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Submitting NGO Coalition:

Georgian Young Lawyers' Association

Human Rights Centre

Article 42 of the Constitution

Educators and Scientists Free Trade Union of Georgia

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Georgian Young Lawyers' Association



The Human Rights Center



**Educators and Scientists Free
Trade Union of Georgia**



Article 42 of the Constitution

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The coalition submitting the shadow report for Universal Periodic Review is composed of a group of civil society organizations of Georgia with human rights concern. The above organizations have a long-standing and extensive experience in human rights litigation both at the domestic and international level. The information submitted in this report is mainly based on the cases that have been taken up by the respective organizations. Therefore it is of first hand and reliable information. The NGOs contributing to the report remain hopeful that the recommendations presented in the report will be considered by the government and consequently will be dully reflected in the legislation and administrative practices of Georgia.

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I. INTRODUCTION

1. The present report was prepared by a Georgian NGO Coalition with the support of the Human Rights House Foundation (HRHF). The Drafting Committee prepared the present report based on an analysis of documented information and opinion presented by the members of the NGO Coalition in line with the general guidelines for the preparation of information under the Universal Periodic Review mechanism of the Human Rights Council. The information contained in the report covers the period between 2006 and 2010.

II. BACKGROUND INFORMATION

2. Under the Georgian Constitution, adopted on 24 August, 1995, the form of political structure of the State of Georgia is a democratic republic with directly elected President and the legislative body – the parliament of Georgia.

3. However, the constitutional amendments enacted in February 2004, right after the so called Rose Revolution, caused transformation of the Georgian constitutional system from a presidential model into a semi-presidential one. The amendments entailed significant enhancement of already disproportionately strong presidential powers and distorted the balance between the three branches of power. In spite of introducing the notion of a Government as an organ, essential powers of the executive remained at the President's disposal with the only change that liability for the actions of the executive authority was imposed not upon the President but upon the Government. Further, parliamentary control mechanisms have been weakened; in particular, procedures for declaring a vote of confidence or no confidence by the Parliament toward the Government have become more complicated and the procedure for the President to dismiss the Parliament has been simplified.

4. Presidential and Parliamentary Elections conducted in Georgia in 2008, which international observers concluded were uneven and incomplete in their adherence to international standards, polarized the political situation in the country. Referring to the massive fraud in the Parliamentary Elections that was accompanied with widespread intimidation and physical harassment of opposition activists¹, the coalition of opposition forces refused to take seats in the Parliament. Thus, the ruling party under the President Mikheil Saakashvili, has the constitutional majority in the Parliament – enough to change the Constitution without consultation with the public and opposition political forces. The parliament with only 15 parliamentarians from opposition forces does not have enough institutional strength and political will to oppose decisions taken up by the President, inter alia, on draft laws affecting human rights situation in the country.

III. JUDICIARY

5. The Constitution provides for an independent judiciary. However, the court system continues to lack public trust. The level of independence of judges raises serious concerns in cases where state/ruling party has any kind of political interest. The established practice of discussing the possible outcome of cases by judges with heads of the courts prior of case hearings is believed to be interference with independence of judges.

6. Extremely high conviction rates, with less than 1 % of total number of acquittals in criminal cases proves the allegation that judicial authorities continued to act as a rubber stamp for prosecutors' decisions.

7. The High Council of Justice, main body in charge of appointment and dismissal of judges, was reformed in 2007 in response to criticism from Venice Commission. However, the President still has a power to veto judicial candidates not loyal to the government, through its representatives to the Councilⁱⁱ. Though the judiciary has the majority in the Council, its members are exclusively nominated by the Head of the Supreme Court, close associate of the President.

8. The High Council of Justice that acts as a political body can exert pressure on judges through opening disciplinary proceedings against judges on vaguely defined grounds, such as 'gross violation of law' or 'misinterpretation of law that is not based on judge's inner belief.'ⁱⁱⁱ

9. The institute of transfer of judges from one position to another, without the judge's prior consent is perceived by judges to be equal to dismissal.

Recommendations:

- *The process of reforming the High Council of Justice should continue. The decision on appointment of judges should be taken by simple majority, without necessary consent from the members appointed by the President and the Parliament;*
- *The Council members should be directly nominated by judges;*
- *The institute of transfer of judges without their consent should be abolished;*
- *The grounds for opening of disciplinary proceedings against judges should be amended and clearly defined.*

IV. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

a) Right to life, liberty and security of the person

10. **Illegal deprivation of life as a result of excessive use of force** by law enforcement officials, lack of effective investigations of these cases and lenient judgments in those few cases which reached the court, has been a long standing problem in Georgia. Tens of such cases have been documented starting from 2004 up to 2009. All these cases followed a certain pattern: Law enforcement officials used excessive force mostly in a hot pursuit *special* operative activity to arrest an alleged criminal and/or prevent a crime; Commonly used pretext for the authorities to 'justify' the use of force was self-defense, however, in many cases available evidence suggests that alleged criminals were unarmed and that weapons were planted on them after they were killed; Often the aim pursued by the law enforcement officials while using the force was not legitimate according to article 2 of the ECHR^{iv}; use of force was not proportionate to the legitimate aim pursued^v and failed to meet the requirement of absolutely necessity^{vi};

11. **Failure to Investigate and Punish.** Until now, no one has been held responsible for dozens of murders on the spot committed by police officers^{vii}. For instance, an investigation to determine whether law enforcement agents acted in accordance with the law during a prison riot in Tbilisi Prison Number 5 in 2006 is still ongoing. During riot 7 prisoners were killed by special operative forces and 22 were wounded.

12. Legislation Regulation Use of Force. The only legal act that regulates use of lethal force by law enforcement officials is the Law on Police. Legitimate grounds for the use of force listed in the law go beyond the list provided in article 2 of the ECHR, e.g., unlike ECHR national law authorizes use of force solely for the purposes of protection of property. In addition, the law does not expressly require that use of force in all circumstances must be proportionate to the legitimate aim pursued. In July 2009, the law was amended legalizing the use of non-lethal force without adopting further regulations as to clarify the circumstances when the non-lethal force could be used.

13. Disappearances. After August conflict of 2008 with the Russian Federation, the Government of Georgia has engaged in illegal practices of exchange of hostages with the *de facto* Tskhinvali authorities. At least 5 ethnic Ossetians disappeared in the hands of the Georgian authorities immediately after they had been released by Courts in August 2009. Only in December 2010 they have been handed to the Tskhinvali authorities by Council of Europe High Commissioner for Human Rights. The criminal case was not opened and accordingly, no one was held responsible for four month enforced disappearance of 5 Ossetians.

14. Excessive Use of Force by Police. Year 2009 saw a sharp increase in the use of the excessive force by police officers. On May 6th 2009, the police used plastic bullets against peaceful demonstrators without taking any precautionary measures to avoid serious injury or casualties. As a result dozens of people were injured and two lost their eye. Usage of plastic bullets was not authorized under the legislation at that time. This instance was not followed by opening an investigation from the Prosecutor's Office.

15. On 15th of June 2009, peaceful demonstrators gathered in front of the Main Department of Ministry of Internal Affairs were attacked and beaten by policemen wearing civilian clothes. As a result, several demonstrators sustained serious injuries. The organizers of the peaceful demonstration, youth activists usually voicing their criticism towards the government, were detained, taken into the Main Department Building and severely beaten up. Afterwards, 5 youth leaders were sentenced with one month administrative detention for 'not obeying lawful orders of a policeman.' None of them were allowed to use services of lawyer at trial. Despite numerous requests, the authorities failed to initiate criminal proceedings against those involved in the attack.

16. Politically Motivated Arrests. Continuous peaceful demonstrations in 2009 were followed by politically motivated arrests of opposition political party activists and leaders, particularly in the regions. Almost all the cases follow a certain pattern – charges brought against those arrested are almost exclusively weapons/drugs possession. charges are based exclusively on police testimony; no forensic evidence on seized weapons is presented; no video evidence of the search and seizure procedure is presented.

Recommendations

- *Every case of illegal deprivation of life committed by law-enforcement officers must be investigated and those responsible must be pursued and brought to justice;*
- *The Law on Police should be amended and brought in line with international standards; Further regulations on the usage of non-lethal force must be adopted;*
- *Every case of disappearance must be investigated and those responsible must be pursued and brought to justice;*
- *Impunity among law-enforcers should be eliminated; every case of ill-treatment during detention or in police custody should be investigated and those responsible must be brought to justice;*
- *The Government must bring an immediate end to politically motivated detentions. The Government must release everyone detained on politically motivated grounds.*

b) Torture, Cruel Treatment and Punishment

17. Government officials, particularly representatives of the Ministry of Internal Affairs, continued to employ practices of torture, cruel treatment and punishment with limited accountability. There have been number of documented cases of torture, cruel treatment and punishment in police custody and penitentiary institutions targeting political party activists, their family members and civic activists. Usually, reports on torture are not followed with adequate and impartial investigation, the Prosecutor's Office often giving qualification of "abuse of power" rather than "torture" or "inhuman or degrading treatment."

Recommendations

- *Prosecutor's Office should change its strategy and give adequate qualification to the incidents of torture and ill-treatment;*
- *Every case of alleged ill-treatment in police custody and penitentiary institutions should be adequately investigated, those responsible must be pursued and brought to justice.*

Prison Conditions

18. The problem of overcrowding persists in most of the penitentiary institutions. The problem caused by the zero tolerance policy implemented by the Georgian Government. After 2003 the prison population increased approximately by 300%. Accordingly, in half of the penitentiary institutions, prisons have limited access to shower facilities, kitchens fail to meet sanitary standards, cells are damp, rodents and bugs are found in the cells (Penitentiary Establishment No. 2 in Kutaisi and Penitentiary Establishment No. 7 in Ksani).

19. The existing legislative framework does not allow prisoners to maintain adequate contact with their families. The institute of long-term visits of the family members was abolished in 2006. According to the new Penitentiary Code, only juvenile prisoners will be entitled to long-term visits; adult prisoners can receive short-term visits up to 1 hour only.

20. The new Code reiterates the rules on short-term leave from the penitentiary establishment. As the Ministry of Corrections and Legal Assistance reported, within the period from the enactment of these legislative amendments (September 2009) until 12 April 2010, only thirteen prisoners were allowed to use a short-term leave from penitentiary establishments.

21. The medical treatment at the penitentiary institutions remains to be the most problematic issue. Prisoners do not get adequate and timely treatment as a result of which around 100 prisoners die per year. Transfer of prisoners with serious illnesses to the Penitentiary Hospital is usually delayed until state of health reaches critical condition. The prisoners are not provided with outpatient medical treatment in a regular cell.

Recommendations

- *The provision which states that detention and imprisonment must be used as a measure of last resort should be strictly enforced, concrete measures have to be taken to increase the use of measures alternative to detention and imprisonment available in the law.*
- *Long-term visits for prisoners should be introduced;*
- *The system of medical treatment at penitentiary institutions should be changed;*

c) Freedom of expression, association and peaceful assembly, and right to participate in public and political life

Freedom of Expression and Media

22. The legislation regulating freedom of expression and information contain commendable provisions that should advance press freedom and the right of access to government controlled information. However, serious obstacles remain in implementation of these laws.

23. According to the law ‘public information must be released immediately, but no later than in 10 days.’ As a matter of rule, however, public bodies do not obey the legal requirement for immediacy, or at all do not disclose the information requested. Nationwide manifestation of the protest against this practice was a joint action of 16 regional newspapers who on May 3, 2010 printed their first pages blank except for one sentence printed on them: *Give us public information.*

24. The electronic media, particularly, national TV channels covering the whole territory of Georgia are clearly pro-governmental ignoring critical views and social problems in their reporting. Transparency of ownership of two private channels, Rustavi 2 and Imedi, remain confidential to the public. However, previous owners (or their family members) of both TV channels are challenging the legality of actions that stripped them of their property rights.

25. The Ministry of Education restricts the right of teachers to communicate freely with the media. According to the address of the Ministry of Education and Science, public school principals and teachers were prohibited by the Ministry to communicate with media without the permission of the press-centre of the Ministry of Education and Science.

Recommendation:

- *The legal provision guaranteeing release of public information immediately, but no later than 10 days should be strictly enforced in respect of all government bodies,*
- *effective measures should be taken to ensure that the public media respects diversity and balance in its programs.*
- *Dubious circumstances related to the alienation of TV channels Imedi and Rustavi 2 should be clarified through effective, objective and transparent investigation;*
- *Ownership of national electronic media should be made public by law;*
- *The Ministry of Education should change its policy in relation to teachers reaching out to media.*

Section Two: Freedom of peaceful assembly and manifestation

26. Although the Constitution guarantees freedom of association, the legal and political environment dominant in recent years in Georgia is not conducive to the exercise of this right. In 2007 government violently dispersed peaceful demonstrators by means of excessive force and illegal weapons (e.g., plastic bullets, tear gas, etc.), several tens of participants were seriously injured, the ombudsman of Georgia was specifically targeted and physically abused. No one has been held responsible for these actions.

27. Dozens of attacks and harassment of demonstrators committed by unidentified people have been documented in the course of demonstrations starting from April till July 2009. Testimonies point to the lack of reaction from the police, who in some cases stands accused of turning a blind eye to the attacks. Attacks seemed to be directed to intimidate demonstrators and obstruct realization of their right to freedom of assembly. The cases remain uninvestigated to date.

28. During the demonstrations, state agents at least on two occasions used illegal weapons (plastic and rubber bullets) and excessive force against demonstrators.

29. No one has faced criminal responsibility for these actions, the names of law enforcement officials who according to the authorities received administrative sanctions, remains undisclosed to the public.

30. In July 2009 the Parliament swiftly adopted amendments disproportionately restricting the right to assembly and manifestation; These amendments *inter alia* aim to keep demonstrations away from the territory close to premises of public bodies;

31. The same day amendments were introduced to the Code of Administrative Offences, based on these amendments violation of the Law on Assembly and Manifestation may lead to a considerable amount of fine or to an administrative detention for up to 90 days.

32. The combination of the two laws has a chilling effect of the exercise of the right to peaceful assembly and manifestation.

Recommendations:

- *November 7 2007 events should be adequately investigated, those responsible for ordering the violent dispersal of the peaceful demonstration should be identified and brought to justice;*
- *All the incidents of attacks on peaceful demonstrators by unidentified persons should be investigated promptly and objectively, those ordering and implementing the illegal orders should be identified and brought to justice;*
- *The amendments to the Law on Gatherings and Manifestations, as well as relevant provisions of the Code of Administrative Offences should be amended in accordance with the international standards.*

Section Three: Freedom of Association

33. There was a tendency by the government-associated media and some representatives of the ruling party to air negative, unbalanced and often unsubstantiated views against Georgian human rights NGOs, labeling them corrupt, traitors of the nation, working against the state interests, etc. This made the environment for human rights groups highly undesirable.

Recommendations:

- *The Government should stop marginalization of the critical civil society groups.*

Section Four: Right to participate in public and political life

34. The election process in 2008 (Presidential and Parliamentary) as well as in 2010 (local municipality elections) were marred by numerous irregularities, including vote count fraud and intimidation of voters, observers and opposition election observers, massive use of administrative resources by the ruling party, etc.

35. During the recent years several tens of cases have been documented of politically motivated persecutions, including imprisonment. Such an environment is not conducive to political dissent and undermines the right to participate in public and political life of the country.

Recommendation:

- *Concrete measures should be taken to ensure safe and enabling environment for a meaningful political participation by citizens and opposition political parties;*
- *The relevant provisions of the Electoral Code allowing the ruling party to have unlimited access to administrative resources should be amended to comply with European standards.*

Section Five: Labour Rights

36. According to the article 14 of Georgian Labor Code duration of the working day determined by the employer during which the employee performs assigned work shall not exceed forty one hours per week. Under the above Article exceeding freedom is given to the employer to establish as many working hours per week as they wish.

37. According to the Labor Code of Georgia (article 37, paragraph “d”; article 38, paragraph 1) “the basis of the termination of a labor contract is the breach of the contract”, which gives the employers rights to violate employees rights and to act voluntarily. Labor Code gives the opportunity to invalidate employment agreement with the employee without any ground and explanation. It often happens due to the discrimination of the employee, for example, because of his/her belonging to trade union, having political opinions or exercising the right to strike and etc;

38. Frequently the fact that an employ is not obliged to give reasons and explanations for not hiring a person happens due to the discrimination, because of the belonging to trade union or any political party. One of the biggest defect of the Labor Code of Georgia is that it does not envisage the preliminary warning and argumentation of the employee by the employer about the termination of his/her work (the reasonable notice for termination of employment).

Recommendations

- *The recommendation in this respect is to establish fixed working-hours limit per week by Labor Code. It should not be provided by the contract of employment, which often violates employees’ rights.*
- *Thus, it will be important to take out Article 37, „d” and Article 38, paragraph 1 from Labor Code.*
- *The legislation should oblige an employer to give reasons and explanations for not hiring a person, if a candidate demands such an explanation.*

Endnotes

ⁱ OSCE/ODIHR Election Observation Mission Final Report, Parliamentary Elections, 21 May 2008, Georgia, p. 4

ⁱⁱ Article 50(3) of the Law on Common Courts of Georgia

ⁱⁱⁱ Article 2 of the Law on Disciplinary Responsibility of the Judges of Common Courts and Disciplinary Proceedings

^{iv} For instance, Gamtsemlidze case, where police officers chased him and used force leading to death for overspending while driving

^v For instance, *Kiziria case* who was shot 53 bullets, including one in the head, while it remains unproved by the investigative authorities that Kiziria was armed

^{vi} For instance, in case of Aprasidzes, who could have been easily arrested without the use of force.

^{vii} Except Girgvliani case, where high ranking officers of the Ministry of Internal Affairs sentenced for a young man's death, have been pardoned by the President after serving sentence for two and a half years.