcut to guaranteeing security, but that they remain keen to foster close ties. Once that convergence has taken place, there will be a real prospect for progress – and progress towards a clear and specific objective.

Brussels remains the place Tbilisi should be looking for international allies. Yet its officials should no longer target NATO Headquarters, in an effort to convince sceptical military planners that Georgia's admission would not add to the burden of transatlantic security. They should instead concentrate their efforts in the European Parliament, the European Commission, and to a lesser but still important extent, the European Central Bank in Frankfurt. Whilst NATO membership may have been a bridge too far, there is nothing to suggest that Georgia's eventual membership of the European Union would be anything other than desirable for all involved.

The long term prospects for Georgian admission into the European Union are much more favourable than they are for its admission into NATO. The EU has always had an elastic

quality, extending in terms of membership and jurisdiction throughout its existence. Despite a post-Cold War enlargement, the same cannot be said of NATO.

Moreover, for EU officials wondering how to restart the process of integration, extending the hand of friendship to Tbilisi represents an opportunity to be seized upon. At a time when enlargement has stalled due to unease about Turkish membership and associated questions of European identity, Georgia might come to be seen as an ideal candidate. There can be no doubt that it is a "European" nation – culturally, historically, and socially. Indeed, Georgia has already been welcomed into the Eastern Partnership, which will give it an opportunity to strengthen its ties with member nations, and address doubts about its capacity for membership.

The prospect of EU membership would also fit well with Georgia's strategic aims. It is worth recalling that those nations threatened by Russia have rarely been invited to participate in the mechanism that would spark an instant military confrontation, namely Article 5 of the Washington Treaty. For instance, despite its history of conflict with the Soviet Union, Finland never sought membership of the Alliance in order to defend against future aggression. Likewise, Austria pledged not to seek membership of NATO in order to secure the withdrawal of the USSR's occupying force in 1955, a promise that has been honoured ever since. However Finland and Austria are both members of the European Union, and in practical terms, their membership of the EU has contributed to their security. Such is the nature of European integration that an attack against a fellow member of the EU would, in all likelihood, be treated in a similar way to an attack against a NATO partner.

Concluding that the interests of Georgia and the West are best served by its ultimate admission into the European Union forces a consideration of Georgia's internal situation. Whereas the prerequisite for NATO membership focus upon the state in question's external relations, the opposite is true for EU

membership. In order to gain position itself for an application to join EU, Georgia must turn its attention away from external threats, and focus on internal matters. In particular, it must address concerns about civil liberties, press freedom, and the rule of law. Doing so will enhance rather than diminish its ability to fend off Russian aggression, by strengthening its capacity for international co-operation.

Whilst Georgia has made great progress since its break with the Soviet Union, its efforts to liberalise remain a work in progress, and need to be accelerated. While there has been substantial progress on the economic front, there remain considerable doubts about the health of Georgia's political system.

Criticism's of Georgia often dwell on the events of 2007, when street protests against Mr Saakashvili's government were confronted with heavy handed tactics during a fifteen day state of emergency. The Government has regularly claimed that internal instability is orchestrated by Russia, and given that the Kremlin has already seized control of large parts of the country, there may well be some truth in that claim. Yet that should not be deemed a sufficient explanation for the regular instances of authoritarian police tactics that have been unleashed against protesters. Recent clashes warrant considerable concern. In May a long running protests resulted in violence, and earlier this month, protesters and journalists were beaten outside the Georgian Parliament. The frequency of such incidents is indicative of a deliberate policy, rather than emergency measures aimed at fending off a Moscow inspired coup. Tbilisi must be encouraged to temper its concerns of Russian subversion, in order to improve its treatment of dissenting voices.

Press freedom is another important aspect that requires Tbilisi's attention. Imedi TV, a television station that operates nationally, was stormed by riot police in 2007. Opponents claimed that by shutting down the network most likely to air critical views of the Government, President Saakashvili

smoothed the way for his re-election. Moreover, Maestro TV, another station critical of the President, was recently the subject of a bombing that was seized upon by opposition leader Nino Burjanadze as an example of state harassment. As a result of these and similar actions, Georgia is no longer listed as an electoral democracy by Freedom House, a major step backward for a nation that embarked on an ambitious program of reform six years ago. The Government must resist the temptation to control the press, and move to prosecute others who would choose to do so.

Another priority for Georgia must be to strengthen the rule of law. The integrity of the country's legal system has been damaged in order to crack down on corruption. While the cause may have been worthy, Tbilisi could not hope to be considered a candidate for European Union status whilst it presides over a judicial process deemed to be arbitrary. Likewise, political opposition groups need to be afforded greater protection. The arrest of nine members of the Democratic Movement-United Georgia party just weeks before planned protests against the President was ill-timed at best, and an effort to criminalise legitimate opposition at worst. Above all, Georgia must take greater steps to strengthen its military chain of command. The mutiny of 500 troops at an army base just days before planned military exercises with NATO was put down swiftly, and by all accounts effectively. Nevertheless, a country liable to fall as the result a military coup is not one that would be trusted with participation in the European Security and Defence Policy, or the Presidency of the European Union.

Georgia has taken great strides in the years since Eduard Shevardnadze was deposed from power. Its willingness to resist Russia's deliberate efforts to cut it off from the West should be encouraged and supported. Yet Tbilisi will not be aided by the false promise of NATO membership, or by benign neglect. A strategy that offers clear rewards, and a detailed roadmap for achieving them will be required if Georgia is to continue its progress towards becoming a liberal democracy.

By outlining the steps Georgia would have to take in order to achieve membership of the European Union, its allies can help improve conditions within the country. By following such recommendations, Georgia can achieve the degree of international co-operation needed to ward off Russian threats, and safeguard its sovereignty. Relations between Georgia and the West currently stand at a crossroads. It is vital for all involved that the right path be chosen.

Human Rights and Good Governance in Georgia: How Can the UK Help?

Bruce George MP

Vice President of the NATO Parliamentary Assembly, former President of the OSCE Parliamentary Assembly and Chair of the All Party Parliamentary Group on Georgia and *Simon Kimber*, Senior Researcher to Bruce George MP

We should begin with the proviso that one of the authors, Bruce George, is slightly prejudiced on this issue. His pro-Georgian views are well known. However, our support for Georgia does not exclude criticism and where it is necessary we will make appropriate comments and offer advice. This contribution will examine human rights in Georgia in their broadest sense and will discuss how the British-Georgian relationship can help to improve the situation in Georgia.

First it is necessary to outline what we mean by "human rights". There are many definitions of human rights, perhaps the most famous being the Universal Declaration of Human Rights proclaimed by the UN General Assembly in 1948.³⁵ This and other definitions go beyond rhetoric and lay down in concrete detail the many components of human rights. In summary we shall focus on human rights including democratisation, "free and fair" elections, good governance, freedom of the media and freedom of expression.

While this is not the place for an historical overview of Georgia, some key points will help to place our arguments in context. It is quite remarkable that despite repeated invasions and divisions of the country, Georgia has retained its identity and sense of nationality. It was the Russians two centuries ago who were invited to protect Georgia against external predators but overstayed their welcome and imposed their authoritarian Tsarist control over the country. This later became the totalitarian Soviet regime in which

human rights, as we understand them today, were extremely low down the agenda. Even after Georgia extricated itself from the Soviet Union in 1991, it faced a number of upheavals including the continued presence of Russian troops and air bases, a long civil war, assassination attempts against Presidents and most recently, the invasion by Russia and the effective annexation of South Ossetia and Abkhazia.

Following the civil war, civil society began to develop quite considerably but the political, judicial, administrative and economic systems were systemically corrupt. The Shevardnadze government was seen to make a number of limited reforms and made the first approach towards the West with the signing of the Partnership and Cooperation Agreement with the EU in April of 1996. However, his commitment to reform dissipated over time and corruption became endemic throughout state and society. While the human rights record of Georgia began to improve after the civil war, groups such as Human Rights Watch continued to express concerns over certain issues including the use of torture by law enforcement bodies, the treatment of religious minorities and the rights afforded to around 250,000 internally displaced people.³⁶ It is also worth noting that the European Union (EU) and the Organisation for Security and Cooperation in Europe (OSCE), in which the UK is a leading member state, were recognised as "bodies [that] played an active role in promoting human rights in Georgia."³⁷ By 2000, there were still concerns over human rights and political opposition increased with a number of politicians in the ruling party defecting to a number of newly-established political parties which began to experience success in local elections. By the 2003 Parliamentary elections, it was clear that Shevardnadze's government had little support, certainly not enough for his party to secure a victory in November 2003 using fair means.

Elections and the Rose Revolution

In light of the vital importance of the 2003 elections, they were to be monitored by the international community including the OSCE, the EU and the Council of Europe. As President of the OSCE's Parliamentary Assembly (OSCE PA) at the time, Bruce George was the Head of the Short Term Election Observation Mission. On Election Day, it became obvious that the government had grossly manipulated the results in their favour. The Election Observation Mission's report made clear that there was widespread and systematic election fraud and a clear lack of political will by the authorities to organise a genuine democratic election process. The Mission reported various allegations of ballot stuffing, voter intimidation, and implausibly high turnout figures in a number of districts that favoured the government.³⁸ Given our earlier inclusion of voting rights and elections in the broad scope of "human rights", the fraudulent elections in 2003 should be seen in this context as a violation of human rights. The strength of international condemnation of the election was seen as one of the catalysts for the Rose Revolution, which peacefully removed Shevardnadze from power. Nino Burjanadze, a leading opposition figure under Shevardnadze, became Acting President while new parliamentary and presidential elections were arranged. These new elections, which resulted in Mikheil Saakashvili becoming President, were again monitored by the OSCE and George once again headed the Short Term Observation Mission. The Office for Democratic Institutions and Human Rights' (ODIHR) statement highlighted the "commendable progress"³⁹ made by Georgia in these elections. Indeed, the improvement in the Georgian election process in just a couple of months was truly remarkable.

Immediately after the Rose Revolution and before the re-run elections could be held, both Nino Burjanadze and George, as President of the OSCE PA, made emotional pleas to the OSCE for substantial and immediate financial support to a near-destitute Georgia. In a remarkable meeting, many of

the nations represented, particularly the Netherlands, the US and the UK, responded immediately and magnificently, helping Georgia to pay for the Presidential election. This sent a clear signal of support for a democratising Georgia. It was not just member states that offered support; the World Bank, the IMF and other international organisations also sent advisory teams to Tbilisi. This support continues today.

Support from the UK

Since the Rose Revolution, there has been an enormous amount of progress in a very short period of time. One international NGO remarked that the years following the Rose Revolution “were marked by success in rooting out mass corruption, strengthening public institutions and promoting robust economic growth.”⁴⁰ Since then there has been, with Georgian will and international support, a plethora of substantial reforms including an overhaul of the police service, military reform, tackling corruption, establishing new institutions and the opening up of the economy. Important human rights reforms include the passing of the Law on Freedom of Speech and Expression in 2004 and the introduction of a domestic violence law in 2006. The Rose Revolution gave the international community, including the UK, confidence in what could be achieved in Georgia. Therefore, while some may criticise developments in Georgia, we really must consider the last few years in a broader context and acknowledge the genuine reforms that have taken place.

There are a number of excellent UK NGOs working in Georgia, including LINKS, Conciliation Resources, the Westminster Foundation for Democracy and the International Association of Business and Parliament (IABP) of which George was formerly Honorary President. The IABP is working inside the Georgian Parliament to improve legislative capacity in Georgia, while Conciliation Resources and LINKS work in the conflict areas of Abkhazia and South Ossetia to help find a

resolution and to improve the situation for those caught up in the conflict. The Westminster Foundation for Democracy, a Foreign Office-funded NGO, is also embarking on a programme in Georgia in conjunction with the Westminster Consortium for Parliaments and Democracy; this consortium is comprised of a number of British institutions including the University of Essex, the National Audit Office and the House of Commons.

Until a few months ago, the Department for International Development (DfID) also had a very active presence in Georgia and worked closely with the government. From 1991–2008, DfID invested around £80 million in aid to Georgia through bilateral and multilateral channels. As well as the investment in overseas aid, DfID contributed to the general reform process in a number of areas. During this period, the country saw significant improvements in good governance and the fight against corruption. Although the UK decided to close its DfID office in Tbilisi, its commitment to support Georgia has not disappeared and it will continue to provide aid, both bilaterally and multilaterally. This continuing interest in Georgia was evidenced by the recent visit of the new Minister for Europe, Glenys Kinnock, in her first overseas visit outside of Brussels. During her visit, the Minister made it clear how much the UK values its relationship with Georgia and reaffirmed Britain's commitment to supporting Georgia's reform programme. In a press conference the Minister also urged continued dialogue between the government and the opposition as "dialogue between all political forces and civil society [is] the only feasible solution to the challenges Georgia faces."⁴¹

As well as the standard diplomatic relationship that the UK and Georgia share, the two countries have in recent years signed a total of fifteen legal agreements formalising their cooperation. These have included a *Memorandum of Understanding on Co-operation in the Fight against Serious Crime, Organized Crime, Illicit Drug Trafficking and in Like*

*Matters of Mutual Interest and a Memorandum of Understanding for Poverty Reduction Budget Support.*⁴²

UK Parliamentary Cooperation

It is not just through the government that the UK can influence Georgia. There is also an important parliamentary dimension. Since the Rose Revolution, the All Party Parliamentary Group (APPG) on Georgia, which George has chaired since 2003, has enjoyed close cooperation with the Georgian Embassy in London and there has been a constant exchange of ministers between the two capitals. The APPG has become an important port of call for any minister visiting London and the ministers often use the opportunity to raise awareness of particular issues, or even to lobby parliamentarians to support Georgia and encourage the British government to do likewise. The APPG can be seen as something of a barometer reflecting the changing relationship between the UK and Georgia. Before the Rose Revolution, the group was less active. However, with the peaceful overthrow of Eduard Shevardnadze's government in 2003, the relationship between the two countries has become closer and this is reflected in the activities of the APPG. Since the revolution, the group has welcomed to London a number of senior ministers of the Georgian government, including Eka Tkeshelashvili during her time as Foreign Minister, Vice-Prime Minister Giorgi Baramidze, current Speaker of Parliament David Bakradze, then Speaker Nino Burjanadze, and even the President Mikheil Saakashvili. The APPG has also held numerous meetings with the Georgian Ambassador to the UK. It is very evident from these meetings that Georgia greatly values its relationship with the UK and sees Parliament as a key factor in that relationship. Indeed, in these meetings a number of Georgian ministers have remarked that the British-Georgian relationship is seen as their key European relationship. This is reinforced by the fact that the UK is the largest foreign investor in the Georgian economy. An example of British companies working in Georgia is BP, which is the

principal partner in the Baku-Tbilisi-Ceyhan oil and gas pipeline.

International Support

The UK does not work in isolation with Georgia to improve its human rights; it works with Georgia through a number of multilateral institutions. Perhaps the most visible body of the international community engaged with Georgia is NATO. Georgia has been actively pursuing NATO membership in recent years. Britain, together with the USA, has been one of Georgia's strongest supporters in seeking NATO membership and has given substantial advice and support in furtherance of this aim. The prospect of NATO membership has undoubtedly provided the single biggest incentive for the Georgians to undertake serious political reform since the Rose Revolution. This reform has included not only security sector reform but reform to human rights, democratisation, good governance and the rule of law as required for NATO membership.

The Georgian desire for NATO membership and our position within the Alliance is, in our opinion, one of the central ways in which the UK can have a positive influence on Georgia. Entry into NATO has unfortunately been delayed and the Alliance is likely to apply more pressure on Georgia to meet the necessary democratic standards of membership that might allay the fears and anxieties of certain NATO member states about Georgia's future membership.

Since the Rose Revolution Georgia has also been working closely with the EU through the European Neighborhood Policy (ENP) and the EU-Georgia Cooperation Committee. The ENP in particular assists Georgia in its efforts to undertake political and economic reforms. Under the ENP Country Strategy there are four priority areas for cooperation with Georgia. Of these four, the first priority is support for democratic development and the rule of law, with human rights being highlighted as a focus under this priority.⁴³

Indeed the EU is quite clear that one of its objectives in working with Georgia is to promote "good governance and greater respect for human rights in a bid to ensure the stability and security"⁴⁴ for Georgia and the wider region.

To achieve this objective the EU has recently stepped up its cooperation with Georgia on human rights issues through the creation of the EU-Georgia Human Rights Dialogue. The first meeting was held in April 2009 and it addressed a wide range of issues including "the reform of the judicial system, enforcement of national human rights legislation, rights of prisoners, freedom of association and assembly, freedom of religion, freedom of expression and media, protection of IDPs and the humanitarian situation following the war in August."⁴⁵

The Post-Rose Revolution Era

In the early days of the post-Revolution era there was a lot of international support, not just to the government but to domestic NGOs. Like many NGOs around the world, they remain dependent on the vast range of international donors. This continued support is vital given that much of the civil society leadership moved into government after the Rose Revolution. Many of these NGOs are focused on highlighting the human rights situation in Georgia. The Human Rights Centre, Georgia Young Lawyers Association and ISFED are all based in Tbilisi. International groups such as Freedom House, Amnesty International and Human Rights Watch all conduct annual surveys of human rights in Georgia. Georgia also has an excellent public defender in Sozar Subari, who works tirelessly to highlight human rights issues in the country and has in the past been highly critical of the government.

There is currently a veritable army of organisations in Georgia underpinning its evolution by offering advice on policy and institutional areas. These organisations offer substantial support in transforming Georgia into a modern democratic state, a task that remains to be completed. These include the whole spectrum of UN organisations, the European Union, the

Council of Europe, the OSCE, and international NGOs such as the National Democratic Institute (NDI).⁴⁶ The Council of Europe's Parliamentary Assembly (PACE) has, for example, a Committee to monitor the commitments of its member states including Georgia. Acknowledging what they referred to as "stunning progress", the Committee claimed that the country "has laid the foundations that should allow Georgia to become a prosperous liberal market economy and a fully-fledged democracy governed by human rights and the rule of law."⁴⁷ Many national governments, including notably the UK, are also actively providing this type of policy advice.

With all of this support and goodwill following the Rose Revolution, the Saakashvili government built up an enormous head of steam, but the pace of reform could not be maintained. This has led to substantial criticism externally and to the revival of protests in the streets in an attempt to topple the government, ironically a measure used successfully by Saakashvili himself. As we have already pointed out, without a tradition of democracy and a foundation of human rights in Georgia, one cannot expect a modern democracy overnight.

This is not to excuse very real areas of concern. The legislature is seen to be weak and easily dominated by the executive. There has been criticism of the length of time it has taken to deal with corruption in high places. Judicial reform has similarly moved at a very slow pace. There is continued criticism of the electoral process with some of the opposition claiming massive electoral fraud and refusing to accept the results of the Presidential elections. Opponents of the regime believe that decision-making has been too centralised around the President and that too little political space has been given to the various opposition parties. The President has been strongly opposed in recent elections. His unpopularity amongst some groups, and criticism of his decision to delay parliamentary elections led in November 2007 to thousands of people taking to the streets to protest against the government.⁴⁸ Unfortunately, instead of allowing

this protest to take place, the police over-reacted and used force to stop it. This move was widely condemned and damaged the reputation of the Georgian government. As a result of these actions, the excellent American NGO Freedom House, in its seminal annual report "Freedom in the World", lowered the Georgian rating in terms of human rights and political freedom. However, it is worth noting that when similar protests occurred after the recent Presidential election, the government had clearly learnt its lesson and did not overreact.

Post-Invasion

After the recent conflict with Russia, Georgia appears to have experienced something of a setback. Amnesty International in a report on the conflict raised concerns about violations of human rights law by both sides of the conflict. Certainly the prospect of NATO membership has been pushed back. There were a number of countries within the Alliance that were reluctant before the war to see Georgia enter NATO. These countries, led by Germany and France, successfully blocked the offer of a Membership Action Plan to Georgia at the Bucharest Summit, contrary to the expectations of many. The war with Russia has made the likelihood of membership that bit dimmer. It is a paradox in our view that Georgia, whilst not blameless in the events leading to the Russian invasion, is the country that suffers and is being punished by NATO. However, while NATO may have delayed Georgian membership following the conflict, it has undertaken some steps to increase its cooperation with Georgia and help it on its way to future membership at an unspecified date. Through the creation of the NATO-Georgia Commission (NGC) in September 2008, NATO is working closely with Georgia on both political consultations and practical cooperation to help Georgia achieve its goal of NATO membership.

Russia certainly appears to have achieved its aims with its invasion of Georgia. As a result of the invasion, not only has Russia effectively annexed Georgian territory, they have

troops on the Georgian border, NATO has been forced to step back its plans for Georgian membership and the OSCE and UN missions have been kicked out. The war was clearly planned well in advance by Russia and many, including the authors, believe it was part of a wider plan to get the President removed and then to punish Georgia for its effrontery in seeking independence.

Georgia has suffered significantly following its military defeat by Russia. International organisations that helped sustain Georgia and enhance its human rights performance have now been booted out at Russian insistence. Only the EU mission survives. The principal encourager of human rights and democracy, the OSCE, has been ejected and the UN monitoring mission in Abkhazia has also been forced to withdraw. In light of all of this, it is understandably difficult for Georgia to reinforce a free society. When a country is faced with a serious external threat to its survival, one cannot expect improving human rights to be a top priority. Indeed, coupled with the poor economic environment, one might expect the pace of reform to have slowed. The reality, however, appears to be somewhat different. Paradoxically, recent events seem to have acted as an impetus for political reform and the government appears to be making some positive steps, especially in terms of good governance, for which they should be congratulated. In January 2009 the government established an anti-corruption council which will be headed by the Justice Minister and will work to improve the government's efforts to combat corruption.⁴⁹ The Parliament has also established a Constitution Commission to look at reform of the political system, including, crucially, changes to the electoral system. Given the previous position of the opposition, it is a positive sign that this Committee invited all opposition parties to take part and that it recognises the need for consensus. A delegation from Georgia that included the Chair of the Central Election Commission and the Deputy Speaker of the Georgian Parliament recently visited London in relation to this Constitution Commission. During their time in London they met with Members of

Parliament, the Ministry of Justice and the Electoral Commission. The visit, and the Constitution Commission, demonstrates that Georgia is still keen to make progress despite recent setbacks. The country is eager to learn from its European allies and trusts the advice that we can give them.

Conclusion

Given recent Russian bullying and what many believe to be the continued threat of further incursions and destabilization, it is vital that national governments and multilateral organisations increase their support to Georgia and help them on their path of reform. Georgia deserves to survive and should be free to choose any future direction it wishes to pursue in defence of its security irrespective of Russian opinion. International organisations, national governments and national and international NGOs should continue to work with the Georgian government, parliament and political parties as well as civil society, to help the country meet international standards in human rights, elections and good governance. Despite the severe consequences of the economic downturn, the cost of Russia's war and the actions of opposition parties, it is to be hoped that Georgia will take advantage of its present predicament and seek to improve upon the progress it has already made in such a short amount of time. Perhaps it has been a little over-optimistic of donor countries to expect a tiny country in the South Caucasus to achieve so much so quickly. We should continue to work with them to help make Georgia a beacon for democracy and human rights in the region.

Abkhazia and South Ossetia

Thomas de Waal

It is a dark irony of Mikheil Saakashvili's presidency in Georgia that he came to power promising to re-integrate the country's two breakaway regions, Abkhazia and South Ossetia, but has only achieved the opposite. Recognized as independent states by Russia and in receipt of full military support from Moscow, the two territories are now far more lost to Georgia than they were in 2003 – though whether they will benefit in the long-term from becoming Russian protectorates is a moot point.

Saakashvili's failure in Abkhazia and South Ossetia has also damaged the other goals of his presidency – the construction of new Georgian state institutions and pursuit of NATO membership. The five-day war of August 2008 and the Russian military presence in Abkhazia and South Ossetia has weakened the Georgian state and frightened off investors, while the fighting with Russia has pushed NATO membership off the immediate agenda.⁵⁰

Broadly speaking, Saakashvili set himself three goals on being elected president in January 2004. The first was to strengthen the Georgian state, by increasing government revenues, building up institutions and cracking down on corruption. The second was to pursue "Euro-Atlantic integration" by aiming for a Membership Action Plan of NATO and closer ties with the European Union. The third was to bring the breakaway territories back into the Georgian state, something he promised to do by the end of his first term.

Nothing if not ambitious, Saakashvili self-consciously compared himself to King David the Rebuilder, who established a Georgian kingdom in the early 12th century, taking an oath at King David's tomb in the monastery of Gelati on the day of his inauguration in January 2004. Yet the

scale of the ambition also raised unduly high expectations and the three goals were in many ways incompatible. Saakashvili's greatest success was in government reform and in substantially boosting state revenues. The government reasserted its control of areas of the state that had been captured by the self-serving "oligarchs" who flourished in the Shevardnadze era. In the summer of 2006 Saakashvili was able to claim that the state budget had increased from 350 million dollars to three billion dollars. This in turn allowed the construction of roads, hospitals and schools and a re-assertion of central control over what had, under Eduard Shevardnadze, looked like a state weakened by centrifugal tendencies.

Yet some aspects of this project, with its self-conscious "nation-building" framework, were almost guaranteed to alarm the Abkhaz and South Ossetians and hurt the fragile peace process between Tbilisi and the two territories, which had *de facto* broken away from Georgian rule in the early 1990s. In May 2004, Saakashvili effected the peaceful overthrow of Aslan Abashidze, the local pro-Russian strongman in the autonomous region of Ajaria. For several years, Abashidze had run Ajaria almost as a personal fiefdom, sharing few powers with Tbilisi. His downfall was cause for rejoicing not only in Ajaria but across Georgia as a whole. However Saakashvili's government subsequently acted to downgrade Ajaria's local institutions and make its autonomous status look more decorative than real – despite the fact that Ajaria's autonomy had been guaranteed by international treaty with Turkey in 1921. The leaders of Abkhazia and South Ossetia interpreted this as a signal that they could also not expect substantial self-rule from Tbilisi.

Shortly afterwards, the Georgian government switched its attention to South Ossetia. In June 2004, in the name of securing its borders and boosting revenues, it shut down the Ergneti market which was operating on the administrative border of the province. Probably the largest wholesale market in the Caucasus, Ergneti was a mass centre for Georgian-

Ossetian trade in goods from across the entire region, most of them smuggled and customs-free. The Ossetians sold the Georgians petrol, cigarettes and consumer goods from the Russian side of the mountains, Georgian farmers sold the Ossetians their agricultural produce. None of it was taxed.

For the Georgian state budget the effect of closing the market was impressive: the customs department declared on September 1 2004 that monthly revenues through the Kazbegi customs checkpoint had increased five-fold since January of that year to around 2.5 million dollars.

Yet this masked the other side of the story. The market was also both a means of livelihood for thousands of people and a forum for mass inter-ethnic cooperation between Ossetians and Georgians. It cemented the inter-dependence of Ossetians and Georgians and made South Ossetia economically reliant on Georgia. The former Georgian conflict resolution minister Georgy Khaindrava said of Ergneti, "if it didn't exist it would have to be invented." Shutting it down without providing any alternative threw South Ossetia into chaos and drew a new line of division between two communities which had always traded and inter-married.

The closure of Ergneti was the first step in a campaign by Saakashvili's government to try and replicate the success of the Ajarian operation in South Ossetia. Several sources have said that plans were being drafted to capture South Ossetia within months. But the two cases were very different. In Ajaria in 2004 there was no recent memory of violence and the differences between the province and Tbilisi were mainly cultural and political. South Ossetia by contrast had little more than a decade before undergone a harrowing war and had hundreds of men prepared to fight to defend its *de facto* status. Dozens of people died in low-intensity fighting in the summer of 2004 across the region in a low-level rehearsal of what was to happen in 2008.

A third by-product of Saakashvili's state-building project was

the big boost in the defence budget, which meant that Georgia, along with Azerbaijan, had the fastest growing military expenditure in the world. In June 2007 the annual military budget doubled almost overnight to \$575 million dollars. The Georgians said they were building an army virtually from scratch and that they needed to spend heavily to support the two-thousand-strong detachment of troops they were sending to Iraq. Yet spending on planes and tanks and the lack of transparency in the budget again un-nerved Abkhaz and Ossetians and made the promise of Russian military protection correspondingly more attractive.

All this added up to a model of state reform that was much more about modernization of old structures than about democracy, borrowing more from Atatürk than contemporary Europe. As early as December 2004, a report by the Parliamentary Assembly of the Council of Europe concluded, "The *Rose Revolution* and the two subsequent elections resulted in a very strong government, which may be an asset in dealing with the country's political, economic and security problems, provided that a strong government is accompanied by a strong and functioning system of checks and balances. This is not yet the case. Today Georgia has a semi-presidential system with very strong powers to the President, basically no parliamentary opposition, a weaker civil society, a judicial system that is not yet sufficiently independent and functioning, undeveloped or non-existing local democracy, a self-censored media and an inadequate model of autonomy in Ajaria."⁵¹

At the heart of this was a contradiction about security. What the Saakashvili government prized as increased security for the Georgian state, in terms of its own internal robustness and ability to withstand a Russian threat, was perceived by Georgia's minorities and in particular its breakaway territories as a harbinger of increased insecurity.

This contradiction was most strongly distilled in the debate over another key goal of Saakashvili, Georgia's pursuit of

NATO membership. The NATO Bucharest summit of April 2008, with Washington supporting a Membership Action Plan (MAP) for Georgia and Moscow opposing it, raised tensions in the region. At the end of the summit, when Georgia was promised that it would eventually become a member of NATO but not given a firm pledge on MAP, Russian president Vladimir Putin made a blunt warning, saying, "The presence of a powerful military bloc on our borders, whose members are guided by Article 5 of the Washington Treaty will be seen as direct threat to our national security."

This disagreement might have remained just a war of words, were it not for the disputes over Abkhazia and South Ossetia, both of whose leaders declared that they saw Georgia's NATO ambitions as a threat to their survival. On July 8 2008, US secretary of state Condoleezza Rice, shortly before arriving in Tbilisi, said, "I think the NATO MAP would be a very good status from which Georgians could move to resolve their frozen conflicts." Two days later, her Russian counterpart Sergei Lavrov, meeting Abkhaz leader Sergei Bagapsh, said, "We greatly regret Condoleezza Rice's statements before and during her visit to Tbilisi that granting Georgia a NATO MAP would resolve the Georgian-Abkhaz problem. Rather, it would be more likely to 'bury' it."⁵² Bagapsh used the meeting with Lavrov to announce that he feared Georgian military intervention, saying, "We do not rule out anything, as Georgia has taken the path of terrorism, and terrorism is a path that inevitably leads to clashes."

Russia, which opposed Georgian (and Ukrainian) membership of NATO for its own reasons, but which did not want to be seen to be claiming a veto over the plans of a neighbouring state, skilfully used the unhappiness of Abkhazia and South Ossetia as its main argument against NATO membership for Georgia. The Russian parliament, the State Duma, which has frequently been used in the Putin era as a mouthpiece of state policy, passed a resolution on March 27, 2008, ahead of the Bucharest summit which explicitly warned Georgia about the cost of pursuing NATO membership. While the Duma said it

affirmed the territorial integrity of Georgia, it also declared, "Russia possesses the right to respect the will and to defend its citizens, who are the predominant population of Abkhazia and South Ossetia and who are opposed to Georgia joining this organization. The deputies of the State Duma are unanimous in the opinion that the path taken by the Georgian authorities towards full integration in NATO deprives Georgia of the right to consolidate its territory and the peoples living on it."

The resolution contained the strong implication that if Georgia were to renounce its NATO ambitions, Russia might be more prepared for a deal over Abkhazia and South Ossetia. Instead, after Bucharest, the situation on the ground deteriorated and Russia moved more troops, including paratroopers, into the two territories.

On the Georgian side, even before August 2008, Saakashvili often gave the impression that he would countenance all options, including war, to recover Abkhazia and South Ossetia. Early in his presidency, he made two progressive appointments to deal with the conflicts by choosing Giorgy Khaindrava as his conflict resolution minister and Irakly Alasania as his main envoy dealing with Abkhazia. Alasania in particular made headway, winning the respect of officials in Sukhumi by his capacity to listen to their point of view. But both men were undermined: Khaindrava was replaced in July 2006, while Alasania was moved to New York as ambassador to the United Nations.

During the presidential election campaign of 2007–8, Saakashvili again upped the rhetoric on the two territories and made unrealistic and highly irresponsible promises. On November 28, 2007, he told a group of internally displaced people from Abkhazia "In the nearest future, I mean in the next few months, I am not saying years, we, along with the international community, will create conditions for your return to Abkhazia in safety and dignity." Three days later, he told the audience at a pop concert broadcast on national television

that "I really believe that the January 5 elections will be held normally and they will give us a ticket on a train taking us to Sukhumi." On December 4, he told a group of students at Tbilisi State University, "The regime in Tskhinvali is like a loose tooth ready for removal and I am sure – if the January 5 [presidential elections] are held normally – this is a matter of, if not weeks, then at the very most, months. I am absolutely sure of this. I have precise information to prove it."⁵³

Initiatives on the conflicts, some of them containing interesting ideas, were presented as if for international or domestic consumption rather than to elicit a positive response from the Abkhaz or South Ossetians. For example, on 21 September 2004, Saakashvili unveiled a peace plan for South Ossetia after the 2004 escalation, at the United Nations, rather than discussing it with the other side first. On March 28 2008 he unveiled a new initiative on Abkhazia in Tbilisi, just five days before the NATO summit was due to begin in Bucharest, giving the impression that his primary audience was not the Abkhaz, but NATO. A major speech by Saakasvhili promising friendship to Abkhaz and South Ossetian "brothers" on April 29, 2008, was made in Georgian, not Russian, automatically ensuring that most of the apparently intended audience could not understand it.⁵⁴

The story of conflict resolution over Abkhazia and South Ossetia over the last six years has been a sad one, of a dynamic government in Georgia with a strong public mandate failing to design and implement a consistent policy that could transform the situation. On the Abkhaz and South Ossetian side, where the default position is the status quo, initial cautious optimism about Saakashvili degenerated into prickly suspicion. Russia, identified as the natural provider of security, exploited the opportunity to step up its de facto annexation of the two territories.

Western governmental friends of Georgia should recognize their complicity in this failure. Engagement with Abkhazia and

South Ossetia was extremely timid, allowing Russia to set the agenda in the two territories. The approach to conflict resolution was strongly framed within Georgia's insistence on its territorial integrity, which precluded the more creative options – postponement of status, an international mandate, various kinds of “constructive ambiguity” – which might have facilitated a positive outcome.

In mid-2009, the situation looks graver than it has for a long time. Following deadlock in disputes over status, the two major multi-lateral missions for Abkhazia and South Ossetia, the OSCE mission in Georgia and UNOMIG, are shutting down, leaving both places without an institutional international presence. In Abkhazia, where the elites have been cool about Russian capture of their assets, it has been confirmed that Russia will take over the railway in Abkhazia as well as the airport and there are reports that it plans to build a naval base in the port of Ochamchire in addition to its existing base in Gudauta.

The primary responsibility for this state of affairs lies with Russia, which rejected a Greek compromise proposal on a “status-neutral” mission for the OSCE and has used the tensions between Tbilisi and its minorities to advance its own strategic agenda in the Caucasus. For the Abkhaz in particular this poses the unpleasant prospect of having traded in what they perceive as a Georgian tiger for a Russian bear. The departure of UNOMIG deprives the Abkhaz of the one permanent international presence on its territory and robs them of the place they had in the UN peace process.

Yet the Georgian government also shares responsibility for what has happened. Saakashvili frequently denounced both UNOMIG and the OSCE mission and publicly called for new international formats for Abkhazia and South Ossetia. In South Ossetia, the Georgians forced the early departure of OSCE ambassador Roy Reeve in 2007 and called for the end of the Joint Control Commission format, without securing agreement on an alternative; both moves served only

rhetorical ends and set back mediation efforts in South Ossetia.

Presentation has too often been in an end in itself. In 2008, Saakashvili suggested that in a sense he even welcomed the Russian military intervention because it had pushed the conflicts up the international agenda. For example, testifying to the parliamentary commission on the conflict in November 2008, the president said that the war had both "complicated" restoration of the Georgia's territorial integrity, but also made it "easier" because it demonstrated that Russia was not a "peacekeeper" but "an aggressor." "Today everyone recognizes that Russians are occupiers and whatever inconvenient this truth might be for the world, that is the fact. This is a new reality for Georgia," he told the commission.⁵⁵

Again, the danger is that the disputes over Abkhazia and South Ossetia will turn into merely a declaration of positions, with decreasing relevance to the facts on the ground and Georgians, Abkhaz and Ossetians, whose lives depend on a constructive outcome of talks.

The current Georgian position is that is better to lose the UN mission in Abkhazia (and its counterpart OSCE mission in South Ossetia) than submit to ambiguous language that would keep the mission open but ensure a symbolic defeat for Tbilisi. On June 16 Georgian foreign minister Grigol Vashadze said, "We have kept our promise – although regretting about closure of the UN mission, the Georgian diplomacy has not been and will never be the part of a solution, which may question even a bit our sovereignty and territorial integrity."⁵⁶

This position paves the way for a world in Abkhazia and South Ossetia of two diverging realities. The Georgian government will not give up on Abkhazia and South Ossetia and will not compromise on its "territorial integrity." This is the position of the entire spectrum of Georgian political opinion, from president to opposition, whatever their differences on tactics

and strategy. Equally, however, Russia will not abandon its recognition policy no more than Western countries will do so over Kosovo. Its die is already cast. The Russian calculation is that the two territories have already left Georgia's orbit and that the West will not make this a central issue of bilateral relations, given that it needs Russian cooperation over a range of issues – Iran, North Korea, nuclear proliferation – more than it needs a new fight over two small territories in the Caucasus.

Within this context, the Western policy response over Abkhazia and South Ossetia needs to be bolder and more creative. The mutually defiant positions of Russia and Georgia make an already fragile security situation more dangerous and do not serve the interests of people on the ground. Continuing the current policy of strong emphasis on the territorial integrity of Georgia merely provides cover for talks to go nowhere on all issues and for Russian *de facto* annexation of Abkhazia and South Ossetia to proceed apace.

The international community should not be expected simply to abandon its support for the territorial integrity of Georgia, yet it has duties to more than just the Georgian government and must be aware that the deadlock puts some communities, such as the Georgian population of Abkhazia's southern region of Gali, in an increasingly fraught situation.

This is therefore a situation which calls for the kind of "status-neutral" interventions that the international community has employed for pragmatic ends in a number of critical situations, from Taiwan to Northern Ireland. Abkhazia in particular is still open to international "carrots" to be made available to open it up to the world and reduce the influence of Russia. A continued international institutional presence in both Abkhazia and South Ossetia – under a more ambiguous title – would serve as a guardian of vulnerable groups and act as an early-warning system against potential trouble caused by either side. If this cannot be done on an official multi-lateral level, then some kind of proxy international

organization could step into the breach as for example the Geneva-based Centre for Humanitarian Dialogue did successfully in Aceh.

There are many schemes that would improve the situation on the ground if Georgia were to take the hard symbolic step of conceding that Abkhazia and South Ossetia are lost in the short-term and would benefit from an international presence. Georgian blessing for a legitimate sea-route from Abkhazia to the Turkish port of Trabzon for example would connect Abkhazia and its diaspora in Turkey and provide an alternative link for Abkhazia from the outside world.

Objectively speaking, such a move could be framed in Georgia as a tactical retreat in the name of lessening Russia's monopoly of influence in Abkhazia and fostering an Abkhaz identity that may, at some point, in the future be open to exploring association once again with its near neighbour, Georgia. Unfortunately, old models persist and there is little sign of either the current Georgian elite or most Western policy-makers adopting this more creative approach to the South Caucasus. The danger is that events on the ground will again set the agenda. We can only hope that the situation is not allowed to deteriorate in places like Gali, before more creative responses such as this find a place on the Western policy agenda.

Conclusion: Georgia's rose is wilting – Time for the international community to drive forward reform

Adam Hug

As the OSCE has now withdrawn from Georgia and the Obama administration is less directly engaged in supporting the Saakashvili government than its predecessor, the European Union has a historic opportunity to lead international pressure for reform. Working in partnership with the US administration, the EU has an opportunity to use the leverage created by the economic crisis and the continued fall-out from the August 2008 conflict to significantly improve human rights and standards of governance in Georgia. Over the longer term, it could move to a position of being the primary international partner for Georgia, supporting both its reform process and its national aspirations.

International commitment to good governance and human rights

A commitment to human rights and good governance has to be at the heart of future international engagement with Georgia. While it is not beyond the realms of possibility that Saakashvili can recover some of his reforming zeal, it looks unlikely that significant progress will be achieved without external pressure. The international community, most notably the EU and US, need to more closely align their economic policies with their human rights commitments. The EU's new Eastern Partnership provides an important opportunity to do exactly this by developing clear human rights and good governance benchmarks and conditionality.

The pre-existing mechanisms of the European Neighbourhood Policy (ENP) are not seen to have delivered the desired levels of improvement in human rights and governance standards in partner countries. Richard Youngs' 2008 publication for FRIDE

and ECFR, "*Is the European Union Supporting Democracy in its Neighbourhood?*", described existing ENP democracy and human rights assistance as "extremely limited" and stated that "the use of democracy related conditionality remains highly circumscribed." It is difficult to disagree with this assessment when looking at Georgia. The current EU-Georgia Action Plan Priority Area 1 sets out the broad themes of EU human rights and governance concerned with "general objectives and actions 4.1. *Political dialogue and reform*" giving further areas for suggested improvement. These points do not address issues in significant detail and the Action Plan does not set out details of how compliance will be assessed. Current monitoring is focused around the publication of annual progress reports that give a narrative account of progress in the identified areas.

Under Eastern Partnership, the EU should develop a more detailed set of benchmarks, after consultation with local NGOs and political actors, with a significant emphasis on implementation of reform beyond legislative and administrative changes. These specific criteria, as well as the broad policy goals to be laid out under "policy platform 1(democracy good governance and stability)" should be clearly published to enable independent assessment of the country's performance against these benchmarks. However, publication of criteria should not preclude the benchmarks from being *intelligent* and identifying and considering "the complex web of political, economic and social phenomena."⁵⁷ There is also a need for "detailed and transparent timescales that determine the exact time horizon that all actors involved need to comply with". The benchmarks should be tough but achievable with robust minimum standards set followed by a series of more exacting steps over time.

To monitor compliance with the benchmarks effectively, the EU will need to increase its capacity to undertake these detailed assessments. The EU should look to establish a permanent good governance and human rights monitoring team that is attached to and builds on the existing EU

presence in-country. The strength of EU presence on the ground would be significantly enhanced by an Irish 'yes' vote in the Lisbon Treaty referendum on October 2nd 2009, enabling the unification of two strands of EU activity: the Commission Delegation and the EU Special Representative's team as part of the new European External Action Service. A permanent monitoring team would be better placed to address the traditional *willingness vs capacity* dilemma when assessing compliance with benchmarks. This is particular key in the Georgian context where assessing genuine willingness, as opposed to a high level of legislative activity, is a highly sensitive political issue.

A new permanent monitoring team should act as the core around which additional personnel and resources can be attached for election, media and other monitoring purposes during key periods. Given current concerns over media freedom and the possibility of pre-term elections taking place for local government as part of a settlement between the government and opposition, the EU should give serious consideration to sending an additional media monitoring presence in advance of the elections to examine the nature of its coverage. In conjunction with the Parliamentary Assembly of the Council of Europe and, if possible the OSCE, the EU should explore the possibility of election monitoring teams for the local polls and ensure that monitors are deployed at the earliest possible opportunity to provide the most comprehensive scrutiny possible of the 2012 Parliamentary and 2013 Presidential polls.

Ultimately, improvements in the EU's human rights and governance benchmarks and monitoring should not only deliver increased moral and political pressure for reform, they must also be clearly linked to the economic aid and trading relationships that the EU develops with Georgia. Eastern Partnership offers countries the opportunity upgrade their Partnership and Cooperation Agreements (PCAs) to full EU Association Agreements that include "deep and comprehensive free trade agreements". This pamphlet argues

strongly that such free trade agreements should be contingent on meeting a set level of performance against human rights and governance benchmarks. Although partner countries should have discussions with the EU about the level of performance required, the final decision about how fast and deep the required process of reform must be should rest with Europe. If countries meet the required benchmarks, the EU should seek to expedite the process of trade liberalisation to act as an incentive for reform. However, trade agreements should only be entered into on the provision that they can be reopened if there is a significant deterioration in a key benchmarked area with the prospect of partial or even full suspension of the agreements, subject to any WTO requirements. This principle of attaching human rights and governance conditionality to trade liberalisation is not only applicable to the EU, but should also be considered by other members of the international community, notably the US, on the provision it is not used as a back-door method of protectionism.

The economic crisis provides another important lever that the EU, US and other international partners could pull to help ensure that significant reform takes place. Georgia faces a precarious economic future in the face of uncertain global conditions, with investors further deterred by a mix of domestic instability and the continued risk of conflict with Russia, formerly its largest trading partner prior to sanctions in 2006. As with trading relations, all non-essential funding, excluding such measures as support for refugees and existing human rights support, should have an element of conditionality linked to performance against the required benchmarks. While plunging Georgia into penury is not likely to be an effective way to achieve the desired human rights goals, sector by sector and issue by issue, there will be scope to withhold funding unless the international community can be sure that Georgia is moving in the right direction. Support payments should, and are likely, to be paid in several tranches that would enable ongoing assessment of performance against benchmarks and enable overall funding

levels to be adjusted accordingly, including if possible, providing increased funding if performance targets are met or exceeded.

To supplement the aid and trade incentives and penalties, the EU should re-examine and develop an existing policy, the ENP's Governance Facility, to help incentivise reform. The facility is "intended to provide additional support, on top of the normal country allocations, to acknowledge and support the work of those partner countries who have made most progress in implementing the agreed reform agenda set out in their Action Plan . . . this will help reformist governments to strengthen their domestic constituencies for reform."⁵⁸ While this is clearly a good idea in principle, the size of the Governance Facility "carrot" to encourage reform is an extremely small €50 million *per year* across all ENP countries. In order for this to have a significant effect, the size of the pot needs to grow substantially.

There remain opportunities offered under Eastern Partnership that should be developed irrespective of performance against human rights benchmarks. Most notably, these include steps to reform the EU-Georgia visa regime and to explore measures for improving EU-Georgia labour mobility which would improve society-to-society interaction and trust-building. However, such measures are contingent on technical reform and improved capacity in other areas.

Georgia and NATO

As has been made clear here, strengthening Georgia's ties with the international community should be inextricably linked with governance reform and improvements in human rights. With this in mind, it is important to analyse Georgia's relationship with NATO and examine how the option of NATO membership for Georgia was fundamentally mishandled by both the Bush administration over several years and by those more sceptical of Georgian membership, who forced a messy compromise at the 2008 Bucharest NATO summit. The

compromise promised Georgia eventual membership, infuriating Moscow, but without offering Georgia a Membership Action Plan (MAP).

Thomas de Waal and Sir Malcolm Rifkind have eloquently addressed some of the failings of the pre-August 2008 approach to Georgian NATO membership. The approach can be criticised for prioritising enhanced Georgian military capability against a backdrop of sabre rattling by the Georgians to the South Ossetians and Abkhazians over their status and by the Russians towards the Georgians over encouraging the West in to its so-called sphere of influence. Full membership of NATO was never a realistic possibility for Georgia without a lasting resolution to the situations in both regions, a fact keenly appreciated by both Tbilisi and Moscow. The escalation and provocation between the Russians, Georgians and the two entities that moved up a gear after Bucharest, culminating in the August 2008 war, was in large part driven by this underlying tension.

The August 2008 conflict has, to all intents and purposes, settled the futures of South Ossetia and Abkhazia to the detriment of Georgia and potentially of the Abkhaz who may find their desire for cultural independence subsumed under Russian dominance. It has also completely reversed, at a stroke, the gradual gains made by the Georgian Government militarily in Abkhazia's Kodori Gorge and politically with Dmitry Sanakoyev's alternative government the Provisional Administration of South Ossetia. Nevertheless, if the new reality on the ground can eventually be translated into a grudging but official acceptance in Georgia that full reintegration of South Ossetia and Abkhazia is unlikely, a significant political challenge as attested to by de Waal, then the longer-term prospects of NATO membership for the rest of Georgia become significantly more healthy. Such an acceptance would give the government in Tbilisi the opportunity to formulate a new strategy towards Abkhazia that may prevent its de facto absorption into Russia from becoming total, as seems almost unavoidable in the case of

South Ossetia. The need for an eventual resolution to the disputes must be clearly communicated to the Georgians as a non-negotiable condition of eventual membership because the Alliance would not be willing to invoke Article 5 and face war with Russia over the future of the two entities.

The second main barrier to membership is the main focus of this pamphlet, the failure to meet the expected standards of human rights and governance that are the expressions of the democratic values of the Alliance. However, even before the setbacks of recent years and setting to one side the territorial disputes, it has always been clear that Georgia was some considerable way off being ready to join NATO. The debate has often centred on whether Georgia was ready to be offered a MAP, the specific process of formally preparing it for membership and assessing its eventual readiness. Pre-Bucharest, there was some debate about whether being offered a MAP equated to being guaranteed eventual membership and whether this was appropriate, particularly in the case of Georgia. The Bucharest Summit Declaration muddied the waters considerably by stating that "NATO welcomes Ukraine's and Georgia's Euro-Atlantic aspirations for membership in NATO. We agreed today that these countries will become members of NATO".⁵⁹ It effectively guaranteed Georgia that it would eventually join NATO without laying out the criteria (in a MAP) on what basis this would be achieved.

The MAP process has the potential to provide clear incentives and waypoints for political reform in Georgia. Given recent events, there is considerable work to be done before it is appropriate to offer Georgia a MAP, but this is not the same as waiting until it is ready to be a NATO member before offering the process. The criteria on the conflicts for offering a MAP should be that the Georgian Government moderates its language and shows willingness to explore new approaches. The MAP would then have to lay down clear benchmarks for reform and commitments to achieving a resolution to the

conflicts, criteria which if not met would prevent Georgia from joining the Alliance.

Membership criteria determined merely by that capability alone should not determine NATO entry, as many existing members of the Alliance far more prosperous than Georgia do not come close to shouldering their fair share of the NATO's military burden. Georgia's potential contribution to European energy security through its position on key pipeline routes and its already demonstrated willingness to deploy troops out of the area would be assets to the Alliance, alongside the broader strategic goal of stabilising Europe's borders. However, the primary benefit of Georgian membership would be that, having met the criteria for entry, it would help lock in its commitment to "transatlantic values".

In the context of the Obama administration's re-balancing of relations with Russia, even the offer of a MAP, let alone the long term goal of membership, is on the back burner but it should not be discarded entirely as it is a valuable mechanism to promote the cause of reform in a number of areas, including human rights and good governance. Furthermore, rather than its previous role as an obstacle to a negotiated solution to the South Ossetia and Abkhazia disputes, if handled with extreme care, the long-term prospect of NATO membership could act as an incentive for the Georgians to adopt a new approach.

Both EU membership and NATO membership are very much long-term goals for Georgia. However the scale of the administrative and technical challenge involved in EU accession (harmonising with the *acquis communautaire*) means that of the two processes Georgia is more able to reach a position where it can be offered a MAP significantly before it could be offered a formal EU accession process, with the same principle applying to eventual membership of either club. Of course, swifter than both membership options is the interim relationship that could be offered by Eastern Partnership.

Engaging in Georgian politics and supporting its institutions

The international community's role in Georgia, or for that matter any country, goes beyond the setting of conditionality and monitoring, offering incentives and penalties. It has a vital role in providing technical assistance and political engagement. The EU and the US need to work pragmatically with the current government while continuing to try to bridge the divide between Saakashvili and his opponents. The international community must make clear to the opposition that it recognises that the human rights situation in Georgia has deteriorated and that urgent action is being taken to address these issues. However, the international community must make clear to the opposition that repeated street protests must not be seen as the means of achieving political change in Georgia and that other methods should be explored.

Since Georgia's independence, there has not been a fully constitutional transfer of power, with coup and civil war surrounding Gamsakhurdia's ouster and the more peaceful protests of the Rose Revolution moving Shevardnadze into retirement. The public desire for transitions of power to be democratically controlled is clearly shown in Gutbrod and Turmanidze's findings in this pamphlet. They show that 94% of Georgians believe elections are the only acceptable way of changing the President. If a closer relationship with the EU or NATO is desired, as a country, Georgia must show that it is able to manage the transfer of political power in a peaceable and truly democratic manner.

There do remain legitimate options that the opposition can explore without fundamentally damaging Georgia's long-term stability. First, sections of the opposition should return to negotiations with the government by dropping the precondition that the President should resign. This could enable the option of pre-term elections to be properly explored. As mentioned previously, a change of timescale for

the local elections seems the most politically achievable goal followed by the less likely option of an early parliamentary election and the remoter possibility of an early Presidential poll.

The second option, a referendum on early elections, was discussed in early 2009 prior to the April unrest. Under Article 74.1 of the Georgian Constitution, a referendum must be scheduled by the request of "not less than 200,000 electors."⁶⁰ The opposition eventually balked at the logistical challenge of obtaining the number of valid signatures required and sought the removal of the President via street protests. Unlike protests, a referendum on a recall Presidential election would have the benefit of being able to test the popular mood across the country rather than simply the numbers either side could muster in Tbilisi and crucially it remains a legitimate constitutional process, albeit one not regularly used in mature democracies, Governor Schwarzenegger notwithstanding.

The third option and perhaps the most easily achievable, yet least desired by certain sections of the opposition, is to patiently build support and a platform to create a credible alternative for the 2012–13 Parliamentary and Presidential elections. This approach would give the international community time to help push for reforms to ensure the contest is conducted fairly with effective international monitoring.

Political engagement by the international community must be matched by technical support. Since the Rose Revolution, Georgia has been highly receptive to offers of technical assistance. It is important that this does not change as a result of international concerns that the reform process seems to be on hold or in reverse in some areas. This pamphlet highlights two key areas where technical assistance could play a valuable role.

First, in the area of media regulation, there is a strong case

for reform of the Georgian National Communications Commission. Building on the UK's OFCOM and other European models, it needs to become an independent regulator with Commissioners no longer requiring final approval by the President. It must be clearly and regularly subject to cross-party parliamentary scrutiny. International engagement can help encourage these changes and there may be scope for representatives of the EU, the office of the OSCE Representative on Freedom of the Media, or the Council of Europe to either sit on the Commission or act as formal observers to the deliberations, providing support and scrutiny.

Second, there is continued scope for policing reform, an area where the EU could take a lead in the wake of the departure of the OSCE policing mission. Marco Kubny's contribution highlights a number of areas where technical support and targeted pressure can make a difference, including improving police training and organisational structures. In addition, the editor would propose serious consideration of the creation of an independent police complaints authority, along the lines of the UK's Independent Police Complaints Commission, with the power to investigate alleged abuses, with compliance of the police mandated, and to recommend disciplinary action or prosecution where appropriate.

Moving forward

It is important to assess Georgia for the country it is rather than the one we would like it to be, setting aside some of the hype, and some of the more extreme criticism, that has swirled around in recent years. Since Saakashvili took over in 2003, Georgia has been one of the better performing countries in transition rather than a new fully fledged democracy. In recent years, the pace of reform has slowed and the Government has shown worrying tendencies, both a more autocratic style of governance as well as in substance, particularly in the areas of media freedom and operation of the security forces. The challenge for the international

community, most notably the EU, is to find a way of reinvigorating the reform process and to put Georgia back on the path to full democracy. Put simply, the international community needs to develop a series of economic carrots and sticks linked to diligent monitoring of clear human rights and good governance benchmarks. This must be supported by continued technical assistance and sustained and consistent political engagement, not simply when Georgia hits the headlines. This pamphlet puts forward a series of recommendations for action, both by the Georgian government and the international community.

Recommendations

The international community should:

- Develop tough and clear benchmarks for the EU's Eastern Partnership on a wide range of human rights issues and good governance goals. These should be publicly available to assist the monitoring of compliance by NGOs and Georgian Civil Society and arranged in a series of progressively more exacting steps to facilitate compliance.
- Ensure that any new EU-Georgia Association Agreement and privileged trade access available under the new Eastern Partnership framework is contingent on partner countries achieving a set level of performance against the published benchmarks and that subsequent deterioration in standards could lead to such agreements being partially or if necessary fully suspended.
- Directly link the level of donor funding to performance against these EU benchmarks, or comparable criteria for other donor countries. Funding for non-essential areas should be cut back if the benchmarks are not met and there should be scope for it to increase if they are achieved. It is critical that the opportunity provided by Georgia's need for increased financial assistance to weather the economic crisis should be used to push for real reform. Such additional assistance should be paid in tranches to enable later payments to be reduced if agreed reforms are not implemented. However, money specifically provided for governance and human rights support should not automatically be restricted as a result of failure to meet the benchmarks.
- Increase the funding available across ENP for the Governance Facility to provide a greater incentive for

good performance in all partner countries including Georgia.

- Ensure effective international election and media monitoring programmes are in place with full access in advance of all future elections. Serious consideration should be given to providing such scrutiny for any pre-term local elections that may become a source of political unrest if serious flaws occur.
- Explore the possibility of a permanent EU human rights and governance monitoring team that is attached to and builds on the existing EU presence in Tbilisi.
- Ensure future debate about Georgia being offered a NATO MAP focuses on the need to meet political criteria rather than primarily on improving military capability. If a MAP is offered, it should be on the basis of significant progress on human rights issues and recognition of the need for a new approach to the territorial disputes. Eventual membership must be conditional on delivering and sustaining improvements in human rights that put it on a par with other new members of the Alliance and on achieving a permanent peaceful resolution to the conflicts over South Ossetia and Abkhazia.

Areas for Georgian reform with international assistance:

- Reforming the Georgian National Communications Commission to make it a more independent media regulator with Commissioners no longer receiving final approval by the President and strengthening cross-party parliamentary scrutiny and international involvement. This could include representatives from the EU, the OSCE Commissioner for Open Media's office or the Council of Europe sitting on the Commission or who would act as formal observers.

- Prioritising crowd control and human rights training for the police and strengthen in-service training that covers all police including long-serving and senior officers.
- Examining measures to prevent political interference in policing such as the creation of an operationally independent National Police Commissioner to reduce direct political interference in police actions. Kubny's suggestion of a de-merger of the Ministry of Internal Affairs and the Ministry of State Security should be considered alongside other initiatives to ensure a clear dividing line is created between the police and intelligence agency function.
- Setting up an independent police complaints authority with transparent mechanisms to investigate alleged abuses and recommend disciplinary action or prosecution. The UK's Independent Police Complaints Commission provides a possible model and operates an international outreach programme that could assist Georgia.
- Working with international bodies Georgia should continue reform of the electoral commission, electoral processes and campaign finance law to increase accountability and effectiveness. There is also scope for bringing non-governmental organisations such as representatives of the Bar onto the High Council of Justice and increasing funding and international scrutiny of the Chamber of Control to strengthen the independence of these bodies.

Notes

¹ N.B The first PM Zurab Zhvania, a close ally of Saakashvili, died in office.

² Human Rights Watch, December 2007, <http://www.hrw.org/en/reports/2007/12/19/crossing-line>

³ Freedom House, June 2009 http://www.freedomhouse.eu/images/nit2009/georgia_es.pdf

⁴ Reporters Without Borders, 2008, <http://www.rsf.org/en-classement794-2008.html>

⁵ Freedom House, 2008 <http://www.freedomhouse.org/template.cfm?page=442&year=2008>

⁶ Freedom House, 2008 <http://www.freedomhouse.org/template.cfm?page=251&year=2008>

⁷ N.B The family of the late Arkady "Badri" Patarkatsishvili have provided support to the FPC for the Spotlight on Georgia project.

⁸ Reporters Without Borders, March 2009, <http://www.rsf.org/Appointment-of-new-head-of-news.html>

⁹ Civil Georgia, July 2009, <http://www.civil.ge/eng/article.php?id=21194>

¹⁰ Council of Europe 2009, <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta09/ERES1676.htm>

¹¹ We wish to thank Giorgi Babunashvili and Mariam Kobaladze for their support in developing this manuscript, as well as Carnegie Corporation of New York, the Eurasia Partnership Foundation and the Swedish International Development Agency for the generous support of CRRC's work. The views represented here are entirely our own.

¹² See http://www.freedomhouse.hu/index.php?option=com_content&task=view&id=196, and also <http://crrc-caucasus.blogspot.com/2008/12/freedom-house-report-democracy-in.html>

¹³ <http://www.civil.ge/eng/article.php?id=18807&search=democracy%20elections>

¹⁴ Data Initiative 2007 (September–October 2007) and 2008 (October–November 2008) – Annual General Household Survey;

Public Opinion Survey on Parliament (March 2008); Post-Conflict Survey (October 2008); Protest and Politics Survey (May 2009).

¹⁵ Public Opinion Survey on Parliament, March 2008.

¹⁶ Protest and Politics Survey, May 2009.

¹⁷ Protest and Politics Survey, May 2009.

¹⁸ Public Opinion Survey on parliament, March 2008; DI 2008, October–November 2008; Protest and Politics Survey, May 2009.

¹⁹ DI 2007, September–October 2007; DI 2008, October–November 2008. However, as a rule of thumb, people exaggerate their election participation, typically yielding an extra 10% of respondents that say they went to vote, over actual voters.

²⁰ Protest and Politics Survey, May 2009.

²¹ DI 2007, September–October 2007; DI 2008, October–November 2008.

²² DI 2008, October–November 2008.

²³ DI 2008, October–November 2008.

²⁴ Lin, Nan. 2001. *Social Capital: A Theory of Social Structure and Action*. Cambridge: Cambridge University Press, p. 25.

²⁵ Putnam, Robert D. 1993. *Making Democracy Work: Civic Traditions in Modern Italy*. Princeton, NJ: Princeton University Press, p. 171.

²⁶ Election and Democratization Survey, December 2007.

²⁷ Transparency International http://transparency.org/news_room/latest_news/press_releases/2009/2009_06_03_gcb2009_en

²⁸ European Committee for the Torture and Inhumane or Degrading Treatment or Punishment (CPT) available at: http://www.cpt.coe.int/documents/geo/2007-42-inf-eng.htm#_Toc177181650

²⁹ "Undue Punishment: Abuses against Prisoners in Georgia", Human Rights Watch report, September, 2006, Volume 18, No. 8(D), at <http://www.hrw.org/en/reports/2006/09/13/undue-punishment>

³⁰ CAT, "Consideration of Reports Submitted by States parties under Article 19 of the Convention, Conclusions and recommendations of the Committee against Torture, Republic of Georgia," CAT/C/GEO/CO/3, May 10, 2006.

³¹ CPT, "Report to the Georgian Government on the visit to Georgia

carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 18 to 28 November 2003 and from 7 to 14 May 2004”.

³² Through extortion, cooptation, and threats, the thieves in law had come to control the prisons throughout Georgia and to enjoy privileges not available to other prisoners. What is more, from their prison cells, they were able to plan and coordinate criminal activity that was carried out by associates on the outside. The government announced its commitment to undoing this corrupt system as a key component to effective prison reform.

³³ See account of the March 27 disturbance in “Undue Punishment”, *op. cit.*

³⁴ See Human Rights Watch, “Crossing the Line: Georgia’s Violent Dispersal of Protestors and Raid on Imedi Television” December 19, 2007.

³⁵ Universal Declaration of Human Rights <http://www.un.org/en/documents/udhr/>

³⁶ Human Rights Watch, *World Report 1996* http://www.hrw.org/legacy/reports/1996/WR96/Helsinki-09.htm#P509_109662

³⁷ Human Rights Watch, *World Report 1996* http://www.hrw.org/legacy/reports/1996/WR96/Helsinki-09.htm#P509_109662

³⁸ Statement of Preliminary Findings and Conclusions, Parliamentary Elections, Georgia – 2 November 2003 http://www.osce.org/documents/odihr/2003/11/1031_en.pdf

³⁹ Statement of Preliminary Findings and Conclusions, Repeat Parliamentary Election, Georgia – 28 March 2004 http://www.osce.org/documents/odihr/2004/03/2488_en.pdf

⁴⁰ Freedom House, *Nations in Transit* (2008) <http://www.freedomhouse.org/template.cfm?page=47&nit=452&year=2008>

⁴¹ Statement by Minister for Europe <http://ukingeorgia.fco.gov.uk/en/newsroom/?view=News&id=20039167>

⁴² Georgian Ministry of Foreign Affairs, Relations between Georgia and the United Kingdom of Great Britain and Northern Ireland http://mfa.gov.ge/index.php?sec_id=287&lang_id=ENG

⁴³ European Union, *European Neighbourhood and Partnership*

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Spotlight on Georgia

Edited by Adam Hug

Preface by Commissioner Benita Ferrero-Waldner

Spotlight on Georgia examines the human rights and good governance challenges facing Georgia. It puts forward clear recommendations on how Georgia needs to reform and how the international community should support it to do so. The pamphlet features contributions from: Peter Semneby, EU Special Representative for the South Caucasus; Rt Hon Sir Malcolm Rifkind MP, former UK Foreign Secretary; Giorgi Chkheidze, Deputy Public Defender of

Georgia; Ambassador Arthur Hartman, former US Ambassador to the Soviet Union; Elsa Vidal, Reporters Without Borders; Giorgi Gogia, Human Rights Watch; Bruce George MP, Chair of the UK Georgian All Party Parliamentary Group; Thomas de Waal, Conciliation Resources; Mary O'Hagan and the team at the National Democratic Institute; Marco Kubny, Former OSCE Georgia; and Dr Hans Gutbrod, Caucasus Research Resource Centers.



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