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Honouring of obligations and commitments by Georgia

Report
Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)
Co-rapporteurs: Mr Kastriot ISLAMI, Albania, Socialist Group, and Mr Mátyás EÖRSI, Hungary, Alliance of Liberals and Democrats for Europe

Summary

While the events preceding Georgia's recent snap election were deplorable – especially the violent dispersal of peaceful demonstrations, the silencing of opposition TV stations and the decision to declare a state of emergency – the election itself was for the first time genuinely competitive and enabled the Georgian people to express their political choice, according to the Monitoring Committee. Significant challenges were nonetheless revealed which need to be addressed urgently and all allegations of fraud should be pursued in court and according to the law. All political forces in Georgia should now accept the official result, considered by international observers as in essence consistent with most international standards.

It is now up to the newly-elected President to do his utmost to strengthen democratic freedoms in Georgia, seek consensus and engage constructively with those who did not vote for him, and focus on poverty and other social issues that matter to many Georgians, the committee declares. It repeats its conviction that Georgian democracy needs a strong and efficient system of checks and balances, and calls for the building up of strong institutions, a fully independent and impartial judiciary, a professional state administration and a healthy political culture. The emergence of a vibrant opposition is welcome, but it should start offering issue-based and credible alternatives to the population and engage in constructive dialogue with the governing party.

In fact, the recent crisis has overshadowed the substantial efforts made by Georgia towards complying with the Council of Europe obligations and commitments, the committee points out. Several major conventions have been ratified and a vast amount of relevant legislation, including the law on the repatriation of the Meskhetian population and amendments to the Electoral Code, has been adopted. Thorough reforms have been applied to most spheres of public life. Key institutions have been restructured and corruption has been clamped down. These reforms are deep and ongoing.

Meanwhile, a democratic Georgia will only truly thrive when the country feels united, safe, and secure. To this end, the government should continue to seek a peaceful and democratic settlement of the conflicts in Abkhazia and South Ossetia. Council of Europe member states, for their part, should make solving the "frozen conflicts" more of a priority, and invest more in helping Georgia towards Euro-Atlantic institutions.

The Assembly should continue to monitor Georgia until there is tangible progress on these outstanding issues, the committee concludes.

A. Draft resolution

1. On 5 January 2008, Georgia held its fifth presidential election since its independence in 1991. The Parliamentary Assembly is pleased to note that, notwithstanding the unexpected circumstances which brought about this snap election, the often significant shortcomings and a high degree of political polarisation, this was for the first time a genuinely competitive election enabling the Georgian people to express their political choices.

2. The Assembly deplores the events which preceded the pre-term elections and in particular the violent dispersal of peaceful demonstrations on 7 November 2007, the subsequent temporary silencing of two opposition-controlled television stations and, finally, the decision to declare a state of emergency. These actions have tarnished the reputation of the Georgian government both in the eyes of their own population and abroad. However, the decision to end the crisis by holding early presidential elections in January 2008, together with a plebiscite asking the people to choose the date of the next parliamentary elections, stopped the escalation of tensions and is to be welcomed.

3. The Assembly now launches an urgent appeal to all political forces in Georgia to accept the officially announced result of the presidential election – which was considered by the international election observer mission as being in essence consistent with most international standards for democratic elections. Any allegation of fraud or vote rigging should be pursued through the legal avenues prescribed by the Constitution of Georgia and related legislation, not through street demonstrations. The Assembly urges the Georgian authorities to investigate each complaint regarding the election process duly and impartially, and to bring those who may have violated the law to justice.

4. The Assembly will closely monitor the developments of the political situation in Georgia and expects the authorities to demonstrate their resolute commitment to democracy, rule of law and human rights. The newly elected President must do his utmost to strengthen democratic freedoms and constructively engage in a dialogue with those parts of the population that did not vote for him. Internal stability and economic prosperity will best be guaranteed though inclusive policies, improvement of the functioning of institutions and an unfailing respect for the rule of law and fundamental freedoms. To this end, the Assembly urges the authorities to create proper conditions in which a strong and efficient system of checks and balances can finally emerge and function. The Georgian government should also immediately address the recent shortcomings of the presidential elections in order to ensure that the upcoming parliamentary elections, in spring 2008, will be democratic, free, transparent and competitive.

5. In any democratic society, the opposition shares the responsibility for the country's stability and national consensus and for the reforms underway. The Assembly welcomes the emergence of a vibrant and united opposition in the country shortly before the recent elections, which it sees as a positive development towards Georgia maturing into a genuinely pluralist democracy. However, it emphasises that, in order to gain long-term support at grassroots level, in particular in view of the upcoming parliamentary elections, the opposition should start offering issue-based and credible alternatives to the population and engage in a constructive dialogue with the governing party on all major issues.

6. Sustainable democracy cannot be built in the absence of basic security. Full normalisation of the situation in Georgia remains impossible without reaching a peaceful and democratic settlement of the conflicts in the breakaway regions of Abkhazia and South Ossetia. The Assembly reiterates its unconditional support for the territorial integrity and inviolability of the internationally recognised borders of Georgia and urges Georgia's neighbours, notably Russia, to do the same. It commends the Georgian government's continuous efforts to reach a peaceful settlement of those conflicts, notably the recent steps aimed at winning over the secessionist population in Tskhinvali region/South Ossetia.

7. The Assembly welcomes the holding of the first high-level meeting between the Georgian and the Abkhaz representatives which took place in Sukhumi in October 2007 after a long pause, while regretting that no progress has been recorded on the ground and that the negotiations conducted under the auspices of the United Nations have produced no results so far. The Assembly deplores in particular that the hundreds of thousands of refugees and internally displaced persons (IDPs) from Abkhazia, victims of the ethnic cleansing in the early 90s, are still deprived of the possibility to return safely to their homes. The Assembly calls upon the *de facto* authorities to provide secure conditions for the return of internally displaced persons (IDPs) and to respect the inalienability of property rights in the conflict zones, in accordance with the recent resolution of the UN Security Council. The Assembly further calls on the Georgian authorities to do their utmost to alleviate the difficult social conditions of the IDPs and to integrate them within the mainstream Georgian society, without prejudice to their right to return.

8. The Assembly regrets that the recent crisis has overshadowed the numerous positive steps taken by the Georgian authorities towards complying with Georgia's obligations and commitments since the adoption of Resolution 1477 (2006). On formal grounds, a significant number of commitments pertaining to the remaining issues listed in the above resolution have been fulfilled, even if several important shortcomings still persist.

9. With regard to Council of Europe legal instruments, the Assembly notes that to date Georgia has ratified 53 Conventions and signed 9 others. It commends the ratification of the Framework Convention on National Minorities (ETS No 157), of the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No 106) and of the Council of Europe Criminal Law Convention on Corruption (ETS No 173). Regretfully, however, the procedure for signing and ratifying the European Charter for Regional or Minority Languages (ETS No 148) has not progressed so far.

10. Georgia's close co-operation with the Council of Europe contributed to the adoption of the Anti-Corruption Strategy and Action Plan, the Law on Repatriation of Persons Forcefully Sent into Exile from Georgia by the Former USSR in the 1940s (repatriation of the Meshkhetian population), the Law on Property Restitution and Compensation on the Territory of Georgia for the Victims of Conflict in the Former South Ossetia District, the new Law on Legal Aid and the Law on Local Self-Government, and the Law prohibiting ex-parte communication. Codes of Ethics regarding the Police, prosecutors, advocates and broadcasters have been elaborated.

11. The Assembly welcomes that, as a result of political dialogue, the last-minute amendments to the Electoral Code incorporated a number of long-standing recommendations of the Assembly and the Venice Commission. In this respect, the Assembly in particular welcomes the agreement jointly reached by the parliamentary majority and opposition to: lower in future the electoral threshold from 7% to 5% - a long-standing Assembly recommendation; transform the much contested majoritarian component of the electoral system into a fully proportional one and change the composition of the electoral commissions and the campaign finance regulations.

12. For the fourth consecutive year, the authorities have demonstrated a clear resolve to build a stable and modern European democracy and to better integrate the country into European and Euro-Atlantic institutions. Many of the most important institutions, including the judiciary, the tax administration, the police and the prosecutor's office as well as the transport, public health and educational systems, have undergone substantial reform. These efforts have been rewarded with double-digit economic growth and remarkable levels of foreign direct investment. Petty corruption has been effectively curbed and steps have been taken to reform the penitentiary system.

13. At the same time, the concerns previously expressed in Resolutions 1415(2005) and 1477(2006) on the strong system of government not being accompanied by efficient checks and balances are more than ever valid. Sustainable democracy and development can only be achieved through public participation and a wide range of institutions in society through which the individual can communicate with the state. This is the only way by which a democratic government can achieve the necessary level of consensus to ensure the irreversibility of its reforms. In this regard, the Assembly calls upon the authorities to commit themselves to building up strong institutions, in particular by creating a responsible and professional state administration and by fostering a political culture that does not support cronyism or self-serving interpretation of laws or restricting independent media, but seeks broad consensus among the plurality of views.

14. The Assembly notes that a number of reforms have been carried out very rapidly and without the public being made adequately aware of their short or long term advantages. Georgian society has perceived many reforms as a shock treatment and feels that the prevailing poverty and social injustices have not been adequately addressed so far. Access to basic social services indeed remains limited; incomes continue to be low and unequally distributed. The government has now realised that the social costs of its reform agenda need to be addressed. The Assembly hopes that the recently declared will to focus more on socially-oriented policies in the future will be followed by concrete deeds.

15. The Assembly commends the Georgian authorities for having created the appropriate legislative framework for all major reforms. It notes, however, that thorough, fair and professional implementation will be the determining factor for their success. Today the courts still do not enjoy public confidence, the fight against corruption is perceived as selectively applied and property rights have been abused. The Assembly therefore urges the Georgian authorities to step up their efforts as regards the reform of the judiciary, in particular by creating proper mechanisms to guarantee the independence of judges and prosecutors. Georgia must also urgently improve its record in the protection of human rights notably with regard to conditions of detention, prevention of torture, and respect for minority, religious or property rights.

16. Whilst welcoming the broad reform agenda of the authorities, the Assembly considers that specific measures need to be taken in order to accelerate the political reforms that will eventually transform Georgia into a stable and prosperous European democracy.

17. With regard to Council of Europe conventions:

17.1. without any further delay, sign and ratify the European Charter for Regional or Minority Languages;

17.2. improve Georgia's record with regard to the ratification of Council of Europe treaties.

18. With regard to the functioning of democratic institutions:

18.1. continue reviewing the constitution, by taking into account the opinion of the Venice Commission;

18.2. ensure that the next parliamentary elections, scheduled for spring 2008, are free and fair and in full compliance with Council of Europe standards; to this end take fully into account the recent findings of the International Election Observer Mission participating at the extraordinary Presidential Election of 5 January 2008, as well as the recommendations of the ad hoc committee of the Assembly, notably as regards:

18.2.1. adopting further amendments to the Constitution of Georgia in order to reduce the electoral threshold from the current 7% to the agreed 5% and transforming the current majoritarian component of the election system into a system based fully on proportional representation;

18.2.2. reviewing all recent and future amendments to the Electoral Code with the assistance of the Venice Commission;

18.2.3. further improving the accuracy of the voters' list and finalising it so as to cancel election-day voter registration in the future;

18.2.4. ensuring clear separation of governmental structures from the electoral administration;

18.2.5. ensuring a balanced pre-election campaign environment, including equal media access;

18.2.6. improving the training of members of electoral commissions;

18.2.7. guaranteeing the impartiality of courts in this process

18.3. pursue vigorous investigation of all allegations of intimidation, harassment and violation of electoral law and bring to justice all perpetrators of electoral fraud;

18.4. adopt and ensure proper implementation of the law on transparency of party funding;

18.5. maintain the commitment to create a second parliamentary chamber, providing for the representation of its autonomous regions at state level, once South Ossetia and Abkhazia are politically and administratively reintegrated into Georgia;

18.6. continue the local government reform:

18.6.1. implement the legislative package including core legislation on local self-government and other related laws;

18.6.2. ensure proper functioning of the State Commission on Decentralisation to lead the implementation of the decentralisation strategy;

18.6.3. follow the recommendations of the Venice Commission on the local government reform.

19. With regard to the Meskhetian population, pursue the work of the State Commission on repatriation, seek actively international assistance and create conditions for the repatriation process with a view to its completion by 2011; implement fully the recommendations set forth in Assembly Resolution 1428 (2005) on the situation of the deported Meskhetian population.

20. With regard to the 1990-94 conflicts:

20.1. continue to seek a peaceful solution of the conflicts in Abkhazia and South Ossetia, in full respect of international law, in the interest of all parties concerned and of regional stability;

20.2. ensure the equal rights of internally displaced persons, along the lines of Assembly Recommendation 1570 (2002) on the situation on refugees and displaced persons in Armenia, Azerbaijan and Georgia;

21. With regard to respect of the rule of law:

21.1. complete the reforms of the judicial system, the Bar, the Prosecutor General's Office and the police in full compliance with European standards and in close co-operation with Council of Europe experts;

21.2. implement a fully transparent system of appointment and dismissal of judges and ensure that the new generation of magistrates is independent and highly professional; ensure the proper functioning of the High School of Justice; ensure that the courts and prosecution are perceived as fair and impartial;

21.3. adopt the new comprehensive criminal procedure code elaborated in co-operation with the Council of Europe;

21.4. pursue the fight against corruption and money-laundering, and fully implement all recommendations of the Group of States against Corruption – GRECO and Moneyval; step up work aimed at building a culture and ethics of civil service;

21.5. investigate transparently and impartially all credible allegations of corruption, particularly at the high levels of authorities.

22. With regard to the protection of human rights:

22.1. fully implement the recent recommendations of the European Committee for the Prevention of Torture;

22.2. continue to address the issue of overcrowding in prisons and pre-trial detention centres and consider supplementary measures, where appropriate;

22.3. secure prompt, independent and thorough investigation of all allegations of ill-treatment and apply a policy of zero tolerance to impunity;

22.4. concerning freedom of expression and information:

22.4.1. guarantee full independence and pluralism of electronic media; ensure that media ownership is transparent and governed by democratic rules;

22.4.2. eliminate instances of obstruction of access to information for political or administrative reasons;

22.4.3. ensure the best quality of training for media professionals;

22.5. 22.4.4 ensure that the Georgian Public Broadcasting channel organises regular political debates involving a fair representation of different political views.

23. Facilitate the active participation of civil society in the drafting and implementing of legislation.

24. The Assembly calls on member states to invest more substantially in Georgia's democratic future, security and stability. This implies continued support for Georgia's domestic reforms, for the resolution of its secessionist conflicts, and for its integration into Euro-Atlantic institutions. All member states of the Council of Europe should provide the necessary financial resources for the successful implementation of the programmes of co-operation between Georgia and the Council of Europe. The Assembly also calls on the European Union to co-ordinate its activities in the framework of its European Neighbourhood Policy (ENP) with the Council of Europe.

25. The Assembly further calls on the European Union and all member states of the Council of Europe to get more actively involved in the search for a peaceful solution of the conflicts in the breakaway regions of Abkhazia and South Ossetia on the Georgian territory, including by finding a more appropriate international framework for negotiations and for ensuring peace, law, order and respect for human rights on the ground. All interested parties in the conflict, in particular the Russian Federation, must demonstrate their commitment, in principle but also in practice, to a peaceful and democratic solution in full respect of the territorial integrity and sovereignty of Georgia. Referring to its Resolution 1455(2005) on the honouring of obligations and commitments by the Russian Federation (paragraph 14.ii), the Assembly in particular encourages the

European Union to step up negotiations on readmission and visa facilitation agreements between the EU and Georgia, also in order not to discriminate between citizens of Georgia and those holding Russian passports in the separatist regions of South Ossetia and Abkhazia.

26. The Assembly resolves to pursue its monitoring of the honouring of obligations and commitments by Georgia until the ongoing reforms in the areas mentioned in this resolution have produced tangible results. In particular, the Assembly expects the Georgian leadership to demonstrate a high level of political maturity and to implement a governance style that will seek compromise and consensus within a competitive democratic system. It also expects all Georgian political forces to demonstrate their capacity to hold the parliamentary elections in 2008 in accordance with international standards for free and fair elections.

B. B. Explanatory memorandum by Mr Eörsi and Mr Islami

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1. Introduction

1.1. The monitoring procedure

1.1.1. History of monitoring Georgia's obligations and commitments to the Council of Europe

1. Georgia became member of the Council of Europe in 1999 and the monitoring procedure was opened immediately thereafter. A first report on the progress of reform in Georgia was issued two years after accession, laying out the persistent deficits and the gap between the legislation and its implementation[1].

2. In November 2003, the co-rapporteurs of the Monitoring Committee were in Georgia when massive but peaceful protests following the fraudulent parliamentary elections led to the Rose Revolution and the resignation of President Eduard Shevardnadze. A few weeks later, in early January 2004, the co-rapporteurs were back in Georgia on the occasion of the presidential election which led to the victory of Mikhail Saakashvili.

3. In Resolution 1363 (2004) and Recommendation 1643 (2004) on the functioning of democratic institutions in Georgia, adopted in January 2004[2], the Assembly acknowledged that the newly elected leadership could not be held responsible for the failure of the former regime to fulfil the country's obligations

1. The report led to the adoption of Resolution 1257 (2001) and Recommendation 1533 (2001).

and commitments to the Council of Europe. As a sign of support to the new authorities and due to the extraordinary character of the transition that had taken place in Georgia, the Assembly agreed to reconsider deadlines for Georgia's commitments to the Council of Europe.

4. The new timeframe was set one year later, in Resolution 1415 (2005), adopted in January 2005. One year after the Rose Revolution, the Assembly made it clear that the post-revolutionary situation should not become an alibi for hasty decisions and neglect for democratic and human rights standards.

5. Two years after the Rose Revolution, in January 2006, the Assembly debated the latest comprehensive report on the honouring of obligations and commitments by Georgia[3] and adopted Resolution 1477 (2006).

6. The Assembly concluded that Georgia's progress could be regarded as generally encouraging but was still only a first step towards meeting its obligations and commitments. It thus recommended a number of important measures which the authorities should take to achieve this goal.

7. Aware that full normalisation of the situation in Georgia was impossible without reaching a peaceful and democratic settlement of the conflicts in the breakaway regions of Abkhazia and South Ossetia, the Assembly commended President Saakashvili's efforts to propose solutions but at the same time was extremely worried that no real progress had been achieved on the ground and in the on-going negotiations. It called all interested parties and in particular the Russian Federation to demonstrate their commitment, in principle and in practice, to a peaceful and democratic solution with full respect for the territorial integrity and sovereignty of Georgia.

8. The Assembly resolved to pursue its monitoring until it received evidence of substantial progress, particularly with regard to the issues mentioned in Resolution 1477 (2006).

9. The serious sanctions that the Russian authorities imposed against Georgia and its citizens residing in Russia in autumn 2006 and the subsequent worsening of the long-lasting tensions between the two countries caused considerable concern to the Council of Europe[4] and the Assembly in particular.

10. The Monitoring Committee commissioned one of its co-rapporteurs on Georgia, Mr Eörsi, and one of its co-rapporteurs on Russia, Mr van den Brande, to visit both countries and report back to the committee. Following a discussion on the information note prepared by Mr Eörsi and Mr van den Brande after their visits in November 2006 the committee at its meeting on 13 December 2006 decided to ask for an urgent procedure debate during the January 2007 part-session. Considering the closing of the remaining Russian bases in Tbilisi ahead of time and the return of the Ambassador of Russia to Tbilisi as first steps in the right direction, however, the Assembly decided not to hold the debate. On 23 January 2007, the Monitoring Committee adopted a declaration on the issue and declassified the information note on its rapporteurs' fact finding visits (AS/Mon (2006)40 rev), including a list of immediate steps the Georgian and Russian authorities should take.

1.1.2. Background of the current report

11. The present document is based on the information gathered during a series of visits undertaken in recent months. From 10 to 16 September 2007 we visited Tbilisi, Batumi, Abkhazia and South Ossetia with a view to assessing the situation in the country. We paid particular attention to the issues of the functioning of democratic institutions, progress in reforms, the protection of human rights, the fight against corruption and the persisting tensions with the breakaway regions of South Ossetia and Abkhazia. This visit led to the preparation of a first draft of this report, which the Monitoring Committee considered at its meeting in Berlin on 6 November 2007. The extensive analysis of the situation in South Ossetia and Abkhazia presented in Chapter 6 provided background information for a public hearing on the frozen conflicts that the Monitoring Committee organised in the German Bundestag on 5 and 6 November 2007.

12. Following the dispersal of anti-governmental demonstrations on 7 November by riot police, after which a state of emergency was introduced and the Imedi TV and Kavkazia channels were shut off, we immediately decided to undertake a snap visit to Tbilisi on 9 and 10 November.

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2. see also Doc. 10049.
3. Doc. 10779.
4. On 15 December 2006, the European Commission against Racism and Intolerance (ECRI) published a statement in which it condemned the massive expulsion of Georgians from Russia.

13. After the resignation of President Saakashvili on 25 November and the proclamation of the pre-term presidential elections for 5 January 2008, we visited Tbilisi again in the context of a pre-electoral mission from 5 to 7 December. A 30-member ad hoc committee of the Bureau of the Assembly observed the election on 5 January 2008.

14. On all the above occasions, we held very open and frank discussions with the highest state authorities, relevant ministers, leaders (and candidates) of the opposition parties and local authorities. In addition to the official programme organised by the Georgian parliamentary delegation, we also met with local think-tanks, NGO and media representatives, foreign Ambassadors residing in Tbilisi and representatives of international partner organisations on each of these occasions.

15. In Sukhumi and Tskhinvali in September, we met with the Speakers of the *de facto* Abkhazian and South-Ossetian Parliaments, Mr Nugzar Ashuba and Mr Znaur Gassiev; Mr Ivo Petrov, Deputy SRSG of UNOMIG in Sukhumi, representatives of the UNHCR in Gali and the OSCE Mission in Tskhinvali. We also paid a visit to a returnee community in Tsikiri village in the Gali district. We regret not having had the occasion to meet with the *de facto* government leaders in Sukhumi and Tskhinvali, which would have offered us a better understanding of possible avenues for conflict resolution in the two separatist regions. On separate occasions, we also met with Mr Malkhaz Akishbaia, Head of the Government of the Autonomous Republic of Abkhazia in the Upper Abkhazia in Zugdidi, and Mr Dimitri Sanakoev, leader of the Temporary Administrative Unit for the Tskhinvali Region, South Ossetia, in Kurta.

16. We wish to thank the Georgian authorities for their full co-operation and hospitality throughout our visits. We are grateful to the Georgian Parliament and the Georgian national delegation for the excellent organisation of our visits, one of which at extremely short notice. We extend our gratitude also to UNOMIG and OSCE, whose Missions facilitated our visits to Abkhazia and South Ossetia. Finally, our full recognition goes to Mr Igor Gaon, Special Representative of the Secretary General of the Council of Europe in Georgia, and Ms Tamara Katzitadze from the Council of Europe office in Tbilisi for their active assistance in making our visits a success.

17. During our first visit in September, we praised the Georgian authorities for their substantial efforts in pushing for simultaneous reforms at various levels, though we also noted various areas where further improvement was necessary. Meanwhile, the country has been upset by the events which have cast a shadow on Georgia's reputation as champion of democratic reforms in the region. Notwithstanding the very short time lapse between the pre-term election and the fact that the final results of the presidential elections of 5 January 2008 are not announced at the moment of finalising this report, we deemed it appropriate to pursue the initial schedule of holding a debate at the January 2008 part-session of the Assembly in order not to lose sight of the progress made in the last two years and to help Georgia identify new challenges and ways to go ahead.

18. Finally, the present document takes account of the information gathered during all these recent visits as well as on the data provided in various recent reports of other international governmental and non-governmental organisations. We have no intention of closing our eyes to various other challenges facing the Georgian society today, notably concerning such issues as protection of national minorities or education, which relate to the core values of the Council of Europe. Nonetheless, in order to be consistent with other similar monitoring exercises and to avoid opening new debates, we will limit our assessment only to the issues mentioned in Resolution 1477 (2006).

1.2. General developments since Assembly Resolution 1477 (2006)

1.2.1. Political events

19. In November 2003, the new government inherited a deeply insecure and corrupt state with no control over large parts of its territory and declining international support. Since then, Georgia has shaken off the legacy of political bankruptcy and poor national reputation and laid the foundations of a functioning democracy and free market economy.

20. Up until September 2007, Georgia enjoyed political stability, which allowed the government to swiftly pursue complex reforms in most spheres of public life. The legislative framework and action plans for major reforms were adopted; the government reformed the education system, law enforcement bodies and the Army, considerably reduced and rejuvenated state bureaucracy and increased the salaries of officials, cracked seriously down on corrupt practices and took measures to strengthen the independence and professionalism of the judges. Signs of restored social infrastructure and reconstruction of tourism infrastructure are visible everywhere. Georgia deserves by all means praise for that.

21. Nevertheless, some reforms have been carried out very rapidly, causing a genuine shock to the Georgian society. The state has slimmed down; many people have lost their jobs. The social situation has in many cases been exacerbated by the Russian economic blockade. Although poverty rates have grossly dropped in figures, concerns of social injustices have been insufficiently addressed. The government has faltered in managing overly ambitious post-revolution expectations and failed to adequately communicate the stakes of the reforms. Impatient to deliver, the young government has too often disregarded the demands of the opposition and public discontent, and bulldozed its way through perceived obstacles. All these factors plus a popular perception of lack of transparency, accountability and credible investigations into disturbing cases of abuse of office led the internationally much-praised reformist government to face a major internal political crisis in October-November 2007.

22. At the beginning of October, Arkadi (Badri) Patarkatsishvili, Georgia's richest man and owner of the oppositional Imedi TV channel, announced that he would take lead of anti-government campaign and became the principal financier of opposition demonstrations throughout the country. He later made a series of statements pointing to financing the regime change in Georgia. On 2 November massive demonstrations broke out at the call of a newly-formed bloc of nine opposition parties demanding the rescheduling of parliamentary elections from autumn to spring 2008, the transformation of Georgia into a parliamentary republic, and the resignation of the then President Mikheil Saakashvili. Patarkatsishvili further announced that he would finance not only the opposition rallies, but also the political parties that constituted the opposition alliance.

23. On 7 November 2007, the political disturbances culminated in a violent dispersal of protesters by the riot police. Special Forces raided and shut down the Imedi TV station, which the authorities claimed was airing calls to stage a Russia-orchestrated coup d'etat. A few hours later, triggered by Patarkatshishvili's communiqué vowing to "… *put all my efforts, all my resources, my financial resources, including the last tetri, for liberating Georgia from this Fascist regime*" and further calls for civil disobedience channelled through the same tycoon owned Imedi TV and radio stations, the government imposed a state of emergency. Several opposition leaders were charged with conspiracy and subversive activities.

24. On the following day, President Mikheil Saakashvili, in an attempt to diffuse the extremely tense political situation, declared that he would step down for a snap presidential elections, while putting the date of parliamentary elections up to plebiscite. The state of emergency was lifted nine days later on 16 November. On the same date, he dismissed Prime Minister Nogaideli and appointed Vladimer Gurgenidze to lead the new government. Upon his own resignation on 25 November, President Saakashvili also signed a decree for holding another plebiscite on NATO accession. Imedi TV and radio subsequently reopened on 8 December; however, a fortnight later, in the midst of the campaign, the authorities produced evidence implicating Badri Patarkatshishvili in renewed plotting to overthrow the government in the days following the elections. A number of journalists quit the channel and its management decided to take it off the air once again. The station remained closed beyond the presidential election.

25. The actions taken on 7 November seriously tarnished the credibility of the government's willingness to build up a state founded on the rules of democracy and law. On the other hand, we welcome the decision of the Georgian leadership to solve this crisis through early presidential elections and also by asking the opinion of the people about the timing of the parliamentary elections. This democratic and constitutional decision helped halt the escalation of violence and brought the opposition from the streets to some form of dialogue and focus on the election.

1.2.1.1. Pre-term presidential elections of 5 January 2008

26. Twenty-two candidates initially expressed their desire to contest the presidential poll. Seven candidates were finally registered. These included:

– Levan Gachechiladze, nominated by the nine-party opposition coalition;

– Davit Gamkrelidze, leader of the New Rights Party;

– Badri Patarkatsishvili, a business and media tycoon;

– Shalva Natelashvili, leader of the Labor Party;

– Mikheil Saakashvili, the ex-president and the leader of the ruling National Movement party;

– Gia Maisashvili, leader of the Party of Future.

– Irina Sarishvili, leader of the Hope Party;

27. Parallel to the presidential election, voters were also called on to cast ballots in a plebiscite to decide on the date of upcoming parliamentary elections and whether they support NATO accession. The constitution currently provides for elections in November 2008; the opposition, however, demanded elections in April 2008. The plebiscite aimed at resolving this disagreement by putting the choice directly in front of Georgia's citizens.

28. From the outset, the election campaign was conducted in a highly-polarised political environment. The government declared it their main goal to conduct free, transparent and fair elections. To this end they welcomed great numbers of international observers and encouraged exit polls to be conducted. More than 1000 international and 2000 domestic observers participated in the observation of this election on 5 January 2008.

29. However, a number of opposition forces put the whole process in question before the latter had even started. Although this election presented the first genuine chance for Georgian political leaders to truly compete, this opportunity was not seized by most candidates. The campaign by the opposition concentrated not on developing programmes but mostly on anti-Saakashvili rhetoric. At the same time, the opposition failed to come up with their own common counterweight candidate. Throughout the electoral process most opposition candidates were clearly not campaigning to win the elections but threatened with post-election protests to contest the results, should Mikheil Saakashvili win. On 24-25 December secretly taped recordings were released by the government showing Badri Patarkatsishvili attempting to bribe the Head of the Special Operations Department of the Ministry of Interior to orchestrate an overthrow of the government and to resort to violent means, including elimination of the Minister of Interior.

30. The legislative framework for these elections underwent a number of important changes. The short period of time between the date of the changes and the date of the election raised concerns among various stakeholders. However, the fact of the parliament having already prepared new draft amendments to the Electoral Code in view of the elections to be held in autumn 2008, which incorporated many previous recommendations of ODIHR and the Venice Commission, helped the ruling majority and the opposition to reach a compromise agreement on these amendments rather quickly. On 22 November the Parliament amended the Law on Referendum and the Unified Electoral Code. Further technical amendments were effected on 7 December. During our pre-electoral visit we observed that, albeit perfectible, the Electoral Code constituted an adequate basis for holding democratic elections, if implemented in good faith.

31. The amended Electoral Code introduced changes ensuring the participation of opposition parties' representatives in the electoral process on the central as well as local levels. The requirement to designate 6 members from opposition parties and the principle of 2/3 majority decision-making added a safeguard against impropriety. The new CEC acted competently during the electoral process, despite some unconstructive actions and voting along party political lines noted by long-term election observers.

32. The accuracy of voters' list has been a long-standing problem in Georgian elections. In order to combat the perceived and real inaccuracies, the CEC carried out a door-to-door voter list verification in the run-up to the election, which resulted in a substantial number of revisions. A public awareness campaign was carried out aimed at exhorting voters to check their data on the lists. Voters could check their data on Internet, through a CEC hotline, or in person in PECs and DECs. This additional campaign resulted in a total of 2,123 corrections made to the database. Throughout the campaign, the opposition claimed that hundreds of thousands of "dead souls" were on the list, without making any official complaint though to the CEC to this avail within the deadlines required by the law. According to the CEC, altogether 31,000 dead persons were removed from the list during the door-to-door verification and later. The Ministry of Interior provided the CEC with information on the deceased persons registered in the Civil Registry Agency until 22 December 2007 and the population was called upon to notify the CEC of any dead relative who might still have figured on the list. Despite all these efforts, international observers noted several cases of inaccuracies on the polling day. We acknowledge, however, a considerable improvement in the quality of this list in comparison to previous elections, and encourage the CEC to continue to improve these lists on the basis of additional data collected on the Election Day.

33. Voter registration on the Election Day was a predictable source of procedural difficulties. Bearing in mind the past negative experiences of Georgia whereby additional voter lists were used for fraud, most domestic and international election observer organizations as well as the opposition contested the use of them. Although the election law provided for various safeguards against fraudulent activities such as inking, use of video cameras, immediate display of protocols, immediate transfer of information by fax and a wide-scale public awareness campaign, the procedures laid down by the amended Election Code remained complicated and vague on some points. With the overall voters' list substantially and continuously improved after this election, we strongly feel that the use of additional lists should be abolished in the future.

34. We welcome the fact that the authorities responded to our pre-electoral recommendations on the security of votes and covered the polling booths with a light material so as to remove any doubt as to the confidentiality of votes in polling stations where ceiling-attached video cameras were used.

35. During our pre-electoral mission we were confronted by the opposition and NGOs with numerous allegations of the use of state funds and administrative resources for the campaign of former-President Mikheil Saakashvili. In a country that has never experienced a genuinely competitive election before, it is understandable that the population is generally not familiar with the give-and-take of democratic policies and has difficulties understanding where the barriers between acceptable and unacceptable electioneering lies. We observed that the notion of what is considered as "fair" and permissible was largely misunderstood by all parties concerned. For instance, the OSCE/ODIHR long-term observers reported evidence of misuse of state budget in the case of distribution of vouchers for utilities and medical supplies to vulnerable groups for campaign purposes of one candidate[5]. The government and United National Movement (UNM) officials asserted that there had been no legal abuse of administrative resources and backed it up by providing evidence that most of the social initiatives had been launched well before the election was announced. They also confirmed that the party had paid for all services their candidate had availed himself of in the course of the campaign. Nevertheless, in the absence of visibility of other candidates' campaign, the grossly over-visualised campaign of the former President appeared out of proportion and contributed to the public perception of state resources being used.

36. We drew the attention of the authorities and UNM representatives that the state's role in a democratic election process was to be a neutral, mature and competent actor. We believe that our advice was taken on board and that the boundaries and separate competences between the government institutions, the CEC and the UNM candidate became clearer in the course of the electoral process. To this end we welcome the establishment of the Inter-Agency Task Force for Free and Fair Elections (IATF) by the Acting President, under the chairmanship of the Minister of Justice, in order to immediately respond to complaints regarding the election. Also the CEC assumed its role as the sole key actor administering this election and the visible involvement of security and law-enforcement bodies was removed.

37. Throughout the campaign, however, concerns were raised about the involvement of central and local state officials at all levels in the former President's campaign. We are aware that there are no common "European standards" as regards the limits of use of administrative resources and that the former President's campaign may well have abided by the Georgian law (Article 73 of the Election Code). However, it is the responsibility of the governmental authorities to ensure that the public perceives the campaign environment as fair between the candidates. In a political system of overwhelming concentration of power in the hands of the governing majority, it would benefit the fairness of the process if some restrictions applied – formally or informally – on the campaigning of political officials and public servants. It is noteworthy that the Acting President on 22 December endorsed Election Guidelines for Civil Servants, elaborated by the CEC and supported by the IATF, which established concrete rules to be maintained by every civil servant during the election campaign by clearly describing prohibited activities and sanctions envisaged. We expect these guidelines to be more widely endorsed before the upcoming parliamentary elections.

38. The campaign was also overshadowed by widespread allegations of intimidation, pressure by local officials and even kidnapping, especially in the regions. Even if only a small proportion of these allegations were true, they are still far too many to be comfortable. Although presumably not orchestrated by the government in Tbilisi or the close election team around the former President, the government and UNM contributed to an atmosphere of permissiveness and impunity which allowed the intimidation to take place.

39. We underline that any form of intimidation or pressure is unlawful and hampers free choice of voters. The government's response to allegations was generally swift but at times overly defensive, finding legalistic counter-arguments instead of tackling the root causes of the problem. Government officials – but most of all the former President himself - failed to send strong messages to lower levels of governance that no form of intimidation, pressure or harassment was to be tolerated. We call upon the relevant state authorities to now seriously investigate all reported cases of intimidation, harassment and violence and prosecute violations.

40. Equal and unbiased access to media for all candidates is essential for democratic elections. The campaign began under emergency rule, which imposed restrictions on the broadcasting of information programmes and newscasts by electronic media across the country – with the exception of the Public Broadcaster. The restrictions were lifted nine days later, although Imedi TV remained off the air for most of the

5. It should be added that Badri Patarkatshishvili's campaign also promised to spend more than 1 billion USD of his own money for social programmes, if elected. Levan Gachechiladze promised to disburse that amount for social programmes from his ally Badri Patarkatshishvili.

campaign period[6]. Self-regulatory safeguards for audiovisual media were elaborated. A number of public bodies (Media Council, CEC, etc), private broadcasters and NGOs launched their media monitoring programmes. Changes to the Election Code provided for equal allocation of free airtime to all qualifying political parties. Additionally, the Georgian Public Broadcaster (GPB) was required to provide additional airtime to non-qualified candidates. Towards the end of the campaign period, the GPB reduced the fees paid for political advertisements.

41. During the pre-electoral visit, our delegation called on the media authorities to ensure balanced and unbiased coverage of all candidates, without any censorship or impeded access to media. We also appealed to both the media and the candidates to organize and participate in regular topical televised debates, enabling voters to make well-informed choices on Election Day. The media landscape was assessed by the International Election Observer Mission (IEOM) as having been competitive, with a wide range of views available through talk shows, televised debates and free airtime for the voters to make an informed choice. Towards the end of the campaign the airtime share became increasingly more balanced but prime time news coverage remained imbalanced towards the former President. No debate between contestants took place, which denied voters an opportunity to see the candidates exchange policy views in an interactive format.

42. In their preliminary statement on the election on 6 January 2008, the IEOM welcomed the calm and peaceful atmosphere on the Election Day. With very few incidents, unrest or violence the Georgian people were able to freely express themselves at the ballot box. The conduct of the elections was judged in essence consistent with most OSCE and Council of Europe commitments and standards for democratic elections; however, significant challenges were revealed which need to be addressed urgently. The IEOM further noted that “this election was the first genuinely competitive presidential election, which enabled the Georgian people to express their political choice”[7].

43. The majority of other international missions of observers (including a mission from the CIS) also assessed the presidential election as open and democratic. Nevertheless, they have also drawn attention to "certain organizational flaws" and "unfortunate factors which cast a shadow over the democratic nature of the process". At the time of completing this report, the final conclusions and recommendations of the OSCE/ ODIHR Election Observation Mission as well as those of the ad hoc Committee of the Bureau of the Assembly to Observe the Pre-term Presidential Elections of 5 January are yet to be released.

44. Despite record snowfall and low temperatures, the absolute turnout of voters, 1,9 million, was the record number in Georgian history, although it represented only 56% of the total number of registered voters.

45. The official results have not yet been announced. However, the preliminary official results that have been released indicate that Mikheil Saakashvili is set to narrowly win his re-election as president of Georgia with 53,38% of the votes ahead of his rival Levan Gachechiladze with 25,66%. The opposition, however, refuses to recognise Saakashvili’s victory, claiming that a run-off is needed. To that end, the opposition is rejecting the international observers’ validation of the electoral process, and is calling for the recount of votes and ultimate cancellation of election results. Protest demonstrations are planned for the week of 13 – 18 January 2007.

46. We urge all political forces to respect the legitimacy of the democratically conducted presidential election process and accept the officially announced results. Any allegation of fraud or vote rigging should be contested through the legal avenues prescribed by the Constitution of Georgia and its related legislation. The “geopolitics of Rustaveli avenue” whereby access to power and the alteration of political power has been dictated from the streets rather than through the ballot box has simply no place anymore in a mature democratic society that aspires to accede to European and Euro-Atlantic structures. Nor are the language of hatred and politics of brinkmanship conducive to stability and national consensus. Accepting defeat with dignity, even at narrow margins, is a fundamental principle of democratic leadership.

1.2.1.2. Political challenges ahead

47. The new old authorities – and the Georgian society on the whole – will have to face a number of huge challenges in the future months:

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6. Although the opposition-backed Imedi resumed its broadcasting on 12 December, its journalists stopped broadcasting two weeks later after the release of the video tapes showing their immediate owner, Badri Patarkatshishvili, plotting a coup

7. International Election Observation Mission, Georgia – Extraordinary Presidential Election, 5 January 2008, Statement of Preliminary Findings and Conclusions

48. First, the presidential election has not produced an environment conducive to defusing tensions in Georgian society. The country faces a turbulent time ahead of the early parliamentary election likely to be held in Spring 2008. This forthcoming election will be a true test for the future of pluralist democracy in Georgia.

49. The authorities will need to show their resolve to organise genuinely democratic, free, honest, fair, competitive and peaceful elections, and demonstrate their ability to achieve this aim. They must resolutely leave behind any bad practices and temptation for fraud or for inequitable play witnessed in the previous elections. The recent presidential election showed that there is still much room for improvement for the future election to culminate in the free and democratic expression of the will of the Georgian people. To this end we expect from the Georgian political leadership an unfailing commitment, working alongside the international community, to address the roots of the previously noted shortcomings and not only their symptoms.

50. In concrete terms, the authorities will have to demonstrate a new level of political maturity to create a competitive and balanced election campaign environment that is free of intimidation and pressure and is perceived as such by the population. Government structures should further be detached from electoral administration and the electoral administration should be fully empowered to act independently. The recently adopted amendments to the Electoral Code which lowered the electoral threshold from 7% to 5% and transformed the current majoritarian election system into a proportional one still need to be written into the Constitution and the remaining inconsistencies need be removed from the electoral legislation. The voters' list will need to undergo final updating on the basis of the information gathered at the presidential election, so as to cancel election-day registration for future elections. It is of utmost importance that all these issues be tackled immediately and not shortly before the next elections. Moreover, in order to give credibility and public trust to all these processes, the alleged wrongdoings of the presidential elections need to be investigated vigorously and those responsible need to be brought to justice.

51. Secondly, the management and governance style of the country's top leadership will need to open up and give way to far more inclusive decision and policy-making processes. Democracy can be effectively sustained only through public participation and a wide range of institutions in society through which the individual can interact with the state. This is the only way by which a democratic government can achieve the necessary level of consensus to ensure the irreversibility of reforms. Inclusion cannot occur without participation and participation cannot occur without the array of institutions in the State, market and civil society to mediate the communication. In this context, the building up of strong institutions and empowering the human potential at all levels of state administration that would be able to cultivate a political culture of independence, respect and plurality of views should become a top priority for the political leadership.

52. Thirdly, a state genuinely governed by the pre-eminence of law and justice needs to be built. As long as impunity reigns and laws are stretched to accommodate whatever purpose or justice is perceived as partial, no public trust can emerge towards the state and its rulers.

53. Restoring confidence in democratic processes in the upcoming early parliamentary election is a joint responsibility of all political forces in Georgia. The state authorities should respect a plurality of views; but the opposition also has its share of responsibility in ensuring stability and national unity and participating in the reforms underway. A new vibrant opposition has recently emerged from the anti-government demonstrations, which could become a positive sign of burgeoning pluralist society. However, they too should seek to engage in a constructive dialogue with the ruling party on major policy issues. In order to maintain long-term support at grassroots level, the opposition should stop focusing on short-sighted criticism of government's actions and politics of brinkmanship and begin offering issue-based, constructive alternatives to the population. Their leaders should harness their energy on contributing to a genuinely competitive and meaningful campaign for the forthcoming parliamentary elections.

54. The governing party's majority in the next parliament will most certainly be reduced. This provides a chance to strengthen the democratisation process by building into the political process the dialogue that has been notably lacking. Georgia's leaders on both sides of the divide would have an opportunity to learn from their mistakes and realise the need for constructive policy debate in order to gain legitimacy and support for the public. A more diversified composition in Parliament would increase the capability of Georgian society to address societal problems and political divisions through the Parliamentary process, rather than from the street. Representation of a larger proportion of the opposition in parliament could help these parties develop into mature, responsible and constructive political actors, able to form credible alternatives in Georgian politics. However, this prospect poses challenges as it will require all sides to step up their democratic commitments.[8]

8. Cornell, S.E., Popjanevski, J., Nilsson, N., Learning from Georgia's Crisis: Implications and Recommendations, Central Asia-Caucasus Institute Silk Road Studies Program, Policy Paper, December 2007

1.2.2. Economic growth

55. Georgia merits praise for its economic growth and dynamism. Immediately after the Rose Revolution, Mikheil Saakashvili promised to redirect the government action and the economy towards privatisation, free market, reduced regulation and control of corruption.

56. The government has made strides in fulfilling these aims. In January 2007, the 2007 Index of Economic Freedom of The Wall Street Journal and The Heritage Foundation ranked Georgia as the world's 35th freest economy (out of 157 countries surveyed).The 2007 World Bank Doing Business survey considers Georgia to be the 18th easiest country in the world for doing business, a great step ahead compared to its 37th position last year and 112th in 2005.

57. Economic growth has remained strong, from 9.3% in 2005 to 12% in 2007. The GDP per capita has gone up from 700 USD in 2003 to 2,300 USD in 2007. Inflation has remained around 11%. And this regardless of the massive pressure imposed by Russia in 2006 in terms of sealing its borders to Georgian exports, which brought to collapse Georgia's major traditional export market and deprived a proportion of the population of their livelihoods, and rocketing Russian gas-import prices as of January 2007.

58. Improved collection and administration of taxes have greatly increased revenues for the government. The government has been able to pay off wage and pension arrears and increase spending on desperately needed infrastructures such as roads and electricity energy supply systems. The government expects to have privatised virtually the entire commercial property of the state (with the exception of the railroads) by the end of 2008, thus increasing revenues and removing a major temptation toward corruption from the control of state bureaucrats.

59. Restructuring along liberal lines has required streamlining and this in turn has both eliminated jobs and created new ones. Such draconian strategies have, however, borne major political risks. The failure to adequately communicate these necessary reforms to the society, largely characterised by a high level of poverty (23%, down from 54,5% in 2003) and unemployment (13-20% according to different sources), limited access to basic social services, low income and unequal distribution of that income, became part of social discontent that led to the political crisis in November 2007. On 28 December, the Parliament reviewed the 2008 budget in order to make it more socially oriented. The man spending priority in 2008 will be the social sector, reflecting the government's promises to tackle social problems in the country in a more coherent manner. With this objective in mind, the economic growth rate is today forecast at 6%; GDP is expected to reach 12 billion of USD and the inflation is forecast at 8% next year.

60. Foreign direct investment (FDI) is the most important source of capital for Georgia and the Government is making huge efforts to attract foreign investors. Foreign investors are beginning to take notice of the changes in Georgia. While initially the inflows were driven by privatisation, they now increasingly reflect investor willingness to establish their own presence in Georgia. FDI reached 1 billion USD in 2006, and has exceeded 1.5 billion USD in 2007. The largest investors last year were Turkey, the United States and Kazakhstan.

61. Turkey has replaced Russia as Georgia's leading trade partner, and a free trade agreement with that country has been concluded. Turkish investors have embarked on several major infrastructure investments including the airport in Tbilisi and a second one in Batumi, which now serve both Georgian and Turkish citizens living in the region. A deal has been struck with Azerbaijan to build a railroad link to Turkey which will ultimately be a link between Beijing and London.

62. Finally, the Georgian leadership feels that successful liberal economic reforms are providing a model for the rest of the region and helping to open trade relations with neighbouring states. These ties are vital and have important implications, not only for the economy, but also for energy security – and possibly in the long run for conflict resolution in its own territory.

1.2.3. International relations

63. Georgia's geo-political location, situated between the Black Sea, Russia, Armenia, Azerbaijan, and Turkey, gives it strategic importance far beyond its small size. It is developing as the gateway from the Black Sea to the Caucasus and the larger Caspian region.

64. In summer 2005 the Georgian government adopted the National Security Concept, which outlined the main priorities of the Country's foreign and security policy. It described Georgia as "an integral part of the European political, economic and cultural area", and asserted that the revival of the country's "European

tradition" will be achieved through "full-fledged integration into the North Atlantic Treaty Organisation and the European Union" and by contributing "to the security of the Black Sea region as a constituent part of the Euro-Atlantic security system"[9].

65. In 2006-2007, Georgia has continued to steer its foreign policy wheel towards NATO and EU integration. It is also currently seeking to orient itself within a new identity paradigm, that of a wider Black Sea region. No longer willing to be labelled merely as a post-Soviet state nor wishing to be identified with the volatile and fragmented Caucasus region, Georgia sees its ties with the Black Sea community as a way to become affiliated with the rest of Europe. As such, Georgia is following its fellow Western-leaning post-communist states on the path to Euro-Atlantic integration through NATO.

66. Georgia's speedy political and economic reforms have boosted international confidence in Georgia as a key regional player. Russia's increasing use of energy leverages in pursuing its political aims have also focused more international interest in Georgia as part of an alternative energy route towards Western Europe. Georgia has also offered reliable partnership in controlling illegal immigration, combating smuggling and fighting terrorism. On the other hand, the government's recent temporary clamping down on the freedom of media and the imposing of the state of emergency on 7 November 2007 have tarnished Georgia's international reputation of champion of democratic reforms in the outer borders of the European Union.

1.2.3.1. Relations with NATO

67. Integration into the NATO is the government's and the public's highest foreign policy priority. The recent plebiscite of 5 January on NATO membership indicated that 72,5% of the public supports integration with NATO. This high support helps explain why the Georgian government has all along been so focused on the issue. NATO membership was high on the agenda of all but one opposition candidates in the recent presidential run.

68. Having completed the Individual Partnership Action Plan (IPAP) in 2006, Georgia is now engaged in Intensified Dialogue on Membership Aspirations (ID). Georgian officials vie for a Membership Action Plan (MAP) which could put Georgia on the road towards NATO accession as soon as possible. Georgia's NATO aspirations have internal implications; they have helped consolidate the reform process and encouraged political forces to deal with internal disputes in ways designed to avoid the use of force. The government also feels that Georgia has no positive and viable alternatives to Euro-Atlantic integration and that its candidacy for NATO will have an impact in other countries in the region. It could be a factor, for example, in Ukraine's approach to NATO.

69. For their part, NATO officials keep stressing that membership of NATO is performance based and that the determination of NATO members to extend a MAP to Georgia will be based on a collective judgment that Georgia has made sufficient progress in a broad range of reforms.

70. Although NATO does not intervene directly in the issue of frozen conflicts and openly claims that countries outside the Alliance have no veto over NATO enlargement, Georgia's gradual integration is raising concerns in the breakaway regions and splitting opinion in the capitals of NATO member states. One view is that the NATO membership would provide a positive framework in which the disputes can be settled peacefully. Others fear it having a negative impact on the conflict resolution: since the two separatist regions are heavily oriented towards Russia, they would want still less to be re-integrated into Georgia, which is becoming part of NATO. Should Georgia join the Alliance before the two conflicts find a settlement, this may give the Russian peacekeepers the pretext to "protect" the Russian passport-holders in Abkhazia and South Ossetia. On the other hand, discouraging Georgia from joining NATO would certainly be perceived in the country as giving a *de facto* veto to Russia[10].

1.2.3.2. Relations with EU

71. EU integration is a top priority in the Georgian government's foreign policy agenda. Although it has long-term aspirations to join the European Union, it recognises that the prospects are more distant. Nevertheless the Georgian government is anxious to exploit existing instruments to associate the country as closely as possible with the EU and move it towards eventual membership.

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9. Quoted in Economic and Political Transition in Georgia, NATO PA Committee report, 170 ESCEW 07 E, Rapporteur: Kurt Bodewig.

10. Coppieters, B., EU and Georgia: Time perspectives in conflict resolution, European Parliament Policy Department – External Relations Publication, Brussels, 12 October 2007.
http://www.europarl.europa.eu/activities/expert/estudies.do?languageEN.

72. Georgia's relationship with the EU is structured under the European Neighbourhood Action Plan, which was endorsed on 14 November 2006. It has adopted a pragmatic approach toward making full use of the ENP AP in order to achieve greater economic and regulatory integration and further enhance its bilateral trade and economic relations with the EU. The Georgian Parliament is working to introduce European legal standards into the corpus of Georgian law where this is possible. It hopes to gain greater access to the EU's internal market and is keen on the establishment of free trade agreements with the EU, particularly in light of the recent Russian embargo[11].

73. As regards the long term perspectives for bilateral relations, the EN AP provides that when the EU-Georgia Partnership and Co-operation Agreement (PCA) reaches the end of its initial ten-year term in 2009, consideration may be given to a new enhanced agreement reflecting the overall evolution of bilateral relations as a result of ENP AP implementation[12].

74. EU is paying close attention to the security challenges in Georgia and in the South Caucasus region in general. Georgia has long requested greater participation in the peacekeeping structures in the conflict zones of Abkhazia and South Ossetia. There is currently an effort underway to give greater prominence to conflict resolution issues within the EU's Neighbourhood Policy. The EU, however, has yet to develop a strategic approach towards these conflicts and a coherent policy towards Georgia. At the same time it has assumed a more prominent role in Abkhazia and South Ossetia by becoming the largest single donor to these regions. It supports economic development and infrastructure rehabilitation, including water supply and electricity networks, educational support and capacity building projects with local NGOs.

75. Georgia is very concerned about the EU-Russian visa facilitation agreement that implicitly recognises passports that Russia has issued in the breakaway regions of Georgia. Today, people from these regions can travel more easily to the Schengen countries than Georgians, which is viewed as a rather unfortunate support to separatism on behalf of the European Union. The European Commission and the European Council should thus be encouraged to take steps in the near future to launch negotiations on similar visa-facilitation agreement between the EU and Georgia.

76. Another issue that would give a quicker boost to Georgia's relations with the EU and to its economy is the free trade agreement between the EU and Georgia in order to give access of Georgian exports to the EU.

77. A new centre of gravity has lately evolved within the EU/NATO regarding policies of Europe's eastern neighbourhood, including Georgia. A group of eight EU member states – the three Baltic States, Poland, Romania, Bulgaria, the Czech Republic and Sweden – was lately formed, identifying itself as the New Friends of Georgia, who have agreed to work jointly as well as in their national capacities to promote Georgia's Euro-Atlantic goals. The New Friends are stepping into a role vacated by the old group of "Friends of Georgia", which was formed a decade ago by the US, Germany, Britain and France; however, it lost its effectiveness by admitting Russia into its ranks and reinventing itself as the United Nations Secretary General's Friends of Georgia. Meeting on 13-14 September in Vilnius, the New Friends supported Georgia's goal to advance to the NATO MAP in spring 2008, called for adjusting the ENP more closely to Georgia's internal reform performance and to the EU's own interests in the region, notably in terms of facilitation of travel and trade agreements, and underscored common interests in resolving frozen conflicts. Together with the US, the New Friends can form a critical mass for shaping strategy and policy towards Georgia.

1.2.3.3. Relations with the US

78. Georgia considers the United States as its most important ally. The US became involved in Georgia in the 1990s because of its regional energy interests. After the events of 11 September 2001 and the war in Iraq, Georgia's geopolitical location became an additional interest. Georgia is one of the biggest per capita providers of allied troops for the Iraqi war.

79. The US has made available substantial military aid and advice to the Georgian government and given solid political backing for Georgia's territorial integrity and NATO aspirations.

80. The US has targeted extensive support to Georgia's democratic, economic, and security reform programmes, with an emphasis on institution building and implementing lasting reforms. The United States has provided Georgia with approximately $1.7 billion in assistance since 1991. Georgia has also met the stringent standards for US assistance under the Millennium Challenge project. On 12 September 2005,

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11. NATO PA Committee report, 170 ESCEW 07 E, Rapporteur: Kurt Bodewig.
12. European Commission European Neighbourhood and Partnership Instrument: Georgia, Country Strategy Paper 2007-2013.

Georgia signed a contract with the Millennium Challenge Corporation for a five-year $295.3 million assistance package. It seeks to galvanise economic development by underwriting regional infrastructure, enterprise development and anti-poverty initiatives. The programme also supports Georgia's democratic transition and facilitates the implementation of economic and social reforms.

80.1. 80.1.1. 80.1.1.1. Relations with Russia

81. Tensions with Russia are a long-lasting political problem for Georgia. It reflects the wide gap that has developed over the last years in the two countries' political and economic aspirations, understanding of mutual interdependence and ways of solving frozen conflicts.

82. For years, the Russian support for the secessionist republics of Abkhazia and South Ossetia has been the primary irritant in Russian-Georgian relations, even more so because Georgia understands that regaining control over the breakaway regions effectively requires Russian consent. Russia's intransigence with regard to the breakaway regions, in particular issuing Russian passports to citizens of Georgia living in those regions, and links made by Russia between Kosovo final status and secessionist aspirations in the two breakaway regions have also contributed to increased tensions between Tbilisi and Moscow.

83. Georgia's unconditional aspiration of NATO membership is a key irritant for Russia who misses no opportunity to condemn Georgia's foreign policy orientation and reiterate that its accession to NATO membership would have negative long-term consequences[13]. Georgia sees the reluctance by the Russian political leadership to accept Georgia's foreign policy change from East to West and notably its closer integration with European and Euro-Atlantic structures as a threat to its independence and sovereign decision on who they wish to build their future with. They fear that through actions to destabilise Georgia's still fragile economy and by telling its European and American partners that the small country is preparing to solve its frozen conflicts through military means, Russian authorities will succeed in undermining Georgia's credibility as a trustworthy and reliable partner and thus enforce the understanding that Georgia is a "tame and weak satellite"[14].

84. Indeed, various punitive measures and economic sanctions undertaken unilaterally by the Russian Federation against Georgia in 2006-2007 have confirmed those fears. Since December 2005, the Russian authorities have imposed a series of embargoes on Georgian fruits and vegetables, wines, brandy and even mineral water produced in Georgia, justifying it by the non-compliance of products with sanitary norms applied in Russia. The political nature of those bans is further demonstrated by the adoption by the Duma of a resolution on 21 March 2006, which abolished such restrictions for the Abkhazian segment of the Georgian-Russian state border[15].

85. Following the expulsion of five Russian military intelligence officers in September 2006 and the subsequent breakdown of diplomatic relations and the closure of the border in October 2006, Russia stopped all air, automobile, sea and railway communication, postal traffic and money transfer with Georgia and launched a major campaign against Georgian nationals living in Russia, expelling them massively from the country. Due to the diplomatic intervention of several international organisations, a further escalation of the situation could be prevented and in January 2007, the Russian ambassador returned to Tbilisi. Yet, economic sanctions persist and the border is largely closed[16]. After the partial resumption of visa issue for Georgians with Russian relatives in May, the government further relaxed the visa policy in July in order to stabilise the bilateral relations. Still, the largest Georgian group seeking visas – tourists – are still excluded from the arrangements[17].

86. On 26 March, Georgia lodged an interstate application to the European Court of Human Rights (EctHR) against the Russian Federation based on reported violation of rights of ethnic Georgians who were deported from Russia in 2006[18].

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13. PACE delegation's interview with high-level Russian officials during the fact-finding visit to investigate into worsening relations between Georgia and Russia, Moscow, 28-30 November 2006

14. Our interviews with high-level Georgian government officials, Tbilisi, 11-13 September 2007

15. Russian State Duma resolution No 154 of 21 March 2006 "On Introduction of Amendments to the Resolution No 1223 of 5 November of the Government of Russian Federation".

16. PACE Monitoring Committee (2007). Information note of the co-rapporteurs following their fact-finding visits to Tbilisi and Moscow (November 2006).

17. See Kommersant (20 July 2007). Russia to Lift Most Curbs on Visas for Georgians.

18. Georgia claims that the Russian authorities have violated a number of provisions of the European Convention of Human Rights, including the prohibition of collective expulsion, the denial of the right to life, and discrimination on the grounds of ethnicity.

87. Russia's reluctance to see Georgia as an alternative energy route towards Western Europe is undoubtedly another major cause of current and possibly increasingly future conflict between the two states. Moscow's tactics of energy cuts, disrupting Georgia's economy through economic blockade or gas price hikes have not made Tbilisi cede their ownership on the North-South gas pipeline to Gazprom (contrary to neighbouring Armenia). The recent decision by Russia to double the price of the gas it delivers to Georgia has rather required Georgia to quickly reorganise its energy markets and modernise its own energy transit potential[19]. Russia runs a different energy policy towards the secessionist regions of Abkhazia and South Ossetia. In December 2006, Gazprom began construction of a pipeline in North Ossetia, prompting protests from Tbilisi. Reportedly worth 15 billion Rubles (over USD 580 million), the pipeline between Dzuarikau in North Ossetia to the breakaway South Ossetian capital of Tskhinvali, with a total length of 163 km, will have the capacity to deliver 252.5 million cubic meters of gas per year[20].

88. On a positive note, Russia has to a great extent honoured its long overdue commitment to the Council of Europe and pulled out its garrison in Tbilisi and the bases in Akhalkalaki and Batumi – even ahead of the deadlines stipulated in a Joint Statement of 30 May 2005. In accordance with the 1999 CFE Treaty's Final Act of the Istanbul Summit, the Gudauta military base (near Sukhumi) had to be closed by 1 July 2001. However, the issue still remains open and the base is used without legal basis by CIS peacekeepers.

1.2.3.4. Relations with regional organisations

89. Recently, relations with the Commonwealth of Independent States (CIS) have become increasingly strained. For more than a year now, Georgia has positioned itself critical towards the organisation. According to several government officials, the CIS has lost its meaning and purpose and hardly represents a community of values to which Georgia would want to adhere. It has repeatedly announced its intentions to quit the CIS[21]; on the other hand, as the organisation's summits offer a platform for contact and exchange with neighbouring states, and notably with Russia, it seems unlikely that Georgia will initiate its secession from the CIS in the nearest future.

90. At the same time, for Georgia, the GUAM[22] is a replacement more appropriate to Georgian foreign policy aspirations, preserving relations and fostering integration with a few more like-minded CIS states. In May 2006 the heads of GUAM member states announced that the group would collectively seek closer integration with the West. In December 2006, Ukraine's military officials reportedly announced that a GUAM peacekeeping force would be formed in early 2007 to serve in UN peacekeeping operations. On the same occasion, GUAM foreign ministers also issued a joint declaration calling on Russia to refrain from unilateral actions against Georgia and supported the introduction of international forces in the breakaway regions.

1.2.4. Statehood and security

91. Sustainable democracy cannot be built in the absence of basic security. Georgia contends that it has pursued a broadly democratic agenda in the face of an overtly hostile Russian government, which has sealed its borders with the country and intimidated it at every turn with such tactics as missile attacks. Russia's challenging of Georgia's statehood has generated a constant state of crisis and siege mentality in the country. Building solid democracy in these conditions is naturally difficult.

92. Under these circumstances it is not surprising that Georgia's volatile democracy has made mistakes. Although the "Russia factor" was most probably grossly exaggerated at the outbreak of the crisis in November 2007, the constant tug-of-war with Russia and the present tensions on the international political arena contribute to increased instability inside Georgia.

93. Yet western and in particular European reactions to various acts of aggression have been weak or almost non-existent. Western governments need to acknowledge that their refusal to engage with Georgia on a serious basis in security issues impedes the country's development and thereby also important European interests in the stability of its Eastern neighbourhood, now also an important conduit for Caspian energy. In

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19. Conclusions drawn by PACE co-rapporteurs on Russian-Georgian relations on the basis of their visit to Moscow, 28-30 November 2006.

20. Gazprom Chief Meets S Ossetian leader, Civil Georgia, 23 October 2007, http://www.civil.ge/eng/article.php?id=16078

21. See statement of Georgia on the Meeting of the Council of the CIS Heads of Governments (25 May 2006). http://www.mfa.gov.ge/index.php?lang_id=ENG&sec_id=461&info_id=1440#

22. GUAM- Organisation for Democracy and Economic Development; The group, founded by Azerbaijan, Ukraine, Georgia and Moldova, is sometimes seen as a way of countering the influence of Russia in the area and a strategy backed by the US.

this context, building a stable and democratic Georgia will only be possible if Europe is prepared to invest more substantially in Georgia's security and stability. This implies continued support for Georgia's domestic reform, more attention to the resolution of its secessionist conflicts, and facilitating its integration into Euro-Atlantic structures[23].

2. Adherence to Council of Europe standards and instruments

2.1. Signature and ratification of Council of Europe conventions

94. Since the adoption of Resolution 1477 (2006) in January 2006, the Georgian authorities have made significant efforts to honour Georgia's obligations and commitments to the Council of Europe. To this end, they have ratified the Framework Convention on National Minorities (ETS No. 157 – entered into force on 1 April 2006[24]) and the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106 – entered into force as of 25 October 2006).

95. In formal terms, the last remaining accession commitment of Georgia is the signature and ratification of the European Charter for Regional or Minority Languages, the deadline for which – as outlined in Resolution 1415 (2004) – expired in September 2005. Despite the promising announcement by the Government in January 2007 that it expected the Charter to be signed and subsequently ratified by the Parliament in spring 2007[25], no substantial effort seems to have been undertaken in that direction since then. Mr Nikoloz Vashakidze, Deputy Minister of Foreign Affairs told us that the delays were due to the elaboration of a national concept of minorities.

96. We remain convinced that the ratification and subsequent compliance with the Charter for Regional and Minority Languages can in no way present a threat to the territorial integrity in Georgia as is sometimes alleged by the national leaders. On the contrary, a failure to properly address these issues and protect the rights, including language rights of national minorities can exacerbate tensions between minorities and the majority, and therefore create a risk for the stability in the country. To this end, ***we recommend the Georgian parliament step up the ratification process of the Charter. We also remind the authorities in Georgia that contrary to many of the 25 member states of the Council of Europe who have to this day not ratified the Charter, Georgia undertook voluntarily to sign and ratify it upon accession in 1999.***

97. ***We also encourage the Georgian authorities to speed up the ratification of Council of Europe instruments in general.*** In eight years of membership, Georgia has ratified only 52 out of the body of 200 Council of Europe treaties. During the period covered in this report, only three additional ratifications[26] have taken place and no treaty has been signed. Eight conventions remain signed but not ratified.

2.2. Legal co-operation with the Council of Europe

98. Georgia enjoys good working relations with different bodies and directorates of the Council of Europe. It has largely benefited from Council of Europe assistance programmes, especially those that aim at bringing the legislation of the country in line with European standards. The Action Plan on Georgia, adopted in 2005, is currently being implemented.

99. During this evaluation period, effective co-operation has contributed to the adoption of the Anti-Corruption Strategy and Action Plan, the Law on Repatriation of Persons Forcefully Sent into Exile from Georgia by the Former USSR in the 1940s of the 20th Century (repatriation of the Meskhetian population), the Law on Property Restitution and Compensation on the Territory of Georgia for the Victims of Conflict in the Former South Ossetia District; the new Law on Legal Aid and the Law on Local Self-Government, and the law prohibiting ex-parte communication.

100. A number of Codes of Ethics, such as those for the Police, prosecutors, advocates or broadcasters have been elaborated in co-operation with the Council of Europe.

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23. Cornell, S.E., Georgia's Elections: Lessons for Europe, Die Welt, 3 January 2008
24. Georgia submitted its 1st cycle State Report on 16 July 2007, see on http://www.coe.int/t/e/human_rights/minorities/Country_specific_eng.asp#P316_16629
25. Georgia's Democratic Transformation: An Update Since the Rose Revolution, Published by the Government of Georgia, January 2007.
26. These include: European Agreement on the Transmission of Applications for Legal Aid (ETS 092), Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS 108) and Council of Europe Convention on Action against Trafficking in Human Beings (ETS 197).

101. The Directorate of Democratic Institutions of the Council of Europe has been actively supporting the process of local government reform in Georgia through providing legal expertise on several pieces of newly drafted and amended Georgian legislation. These include: the draft Law on Municipal Property; the draft Law on the Budget of Local Self-government Units; the Concept Paper on the Administrative and Territorial Reform, the Law on Making Amendments and Additions to the Law of Georgia on the Capital of Georgia – Tbilisi; the draft Law on the Supervision over the Activities of Local Self-Government Bodies, the revised Organic Law on Local Self-Government, etc. Relevant amendments to bring the Organic Law on Local Self-Government in compliance with the Council of Europe recommendations are being currently drafted. In addition, the Council of Europe has recently completed the appraisal of the draft law on Regional Development and the Concept Paper on Regional Development Planning and Implementation Process in Georgia, requested by the Security Council of Georgia.

102. The Venice Commission has offered its invaluable expertise on a number of draft laws, including the draft Law on Property Restitution and Compensation on the Territory of Georgia for the Victims of Conflict in the Former South Ossetia District[27], the amendments to the Election Code[28] (joint opinions with OSCE/ ODIHR), the draft Constitutional Law on Amendments to the Constitution[29] and the Law on Disciplinary responsibility and disciplinary prosecution of judges of common courts[30]. It is currently advising Georgian lawmakers on further amendments to the Electoral Code.

103. In recent years the Georgian Parliament went through a marathon of adopting legislation to fulfil the calendar of legislative reforms. We have full comprehension that much of the legislation has been adopted under extremely tight time frames, which has not favoured thorough reflection and extensive parliamentary or public debate. On the other hand, we must reiterate that reforms continue to be carried out by a very narrow circle of likeminded leading politicians rather than by a broad configuration of people reflecting all the rich potential of the country. This has not encouraged a feeling of responsibility and ownership by the parliamentarians towards the legislation it passes.

104. A frequent source of frustration for Council of Europe experts willing to assist Georgia is that the authorities often submit legislation for expertise after its adoption, thus necessitating endless new amendments in order to bring it closer to European standards. Several important recent pieces of legislation have been sent to the Council of Europe bodies such as the Venice Commission after the first reading of the texts, yet these texts are adopted a few days before or after the adoption of the legal opinions have been issued, without paying heed to the latter. In this regard, ***we would like to to encourage the authorities to send all the laws within the competence of the Council of Europe immediately to the organisation for expert appraisal. It would also be highly recommendable that Council of Europe experts are involved already at the stage of drafting of the laws, as this would ensure from the outset the high quality of the legislative process and save precious time.***

105. Experience of other member states having passed through the Assembly's monitoring procedure has demonstrated the paramount importance of the Council of Europe's legal expertise for the smooth adaptation of the legislation of these countries to the European standards, including those relating to the European Union's *acquis communautaire*.

3. Democratic institutions

3.1. Constitutional changes

106. Constitutional changes in Georgia have long been an issue of serious discussion. Successive presidents have introduced new constitutions "for generations to enjoy" only to see the reality prove otherwise.

107. Immediately after the Presidential elections in February 2004, constitutional amendments were enacted, which provided for the restoration of the post of Prime Minister. According to this Constitution, the President appoints the Prime Minister who appoints the Ministers of Interior and Defence. He also has the right to appoint a Cabinet of Ministers if the latter fails to obtain parliamentary support three times. He can even dissolve Parliament in case the latter rejects the proposals for the State Budget. The President has unlimited power to dissolve the Government. The 2004 amendments also provided that the President chairs

27. Venice Commission, CDL-AD(2006)007 adopted on 17-18 March 2006; CDL-AD(2006)010 of 9-10 June 2006.
28. VC CDL-EL(2006)017rev of 18 March 2006, CDL-AD(2006)023 of 9-10 June 2006 and CDL-AD(2006)037 of 15-16 December 2006.
29. VC CDL-AD(2006)040 of 15-16 December 2006.
30. VC CDL-AD(2007)009 of 16-17 March 2007.

the Supreme Council of Justice of Georgia and gave him/her the right to appoint and dismiss judges "according to the constitution and organic law". The Venice Commission, which examined these amendments before their adoption, concluded that the amendments did not fully correspond to a "semi-presidential model" as they retained strong powers for the President[31]. Its recommendations were not followed.

108. In February 2005, further constitutional amendments were introduced regarding the reduction of the total number of seats in the unicameral parliament from 235 to 150. According to this amendment, 100 MPs will be elected through a proportional, party-list system, while 50 MPs will be elected in first-past-the-post constituencies. The amendment will apply to the next Parliament, to be elected in 2008. Again, although the Venice Commission was invited by the Ministry of Justice of Georgia to comment on the draft law on Changes and Amendments to the Constitution of Georgia, which it delivered in a form of a joint opinion with OSCE/ ODIHR in December 2004, the Venice Commission's advice was not taken into consideration.

109. In January 2006, the Assembly called upon the Georgian authorities to "review the constitutional changes of February 2004, by taking into account the opinion of the European Commission for Democracy through Law (Venice Commission), especially with regard to the strong powers of the President".

110. On 27 December 2006, several new amendments to the current Constitution were passed, which the President enacted on 10 January 2007. According to these amendments, the President no longer chairs the High Council of Justice (the Chairman of the Supreme Court will instead serve as chair of the High Council of Justice) or have the right to appoint or dismiss judges. Furthermore, while the Constitution so far enabled the President to dismiss the Parliament on multiple occasions, the new amendment enables him to dismiss Parliament only twice. This has certainly been a welcome step in the desired direction.

111. In addition, an amendment introduced simultaneous parliamentary and presidential elections to be held sometime between October and December 2008. This amendment prolonged the sitting Parliament's mandate (at least of those lawmakers who were elected through the party list system) by at least six months and has also cut the President's current term in office by between three to six months[32]. Lawmakers of the governing party argued that simultaneous elections were necessary for foreign policy reasons, as the upcoming polls will be seen as an approval referendum for the current authorities' action against the background of Russia's mounting pressure on Georgia[33].

112. The opposition parties objected to the rushed adoption of the amendments and in particular the provision for holding simultaneous parliamentary and presidential elections, claiming that regardless of its single-record nature, an extension of the current Parliament's term in office would be a negative precedent. In October-November, the opposition parties reinforced their push for parliamentary elections to be held in April 2008 instead of late 2008. On 8 November, the President announced early elections and a plebiscite on this question. More than 67% of the voters gave their consent to hold the elections in Spring 2008.

113. On 22 November the Parliament adopted amendments to the Electoral Code, reflecting the agreement reached between the majority and opposition to lower the electoral threshold currently set at 7% to 5% and to change the current majoritarian system for a proportional system. Thus further constitutional amendments are expected with regard to lowering the electoral threshold. We note that the election barrier was raised from 5% to 7% under President Shevardnadze in 1999. For the last eight years, this high threshold has hampered the development of opposition parties and has not encouraged them to unite and form a stronger political platform.

114. On 28 December, the parliament introduced a draft constitutional amendment that would make the plebiscite results on the timing of parliamentary elections binding.

115. We strongly advise the Georgian authorities to involve the Venice Commission as the n°1 competent European body in constitutional matters in the drafting process of any constitutional amendments or new constitution from the very outset and not only in the final stages of adoption.

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31. Venice Commission, CDL-AD(2004)008.

32. There is some confusion over when the parliamentary term ends. Some lawmakers were elected through a proportional party list on March 28, 2004, and their terms in office are due to expire in spring 2008. Others were elected through a majoritarian system on November 2, 2003, and as a result their terms expire this November.

33. Some parliamentarians from the ruling National Movement party say that the amendment was introduced to avoid having Georgia's parliamentary elections coincide with the presidential elections in Russia, which are scheduled for March 2008. The supposed rationale was that there was "a serious risk" that Russia could manipulate the Georgian elections, or even "stage serious provocations" in Georgia for internal Russian consumption on the eve of its presidential elections. http://www.civil.ge/eng/article.php?id=16082

3.2. Creation of a second parliamentary chamber

116. Despite being commonly accepted as a possibility for further developing the system of checks and balances, the issue is put on hold as long as there is no progress in the resolution of the conflicts in Abkhazia and South Ossetia.

117. We received assurances from the President and the State Minister of Conflict Resolution Issues of the readiness of the Georgian authorities to offer the widest possible autonomy, including the creation of a second parliamentary chamber. Also the Speaker of the *de facto* Parliament in Tskhinvali recognised the readiness on the Georgian side to offer them what was requested in the early 1990s; however, we believe that in realistic terms not much progress is to be expected in the near future.

3.3. Electoral reform

118. The conduct of elections since the Rose Revolution has been considered generally free and, apart from minor irregularities, in compliance with internationally accepted standards. Overcoming widespread fraud, hitherto endemic, constitutes a major achievement in Georgia as regards its democratic standards. On the other hand, the election legislation is still perfectible and the level of political competition remains low, regardless of the competitive environment in the recent presidential elections.

119. During past years, serious debate has been held among Georgian political opposition and authorities on the necessity to improve the principles and procedures embodied in the Election Code of Georgia, notably issues related to the principles of representation and transparency. The Government initiated discussions on those issues. In October 2005, the Parliament of Georgia requested that the European Commission for Democracy through Law (Venice Commission) provide an opinion on the Georgian Election Code. On 19December,2006, the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights issued a Joint Opinion on the Election Code of Georgia as amended through 24 July, 2006.

120. The process of negotiations was very active throughout 2006-2007 and legislative amendments were supposed to be passed long before the parliamentary elections in the autumn of 2008, as prescribed by the Georgian Constitution. The Venice Commission's Code of Good Practice in Electoral Matters underscores that substantial changes to election legislation should be made no later than one year before the elections. Bearing this in mind, we urged the Georgian parliament in the first draft of this report to amend the Election Code of Georgia before the end of the year, in particular as regards the lowering of the electoral threshold, the introduction of guarantees for the independence of the election administration and the improvement of the complaints and appeals system. Meanwhile, early presidential elections were announced for 5 January. The political upheavals in early November however pushed once again for major changes to be introduced in the electoral system a month before the elections.

121. On 22 November, the Parliament voted and adopted in third reading changes and amendments to the Electoral Code. This included the composition of the electoral administration and division of authorities, legal regulation of the first and second rounds of the presidential elections, the number of signatures to nominate a candidate, the rule of creation and the size of the electoral precincts, supplementary voters' lists, the distribution of air time among the electoral subjects and other technical issues.

122. Based on a serious of discussions with opposition parties, the Government agreed to opposition demands to transform the current majoritarian election system for Parliament into a system based on proportional representation. Some MPs will be elected through a nation-wide party list system, while other part will be elected through regional party lists. This effectively eliminates the previous much-criticised system whereby one-third of the Parliament was to be elected through a "first past the post" system.

123. On 15 November, the Parliament gave preliminary endorsement to constitutional amendments that will decrease the election threshold for Parliament from 7% to 5%. These amendments have been subjected to a one-month period of public discussion; they are expected to be adopted without delay. We welcome the authorities for partly fulfilling this long-standing demand of the Assembly.

124. With a view to the forthcoming parliamentary elections, the date of which has been set to Spring 2008, we expect these changes to be passed into law as soon as possible.

3.4. Local self-government reform

3.4.1. Legislative package

125. Georgia is party to the European Charter on Local Self-Government since 1 April 2005. Towards the end of the same year, Georgia launched a comprehensive government decentralisation programme. At the time of adoption of the previous report in January 2006, the State Commission on Decentralisation[34] and the Parliament were in the process of drafting or amending several laws, including the organic Law on local self-government, which, together with the Electoral Code, constitute the core legislation on local self-government. The legislative package also includes the draft on the supervision over local government activities and on citizen participation in the activities of local authorities. The Council of Europe has been actively involved in drafting these laws.

126. At that time, the Georgian Parliament, together with Council of Europe experts, proposed a timetable according to which most of these laws were to be adopted by the end of June 2006. The authorities estimated that it would take about 5 years for the decentralisation strategy to be fully implemented. The local elections of October 2006 were to be the first real test for local democracy.

127. However, the "decentralisation package" is still under consideration in Parliament. The Law on Local Self-Government and the draft Law on Budget of Local Self-Governing Units have been passed but the draft Law on Citizen Participation in Local Self-Government Activities is still pending[35].

128. The Law on State Property Transfer to Local Self-Governing Units was passed in March 2005. It transferred important assets from the central government to local governments. According to USAID, which assisted with the implementation, effective management of local assets and government transparency have increased as a result of this initiative[36]. With more resources under their control, local governments will be able to develop income-generating programmes on the district level.

129. According to a recent report of the CLRAE[37], a number of positive developments relating to local democracy have been taking place in Georgia since the ratification of the European Convention on Local Self-Government. Yet, significant steps are needed to ensure full compliance with the Charter and other Council of Europe standards.

130. One of the principal challenges facing local government reform in Georgia is the weak financial base of many local and district governments. With the new Law on Local Self-Government coming into effect now, some of these problems should be eliminated, and local governments should achieve financial sustainability. A special formula has been designed for distribution of finances between local governments. Municipal budgets are based on per capita revenues of each municipality and then adjusted through equalizing transfers from the central budget. A municipality that has revenues above national per capita average is not eligible for equalizing transfers. In those municipalities that have lower per capita revenue than the national average, the number of residents is multiplied by a number indicating difference between national average and municipal per capita revenues; and this figure is also adjusted through a special corrective coefficient for mountainous regions or for low-density populated areas. This kind of municipalities are entitled to central budget subsidies that should be no less than 70% of number, calculated though the above mentioned formula. Finally, *local infrastructure must be developed in order to give local governments the opportunity to control their municipalities effectively*.

131. At local level, significant control by the central government is still very much apparent. According to Georgian government officials, this is partly due to the low professional status, qualification and technical ability of the local authorities; the management capacities of these units are still poorly developed. They consider these conditions as the seedbed for corruption, which is apparently still a serious issue at local level.

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34. The official name of the commission is «State Commission on Effective Governance Structures and Territorial Arrangement.

35. Information as of January 2007. *Georgia's Democratic Transformation: an update since the Rose Revolution*, Published by the Government of Georgia, January 2007.

36. Idem.

37. Local elections in Georgia observed on 5 October 2006, report of the Standing Committee of CLRAE adopted at the autumn session of 2006 in Moscow; Rapporteur: Wim Van Gelder, EPP/CD, The Netherlands, Chamber of Regions, CG(13)32 Part 2.

3.4.2. Implementation of the reform

132. The 2005 monitoring report welcomed the Georgian authorities' wish to speed up the local government reform. It pointed to a number of positive elements underlined by Council of Europe experts, such as the reduction of number of municipalities, the simple and objective approach to implementation, the transparency of assignment of powers and functions, etc. However, we warned against excessively rushed passing of new legislation and implementation of the reform while its concept still needed to be revised according to the recommendations of the Council of Europe. We cautioned the Georgian government not to determine the timeframe for the preparation of the territorial reform only on the basis of the next local election date; the risk was too high that the reform would be disruptive and ineffective, despite the good intentions inspiring it[38]. We also called upon the authorities to give more space to consultation with the existing local authorities and the population at large, and to settle beforehand the essential issues of the scope of powers and functions to be "delegated" or "transferred" to local governments.

133. According to the recent Freedom House *Freedomin the World 2007: Nations in Transit* report, the creation of new local government institutions began after the local elections of October 2006. These have been established at the district level, plus Georgia's six largest towns and the capital, Tbilisi, which is now governed by locally elected councils with their own budgets and property. Municipalities have been given all sufficient powers and resources for implementing their competences, in accordance with European charter on local self governments and best international practice

3.4.3. State Commission on Decentralisation

134. In our 2006 report we regretted that the State Commission on Decentralisation had been bypassed when key topics such as the revision of the Law on Tbilisi and the Election Code of Georgia were submitted to Parliament. We urged the authorities to recognise – not only on paper but also in practice – the co-ordination function of the State Commission and its role as a platform for institutional dialogue. We also requested that the State Commission be given real authority and the necessary means to lead the preparation and implementation of the decentralisation strategy. ***We note with satisfaction that this request was taken into consideration and the role of this commission has been significantly increased since 2006.***

135. In April 2006, an effective State Commission Secretariat[39] was set up with the financial help of UNDP and Urban Institute. Its aim is to secure long-term sustainability of reform. It has its own headquarters, a full time Executive Director and a team of full time experts and administrative assistants. The Council of Europe is assisting in the drafting and implementation of its Action Plan.

3.4.4. Election of the Mayor of Tbilisi

136. Before the adoption of the Law on Local Self-Government in 2005, the Mayors of Tbilisi, Poti and Batumi were appointed directly by the President while in the rest of the country, mayors were elected directly. The Mayor of Tbilisi did not have the status of elected representative. Such appointment procedure infringed Article 3.2 of the European Charter of Local Self-Government. On 16 February 2005, the Georgian Constitutional Court ruled that it also violated constitutional principles.

137. On 1 July 2005, the Parliament approved in its third and final reading the government-backed proposal of the Law on the election of the Mayor of Tbilisi. The new rule envisages the election of 25 members of the Sakrebulo (City Council) through a majority system, while the remaining 12 seats would be distributed through the so-called "compensatory list" among the parties which received 4% of the votes in all 10 constituencies of the capital city. The 37-member City Council would then elect the Tbilisi Mayor from among its members with at least 2/3 of votes for a four-year term. Contrary to what happens in other municipalities, the voter has only one vote (and not two separate votes for the plurality and the proportional parts of the election).

138. The first election according to the new system took place in October 2006. The incumbent Mayor Mr Giorgi Ugulava (appointed by the President in July 2005) was elected to this position.

38. Assembly Doc. 10779 of 5 January 2006, pp. 16-17.

39. The official name of this Secretariat is the «Centre for Effective Governance System and Territorial Arrangement Reform».

4. Rule of law

4.1. Reform of the judiciary

139. Since July 2005 when the Concept of the Judiciary was approved by a Presidential Decree, Georgia has made strides in moving from a corrupt judicial bureaucracy to a modern European judiciary system. In many ways we believe that the reform of the judiciary in Georgia – although still in the initial stage of implementation - has advanced at a quicker pace and with clearer objectives than in many other transformation societies of Central and Eastern Europe, some of whom are members of the European Union today.

140. According to the Concept and the subsequent Action Plan of the Government of Georgia, the main goal of the comprehensive reform is to establish a strong, independent and effective judiciary instead of the heavily corrupt, biased and extremely badly managed judicial system that existed before. The reform will encompass the organisation of the court system, strengthen the role of the High Council of Justice and reinforce the capacities of the High School of Justice. Since 2005 the Government has committed over 560 million USD to modernising the Georgian judicial system and to placing the country within the established parameters of law in compliance with European democratic standards.

141. The Assembly's Resolution 1477 (2006) adopted in January 2006 called upon the Georgian authorities to complete the reform of the judicial system, to ensure constitutional and legislative guarantees for the independence of the members of the Supreme Court and the Constitutional Court, to guarantee a fully transparent and democratic system of replacement of judges in a dignified manner, to ensure that the next generation of magistrates is independent and highly professional, and to provide for the successful start and functioning of the High School of Justice[40].

4.1.1. Reform of the courts

142. The systemic reorganisation of the judicial system is currently under way, with its first fundamental phase – the introduction of a well-defined sequential order of court instances – having been completed already. The first instance courtshas been separated from the appellate and cassation courts, which is fully in line with the classical systemic layout of judicial systems of European countries.

143. Two appeal courts have been established. The Supreme Court now only acts as a court of cassation, providing a uniform interpretation of the law that will strengthen legal security (so-called doctrinal court).

144. With a view to focusing resources and increasing the efficiency of the court process, district (city) court structures are being enlarged and new judges and court personnel have been recruited to allow for speedier trials that better protect the rights of the accused.

145. After the expected completion of the reform in 2009, there will be 18 enlarged district (city) courts established in all the regions instead of the current 70 small first instance district courts. Five enlarged district courts in Tbilisi, Mtskheta, Khashuri, Akhalkalaki and Sachkhere have already been created, based on the principle of specialisation of judges. The district (city) courts shall be the first instance courts in criminal, civil and administrative cases. The newly established magistrate courts will become part of the lower unit of the common courts in the territorial unit where the enlarged district (city) court is not present.

146. Magistrates appointed in specific areas of the administrative-territorial unit under the jurisdiction of the district court will ensure that people in areas remote from the district court have speedy access to justice locally. At the same time by freeing district (city) courts from small claims cases in civil and administrative cases they contribute to the decrease of backlog of cases in district (city) courts.

147. The power of constitutional review is vested solely in the constitutional court. It arbitrates disputes between branches of government and rules on individual human rights violation claims. The court interprets its function in human rights cases narrowly, agreeing to rule only on cases in which human rights were violated as a result of specific articles of law.

148. Dramatic increases have been earmarked for the financial and material support to the courts. In the past two years, 20 court buildings have been totally renovated and equipped; the reconstruction of the remaining 7 courts is under way. The process of reconstruction is funded entirely from the state budget. This year, for instance, more than 5,850,000 GEL were allocated from the state budget for the above purposes.

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40. Paragraphs 10.5.1.-10.5.3.

149. The budget of the judiciary has tripled in the course of the last three years, reaching over 20 million USD. We were told that the salaries and pensions of judges have increased to an equivalent of 800 USD for first instance judges, 1200-1300 USD for second instance judges and 1700 USD for the Supreme Court judges. This has served to substantially improve the working conditions of judges. Today all judges have basic research tools such as Internet access and special digital networks to track cases and legal decisions.

150. Special database management systems have been developed for improved management of cases and the judiciary at large, which will contribute to the increased transparency and efficiency of the judicial system.

4.1.2. Independence of the judiciary

151. A major focus of reform is aimed at strengthening the independence of the judiciary. Previously we had expressed our concerns over the constitutional amendments introduced in early 2004, which increased the Georgian President's authority to dismiss and appoint judges. The government then started to address corruption in the judiciary, but the procedures for removing allegedly corrupt judges lacked transparency and due process. In 2005 the authorities told a number of judges that they should either resign or face disciplinary proceedings; 21 of 37 Supreme Court judges resigned under this pressure. Nine refused to resign but were then subjected to disciplinary proceedings in December 2005, found guilty, and were dismissed from office. The proceedings addressed matters related to the judges' interpretation of law rather than issues of ethics or conduct subject to disciplinary evaluation.

152. Since then, important legislative amendments, including constitutional ones, have been implemented with a view to further reinforcing the independence of the courts. Following the most recent constitutional changes in January 2007, the High Council of Justice has ceased to be an advisory body of the President of Georgia. Not only does the President no longer chair the High Council, but he is no longer a member. The High Council is chaired by the President of the Supreme Court. The procedure of staffing of the High Council of Justice ensures majority membership of judges (10 out of 18), which gives them a decisive role in the decision making process. The Minister of Justice no longer sits on the High Council of Judges and the Parliament no longer appoints the permanent members of the Council. Other executive and legislative branch appointees, however, remain on the High Council[41].

153. Members of the High Council of Justice exercise disciplinary powers through a panel of 6 of its members: 3 judges and 3 non-judge members.

154. On 10 August 2006, the Disciplinary Chamber of the Supreme Court upheld the decision against the judges convicted in late 2005 on grounds that the latter had, among other allegations grossly violated the law when deciding on a case; No allegation of fraud or misconduct was made against these judges. NGOs and legal experts widely criticised the action as infringing on the core responsibility of judges to interpret and apply the law according to their knowledge and experience. The justices were dismissed from the court. This decision had a chilling effect on independent decision-making by judges.

155. On 25 October 2006, the Monitoring Committee decided to request the Venice Commission to provide an opinion on (1) the Law on "Disciplinary responsibility and disciplinary prosecution of judges of common courts" of Georgia, in particular with regard to the principle of the independence of the judiciary and (2) the scope and application of Article 2.2.a of that Law, which was the basis for disciplinary proceedings brought against a number of judges, including judges of the Supreme Court who were dismissed by decision of the disciplinary board dated 26 December 2005 (decision confirmed by the Supreme Court of Georgia on 10 August 2006). The Venice Commission delivered the requested opinion at its 70th Plenary Session on 16-17 March 2007[42]. It concluded that although the Law of Georgia on disciplinary responsibility and disciplinary prosecution of judges of common courts was founded on the good intention of providing a legal basis for sanctions against judges who fail to carry out their responsibilities and thereby, *inter alia*, fight against corruption of the judiciary, "*its vaguely worded provisions pose a real threat to the independence of the judiciary and ultimately to the rule of law. This Law should therefore be revised and its provisions redrafted in a clearer and more precise manner in order to bring it into line with European standards*". The law on disciplinary responsibility and disciplinary prosecution of judges has since been amended along the lines of the recommendations of the Venice Commission. A decision of the Disciplinary Panel of the High Council of Justice may now be appealed to the Disciplinary Chamber of the Supreme Court of Georgia on both the factual and legal basis. This also means that any final decision with respect to disciplinary proceedings is

41. The 18 members of the High Council of Judges are the following: 10 judges, the head of the Legal Committee of the Parliament, 5 further persons appointed by the Parliament – of whom 4 are MPs – and 2 further appointees by the President.

42. Venice Commission, CDL-AD(2007)009.

made only by judges. Furthermore, only a judge can become a Chairperson of the Disciplinary Panel of the High Council of Justice: this gives the right of decisive vote to judge-members of the Panel. Judge-members of the Disciplinary Panel of the High Council of Justice are elected by the Conference of Judges from members of the Council itself.

156. According to government sources, amendments to the Law of Georgia on the Disciplinary Administration of Justice and Disciplinary Responsibilities of Judges of General Courts of Georgia were adopted by the Parliament in July 2007. These amendments aim at providing more clearly defined and exhaustive grounds for the disciplinary responsibility of judges and offer a more detailed definition of the term "gross violation of law" in order to protect judges from being prosecuted for their decisions. It is now imperatively stated that any wrongful interpretation of the law that was based on the intimate convictions of the judge cannot form the basis for disciplinary prosecution.

157. The recent adoption of the law on *ex parte communication*has been another significant step further for strengthening the independence of the judiciary. It protects judges from attempts by outside actors to influence them. It also obliges judges to report immediately to the High Council of Justice any attempt to influence the court regardless of whether it is done by a State official, a member of the Executive branch, a lawyer or a common citizen. This law also explicitly forbids contacting a judge regarding any specific claim under his or her review.

158. The Code of Judicial Ethics has been substantially revised. Draft rules of judicial ethics which are in full compliance with the European standards of judges' ethical behaviour were recently presented to the Association of Judges of Georgia.

159. Despite all these positive initiatives, the popular perception of the judiciary is that it continues to suffer from corruption and pressure by the executive branch. We heard from several NGOs that the executive and the "powerful" allegedly continue to exert pressure on judicial authorities. Many NGOs complained that judges continue to simply "rubber stamp" prosecutors' decisions, that "telephone justice" was still commonplace and that the executive branch exerted undue influence. The recent political manifestations were also sparked by the perception of selective application of justice.

160. We have no reason to doubt that the Georgian Government sincerely strives to create an exemplary judicial system in their country. However, deep-rooted traditions of corrupt and biased practices will take long to eradicate. In their endeavours to clean the judiciary from corruption, the Georgian authorities have dared what most other countries in transition have not: to clean the old guard of corrupt judges and replace them with a new – hopefully better-qualified – judicial corps. The process has been painful and many mistakes have been made along the way. We do not doubt it was a necessary step, which should however remain an exceptional one.

161. The dilemma facing the current authorities now is how to avoid new loyalties being formed. We believe that the key to continued progress lies first and foremost in the political will of the government officials to abide by the rule of law and separation of powers, and in full transparency of procedures, vigorous oversight by a democratically elected parliament, but also on the continued recruitment and promotion of well educated and qualified persons able to make independent rulings and willing to deliver justice in the country through open and transparent procedures.

162. Despite the many positive measures introduced to enhance the independence of the judiciary, there is still some reason to be concerned about the influence of the political elite over the functioning of justice. Although in other European countries the top of the judicial power is often also nominated and/or elected by the executive and legislative branches, the present composition and functioning of the High Council of Justice still allow for a direct interference by the executive or political nominees in the every-day administration of justice. We therefore ***urge the Georgian authorities and lawmakers to further revise the legislation in line with the European Charter on the Status of Judges with a view to limiting the influence of political personnel over the recruitment of judges and disciplinary proceedings against them.***

4.1.3. Appointment and training of judges and magistrates

163. According to the information given to us by the President of the Supreme Court of Georgia, since 2005, 140 new judges have been recruited. However approximately 120 of the 400 posts of judges in the Georgian court system still remain vacant. The country is in dire need of at least another 30-40 new judges. It is still proving extremely difficult to find decent, educated, qualified personalities. Only 8 percent of those having sat the examination passed it.

164. The lack of qualified personnel gravely affects the system's ability to try cases effectively. To facilitate the filling of vacancies with appropriate candidates, recent constitutional amendments decreased the age requirement for judges to 28 years of age.

165. The NGOs we spoke to expressed concerns that recent judicial appointees (mostly very young) lack experience and training to act independently. In addition, the high number of vacancies at the first instance court level has resulted in long delays in scheduling of trials, which in turn requires pre-trial detainees to be kept in severely overcrowded detention facilities for extended periods.

166. The Georgian authorities assert that the situation is significantly improved. Speedy trial rules have been mandated by new legislation. The appointment of new judges contributed to decrease the caseload per judge and simplification of certain procedures enabled quicker completion of average cases.

167. A few months ago, a new system for the selection and appointment of judges was introduced. The newly established High School of Justice will be the cornerstone of this new model. The standards of higher legal education will be in accordance to the Bologna Process. Graduates in three categories of legal professions – judges, lawyers and prosecutors – will have to pass, upon completion of academic studies in the graduate school, a Unified Certification Exam. When a candidate passes the selection process, he or she will not be directly appointed as a judge, but will be enrolled in the High School of Justice to complete comprehensive judicial training. Afterwards, candidates will have the requisite training and will be nominated by the High Council of Justice for appointment to a vacant post without any selection process. A well-regulated career development system is also being developed. The Council of Europe has been asked to give an expert opinion on the selection, appointment procedure and the Statute of the school and to advise the Georgian authorities on the curricula development.

168. The first class started with an intensified 18-month course in legal processes and procedures in October 2007. Their new curriculum has been prepared with the assistance of experts of the Council of Europe and similar schools of the European Union member countries.

169. We heard many critical remarks by the NGOs as regards the transparency of the appointment process, mainly on the account of oral interviews of appointees being held behind closed doors with no written or testimonial record. ***We wish to receive more information from the judicial authorities on that account.***

170. We are nevertheless convinced that, at least in principle, the newly established system is on the right track. The new model has only been introduced and will require some more time to take root. All in all, the various positive steps taken to reform the judiciary need to be more widely communicated to the public in order to promote effective implementation and increased confidence of the public at large.

4.1.4. The Bar Association

171. In January 2006 we reported that two entrance exams sessions had been organised, in 2003 and 2004, by the High Council of Justice. 1200 lawyers successfully passed the examination and took an oath as members of the Bar. The founding Assembly of the Bar Association was held in March 2005. It adopted a Charter and elected a Chair, but at the time of writing it had not started functioning yet because of legal disputes surrounding the entry examinations. These were later resolved with an out-of-court settlement.

172. According to information received from the Council of Europe Directorate of Political Affairs, the Bar has been functioning now for a year. At present, the main focus of the Bar Association is on elaborating the Code of Ethics and Disciplinary Procedures. The Council of Europe has offered to provide its support and expertise

4.1.5. Legal aid system

173. On 2 July 2007, the Law on Legal Aid entered into force. It introduced a full-fledged model of public defenders as legal aid providers, and a quasi-independent executive agency (outside the Ministry of Justice) to administer the system.

174. The law radically changes the former system of publicly-funded legal services, which was rooted in the Soviet legacy. It seeks to address the former shortcomings by devising clear procedures to assess individual eligibility for free legal aid and for appointment of legal aid lawyers; by introducing registration and reporting requirements for private attorneys who wish to become legal aid providers. It calls for a gradual implementation of the system over the next two years. The Georgian government drastically increased the 2007 legal aid budget to more than 800,000 USD (from about 30,000 USD in 2005) to fund the ambitious reform plan[43].

175. According to the law, the territorial bureaus of the Legal Aid Service shall cover all levels of criminal proceedings and administrative proceedings in the territory under their competence (they will cover all administrative and civil proceedings from 2009). The bureaus shall also provide free legal consultations and drafting of legal documents. In 2007, the competence of the bureaus has been enlarged, offices have been adequately equipped, and a number of new lawyers have been recruited on the basis of competitions. Before the end of the year, more territorial bureaus will be created and a Public Attorneys Register will be established. From January 1 to September 20, 2007 the attorneys of the Tbilisi Bureau and Imereti Bureau took 747 criminal and 11 administrative cases.

176. The establishment of a unified free legal aid system is a laudable step ahead, even if it still needs to be made fully operational on the ground in order to become a truly effective aid system. Several human rights organisations we met voiced their concern about the current functioning of free legal aid services in practice. They pointed out that the quality of the work of *ex officio* lawyers often left to be desired and that the perception of their independence from law enforcement and prosecuting authorities was questionable. Thus many defendants preferred not to have a lawyer at all rather than to be represented by an *ex officio* one. Taking this into consideration, ***we expect the new system to be elaborated and implemented in close co-operation with the Georgian Bar Association, in particular so as to improve the professional quality and independence of the services offered***.

4.2. Criminal justice reform

4.2.1. New Code of Criminal Procedure

177. In 2004, the Georgian government launched a comprehensive strategy for the reform of the criminal justice system, which foresaw the adoption of the new code of criminal procedure (CCP). In January 2005, the Assembly welcomed the assurances of the Georgian authorities that the new Code was being elaborated. However, in February 2005 the Council of Europe experts expressed the opinion that while most of the proposed amendments were compatible with European standards, the new draft was considered to be largely unsatisfactory. The draft was further elaborated in collaboration with the Council of Europe and other international and national organisations and adopted in the first reading in May 2006. It contains many steps forward such as adversarial proceedings (in which the judge would play the role of a real arbitrator not the inquisitor, prosecutor, investigator and jury in one mantle), examining witnesses in front of the judge only, trials by jury, limited time frames, simple but effective investigation, etc. Since then, however, the adoption process has stalled.

178. Instead, the Georgian authorities have introduced a number of step-by-step amendments to the existing CCP, thus allowing those involved to get used to the changes and possibly revise weak points. These include:

– The placing of the burden of proof for the necessity of pre-trial detention on the prosecutor rather than on the defence;

– The abolition of out-of-court testimonies as an essential component of criminal trials;

– The reduction of the maximum trial length of a person under accusation from 24 to 9 months and the term of maximum pre-trial detention length from 9 to 4[44] months;

– Introduction of release on bail and plea-bargaining systems.

179. The first stage of investigation, i.e. the inquiry by the police**,** has become part of the preliminary investigation. This has effectively helped streamline the process of criminal investigation and reduced the bureaucracy involved.

180. In order to ensure transparency and the protection of individual rights, a defendant now has the right to invite two people to witness any investigative actions or searches. In the past, law enforcement agencies were obliged to select witnesses for investigative actions. The result of this practice was that the same persons routinely attended investigative searches as witnesses, a practice that lead to unfairness and misinterpretation. The ability to choose the witness for investigative purposes now lies in the hands of the defendant. Furthermore the draft CCP, if adopted, will give the defendant the right to conduct a private investigation and, in certain cases, also to the plaintiff.

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43. *New Legal Aid Law Adopted in Georgia*, Open Society Justice Initiative press service, Tbilisi, 26 June 2007.

44. After the enactment of the new CCP, the 4 months period will be reduced to 45 days. The detention period, including pre-trial, appeal, and cassation, will not exceed 9 months.

181. In reaction to the alarming increase of the number of inmates and the resulting aggravated overcrowding in Georgia's detention centres (see 5.2.) following the government's "zero tolerance on crime" policy, the government has taken measures to limit the detention of the accused. In order to detain an individual, the authorities must now prove that there is a strong probability of absconding justice, avoiding appearance in court, destroying evidence, threatening parties involved in an impending legal battle, or committing a crime. According to the Minister of Justice, the number of pre-trial detentions in lower courts, and convictions in both appellate and cassation courts, have decreased remarkably, with the use of bail during the pre-trial period having increased up to 55,3% this year. Also the use of plea-bargaining has increased.

182. In our previous reports we expressed certain doubts about the application of the plea-bargaining system, which we believed on the one hand to allow some alleged offenders to use the proceeds of their crimes to buy their way out of prison and, on the other, risk being applied arbitrarily, abusively and even for political reasons. In the meantime the system of plea-bargaining has been improved through the introduction of an appeal procedure. The plea agreement can now only be accepted after the court has ascertained that there has been no torture, inhuman or degrading treatment. The accused has the right to request criminal proceedings against the relevant person(s) in case of such treatment. ***Regardless of these improvements, we maintain our earlier reservations as regards the possibilities of arbitrary application of the plea-bargain system.***

183. Although the step-by-step amendments have managed to considerably bring the Georgian criminal justice system closer to the standards of western liberal criminal justice, a new comprehensive CCP which incorporates the best European practices is a must for the credibility and sustainability of the Georgian justice system. Its adoption would also allow proceeding faster with reforms of different branches of law enforcement.

184. A separate – and more contentious – issue in the criminal justice reform is the recent amendment signed into law by the Georgian President on 27 May 2007 lowering from 14 to 12 the minimum age for criminal responsibility for specific crimes, including premeditated murder, intentional bodily injury, and most types of robbery and assault. The Council of Europe together with other international and national human rights watchdogs have severely criticised these amendments, pointing out that this was against acknowledged European practice and that instead of solving the problem of juvenile delinquency, lowering the age of criminal responsibility may exacerbate it instead.

185. We raised this issue with President Saakashvili and relevant ministries, who explained that juvenile crime and particularly the use of drugs and violence, including fatal violence, was becoming a grave problem in the country, notably in certain wealthier neighbourhoods. They explained that under-aged juvenile detainees would not be sent to ordinary detention facilities but to special correctional semi-educational establishments and that the law will only become applicable once proper conditions for juvenile confinement will have been created.

186. Nevertheless, we see this step as a measure to treat symptoms rather the causes of the high juvenile crime rate, which we consider at least partly to be the consequence of fast socio-economic changes in the country. ***In order to prevent child criminals falling into a systemic circle of committing recurrent crimes, juvenile confinement should be used as the last resort in exceptional cases only. The protection of the rights of this particularly vulnerable category of persons, their education and reintegration into society should be tackled with utmost care.***

4.2.2. Reform of the Prosecutor's Office

187. The concept and strategy of the reform of the Public Prosecutor's Office have been finalised and are currently in the process of implementation[45]. This concept envisages, *inter alia*, the establishment of the Council of Prosecutor's office with a view to ensuring effective management of the system, participating in the appointment procedures and disciplinary proceedings. The adoption of the Law on the Public Prosecutor's office, which would set forth the reform of the Prosecutor General's Office, is stalled by the non-adoption of the new Code of Criminal Procedure.

188. Meanwhile, a draft Code of Ethics for prosecutors was approved by the Prosecutor General in June 2006: it provides rules aiming at strengthening the sense of responsibility inherent to the position of the Prosecutor, ensuring protection of human rights, contributing to effective and impartial criminal prosecution

45. Compliance with commitments and obligations: The situation in Georgia, Regular report prepared by the Directorate General of Political Affairs (May 2006), SG/INF(2006)8.

and administration of justice. Violation of the requirements of the Code of Ethics leads to the imposition of disciplinary liability upon the employee of the Prosecutor's Office. The General Inspection of the Office of Prosecutor General is in charge of inquiring into such violations.

189. Also, the Prosecutor's Office now holds a larger supervisory role over preliminary investigations. An investigator can only request to change, extend, or discharge a criminal complaint with the consent of the Prosecutor. This gives the Prosecutor's Office rather wide discretionary powers of oversight. At the same time there is slow process and lack of convincing results in major enquiries.

190. For reasons of conflict of interest, the Prosecutor's Office no longer supervises the penitentiary system.

191. The prosecutor general's office is in charge of all criminal investigations into allegations of torture and ill-treatment. Prosecutors are required to investigate police use of force when a detainee with injuries sustained during arrest was registered. The law requires the office to open an investigation when it receives information about a possible violation even coming from an anonymous source. If prosecutors conclude after an investigation that charges are not warranted, the decision can be appealed to a higher level of the office.

192. In 2006 investigations were initiated into 137 cases of torture and ill-treatment. Criminal cases against 16 officials were submitted to court for trial. Sentence was passed against 7 officials in 4 criminal cases. During the first 4 months of 2007 an investigation was launched into 44 cases of alleged torture and ill-treatment. 2 cases together with the indictments against 6 officials have been submitted to the court for trial. 11 officials have been convicted in 3 cases[46].

193. According to the US State Department[47], NGOs report that the prosecutor general's office opens investigations but often continues them indefinitely without issuing any findings or, if concluded, usually substantiates the reasonable use of force by police. In 2006 at least nine investigations conducted by the office into allegations of torture or abuse and inhumane treatment concluded that the police had not committed any violation. The statistics show that after the rose revolution 68 police officers and prosecutors were charged and convicted for human rights violations. In addition, 27 officials of the prosecution service were dismissed from their positions, 46 officials were reproached, 19 received severe reproof and 99 were rebuked.

194. Unfortunately we did not have the possibility to discuss the above issues with the Prosecutor General's Office.

4.3. Reform of the Police

195. The reform of Georgia's police, which has remarkably reduced petty corruption, can be considered as a major achievement of the current government in Georgia. Even though the new Law on Police is not adopted yet pending the adoption of the Criminal Procedure Code, major steps have been taken to reorganise the police force, which has been divided into patrol police (public order police), criminal police and border police. The government has completely reorganised the traffic police, which was infamous for its corruption prior to the Rose Revolution. They take pride in claiming that small corruption and bribery have virtually been ousted from the police force.

196. A Main Office for the Protection of Human Rights and Monitoring has been established within the Ministry of Interior. It carries out internal monitoring in the law-enforcement agencies and pre-trial detention centres. The Unit co-operates closely with the Public Defender and NGOs.

197. However, impunity remains a serious problem in the police force, which was not denied by any of the authorities we met. Though the crime rate has considerably decreased in the last year, members of the police are still reported to be involved in a number of human rights abuses, which mainly include disproportionate use of force, in particular in police stations and during special police operations, torturing of detainees and other forms of abuse. According to Minister of Interior data, in 2006 alone, 612 officials of the Ministry were subject to various penalties: 83 were rebuked, 220 were reproached, 121 received severe reproof, 11 were demoted, 166 dismissed, and 6 suspended from work. Furthermore, 32 officials were prosecuted and two are currently wanted.

46. Overview of Implementation of the European Neighbourhood Policy EU-Georgia Action Plan, July 2007.
47. 2006 US Department of State Country Report on Human Rights Practices, released on 6 March 2007.

198. In June 2006 a new Code of Ethics came into force. The comments and suggestions of the Council of Europe on the draft code of ethics for the policemen were taken into account in the final version of the document. The Code obliges police officers to uphold the human rights of all persons and to use force only when strictly necessary for the performance of their duty. However, there is no office of professional responsibility within the police.

199. According to the authorities the problem of excessive violence relates to the lack of professional training of the police forces. The Ministry of Interior therefore attaches great importance to the proper training of police. The Police Academy includes training on human rights in the basic course for patrol police and conducts additional specialised training on human rights in conjunction with international partners, including the Council of Europe. However, ***there is still a serious lack of adequate initial and continuous training for police, including the criminal police, which should be effectively addressed***[48]. On many occasions, the Council of Europe has stated its readiness to give substantial assistance to the Georgian authorities in this field.

200. The Council of Europe could also offer its valuable know-how and assistance for police decentralisation notably in setting up a system of community policing in Georgia, which in many member states has proved to be an effective and efficient measure to make the police closely work together with the local population and thus enhance its role and reputation in society.

4.4. Fight against corruption

201. From the outset, President Saakashvili and the new Georgian administration declared the fight against corruption as their top priority. The ambitious anti-corruption strategy and action plan have already scored significant results, notably in the law enforcement sector. Small-scale corruption, which used to cripple Georgian society has been significantly reduced. According to the data received from the Ministry of Interior, 211 police officers have been arrested on corruption charges, mostly for taking bribes. Today, polls rate only 2% of corruption in the police force. The anti-corruption strategy is also being pursued through a drastic decrease in the government's role in Georgian citizens' and business' lives. Independent observers have noted strong ownership of anti-corruption efforts at the highest level of government[49]. The EBRD-World Bank Business Environment and Enterprise Performance Survey (BEEPS 2005), showed Georgia as having achieved the largest reduction of corruption in 2002-2005 among transition countries.

202. A more recent survey by Transparency International, which was published on 26 September 2007, ranked Georgia 79th among 180 countries, giving it a Corruption Perception Index (CPI) rating of 3.4 points (out of a total 10)[50], a significant improvement over the score in 2006 (2.8). Though this score "still indicates that corruption is a significant problem in the public sector"[51], it nevertheless means that Georgia has moved out of the countries considered to have a rampant corruption problem (those under 3.0).

203. All in all the government's zeal in curbing corruption can be felt in almost all spheres of public life. The vigorous anti-corruption measures applied alongside the liberalisation of economy and cutting state bureaucracy have indeed almost ousted petty corruption and bribery in daily lives of Georgian citizens today. This has enabled the government to tackle higher and more sophisticated levels of corruption more aggressively. As a result, up to 400 officials had been prosecuted for abuse of power by January 2007, including 11 former ministers, 9 deputy ministers, 2 MPs, the Head of the Audit Chamber, 21 judges, 17 prosecutors, 6 mayors, and 96 heads of local authorities[52]. This trend has continued, and even tightened as investigation of corruption cases proceeds. President Saakashvili has personally sent a strong message that no one would be treated above the law.

204. To this end, and most particularly in reaction to the recent accusations by the former Minister of Defense Irakli Okruashvili of top political level corruption, President Saakashvili has announced that a special anti-corruption commission directly subordinated to him and the Speaker of Parliament would be set up[53].

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48. Idem.
49. European Neighbourhood and Partnership Instrument – GEORGIA, European Commission Country Strategy Paper 2007-2013.
50. The CPI ranks countries in terms of the degree in which business people and country analysts, both residents and non-residents, perceive corruption to exist in the public and political sectors.
51. TI Georgia press release of 26 September 2007.
52. Prosecution and Criminal Legislation: Reforms Undertaken and Planned, powerpoint presentation of the Prosecution Service of Georgia of 26.01.07 available at the Ministry of Justice website www.justice.gov.ge
53. Saakashvili Plans Special Anti-Corruption Commission, Civil Georgia, 4 October 2007, http:www.civil.ge/eng/article.php?id=15955

According to the President, this commission's major task will be to inspect and control the ministers and their relatives. At this point of drafting it is not known what the composition of this commission will be, when it will be created, or how it will operate***. Following democratic standards, in order for the commission to gain credibility, our suggestion is that the head of this commission could be proposed by the opposition.*** In a televised government sitting on 4 October 2007, he underlined that this commission must enjoy public confidence in terms of its composition, ability to communicate with the public, and the transparency of its activities. In addition to ensuring the effective work of the commission, the state must put additional effort into strengthening the authority and independence of those institutions that are responsible for preventing and eradicating corruption, such as the Audit Chamber, the Inspectors General, the State Procurement Agency, the judiciary, and the Ombudsman's Office. It should also strengthen parliamentary oversight and increase the transparency of the Prosecutor General's Office and the Ministry of Interior's activities.

205. This is certainly a welcome initiative, which should be implemented promptly in order to enhance public confidence. We nevertheless see a number of risks and challenges in the current handling by the President and government of the clamping down on high-level corruption. We would like to emphasise that:

– for the sake of the long-term credibility of the government's strategies, corruption should not be fought on an ad hoc basis but through systematic and consistent scrutiny of all public officials' assets, property and business affiliations;

– although no crime should ever go unpunished, we encourage the Georgian authorities to focus on the roots of bribery and corruption in the society in order to strike a proper balance by weighing the causes and consequences of massive prosecution of corrupt officials on society; in this context, they should review the existing policies and oversight mechanisms of public procurement and focus on transparent, targeted and priority-based public spending;

– whereas any high-level corruption case is linked to a political context, the authorities need to be extra careful with corruption accusations in order to avoid any connotation of selective application of corruption charges against political opponents. To this end, any accusation of corruption needs to be correctly investigated, proven in a court of law with full respect for the presumption of innocence and explained to the public through a well reasoned judicial ruling;

– where release on bail is used, all relevant information including who paid the money, how much and what for should be immediately made open to the public; the sums imposed should be justified and reasonable in quantum.

206. The Assembly's Resolution 1477 (2006) recommended the Georgian authorities to "pursue the fight against corruption, implement all recommendations of the Group of States against Corruption (GRECO) and ratify the Council of Europe Criminal Law Convention on Corruption (ETS No. 173);…" (paragraph 10.5.5.). In 2004, the new Government inherited a GRECO first evaluation round compliance procedure with only two recommendations fulfilled out of twenty-five. This delay resulted in a non-compliance procedure being initiated. However, according to GRECO's September 2006 Final Overall Assessment[54], Georgia has now totally or partially fulfilled the remaining recommendations. GRECO consequently closed the non-compliance procedure, but it nevertheless urged the Georgian authorities to pursue their anti-corruption efforts vigorously. GRECO also stressed the need for the active involvement of civil society in this process. Georgia has now begun the procedure for drafting a second evaluation report.

207. Unfortunately Georgia is among the 11 member states that have not ratified the Council of Europe Criminal Law Convention on Corruption. We urge the authorities to ratify this significant international instrument as soon as possible.

208. Resolution 1477 (2006) also urged the Georgian Government to step up work aimed at building a culture and ethics of civil service (paragraph 10.5.5.). Indeed, the public service has undergone major reorganisation as a result of which the number of ministries and government agencies, including the number of public servants, has been dramatically reduced[55]. According to government sources, the salaries of civil servants have increased approximately 15-fold, which has attracted young motivated professionals to civil service. The de-regularisation of economy, which has been carried out along with the institutional changes, plus the optimisation of human resources have considerably diminished or even eradicated corruption in some predominantly corrupt services. In a number of cases, but most remarkably in the Patrol Police and Product Safety Agency, a complete renewal of the staff has been carried out. This in turn has created much less

54. Greco Eval II Rep (2006) 2E, adopted at its 31st Plenary Meeting in Strasbourg, 4-8 December 2006.
55. The number of Ministries was reduced from 18 to 13 and the number of Governmental agencies from 52 to 3. The number of public servants decreased 35,1% and 65,4% respectively.

tolerance of corruption in the general public. A Code of Conduct for Public Service has been elaborated. The Public Service Council, an advisory body of the President of Georgia, is responsible for the implementation of the Code as well as of the oversight of the Public Service Reform Strategy and its Action Plan in general.

209. Despite the civil service having become more optimised and effective, structural public sector reforms still remain to be finalised or carried out in several areas. In a country of traditionally strong vertical of power, the motivation and responsibility-empowerment at middle management level still needs to be seriously worked on. ***A professional and responsible, non-corrupt and non-politicised public administration that would be resilient to any power alterations in the country's political spheres will be a key to long-term sustainable reforms in the country. To this end, particularly great importance should be attached to the improvement of the selection and admission criteria and transparency for employment in the civil service.***

5. Human rights issues

5.1. Prevention of torture and inhuman treatment, problem of impunity of crimes committed by law-enforcement officials

210. The Assembly's Resolution 1477 (2006) called upon the Georgian authorities to "build on first steps taken to eliminate the "culture of violence" and torture in prisons and pre-trial detention centres, urgently adopt further necessary measures to meet this objective, with special attention to the regions of Georgia outside the capital, in particular in order to secure prompt, independent and thorough investigation of all allegations of torture and ill-treatment and apply a policy of zero tolerance to impunity (10.6.3.).

211. The Georgian Constitution and law provide important safeguards for the protection of human rights. Considerable progress has been made as regards preventing ill-treatment of persons in police custody. Whereas Amnesty International, the US State Department, domestic NGOs, and the Public Defender's office reported a large number of cases in 2006 in which a detainee reportedly sustained injuries resulting from police mistreatment during arrest[56], in the current year the Ministry of Interior told us that the number has so far been minimal. **Torture has practically been eliminated. This presents a major positive change**.

212. In 2006-2007, the government created better safeguards for eradicating torture through amendments to the Code of Criminal Procedure (CCP) and reforming the penitentiary system. For instance, upon arrival, every new detainee undergoes a medical examination. In cases where detainees are moved to another facility, a new examination takes place. Every instance of interaction between enforcement agents and inmates are documented. All court and prison employees are supposed to wear identity badges, and masked enforcement agents within the Department of Prisons have been assigned individual numbers kept in a special log book which they must wear on duty[57].

213. New amendments to the CCP adopted in 2006 exclude evidence obtained in violation of the law and require that confessions given by detainees during pre-trial detention be ratified in court before being admitted as evidence. This is designed to prevent authorities from pressuring alleged criminals to confess during preliminary investigation. It should also be mentioned that a plea agreement is null and void if it prevents the prosecution of law enforcement officials for torture or ill-treatment.

214. In order to protect suspects from physical and psychological pressure during interrogation, they also retain the right to record the interrogation with their own recording equipment, should they so desire.

215. The government has established departments of human rights and monitoring within the Interior Ministry, the Office of the Prosecutor General, and the Department of Prisons, thus strengthening internal oversight of human rights practices within the law enforcement bodies. Since March 2005, temporary detention isolators have been structurally subordinated to the Main Unit for Human Rights Protection and Monitoring set up at the Ministry of Interior. In September 2006, a new structural entity within the Department of Prisons – the Office of Prisoners' Rights Protection – was established in order to supervise and enforce protection of prisoners within the penitentiary system. In addition to reinforced internal control exercised by the Human Rights Protection and Monitoring Unit, police establishments are regularly monitored by the Office of the Public Defender and NGOs.

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56. According to statistics from the Ministry of Internal Affairs, of the 18,083 detainees held in 2006, 2,962 (16%) were registered with injuries, 191 of whom claimed to have been beaten by police.

57. *Georgia's Democratic Transformation: An Update Since the Rose Revolution*, Published by the Government of Georgia, January 2007.

216. A new approach has also been adopted as regards the selection, recruitment and training of the staff of the Ministry of Interior. The adoption of a Code of Police Ethics in January 2006 is another important step. In addition, considerable investment has been made in the acquisition of modern technological means of inquiry and laboratory equipment.

217. Regardless of the above efforts, impunity remains a serious problem, particularly in the regions[58]. Effective investigations are rare. According to government sources, between 2004 and 2006, 68 police officers and prosecutors were charged and 33 convicted for human rights violations. In addition, 27 officials of the prosecution service were dismissed from their positions, 46 officials were reprimanded, 19 received severe warnings and 99 were rebuked. Of the 105 preliminary inquiries investigated by the General Inspector's office of the Ministry of Interior in 2006, 70 cases were referred to the Prosecutor General's Office. In the same period, the Prosecutor General's Office opened 46 cases against law enforcement officials; charges were brought against 8 officers in 5 cases, and 4 cases against 6 officers were sent to court. The courts issued 4 sentences for ill-treatment in respect of 7 police officers in 2006.

218. NGOs claim that close ties between the Prosecutor General's Office and the police hindered their ability to substantiate police misconduct and believed the continuing lack of professionalism and independence of the judiciary made it unresponsive to torture allegations[59]. As a result, despite implementation of positive reforms, NGOs claim that law enforcement officials can still resort to torture or mistreatment with limited risk of exposure or punishment. They believe that a lack of adequate training for law enforcement, as well as low public awareness of protection afforded to citizens, impeded improvements. The authorities maintain that the statistics show the opposite that police officers receive punishment for any kind of misconduct

219. Human rights organisations have also voiced concerns about the increased abuse of prisoners by prison staff and special police forces since 2005 when the government stepped up its fight against crime and sought to break the power of organised crime bosses (locally known as "thieves-in-law"), including within the prison system, which resulted in more frequent use of force to subdue or punish detainees. Security forces repeatedly used force to suppress prison disturbances.

220. There were allegations of a search by the special forces in Rustavi prison N°1 on 30 January 2006, which had resulted in the beating of a number of prisoners. However, according to HRW, no one has had access to the prisoners to collect first-hand statements.

221. On 27 March 2006, Special Forces used automatic gunfire in Tbilisi Prison No. 5 to suppress a disturbance, resulting in the deaths of at least seven inmates. According to HRW, no one, including lawyers and the members of the official Monitoring Council, was allowed to enter the prison for two days. The government announced that it had prevented a nation-wide prison riot plotted by criminals and that extreme force was necessary to prevent further violence. They presented video-taped evidence and taped telephone conversations where prisoners were planning the disturbance. However, the opposition and human rights activists have questioned the official version and allege that the riot was a spontaneous act of prisoners to protest against inhuman treatment by the prison officials against inmates overnight on 26-27 March and that the force used by police was excessive.

222. We are not in the possession of any information as to where the investigation of the above incidents stands.

223. In the current year, no major complaints against prison officials have been launched. Closed-circuit surveillance TV cameras have been installed in the corridors of a number of detention facilities, which has certainly contributed to the improvement of treatment of the inmates by prison officials. There has been no riots in the prisons either.

224. We remind the Georgian authorities that all allegations of ill-treatment or excessive use of force by the law-enforcement staff should be properly investigated and where necessary, prosecuted. We welcome the measures taken to limit excessive force and enhance human rights awareness among the police force, but the authorities must remain vigilant in this are.

5.2. Detention conditions

225. Overcrowding and poor conditions of detention, especially in temporary detention isolators, continues to be the major human rights concern in Georgia.

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58. 2006 US Department of State Country Report on Human Rights Practices, released on 6 March 2007.
59. Idem.

226. In 2006, the Ministry of Justice, which includes the Department of Prisons, launched a comprehensive multi-year (2006 – 2010) action plan for reforming all aspects of the penitentiary system. The latter aims at establishing a humane penitentiary system based on human rights and human dignity, solving the problem of overcrowded prisons and improving the living conditions and reintegration into society of prisoners. It also involves improvements in prison staff selection, training and remuneration as means of fighting against prison staff corruption. This action plan has been supported by a substantial increase in the budgetary allocation (over 1 billion GEL over the four-year period), notably for the refurbishment of existing and construction of new prisons. In its first year, the government's budgetary allowance for the Department of Prisons increased by 87% compared to 2005. Further the budget more than doubled in 2007 compared to 2006. Since 2005, however, the inmate population has grown some 54% (from 8895 prisoners in 2005 to 19,441 prisoners on 30 September 2007[60]), eroding some of the benefits that could have been realised by the increased budgetary allowance. The Minister of Justice estimated that the prison population will exceed 22,000 inmates by the end of next year.

227. In response to the steep increase in prison population, the Ministry of Justice has opened six new prison buildings that meet international physical standards with a total capacity of 5178 in Tbilisi, Kutaisi, Rustavi and Khoni since October 2005[61]. Another four new prisons with a maximum capacity of 6300 are in construction in Rustavi (additions to prisons Nos 2 and 6), Batumi and Zugdidi. Given that the pre-October 2005 capacity was about 12,200 places calculated on the basis of 2.5m² of living space per prisoner[62] (and not on the basis of the CPT-recommended 4m² per prisoner), the new additions will hardly be sufficient. It will be difficult for the country to keep up its current prison-building marathon, for each new structure implies not only construction and physical infrastructure, but also recruitment and training of additional prison staff.

228. Furthermore, regardless of the official zeal and the policy of "zero tolerance on crime" of the Georgian government, the country's prosecutors and judiciary cannot go on forever sending an ever-increasing number of its citizens behind prison bars. Instead, new legal avenues that regard incarceration as the final resort and propose non-custodial measures, wider uses of probation or early conditional release should be more actively explored. In this respect, the last two years have already seen notable progress. The ratio of sentenced prisoners versus pre-trial prisoners has changed from 43,1: 56,9 in 2005 to 78,3:21,7 in September 2007[63]. The use of probation has doubled within the last year. More attention should be paid to measures which facilitate the reintegration into society of persons who have been deprived of liberty.

229. Also, despite the opening of new and remodelled facilities and the efforts made by the Ministry of Justice, conditions in prison and pre-trial detention facilities have generally remained poor and fail to comply with European standards. According to a recent Human Rights Watch report, the majority of Georgia's prisoners live in overcrowded, poorly ventilated, filthy cells. They receive inadequate food and substandard medical care, have limited access to information and family visits, and in 2006 some went for weeks or months without an opportunity to leave their cells for exercise or fresh air. In such cases the conditions of detention amount to degrading treatment.

230. Further issues raised during our mission by our NGO interlocutors revealed the inadequacy of activities for inmates. Very few inmates are entitled to work or professional training, most of them spend 23 hours in their cells without any mental or physical activity. TV sets and radio are mostly not allowed, even if the latter is not prohibited by law.

231. Another complaint of the human rights organisations, which we also raised with the Public Defender, was the increased mortality rate in the penitentiary system and the dubious fact that nearly all deceased prisoners reportedly died of heart failure. The Justice Ministry reported in 2006 that 92 inmates died in the prison system compared with 46 deaths during 2005. In the first nine months of the current year 79 inmates have died. Though generally deplorable, percentage-wise the situation has been rather stable since 1999 (around 0.5%-0.6%). Besides, 31 (one-third) of the 92 deceased in 2006 died in the months of July-August when inadequate conditions were exacerbated by very high seasonal temperatures. The Justice Ministry made efforts to improve conditions during that period by providing fans and removing metal window shutters. Nevertheless, also in the current year the outside climatic conditions in February and July affected prisoners' health most. The Public Defender mentioned that his office frequently petitioned prison officials to obtain necessary medical treatment for inmates.

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60. Data presented on the official website of the Ministry of Justice.
61. Overview of Implementation of the European Neighbourhood Policy EU-Georgia Action Plan, July 2007, Tbilisi, Georgia.
62. Idem.
63. Idem.

232. We visited Tbilisi Prison No 7, which is an establishment traditionally used for the confinement of "high profile" prisoners, including a number of criminal bosses (the so-called "thieves-in-law") and prisoners serving a life sentence. We picked this particular establishment on purpose because of our previously negative impressions of the conditions of detention there. We were pleased to observe a significant number of improvements in that establishment such as the generally clean and refurbished cells including adequately secluded sanitary conditions, space per inmate and luminosity in most cells, the introduction of a prison shop with a very modern "credit card" payment system and the installation of close-circuit surveillance cameras[64]. We were told that for a year there had been no complaints of torture or violence in that penitentiary establishment. The inmates that we interviewed did not have any complaints in this regard either.

233. At the moment of our visit, the prison was functioning below its capacity (81 inmates for a total capacity of 108 places). Bearing this in mind, we were surprised to see eight life-sentenced prisoners crammed together is a cell of not more than 15-16 m². Their cell (located on the 1st level of the building) had almost no light, with the small window covered by dense wiring which allowed hardly any natural light and fresh air to enter. We found out that the detainees of this cell had been allowed no outdoor exercise for more than two weeks. This is clearly unacceptable[65]. They also complained about having been transferred from another prison for unexplained reasons. None of them had been informed of the reasons for their transfer to another establishment. They were generally well-aware of their rights and found that the prison conditions were not adapted for life-sentenced prisoners. The prison authorities appeared to be aware of these complaints but seemed to ignore the issue. They explained that those prisoners had been moved to their establishment from another institution in Rustavi for the period of the latter's refurbishing. None of the inmates was aware of the possibility of appealing against the decision of their transfer.

234. None of the inmates that we talked to in Prison n° 7 could engage in any professional or training activity. This should be improved. No access to any outside information by radio, TV or newspapers (other than those sent by relatives) was allowed even if permitted by law. This should be immediately changed, especially given the long-term sentences most of the prisoners in that establishment are serving. One life-sentence prisoner was in solitary confinement at the time of our visit. However, he did not complain and said that he had some communication during the day with other prisoners.

235. Restrictions on visits and correspondence also appear to us excessive, especially as regards prisoners on remand who require prior authorisation by the competent investigation authority or court to receive a visit, and which – even if authorised – can only take place twice a month. The visit entitlement is even more restrictive for life-sentence prisoners and especially those serving their sentences under a cell-type regime. The latter are allowed only two visits per year. The visiting facilities we observed in Prison n° 7 permitted no physical contact between the prisoner and their visitor. Under such conditions it is impossible for the long-term prisoners to maintain adequate contact with their families.

236. In the light of the above, we can conclude that the detention conditions have improved in general, even if overcrowding still remains a grave problem for the foreseeable future. We hope that the ***new draft Code on Imprisonment[66], aimed at harmonising the Georgian penitentiary system with international standards, will be adopted without delay. We encourage the authorities to take into account the recent recommendations and observations made by the CPT on their visit to Georgia in March 2007 during the consideration of the draft Code. We welcome the initiative of the Georgian authorities to make the CPT report public on 25 October 2007[67].***

237. We are pleased with the apparent effectiveness of the measures taken to eradicate ill-treatment of the prison population, yet we expect ***further safeguards to be introduced with the adoption of the Code of Ethics of the Employees of the Penitentiary System. We also count on the authorities to pay particular attention to the detention conditions of juvenile prisoners.***

238. We appreciate the fact that since 2006 the Georgian authorities have made prisons accessible round the clock to various monitoring bodies such as the Office of the Public Defender, the Ministry of Justice's Inspection and Monitoring Department as well as local monitoring commissions composed of NGO

64. We have no reason to suspect any putting-up-a-façade for us, for we changed the penitentiary establishment to be visited on the night before the visit.
65. In all other cells that we visited, the inmates asserted having 1-1,5 hours of outdoor exercise per day.
66. The draft code has been positively reviewed by the Council of Europe experts.
67. See Http://www.cpt.int/documents/gro/2007-42-Inf-eng.htm. Due to the short time available, the recommendations of the CPT could not be taken into account when elaborating this document. They will be reflected on in the final version of this report.

representatives and known public figures. ***We trust that the observations and recommendations of these monitoring bodies will be duly taken into account when elaborating new legislation and taking measures to improve conditions of detention.***

239. Of the little we could observe ourselves during our visit to Prison n° 7, we recommend that as long as this establishment operates below its maximum capacity, its occupants should be dispersed in cells so as to provide them with maximum possible space (even if the recommended minimum of 4 m² cannot yet be fully respected). We also urge the authorities to take further measures to provide adequate lighting and outdoor exercise to all inmates irrespective of their length of stay in the establishment. We further recommend that the activities of inmates be substantially improved, including their access to outside information through the installation of TV sets and radios. Finally, we call upon the authorities to review the current excessively strict regulations on visits and correspondence, especially those regarding remand prisoners and prisoners serving under the strict regime.

5.3. Repatriation of the Meskhetian population

240. The repatriation of the Meskhetian population by 2011 to Georgia was one of Georgia's accession commitments in 1999. However, it is only since the coming into power of the current government that the issue has received more serious attention and reached a stage of partial fulfilment.

241. In January 2006, the Assembly's Resolution 1477 (2005)(2006) called upon the Georgian authorities to "pursue the work of the State Commission on repatriation, seek actively international assistance and speed up the adoption of relevant legislation in order to create conditions for the repatriation process with a view to its completion by 2011; implement fully the recommendations set forth in Assembly Resolution 1428 (2005) on the situation of the deported Meskhetian population (paragraph 10.3.).

242. In March 2005, a state commission was set up which put forward a new draft in collaboration with the Council of Europe and the European Centre for Minority Issues (ECMI) experts. At the same time the relevant Parliamentary Committee started working on the law on repatriation. The version of the draft law envisaged comprehensive mechanisms for state support to repatriates and also mechanisms for regulating the settlement process with regard to deciding on locations for settlements and measures for integration of the repatriates. This draft law passed through a series of consultations with legal experts from the Council of Europe, Meskhetian representatives and other civil society organisations[68]. However, the process was again suspended in autumn 2006.

243. The government presented a much "shaved down" version of the draft law to Parliament in June 2007, which encompassed only procedures for application and provisions for granting of repatriate status and citizenship. It was in this version that the draft law "On Repatriation of Persons Forcefully Sent into Exile from Georgia by the Former USSR in the 1940s of the 20th Century" was finally adopted on 22 June 2007 at the first reading (by 134 to 14 votes).

244. Though this step has been criticised by many, we understand that it may have been the only way for the Georgian lawmakers to make at least the first step towards fulfilment of their commitment. The President and the lawmakers of the country consider the repatriation issue as their "moral obligation" and there is no reason to doubt their sincerity. However, the government functions in the context of very negative public opinion towards repatriation. A public opinion poll carried out by the International Republican Institute (IRI) in February this year indicated that 67% of the population was against and only 16 in favour of opening Meskhetian repatriation. The opposition was even higher than a 2006 poll when 53% were against repatriation. The region from where the Meskhetians were deported, Samtskhe-Javakheti, is populated by a large Armenian minority population. Both the Armenian and Georgian local communities have issued strong statements against repatriation.

245. Similar resistance was also seen during the debate in the parliament in June, some of the opposition parties making alarmingly provocative statements. Even some less provocative parties suggested that Georgia is not prepared to offer the Meshkhetians a proper return and that their presence could cause more political instability or threaten Georgia's territorial integrity.

246. Only one opposition force – the Republican Party – has supported the draft. They were, however, critical of the authorities' failure to provide a proper public awareness campaign, so as to bring the population on board behind the proposal[69].

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68. Trier, T., *Can Meskhetian Repatriation to Georgia Begin? Law Adopted by Georgian Parliament*, the European Centre for Minority Issues Newsletter, Vol 4, Issue 2, October 2007.

247. The content of the draft law as adopted has been widely criticised. Some have gone as far as to call it a "law on non-repatriation". We agree that many provisions of the adopted law are vague and leave too much space for interpretation by the state officials who will be responsible for the processing of applications, thus bearing a risk of applicants being turned down on technical grounds. In addition, the law allows the receipt of applications only between 1 January 2008 and 1 January 2009. No applications will be allowed after that deadline. According to the Chairman of the Georgian Delegation to the PACE, Giga Bokeria, the one year period will enable the authorities to determine exactly how many people are willing to return. This would enable the government to plan – rationally and based on national interests – the pace of the process[70].

248. Another ambiguity in the law concerns the question of citizenship. It determines that by 1 January 2010, a decree on simplified procedures for repatriates should be issued. Hence it will remain unclear for quite some time to come what repatriates can expect in terms of citizenship[71].

249. Furthermore, the law envisages the right to apply for the repatriate status, but it fails to stipulate the right to repatriate. It makes no mention of the order and procedures of resettlement to Georgia and is unclear about how the issues concerning property, taxation or social security are to be resolved upon the repatriates' arrival in Georgia. Nor does the law define the rights and duties of the repatriates coming to Georgia.

250. With many of the issues worded in an ambiguous way or not touched upon at all, the adopted law will need to undergo further revision in the future. Although Georgia has formally fulfilled its commitment to adopt a law on repatriation of the Meskhetian population, much needs to be done to keep to the deadline of 2011 for the completion of repatriation. We therefore call on the Georgian authorities to:

– prepare a proper national strategy for the resettlement and integration of the to-be-repatriated Meskhetians;

– envisage setting up a joint commission with the participation of representatives of the government, international organisations and relevant NGOs to work on the implementation of the law as well as on further improvement of the existing legislation;

– consider providing financial and technical support to the returning Meskhetians, regardless of the latter not having been among Georgia's original 1999 accession commitments;

– explore all possible means for reversing the largely negative public opinion towards Meskhetian repatriation. There is still not enough recognition of the deportation in history schoolbooks and museums.

251. We hope that the government will tackle the issue with much care and sensitivity in order to avoid any complication that it becomes a major issue of the election campaign next year.

252. Finally, at the very moment of drafting this report, the Council of Europe is organising a seminar in Tbilisi on the implementation of the law. ***We encourage the Committee of Ministers of the Council of Europe to keep on providing substantial support and assistance to the Georgian government to enable the country to fully honour their accession commitment by 2011.***

5.4. Media pluralism and freedom of expression

253. Since the Rose Revolution, legislation relating to freedom of speech and the media has fostered an open, lively, and critical discourse in Georgian civil society. The Law on Freedom of Speech and Expression, adopted in June 2004, is widely considered as one of the most democratic and liberal of its kind in Europe. It elaborates on the freedom of expression provisions that appear in the Georgian constitution and in human rights treaties to which Georgia is a party.

254. The Law prohibits censorship and protects journalists against unwarranted pressure from owners and editors. It provides a course of action by which individual journalists can take editors or owners to civil court. This ensures that journalists have a legal remedy not only in cases concerning the state, but also in cases when editors and publishers violate the principles of journalistic independence. Under the Law, journalists are guaranteed independence and freedom of thought. This particular part of the legislation encourages

69. http://www.civil.ge/eng/article.php?id=15325
70. reported in Civil Georgia http://www.civil.ge/eng/article.php?id=15325
71. Trier, T., *Can Meskhetian Repatriation to Georgia Begin? Law Adopted by Georgian Parliament*, the European Centre for Minority Issues Newsletter, Vol 4, Issue 2, October 2007.

journalists to make editorial decisions based on their own professional judgment. The Law also provides special protection for whistleblowers and individuals who disclose confidential information in good faith in order to prevent or expose wrongdoing.

255. The Law protects the absolute immunity of confidential journalistic sources. It guarantees that a court cannot require a journalist to disclose the source of confidential information during court proceedings. Absolute protection is conferred upon the individual; in other words, a journalist cannot be compelled to disclose a given source no matter how important the countervailing interest might be. The Criminal Procedure Code of Georgia contains additional guarantees for journalistic activity.

256. There is no direct government pressure or influence from the government on media, although according to the Freedom House 2008 report, after the Rose Revolution, part of the media proved vulnerable to behind-the-scenes pressure from the government. NGOs and independent media analysts sometimes accuse high-ranking government officials of exercising undue influence over editorial and programming decisions through their personal connections with news directors and media executives[72]. This has much to do with the fact that many of today's media owners used to be formerly in opposition but with the change of government have automatically become close to the government and other authorities. This has contributed to a certain degree of self-censorship. Weak editorial independence, using media outlets to promote the political interests of owners, and low professional standards thus constitute major concerns in the media field.

257. Both the government and civil society representatives criticise the level of quality of broadcasting and press. A draft Code of Ethics for broadcasters is currently being elaborated together with the Council of Europe experts. It has triggered sharp criticism from most journalists and has been denounced as an attempt by the government to control broadcast media. Thus the National Commission on Communications has postponed its adoption in order to allow for public comment.

258. The 2004 Law on Freedom of Speech and Expression took libel off the criminal code and relieved journalists of legal criminal responsibility for revealing state secrets. There have been no reported cases of excessive fines in the last years. The new Law holds people liable only for false statements that seriously damage a person or his or her reputation, and not for a mere mistake. Thus, the Law creates a favorable environment for free discussion and debate. Moreover, the law distinguishes between public and private persons in defamation proceedings. This distinction reflects the well-established principle that public figures, because of their status in society, must tolerate a far greater degree of criticism than ordinary persons. The burden of proof was shifted from the defendant (i.e., the media) to the plaintiff, thus making it harder to win cases against media outlets. According to the Law, the court can hold only the owner of a media outlet liable when a defamatory statement is aired or published. A journalist or editor can never bear individual responsibility for the publication of a defamatory statement. This provides important legal protection to journalists. It eliminates the possibility that, in the case of a libel accusation, a journalist would be forced to personally hire expensive lawyers, or pay damages that he or she may not be able to afford.

259. There are no strong formal associations of media, but in 2006 the Media Council made the first steps towards enforcing professional standards to which most media have subscribed.

260. Although according to the General Administrative Code all citizens have the right to require information through specially designated persons in state bodies, problems nevertheless have been reported about some institutions funded by the state budget which systematically did not give out information or did not do so immediately, as required by the law. According to law, if the information is not readily available, it has to be provided within 10 days of the request.

261. Media freedom has been recently in the focus of attention. The media environment was affected by the recent state of emergency, during which broadcast media faced restrictions in their reporting and two TV channels were temporarily taken off the air. While all broadcasters resumed normal operation after the state of emergency was lifted nine days later, the opposition-backed Imedi TV, which was raided by police on 7 November and had its license temporarily suspended, was only able to resume broadcasting a month later. On 26 December, six leading journalists announced their decision to leave Imedi TV in connection with the accusations against Imedi's owner Badri Patarkatsishvili. Imedi TV's management consequently suspended broadcasts to "distance themselves from dirty political games", alleging pressure from both their owner and the authorities.

72. US Department of State 2006 Country report on Georgia.

262. A positive outcome of the otherwise deplorable reaction of Georgia's leadership on 7 November and its aftermath is the increased awareness of professional and ethical standards of media in Georgia. The closure of the Imedi station, although widely condemned, has brought the quality of reporting into the focus of public debate. It has also multiplied the broadcasting of differing views by private broadcasters. Whereas up until 7 November Imedi was the only television channel offering political debates, now other private channels have followed. A major development has been the elaboration by the Media Council of guidelines to encourage free and balanced media in the pre- and post-election period, which have been subscribed to by most of Georgia's major television stations. The Council of Europe media experts are currently working on revising the draft Code of Ethics for Broadcasters.

5.5. Public Defender's (Ombudsman) office

263. The Assembly's Resolution 1477 (2005)(2006) invited the Georgian authorities to "grant the necessary political and financial independence to the office of the Public Defender (Ombudsman) and consider broadening its powers" (paragraph 10.6.5.)

264. The Public Defender's Office (PDO) has been functioning for more than a decade already, providing an effective leverage for the protection of human rights in Georgia. It has sought to promptly follow on all allegations of human rights violations. As a result, the public trust and credit given to the PDO has increased considerably. This has brought along a steady growth of complaints to the Public Defender. According to the Public Defender, the biggest number of applications concerned the socio-cultural sphere, including housing and labour rights, but also criminal and civil proceedings. In recent times, there have also been an increasing number of complaints on the violation of the right to property, in particular concerning the destruction of property by the state without fair compensation.

265. Citizens frequently address the PDO on the illegality of decisions taken by courts. However, according to the Organic Law on Public Defender, the PDO cannot interfere into judicial proceedings, summon witnesses to court or take on the function of a counsel for prosecution. The maximum right the Public Defender enjoys in relation to courts is to make suggestions to the High Council of Justice concerning the disciplinary responsibility of judges, where there is a breach of law. The PD regrets, however, that his suggestions concerning disciplinary penalties against judges have so far not been acted on.Mr Subari also regretted the frequent reluctance by the Prosecutor General's Office to open investigations concerning crimes committed by state agents, such as torture and inhuman treatment, unlawful arrest, non-execution of court orders, biased investigation, etc.

266. The PDO in Georgia enjoys a much broader monitoring right than in most other European countries. Within the context of implementing the Action Plan for criminal justice reform 2005-2009, the monitoring of the prevention of torture and ill-treatment and other breaches of human rights in closed institutions has become a key function of the PDO. Since January 2005, the PDO has carried out more than 3000 visits to pre-trial detention facilities and police stations and issued a number of recommendations. Monitoring of prisons, psychiatric clinics, orphanages, military units and shelters of elderly people also fall under the PDO's remit.

267. Several specialised centres of the PDO, such as the Tolerance Centre, Patience Rights Centre or the Legal Centre, have been opened with the help of UNDP and other donor organisations. The establishment of these centres has helped improve the analysis of particular human rights issues. For instance, the legal centre, established in 2006, carries out the analysis of draft laws as well as of laws currently in force. Since its establishment, the centre has prepared amendments on 35 draft laws.

268. The PDO is actively involved in monitoring the situation of ethnic and religious tolerance in the country. Some civil organisations' representatives, however, pointed out that the PDG's office should broaden its scope and deal also with other forms of discrimination, including discrimination on the grounds of gender or sexual orientation. ***Given the generally negative perception of homosexuality in Georgia, which sometimes amounts to homophobia and which finds support by the Georgian Orthodox Church, and the fact that even the Council of Europe "All equal, all different" campaign had to be cancelled earlier this year because of ferocious media attacks labelling the event a gay pride***[73]***, we recommend that attitudes to homosexuality and LGBT rights be taken up by the PDO as an area of monitoring and included as a component in its human rights trainings***.

73. The campaign was cancelled for security reasons after the Georgian Orthodox Church warned that the parade with participation of sexual minorities would lead to confrontation and clashes.

269. In the framework of the criminal justice reform, it is foreseen to expand the authority of the PDO. In this regard, the office has drafted amendments to the Organic Law on Public Defender regarding the competences of the PDO.

270. The reform is also accompanied by the budgetary increase of the PDO. According to the data available on the Ministry of Justice official site, the total budget estimation for the Action Plan 2006-2009 as concerns the PDO is 2,050,000 GEL. According to the Public Defender, the total budget for 2007 of his office is 1,340,000 GEL.

6. Regional conflicts over Abkhazia (Georgia) and South Ossetia (Georgia)

6.1. Commitment of peaceful resolution

271. Upon accession to the Council of Europe, Georgia (1999[74]) as well as Russia (1996[75]) voluntarily undertook the obligation to settle all international as well as internal disputes by peaceful means. Later Assembly resolutions recommended the Georgian authorities to adopt a legal framework for the restitution of ownership and tenancy rights or compensation for the property lost during its internal conflicts and to ensure that internally displaced persons would enjoy equal rights with the rest of the population[76]. In 2005 the Assembly called twice upon the Russian Federation "to use its substantial influence to back the efforts of the Georgian Government to resolve the outstanding conflicts with South Ossetia and Abkhazia in a peaceful and political manner; to create conditions to guarantee the broad autonomy of South Ossetia and Abkhazia and to restore the territorial integrity of Georgia[77]"; and to "constructively contribute to the resolution of open issues and cease with activities, such as the issuing of Russian passports to inhabitants of the Georgian regions of Abkhazia and South Ossetia, which may – directly or indirectly – undermine these countries' sovereignty and territorial integrity[78]". These obligations and recommendations serve as mandates for the Council of Europe to monitor the progress made in peace settlement and stabilisation in Abkhazia and South Ossetia.

272. The Monitoring Committee of the Parliamentary Assembly and the Committee of Ministers have followed in parallel the developments in the two breakaway regions over the years. The Council of Europe Commissioner of Human Rights lately visited both regions and has issued an assessment report on the human rights situation in these regions in September 2007[79]. At its April 2007 part-session, the Assembly adopted Resolution 1553 (2007) on missing persons in Armenia, Azerbaijan and Georgia from the conflicts over the Nagorno-Karabakh, Abkhazia and South Ossetia regions, prepared by our colleague Mr Platvoet (The Netherlands, UEL), which also dealt with important human rights issues in the two separatist regions. Our recent visit concentrated moreover on the political considerations that impede the advancement of a positive settlement of these conflicts today.

273. We observe that a major obstacle to conflict resolution today is related to perceptions that prevent confidence-building. The communities have lived isolated from one another for nearly fifteen years now and have been subjected to heavy propaganda from all sides. This has solidified the conflicting parties' distorted and negative image of "the other" that do not quite fit the realities, but which cannot be ignored if a solution is to be found one day. Also, it is deplorable that the conflicting parties and the international community have so far not managed to create minimum conditions for the safe return of the internally displaced persons (IDP)s, which we also address in this Chapter of the report.

274. In broad terms, the Georgian government has continued to respect its international obligation as regards the peaceful settlement of its internal conflicts. They insist that they do not seek military solutions to the conflicts within Georgia's borders and we have indeed no reason to doubt that the Georgian authorities who already work hand in hand with NATO and EU structures with a goal of further integration have any intention to solve these conflicts through any other than peaceful means, even if the "rhetoric of frustration" over the dead-locked situation may sometimes indicate otherwise[80]. There is no political force in Georgia

74. PACE Opinion No. 209 (1999).
75. PACE Opinion No. 193 (1996).
76. PACE Resolutions 1415 (2005) and 1477 (2005).
77. PACE Resolution 1415 (2005).
78. PACE Resolution 1455 (2005).
79. Human rights issues linked to regional conflicts in Abkhazia and South Ossetia (Georgia), Interim report based on a visit from 12-18 February 2007, CommDH(2007)19/Restricted.
80. Georgian authorities are often criticised by international organisations for sending mixed messages at home and abroad. The messages to the domestic audience of "we can't tolerate it any longer" may contain veiled threats to go back to war and encourage the distrust and isolation between the conflicting sides.

today willing to propagate military solutions. The picture often presented by the Russian propaganda machine that Georgia is an aggressive and armed-to-the-teeth country ready to embark on a new military attack any moment is absurd. In recent years, Georgia has proposed several peace plans, which have been supported by the OSCE and the EU. These peace proposals have however been discarded by other conflicting parties, the latter perceiving these as directed primarily at proving good intentions to the international community and thus allowing Georgia to pursue a solution on its own terms[81].

275. According to the State Minister of Conflict Regulation Issues, Georgia is moving from daily operational issues, such as dealing with individual border incidents, to focusing on wider strategic conflict settlement issues such as economic reconstruction, the return of the IDPs, restitution of their property, etc. This has, however, not been facilitated by recurrent border provocations and air raids, which flair up emotions every now and then, diverting domestic and international attention from the issues of peace settlement proper. Nonetheless, the government of Georgia seems to have greatly matured in its reactions to such provocations over the last year. Its response to the latest instance of military violation of its borders[82] was sober and responsible, immediately mustering western diplomatic response to the incident rather than taking unilateral action[83].

276. It has long been said by all negotiating sides that a prerequisite of peaceful resolution of these conflicts is that Georgia becomes attractive to Abkhazia and South Ossetia. Lately, Georgia has greatly moderated its policies toward the breakaway regions and now privileges the so-called "soft methods" of conflict resolution in a way that appears to be creating new opportunities for dialogue. Their current strategy favours linkage between conflict-resolution efforts and its internal reforms. The measures taken include large-scale investment into the infrastructures (reconstruction of roads and schools, hospitals, public administration buildings) and generously distributing food and medical supplies to the regions under their control with a view to marking the growing contrast between the regions under their control and the rest of Abkhazia or South Ossetia in terms of economic development. It also involves engaging the new Temporary Administrative Unit at national political level. For instance, a member of the governing body of the Temporary Administrative Unit was recently appointed Deputy Minister of Economy. This strategy is mostly applied to the resolution of the conflict in South Ossetia, which has created new tensions in that region but which could lead to a political breakthrough if properly handled.

277. International observers note however that Georgia's new strategy may backfire, and that frequent security incidents could degenerate, unless it proceeds cautiously[84]. They also warn Georgia against pushing too far too quickly, explaining that impatience may lead to unnecessary escalation of tensions and the situation getting altogether out of hand.

278. Following international advice, the Georgian government is in fact currently pooling its efforts to engage in bilateral contacts with the secessionist authorities. On 25 October, the State Minister of Conflict Resolution met with the *de facto* Minister of Foreign Affairs of Abkhazia in Sukhumi; which marked an end of a year-long pause in bilateral relations between senior Georgian and Abkhaz officials[85]. Sukhumi had earlier linked the resumption of dialogue to preconditions, such as the withdrawal of Georgian forces and the Tbilisi-backed government from the Tbilisi-controlled upper Kodori Gorge in the breakaway region. The dialogue appears to be currently more difficult to establish with the Tskhinvali authorities who do not wish to be part of a negotiated solution.

279. The Georgian government has recently taken the initiative to launch a State Commission working on a future status of South Ossetia within the Georgian State, which is meant to involve all parties as well as Georgia's international partners in an inclusive dialogue. The Georgian government has undertaken to request Council of Europe's expertise on the draft to be elaborated.

280. The year 2008 will be an important test for the Georgian government: Georgia attaches much importance to the April 2008 NATO summit in Bucharest, as it could see Georgia joining NATO Membership Action Plan (MAP). Georgia perceives its possible future membership as an additional guarantee of security

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81. Georgia's South Ossetia Conflict: Make Haste Slowly, International Crisis Group, Europe Report N° 183, 7 June 2007.
82. Reference made to the incursion into Georgia's air space from the territory of the Russian Federation and the dropping of a missile near the village of Tsitelubani on 6 August 2007.
83. Cornell, S.E., Smith, D.J. and Starr, S.F., The August 6 Bombing Incident in Georgia: Implications for the Euro-Atlantic Region, Central Asia-Caucasus Institute Silk Road Studies Program, Silk Road Paper, October 2007.
84. Georgia's South Ossetia Conflict: Make Haste Slowly, International Crisis Group Europe Report N° 173, 7 June 2007.
85. State Minister Bakradze to Visit Sokhumi, Civil Georgia, 24 October 2007, http://www.civil.ge/eng/article.php?id=16091

for its territorial integrity. But for the time being, it is walking on a thin line between the diplomatic behaviour that NATO and EU expect from potential members, and safeguard measures of its own sovereignty, security and dignity[86]. 2008 will also see presidential and parliamentary elections in Georgia. The restoration of territorial integrity is high on the political agenda of both the National Movement and the newly united opposition. Furthermore, the Georgians point out that the old models have failed to solve the outstanding differences and insist that the time has come to introduce new ones. The latter should however take account of the current realities on the ground as well as the changed geo-strategic situation in the wider Caucasus region.

6.2. Reasons for continued stalemate

281. The peace settlement over the political status of Abkhazia and South Ossetia is at standstill; there are no effective negotiations going on between the conflicting parties or attempts to broker them at international level. From the discussions which we held with different stakeholders of these conflicts, we distinguish five fundamental causes or controversies that hamper finding a positive settlement today.

282. First, the international community univocally recognises the state sovereignty and territorial integrity of Georgia, thereby granting legitimacy to Georgia's right to exert control over all its territory. The "*de facto*" inability to regain full control of its territory is seen by Georgia as impeding its state-building, national security and economic development. Hundreds of thousands of individuals remain internally displaced as a result of the ethnic cleansing that occurred in the early '90s in Abkhazia, most of them living in harsh conditions in Georgia proper but also in Russia. The continuing killing and kidnapping, lack of law and order and lack of guarantees for the safe return of refugees in the conflict zones make the Georgian government nervous and impatient. Occasionally they resort to contumelious rhetorics, which is not appreciated by other stakeholders in the peace settlement. The Georgians argue that they cannot allow the "tactics of prolonging the situation, prolonging injustice, prolonging persecution, with the final aim of annexing those territories"[87] to continue.

283. They are also frustrated that every time they take an initiative to reassert control over an unruly region (such as was the case with the Upper Kodori Valley in July 2006), strive to build up a military force that would put the country into a different negotiating position, organise a youth patriot summer camp in Ganmukhuri that would help bring the youth of different ethnic origins together, or request a neutral, professional peacekeeping and police force under the UN auspices to be set up, Georgia gets reproached by both its western partners and Russia, and is reminded that it should stick to the existing mechanisms of conflict resolution, in spite of their utter failure[88]. This form of international support to Georgia's sovereignty and territorial integrity is perceived by Tbilisi as maintaining the status quo rather than leading to a fruitful settlement.

284. **Second**, these conflicts originally began as inter-communal conflicts, the regulation of which then became "frozen" over different perceptions of the causes and differing interpretations of international law. While Georgia claimed the principle of its sovereignty and territorial integrity, the Abkhaz and South Ossetians referred to the right of self-determination as the basis of their own fight for independence. However, even if these conflicts arose out of genuine grievances on the part of minority populations and serious mistakes on the part of the Georgian then leadership, Russia's influence over the secessionist regions has grown so strong over the years that it **has changed the nature of these conflicts**. At the same time Georgia has become more important for Europe and the United States as a strategic partner. There is reason therefore to question whether these conflicts are still essentially secessionist civil wars, or whether they are best described as outright Russian-Georgian confrontations by proxy[89], or even as part of Great Power rivalry between international actors, who are themselves characterised by incompatible identities and interests.

285. Indeed Russia has taken a different, more assertive position in the two secessionist regions since 2004, refuting its earlier stance of being a peace facilitator only. The Georgian side refers to the Russian political, financial and military backing of the *de facto* authorities in Sukhumi and Tskhinvali as undermining Russia's role as an honest broker. The Georgians claim that the vast majority of the population in Abkhazia hold Russian passports that the currency used is the Russian rouble and that a number of retired people receive Russian pensions. Moscow has appointed Russian officers to the military and security services of the *de facto* governments in Abkhazia and South Ossetia. Hence Abkhazia's Defence Minister and the chief-of-staff are both former Russian officers. Likewise two Russian officers serve as Defence Minister and Head of Security

86. See footnote 98.
87. Featherly, W., The Messenger interviews: Giga Bokeria, *The Messenger*, 20 October 2007.
88. Cornell, S.E., Georgia After the Rose Revolution: Geopolitical Predicament and Implications for US Policy, Strategic Studies Institute (SSI) Publication, February 2007.
89. Idem.

Service in Tskhinvali. On 18 November 2006, the Moscow-backed *de facto* South Ossetian leader Eduard Kokoiti stated that "South Ossetia will join North Ossetia and become a part of the Russian Federation in the foreseeable future in any case"[90]. All these measures are not tolerated by Georgia who sees in them Russia's intention to undermine Georgia's stability and thwart its prospects of regaining territorial integrity.

286. The Russian side believes that the Abkhazian and South Ossetian people do not want to live under Georgian rule and that they want Russian peacekeepers deployed on their territory, at least until Georgia convinces them that they will refrain from any military solutions. This belief has further deepened after the Georgian special operation in the upper Kodori Valley in July 2006, which was perceived by the Russian side as employment of military force to solve the conflict in Abkhazia. In the same month, the Russian Duma passed a resolution authorising Russian troops to serve anywhere in defence of Russian citizens – presumably including those who reside permanently in Abkhazia or South Ossetia. Moreover the adoption by the Russian Duma of two further resolutions on 6 December 2006, calling for the recognition of Abkhazia's and South Ossetia's secession from Georgia and their potential incorporation into Russia, blocked any hope of breakthrough in the negotiations at the end of 2006.

287. As full-fledged parties to the two conflicts, Russia and Georgia accuse each other of wanting to resolve the conflicts on their own terms and according to their own picture of realities. Russia maintains that it is interested in the regulation of the existing conflicts as soon as possible and only through peaceful means, but it cannot put up with Georgia not paying attention to the realities in the two secessionist regions. Georgia's provocative acts humiliate Russian peacekeepers and Russia in general[91]. In a rather father-to-son style, it demands that the Georgian side should feel the responsibility of its actions. Georgia in its turn asserts that it wishes to see Russia as part of the solution and not as part of the problem. Georgia is not interested in ousting Russia from the peace process, but in view of Russia's partiality and vested interests in the conflict zones, the formats for negotiations and peacekeeping should be altered so as to extend the international participation in the negotiation process and bring international police forces to the regions. This has been met by opposition in Moscow and the two breakaway regions, and has not been strongly backed by Georgia's Western partners, who do not wish to further strain their own relations with Russia.

288. Georgia has pinned its hopes of recovering its lost territories to its integration into the West, and notably to the prospect of NATO membership. Its membership is strongly supported by the United States. This is an irritant for Russia, who views its relations with the United States in the region in zero-sum terms and has made it very clear that Georgia's accession to NATO will "immensely complicate and make very remote" the resolution of the South Ossetian and Abkhaz conflicts. The successive border incidents and the recent violations of Georgian air space may indicate that Russia is testing Georgia's patience and international reactions, signalling to Georgia that while the US and Europe may wish a close relationship in the sphere of energy they might not be willing to take on any obligations in the security sphere[92].

289. Russia claims that it takes a long-term view of conflict settlement, arguing that there should first be sufficient trust between the sides before building a common state. However, it does not do much to build this trust. Moscow's propaganda continues to depict Georgia as guilty of aggression and ethnic cleansing against Abkhaz and Ossetians. Russia is often using the UN Security Council's platform and its resolutions to vindicate its own arguments, which deepen the political deadlock[93].

290. During the night of 11 March 2007, a major air attack on Georgia's upper Kodori Valley was carried out by Russian helicopters[94]. More recently, on 6 August, Russian SU-24 military aircraft(s) again violated Georgian airspace, entering more than 75 kilometres into sovereign Georgian territory and dropping a precision-guided air-to-surface Raduga Kh-58 anti-radar tactical guided missile near the village of Tsitelubani close to the Tskhinvali region, in South Ossetia (some 60 kms from Tbilisi)[95]. The suspected purpose of the

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90. Cornell, S.E., Georgia After the Rose Revolution: Geopolitical Predicament and Implications for US Policy, Strategic Studies Institute (SSI) Publication, February 2007

91. Our interview with the Russian Ambassador to Georgia Vyacheslav Kovalenko on 12 March 2007.

92. See footnote 115.

93. Socor, V., Intransigence in Moscow, Sukhumi, Tskhinvali after UN Resolution and Okruashvili Resignation, Eurasia Daily Monitor, 22 November 2006.

94. Two or three helicopters, apparently of the Mi-24 type, flew into Georgia's internationally recognised air space over the upper Kodori Valley and fired at least 20 guided projectiles, damaging the local government headquarters, a school, and some other civilian administration building in several villages. The attack was at least the fifth Russian violation of Georgian air space in the upper Kodori Valley in six months.

95. For comprehensive information on the incident and different international expert reports, see Cornell, S.E., Smith, D.J. and Starr, S.F., The August 6 Bombing Incident in Georgia: Implications for the Euro-Atlantic Region, Central Asia-Caucasus Institute Silk Road Studies Program, Silk Road Paper, October 2007.

latest incursion was to damage or destroy the Georgian radar installation at Tsitelubani, but the rocket fired by the aircraft missed its mark[96]. Analysts of Georgian civilian and military radar data concluded that the aircraft entered Georgia from the Russian Federation. An onsite OSCE team, which included Russian representatives, confirmed that the planes entered and left Georgia from the North-East.

291. As in the case of the 11 March bombing, Russia's initial reaction was to claim that the Georgians had fired on themselves, which later changed for the contradictory claim that the incident did not occur at all. Georgia for its part reaffirmed its readiness to immediately launch bilateral consultations with the Russian side in order to prevent recurrence of such incidents in the future. Two consultation meetings indeed took place on 17 August in Tbilisi and, at political level, on 30 August in Moscow[97]. Following the statement made by the Portuguese Presidency on behalf of the EU on 10 August, underlining "the need for a rapid, thorough and independent investigation in order to clarify and verify all the facts surrounding this incident", the Ministry of Foreign Affairs of Georgia called for an independent international investigation[98] of the circumstances of the air incursion and missile drop. Two groups of experts worked in Georgia[99], both confirming that the Georgian airspace had been violated three times on 6 August from/by aircraft flying to/from Russian airspace and that Georgia has no capacity for operating this type of missile[100].

292. Although the UN Security Council in its Resolution 1752 (2007) of 13 April 2007 condemned the attack on villages in the Upper Kodori Valley as such, it avoided establishing any responsibility, probably because of Russia's veto power. The OSCE reaction to the August crisis was similar to the UN's reaction following the March incident or the later incident in the Kodory Valley, proving as incapable of addressing this event.

293. This leads to the **third** underlying reason for the current stalemate: **the existing mechanisms of international response to incidents of this sort are ineffective**[101]: both the UN and the OSCE are ill-suited for deterring future incidents of this type[102] mainly because these multilateral international bodies are dependent on Russian political or budgetary vetoes. Failing to respond convincingly to provocations of this type sends the message to Russia that it can intimidate its neighbours without being called to account for it and deter Georgia from integrating Euro-Atlantic institutions[103].

294. **Fourth**, there is a general **absence of international consensus on how the problem ought to be resolved**. The international multilateral organisations have no clear strategy or positive experience of similar peaceful resolution of secessionist conflicts in Europe. Mixed with prudence not to stretch the fragile ceasefire arrangements, this absence of a coherent strategy has lead to an overall **defence of the status quo**. Western policymakers routinely urge "caution" advising the Georgian leaders to trust the work of the "peace process" and international institutions under the auspices of the UN and OSCE. Yet these "processes" are not only ineffective, they are excuses for inaction[104]. Thus, for example, all recent UN resolutions since October ask Georgia in strong terms to comply with the terms of the 1994 Moscow agreement. Citing these resolutions, Moscow and Sukhumi therefore demand the withdrawal of Georgian police and civil authority from the upper Kodori Valley as a precondition to their return to negotiations. Thus the western diplomacy has given Moscow and Sukhumi an argument for blocking the negotiations which the same western diplomats have been anxious to see resumed[105].

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96. Idem.
97. Statement of Mr Zurab Tchiaberashvili, Permanent Representative of Georgia to the Council of Europe, at the 1003rd Meeting of Minister's Deputies, 5 September 2007 in Strasbourg.
98. Independent meaning that the experts would volunteer their services and that the group would work outside the framework of organisations that are constrained by Russia's veto, such as the United Nations and the OSCE – Socor, V., Experts Report on Missile Drop in Georgia Leaves Unanswered Questions, Eurasia Daily Monitor, 16 August 2007.
99. The first group of experts – from Latvia, Lithuania, Sweden and the US – worked in Georgia from 12-14 August and issued their report on 14 August. The second group of experts – from Estonia, Poland and the United Kingdom – worked on the spot from 18 – 20 August and issued their report on 20 August.
100. Report investigating possible violations of Georgian airspace and the recovered missile near Tsitelubani, Georgia, 6 August 2007, Second Independent Inter-governmental Expert Group (IIEG-2), distributed at the request of Estonia, August 22, 2007.
101. Cornell, S.E., Smith, D.J. and Starr, S.F., The August 6 Bombing Incident in Georgia: Implications for the Euro-Atlantic Region, Central Asia-Caucasus Institute Silk Road Studies Program, Silk Road Paper, October 2007.
102. Socor, V., Moscow Pleased with OSCE's Response to Missile Drop on Georgia, Eurasia Daily Monitor, 11 September 2007.
103. see footnote 124.
104. Cornell, S.E., Georgia After the Rose Revolution: Geopolitical Predicament and Implications for US Policy, Strategic Studies Institute (SSI) Publication, February 2007.
105. Socor, V., Intransigence in Moscow, Sukhumi, Tskhinvali after UN Resolution and Okruashvili Resignation, Eurasia Daily Monitor, 22 November 2006.

295. In his recent address to the UN General Assembly on 26 September 2007, the Georgian President observed that "fourteen years have passed without a single in-depth analysis being conducted as to why peace has not triumphed". He called for a "comprehensive review of all aspects of the peace process" that should result in "fundamental changes" to the existing "mediation" and "peacekeeping" formats. He further called for the replacement of the "biased and unbalanced actions by supposed peace keeping forces" with "competent and neutral ones"[106].

296. The European Union has not excluded that it may in principle be prepared to participate in peacekeeping operations. This would, however, require acceptance of joint operations by the other parties, including Russia[107].

297. **Finally**, the *status quo* also serves as an alibi for the western governments who support (albeit to varying degrees) the **independence of Kosovo** from Serbia. However, this logic seems tacitly to accept Moscow's thesis that the post-Soviet conflicts and Kosovo conflict are linked – a thesis officially rejected both by the US and the European Union. Any tacit or implicit acceptance of linkage could reward Moscow's tactics of blocking the resolution of all five conflicts[108].

298. The "Kosovo precedent" has infused new trends into the politics of the secessionist regions. Kosovo's possible move towards independence, albeit "conditional", has created a new *raison d'être* for the secessionist entities to resist any conflict settlement in the hope that sooner or later they will follow Kosovo[109]. The Abkhaz *de facto* President has openly stated that "if Kosovo is recognised, Abkhazia will be recognised in the course of three days."[110]

6.3. Developments and perceptions in the breakaway Regions

299. In his recent UN address, the Georgian President spelled out Georgia's political offer to the South Ossetian and Abkhaz communities: "Full self-governance based on the same principles that have guided Europe," with special protection of language and minority rights, under Georgian constitutional guarantees as well as international guarantees to be negotiated. He also linked the long-term preservation of ethnic identity with legal guarantees of property rights[111]. As it is to be expected, this proposal has been received with mixed feelings within the conflict areas themselves.

6.3.1. South Ossetia

The open phase of the conflict in South Ossetia lasted between 1990 and 1992 and claimed approximately a thousand lives. The conflict ended with a ceasefire agreement signed on 14 July 1992. As a result of the ceasefire agreement, there is a trilateral peacekeeping operation consisting of Russian, Georgian and de facto South Ossetian troops. A Joint Control Commission (JCC) consisting of Russia, de facto South Ossetia, North Ossetia (region of the Russian Federation) and Georgia oversees the security situation and pursues negotiations on conflict settlement. The OSCE supervises the situation. The Georgian government has frequently complained that the current format for talks puts them at a disadvantage, and would like greater participation by the international community. The EU is an observer in the JCC meetings on economic issues.

300. Following the election of President Mikheil Saakashvili in January 2004, the Georgian government intensified efforts to bring South Ossetia back under its control. Its South Ossetia strategy combined anti-smuggling campaigns, aimed primarily at closing the prosperous Ergneti market[112] with a humanitarian aid campaign to undermine the leaders in South Ossetia. These steps in fact increased support for the *de facto* regime, for many South Ossetians depended on illegal trade for economic survival. As a by-product of the

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106. Remarks by H.E. Mikheil Saakashvili at the 62nd Session of the United Nations, Civil Georgia, 27 September 2007.
107. Kelam: Euroopa Liidu sõnum peab olema Gruusia terviklikkuse tingimusteta toetamine, BNS, 9 October 2007.
108. Socor, V., Saakashvili at UN: International Organisations Failing on Post-Soviet Conflict Resolution, Eurasia Daily Monitor, 1 October 2007.
109. Popescu, N., "Outsourcing" de facto Statehood: Russia and the Secessionist Entities in Georgia and Moldova, Centre for European Policy Studies (CEPS) Policy Brief No. 109, July 2006.
110. Interview with Sergei Bagapsh, de facto President of Abkhazia, Svobodnaya Gruzia, 28 February 2006, quoted in Popescu, N., "Outtsourcing" de facto Statehood: Russia and the Secessionist Entities in Georgia and Moldova, *Centre for European Policy Studies (CEPS) Policy Brief No. 109*, July 2006.
111. Socor, V., Saakashvili at UN: International Organisations Failing on Post-Soviet Conflict Resolution, *Eurasia Daily Monitor*, 1 October 2007. The unspoken implication is that property guarantees under Georgian law could forestall the possibility of massive Russian takeover of seafront properties in Abkhazia, where the Abkhaz themselves could be reduced to a small minority. This eventuality is known to preoccupy many Abkhaz, and seems increasingly likely unless Georgian law guarantees indigenous property rights there.

offensive anti-smuggling policy, Georgian troop presence grew significantly, provoking harsh reactions from the Ossetian side. In summer 2004, tensions escalated and almost degenerated into another full-scale war. Within one month, a ceasefire was agreed upon, which however has not prevented daily shootings and criminal incidents from happening in the region.

301. As part of the Georgian government's new strategy of changing the status quo peacefully, Tbilisi since November 2006 has supported a South Ossetian administration led by Dmitri Sanakoev, a former government official of the *de facto* regime in Tskhinvali. The latter has set up a government in Kurta, South Ossetia, just 5 kilometres away from Tskhinvali. A situation of dual power has thus developed in South Ossetia[113]. On 10 May 2007, Sanakoev was appointed by the Georgian government as head of a new Temporary Administration Unit for the Tskhinvali region/South Ossetia. So far, Sanakoev has secured support in Georgian-populated villages[114], but it is uncertain whether he will be able to gain significant influence over the Ossetian governed territory – which will determine the future course of the conflict.

302. The Georgian government sees Sanakoev as a genuine Ossetian interlocutor with whom it can negotiate a settlement which would keep South Ossetia in the country[115]. They also see his credibility in the fact that he is an ethnic Ossetian and a former secessionist leader who fought against the Georgians in 1991-1992. President Saakashvili and several government officials told us that they were confident that Sanakoev would be able to win the support of the majority of the population in the villages under the *de facto* Tskhinvali rule. However, they do not rule out radical provocations orchestrated from Moscow, which may slow down the process.

303. Tbilisi is backing up its political support to Sanakoev by the economic rehabilitation of the Georgian-administered areas, supported by international donors, including the US. With government encouragement, Georgian construction and other companies are building roads, banks, cinemas, hotels, renovating schools, etc., which is already making a visible difference compared to the areas administered by the secessionist authorities. Economy is surely one area where progress may be possible, but different economic realities are also fuelling the conflict. Those benefiting from lucrative smuggling and counterfeiting operations in South Ossetia will resist any reassertion of state authority.

304. At our meeting with Dmitry Sanakoev, he stressed that Georgian should become the state language on the territory of South Ossetia while full autonomy should be guaranteed for the preservation of Ossetian linguistic and cultural identity. Also, he pointed out that the EU appeal could become a decisive factor in promoting confidence between the Ossetians and Georgians. The EU would be the best placed to broker a political dialogue and conflict resolution.

305. The Georgian government actively seeks international support to the Sanakoev-led administrative unit. To this end, Sanakoev often accompanies the President or government officials on their foreign missions. Also, on 21 September 2007, Georgia organised an international conference in Tamarasheni, South Ossetia, on the conflict. It was the first event of this type ever held in any post-Soviet conflict area, and was attended by ambassadors and staff from nearly all EU and NATO member states as well as by the EU and OSCE missions in Georgia[116].

306. In spite of these positive developments, we tend to agree with the International Crisis Group which points out that while Tbilisi is approaching the conflict in an imaginative way, it would also need to realise that this strategy cannot work overnight or solely on the basis of economic incentives. The Ossetian aspirations

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112. Located on the Transcaucasian highway between South Ossetia and Georgia proper, directly in the south of Tskhinvali, the Ergneti market was a vast trade hub for illegal business, smuggling, drug trafficking but also kidnapping and arms trading. Mostly, Georgians bought goods to be resold on the Georgian market cheaply without proper labelling, which made the government lose significant customs revenue. Despite the negative legal, political and economic effects on Georgia, the market can be argued to have some assets: the average citizen profited not only from the trade as such but also from the artificially low prices of basic goods as they were not taxed. Probably most important, the market was a place for the average Georgians and Ossetians to meet, build contacts and identify common interests.

113. The process began with the so called referendum and "presidential" election in Georgian-controlled areas of South Ossetia, where many residents from secessionist-controlled areas managed to turn out for the vote. The proposition calling for autonomy within the Georgian borders won the referendum and Sanakoyev won election as "president". In parallel a referendum and "presidential" election took place in the Russian-controlled areas, which voiced itself in favour of secession from Georgia and elected Eduard Kokoiti as "president".

114. The ethnic composition in South Ossetia has traditionally been very mixed. It comprises a patchwork of Georgian villages interspersed with ethnic Ossetian villages.

115. Georgia's South Ossetia Conflict: Make haste slowly, International Crisis Group, Europe Report N°183 – 7 June 2007.

116. Socor, V., International Conference Held in South Ossetia, Eurasia Daily Monitor, 25 September 2007.

and fears must also be addressed. The Tskhinvali Ossetians doubt that Sanakoev can represent their interests ahead of Tbilisi's. Many in the Tskhinvali-backed villages consider him a traitor. To this end, the ICG suggests that Tbilisi should resume substantive dialogue with Tskhinvali, while Sanakoev tries to steadily build credibility with the Ossetians[117].

307. The Georgians argue that since March 2007 they accepted a limited resumption of the JCC's work while emphasising that the main focus is on the negotiations between Georgia and South Ossetia bilaterally. However, they regret that Kokoiti's group mainly represented Russian interests rather than local ones in the negotiations.

308. Despite the *de facto* authorities in Tskhinvali being known as seeking European recognition as well, neither Mr Kokoiti nor any government official responded to our meeting request. The only meeting we held in Tskhinvali was with the Speaker of the *de facto* Parliament. He regretted that the proposal of President Saakashvili for full autonomy within the territory of Georgia came 18 years after it had been first requested by the South Ossetian parliament. He was of the opinion that until South Ossetia has had its own Nuremberg trial, the situation would not change. He also expected some guarantees from the Georgian government that the atrocities would not happen again. The Speaker, a local ethnic Ossetian himself, believed that the conflict was entirely political and not ethnic.

309. A plenary session of the quadripartite Joint Control Commission (JCC) on South Ossetia was to be held on 23-24 October 2007 in Tbilisi. The Georgian side expected to push again for the demilitarisation of the region and disarmament of illegal armed groups, as well as to regain control over the Roki Tunnel that links breakaway South Ossetia with the Russian Federation. Tbilisi also proposed that Sanakoev's leadership be included in the existing negotiating formats which deal with "on-the-ground" issues such as water supply, electricity, roads, humanitarian projects and confidence-building, given that the latter control about 50% of the territory. Meanwhile, the South Ossetian side expected to push for an agreement on the non-use of force, which, they hope, will be signed by South Ossetian secessionist leader Eduard Kokoity and President Saakashvili. The two days of talks, however, failed to yield any result, which the Georgian side interpreted as demonstration of ineffectiveness of the existing Russian-led format. The South Ossetian side saw Tbilisi's refusal to sign the agreement on the non-use of force to have caused the talks to fail[118].

6.3.1.1. Restitution of property

310. Georgia promised to enact legislation on property restitution for victims of the South-Ossetian conflict as a condition of joining the Council of Europe in 1999. In 2004, the government drafted a law on Restitution of Housing and Property to the Victims of the Georgian-Ossetian Conflict, on which the Venice Commission gave a rather critical opinion. In 2006, the draft law was revised with advice from the Venice Commission. It passed the first reading on 9 June 2006. The law – titled Law of Georgia on Property Restitution and Compensation on the Territory of Georgia for the Victims of Conflict in the Former South Ossetia District – finally came into force on 1 January 2007. With this Georgia has fulfilled another of its accession commitments.

311. The Law allows those who lost property during the conflict, Ossetians and Georgians alike, to reclaim their houses if they can prove legal ownership. If the property is damaged they are entitled to adequate compensation or equivalent housing.

312. In its opinion on the revised draft, the Venice Commission pointed out that while the draft law was clearer than the previous versions and solved several problems, other issues remained open, especially given that the law was also to function as a confidence building measure. It also emphasised that an effective remedy for claims of non-pecuniary damages for human rights violations that occurred during the same conflict should be provided for. The legislative package also needs to be accompanied by economic and social integration measures and improvement of the infrastructure of the areas concerned. It called upon the Georgian authorities to assess in depth the financial burden of the law before its enactment. The financial implications need to be assessed not only nationally but from an international perspective[119].

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117. Georgia's South Ossetia Conflict: Make Haste Slowly, International Crisis Group Europe Report N° 183, 7 June 2007.
118. JCC on South Ossetia Pointless - Georgian Negotiations, Civil Georgia, Tbilisi, 24 October 2007, http://www.civil.ge/eng/article.php?id=16090
119. Venice Commission, CDL-AD(2006)010.

313. In theory, with the enactment of the law on 1 January 2008 Georgia is now ready to begin handling restitution claims. Currently a tripartite Restitution Commission is being formed to involve representatives of the Georgian government, the Tskhinvali authorities and international organisations. Several international organisations such as the Council of Europe, OSCE, UN, European Commission as well as the US Embassy are working with the Georgian government on the organisational issues.

314. On the returnees' side, however, the strained relations between Tbilisi and South Ossetia's unrecognised government in Tskhinvali have more-or-less blocked the law's implementation. Besides the political tensions, the reasons for reluctance to return are many: fear, lack of trust in the law or Georgian authorities, integration in the North Ossetian life today, etc. Some see the law itself as a possible basis for encouraging tensions between old and new owners, which could lead to ethnic hatred.

315. Also the Tskhinvali authorities are reluctant to take part in a system run under the law of Georgia, the state from which they claim to have seceded. They also feel the law places them at a disadvantage because their side will make up only one-third of the tripartite commission which is to decide on each claim, with Georgian officials and international organisations making up the rest. Finally, they fear claims against lost property from ethnic Georgians who fled South Ossetia.

316. Reportedly North Ossetia, which has borne the burden of refugees in its own republic of 700,000 people, is more favourable to the return but argues that in the absence of agreement between Georgia and Russia or Georgia and South Ossetia, the republic cannot take part in the law.

6.3.2. Abkhazia

The conflict in Abkhazia claimed more than 10,000 lives between 1992 and 1994. The most intense phase of the conflict lasted from August 1992 to September 1993. A "Declaration on Measures for a Political Settlement of the Georgian-Abkhazian conflict" was signed in April 1994 in Moscow and an "Agreement on a Ceasefire and Separation of Forces" (Moscow Agreement) was signed in May 1994. There is a Russian-led peacekeeping operation under a mandate of the Commonwealth of Independent States (CIS) and under the supervision of the United Nations (UN Observer Mission to Georgia – UNOMIG).

317. For Tbilisi, Abkhazia represents the big prize for a number of reasons, including its strategic importance on the Black Sea coast[120], the economic interest for the long-term sustainability of Georgia's economy, the high numbers of internally displaced persons (IDPs) still affected by its non-settlement, the difficulty of resolving this conflict, and the issues it raises in relations with Russia.

318. From an historical perspective, the conflict is driven by competing narratives. According to the Abkhaz view, the indigenous Abkhaz have been victims of mass displacement and colonisation during the last centuries which explains the very low representation of ethnic Abkhaz at the end of the Soviet era[121]. In contrast, Georgians claim the civil war of 1992 – 1994 to have been a struggle for power between different interest groups, one of which being the Abkhaz, not peoples or nations. Both groups generally characterise what happened to them as "ethnic cleansing"[122]. As the result of the war, the population diminished from around 535,000 to 120,000 people.

319. The military confrontation between Abkhazian and Georgian troops during 1992-1993 basically led to the full control of the first over the territory of the former Soviet Abkhazia Autonomous Republic. Despite the fact that both sides committed atrocities, neither the Georgian nor the Abkhaz authorities so far have investigated war crimes, declared amnesties or significantly sentenced perpetrators of war crimes.

320. The Abkhaz seek full independence from Georgia, not incorporation into Russia. They also stress that in the 2004 *de facto* presidential elections the Moscow-backed candidate lost the elections. And yet, they have "outsourced" some of the key "state" institutions to Russian state institutions. Most of the population in these regions have Russian passports, pensioners receive pensions from the Russian state, the Russian

120. The region, bordering the Russian Federation to the north, constitutes approximately an eighth of Georgia's territory, including nearly half of its coastline and two of its biggest ports.
121. While ethnic Abkhaz were only around 18% of the population of Abkhazia, ethnic Georgians were around 46%. See International Crisis Group (2006). Abkhazia Today. Europe Report No. 176.
122. Georgia: IDPs' living conditions remain miserable, as national strategy is being developed, International Displacement Monitoring Centre (IDMC), 1 September 2006.

rouble is the only valid local currency, etc. In addition, although most of the legislation in force still dates from the Soviet times, there is a process of legislative harmonisation between the legal systems of Abkhazia and Russia[123].

321. In May 1994, the Moscow Agreement established a ceasefire separating the forces and installed a CIS peacekeeping force, which is *de facto* entirely Russian. Even today, these troops control the border district between Abkhazia and the rest of Georgia, which is divided into an inner 'security zone' and an outer 'restricted zone' in which no military presence at all or no heavy weapons are permitted. The Moscow Agreement also provides for a UN monitoring of the CIS peacekeeping forces, which became the UN observer mission UNOMIG. It aims also to facilitate the return of refugees and IDPs and its mandate is regularly extended.

322. Currently, the situation in Abkhazia is relatively stable in terms of only occasional ceasefire violations and the return of some 45,000 IDPs to the Gali district. Abkhaz and Georgians co-operate in limited economic matters, such as the operation of the Inguri power plant and the construction of a strategically important railway through Abkhazia. However, negotiations at political level are deadlocked. There was optimism in spring 2006 that discussions on increasing co-operation and resolving disputes could begin: the sides resumed talks within the UN-led Coordinating Council for the first time since January 2001, and the Abkhaz presented a "Key to the Future" document while Georgia issued a "Road Map". But nothing came of it[124]. Following the anti-criminal operation against armed rebels of Kvitsiani, which enabled reassertion of Georgian Government control over the upper Kodori Valley area of Abkhazia in July 2006 and made possible the resumption of UN monitoring and introduction of additional transparency measures in that area previously governed by warlords, all talks were stopped by the Abkhaz side.

323. The Abkhaz side continues to link the resumption of such dialogue to the return of the *status quo ante* in the upper Kodori Valley before the Georgian special operation there in 2006, while the Georgian side insists that the present situation there is not negotiable[125]. For them, legitimacy rests with the Government of the Abkhazian Autonomous Republic headed by Alkhaz Akishbaia, which had been long "in exile" in Tbilisi and which took new temporary residence in Chkalta, Upper Abkhazia, only in September 2006, weeks after the clearing of the upper Kodori Valley. Following these events, the Georgian local self-government elections were organised in the Upper Kodori Valley in October 2006.

324. The Georgian side demands a "meaningful and implementable plan for the return of the displaced", including creating a legal framework, establishing a plan for the return, promoting economic rehabilitation, guaranteeing their human rights, including their property rights, and the resumption of direct dialogue between Georgian and Abkhazian interlocutors without any preconditions[126]. They also request fundamental changes in the negotiation and peacekeeping format, which the Abkhazian side, supported by Russia, is not prepared to underwrite.

325. According to international observers, the big problem is the lack of minimum confidence between the Georgians and the Abkhaz. Confidence and confidence building suffer from the continued effects of ethnic cleansing. The fact that the Georgian community has not been allowed to return to Abkhazia – apart from the Gali district which used to be predominantly Georgian anyway – makes inter-community contacts (which are key to confidence building) and implementation of joint measures impossible. Thus the political environment continues not to be conducive to major breakthroughs, even if a first attempt of reconciliation was made on 25 October 2007 when a first senior-level meeting between the Georgian State Minister of Conflict Resolution Issues and the *de facto* Akhazian Foreign Minister met in Sukhumi after more than a year, following Tbilisi's agreement to release seven Abkhaz militaries detained during the 20 August 2007 clash with Georgian Interior Ministry forces[127]. This meeting resulted in an agreement to resume quadripartite weekly meetings[128].

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123. Popescu, N., "Outsourcing" de facto Statehood: Russia and the Secessionist Entities in Georgia and Moldova, Centre for European Policy Studies (CEPS) Policy Brief N° 109, July 2006.
124. Executive Summary, Abkhazia: Ways Forward, International Crisis Group Europe Report N° 179, 18 January 2007.
125. United Nations Security Council Report of the Secretary-General on the situation in Abkhazia, Georgia, UN S/ 2007/588, 3 October 2007.
126. Remarks by Mikhail Saakashvili at the 62nd Session of the United Nations, Civil Georgia, 27 September 2007.
127. The United Nations Security Council Resolution 1781 (2007) – SC/9142 adopted on 15 October 2007 expressed serious concern over this incident. See the resolution on http://www.un.org/News/Press/docs//2007/sc9142.doc.htm
128. a commitment to this end was taken at a meeting chaired by the United Nations in Bonn on 27-28 June 2007. The recent UNSC Resolution 1781 (2007) urged both sides to respect this commitment.

326. In parallel to the resumption of bilateral contacts, it would also be desirable to work on small confidence building projects and to alleviate trade restrictions. Finally, there remains a great deal of work to do with civil society and NGOs, both of which are needed to create preconditions for peace and reconciliation.

6.3.2.1. Conditions of return of the IDPs

327. The civil war of 1992-1993 led to a massive departure of the then ethnically majority Georgian population as well as other ethnic groups such as the Greek, the Estonians, the Armenians or the Azeris from Abkhazia, constituting an ethnic cleansing. Almost half of the pre-war population of 535,000 people were forcibly displaced, mostly to Georgia and Russia.

328. Almost the entire population of the Gali district, totalling some 79,000 mostly ethnic Georgians was displaced. Since 1999 an estimated 45,000 persons have returned to the Gali district. The Gali district constitutes currently the only area where the IDPs return even if the political situation is not considered conducive to their return[129]. The IDPs return only semi-legally, without support from the Georgian government. Their return is tolerated by the Abkhaz authorities, but they do not enjoy any rights from them either. Many IDPs return as seasonal workers for the harvest period only. The old Soviet *propiska* serves as proof of former residence and it also gives the returnees the right to apply for the "citizenship of Abkhazia".

329. The Law on "Citizenship of the Republic of Abkhazia" was adopted by the Abkhazian *de facto* Parliament in October 2005. It restricts the possibility of acquiring or maintaining dual citizenship other than that of the Russian Federation. This excludes the option of returnees to the Gali district to keep their Georgian passport when acquiring Abkhaz "citizenship". We were told by the UNHCR office that nobody was forced to take Abkhazian passports (which have no international validity in any case). The *de facto* Abkhaz authorities themselves confirmed that the law was not very strictly observed in the Gali district, and that most returnees were in possession of both Georgian and Abkhazian passports.

330. The Abkhazian citizenship is, however, linked to compulsory military service within the "Abkhaz Army". There is information from various international and Georgian sources that alleged forcible recruitment of ethnic Georgians to Abkhaz military forces is taking place in the Gali district. The *de facto* Abkhaz authorities denied these allegations, pointing to the fact that only Abkhaz citizens were drafted. Some local representatives of the returnee community explained to us, however, that the problem existed and that it was the reason why almost no man aged 18 to 40 resettled permanently in the Gali district.

331. Education continues to pose a serious problem: schools are scarce and teaching takes place in Russian only. Hence many Georgian returnee families send their children to school in Zugdidi. Despite the promise of *de facto* President Bagapsh to the Council of Europe Commissioner of Human Rights in February 2007 that he had given an order to the "Ministry of Education" of Abkhazia to open Georgian-language schools in the Gali district, we were told that no such school had been established. We visited ourselves a small school in Tsikiri village in the Gali district where all families interviewed were Georgian. However, they told us that they were not allowed to teach in Georgian nor use any Georgian textbooks. The textbooks that we inspected all followed the Russian school curricula and were very Russia-patriotic in their content.

332. The living conditions of the returnees remain extremely poor, with deficient housing, limited economic opportunities and general lack of public services. But the situation is not much better in the collective centres in nearby Zugdidi, where the IDPs live in crammed conditions. Nevertheless, many IDPs prefer staying in the collective centres as they receive a tiny state allowance (14 GEL) and allowance for electricity and water bills.

333. The general security situation as well as the human rights record in the Gali district remain precarious. Many killings, kidnappings, extra-judicial detentions, etc allegedly happen – in particularly during harvest periods and elections – and impunity reigns. The distrust of victims in the effectiveness and willingness of the *de facto* local authorities to investigate, combined with politicised misinformation, increases the returnees' feelings of insecurity.

334. No ethnic Georgians have been able to return to other parts of Abkhazia. Having unilaterally declared independence and being concerned about losing their current demographic majority, the Abkhaz say they are prepared to countenance the return of large numbers of Georgians only under strict conditions. They claim that they will reject the return of those who fought in the conflict and underline that "those who return have to know that they return to a republic with its own laws and identity[130]".

129. Interview with Ms Yuka Hasegawa, Head of the UNHCR office in Gali.
130. Interview with Speaker of the de facto Abkhazian Parliament, on 14 September 2007 in Sukhumi.

335. The property issue remains a serious concern. Tens of thousands of destroyed and unoccupied derelict houses all around the Abkhazian countryside as well as in Sukhumi bear a gloomy testimony of the violence of the past war in Abkhazia. The Georgian authorities are concerned about the reported accelerated privatisation of property belonging to ethnic Georgians who fled Abkhazia. The courts appear to reject as inadmissible claims filed by owners displaced by the armed conflict since 1992 for restitution of their illegally occupied property. The recent UN Security Council's Resolution 1781 (2007) adopted on 15 October 2007 reaffirmed that "*the importance of such people's [IDPs'] return to their homes and property and that individual property rights have not been affected by the fact that owners had to flee during the conflict and that the residency rights and the identity of those owners will be respected*"[131].

336. In response, in March 2006, the Minister of Refugees and Accommodation launched a programme called "My House", according to which IDPs can register their land titles in a state inventory, and thus ascertain their property rights in Abkhazia and South Ossetia.

337. According to the same Ministry, the IDPs living in Georgia proper currently constitute 6% of the population, numbering 232,623 IDPs from Abkhazia and 12,673 IDPs from the Tskhinvali region, i.e. in total 245,296 IDPs. A vast majority of IDPs live in collective centres housed in public buildings where conditions are very poor. Others live with relatives, friends, rent flats or have purchased their own houses. In 2006, the Georgian government announced the creation of the State Commission on elaboration of an IDP National Strategy with the support of the international community and civil society organisations. The National Strategy has since been adopted and an Action Plan should be ready by the end of 2007. This Action Plan will address all aspects of displacement – housing, employment, social issues and legal status. The government has stressed that integration of IDPs does not hinder their future return to their former residences[132].

6.4. Challenges ahead

338. It emanates from the above that the obstacles to successful resolution of the two conflicts on the Georgian territory are numerous and motivated by zero-sum considerations by many of the stakeholders involved in the peace process. The process itself appears fundamentally flawed: the overall policy of appeasement has not delivered results, the existing mechanisms – whether it be the format of the negotiations and peacekeeping or effective and independent investigation of border incidents – have proved ineffective, and there is no international consensus on the current nature of the conflicts or ways on how to solve them. The result is a status quo and stalemate on "negotiations about how to negotiate". The price of the *status quo* is however very high. It therefore proceeds that a proper independent international analysis would be necessary in order to assess why and where the process has gone wrong.

339. A peace process can be effective only as long as it is deemed impartial and equitable by all conflicting sides. For reasons discussed above, the Russian domination over the mediation (through its veto right in the UN or OSCE) or peacekeeping of these conflicts is obsolete and reflecting the geo-political realities of the past decade when western interests in the region were minimal. Today the geo-strategic realities are different in the South Caucasus and the wider Black Sea regions, which results in an evident need for internationalisation of the mediation and peacekeeping structures applying to the "frozen conflicts". This does not mean the entire elimination of the Russian contingent in place, but under a clear international mandate. The role of the European Union as mediator should also be significantly enhanced in this process.

340. Four years ago, Georgia affirmed the Euro-Atlantic integration – and notably NATO membership – as its highest foreign policy goal and embarked on reforming the country in order to achieve this goal as fast as possible. Four years into that process, this goal enjoys outstanding public and political support in the country. The international community should recognise and respect Georgia's aspirations in this regard, as their continued progress towards desired goals will also uphold guarantees for common security, democracy and governance through the rule of law.

341. Finding a solution to the conflicts is central to the Georgian government's policy. Its actions are based on legitimate concerns of building up a sovereign state in its full integrity and right to exert control over its territory. Moreover, public opinion in Georgia is not easily ready to accept any solution which goes beyond the official policy lines, and which does not involve full reintegration of the separatist territories. Notwithstanding these constraints, the Georgian government should show more openness to compromise and creating a more pragmatic atmosphere among its people. It needs to work on changing perceptions; and this can best be

131. UNSC Resolution 1781(2007), paragraph 15, http://www.un.org/News/Press/docs//2007/sc9142.doc.htm.
132. Georgia: IDPs' living conditions remain miserable, as national strategy is being developed, International Displacement Monitoring Centre (IDMC), 1 September 2006.

achieved through understanding and consideration of the fears and objectives of the other side. It is especially important for Georgia to create favourable conditions for the Abkhaz and South Ossetians to overcome century-old fears of forced 'Georgianisation' and to offer security guarantees to facilitate trust. The approach of seeking to isolate, blockade and engage in hostile rhetoric towards these populations has not proved successful in terms of moving towards a solution of the conflicts[133]. Strengthening confidence-building on the contrary will promote refugee and IDP return, which would constitute considerable progress.

342. On their part, the separatist leaders, supported by the Russian authorities, should also seriously engage in a one-to-one result-oriented dialogue with the Georgian authorities. It is moreover the lack of substantial and pragmatic dialogue that is pushing the Georgian side to be creative in finding new "administrative solutions".

343. Finally, the Russian authorities need to understand that provocative actions or targeted international law violations with a purpose of "testing the patience" of the other side have no place in conflict settlement and will only flash back negatively on the country itself. Similarly, sanctions, boycotts or any other excessive means of "punishment" are not effective tools to resolve conflicts, and can instead – indeed like verbal provocations – have disastrous consequences.

7. Further steps in the monitoring process

344. Two years after our previous report, our overall impression is that the authorities have made fast and substantial progress towards complying with their obligations and commitments. On formal grounds, practically all commitments pertaining to the remaining issues of Resolution 1477 (2006) have been fulfilled. Nevertheless, some important shortcomings still persist in areas referred to in the various chapters of this memorandum.

345. Raising democratic standards and creating proper conditions for the opposition in the parliament as well as tolerance towards political opponents in public life are the key priority areas for us before we can consider closing the full-scale monitoring procedure. We expect Georgia to live up to democratic standards of conducting free and even more importantly – fair elections based on proper political competition – in 2008. Notwithstanding minor shortcomings, we are pleased that the electoral legislation has been amended to this end.

346. Georgia should put all efforts into building up sustainable state institutions, characterised by strong administrative capacity and ability to resist any political fluctuation.

347. The country also needs more decisive and far-reaching efforts as regards its judiciary system, proper mechanisms that guarantee the independence of courts and prosecution, combating corruption, or decentralisation. It would also need to improve its track record in other areas of human rights such as the conditions of detention, prevention of torture, or respect of minority and religious rights. Contributing to finding a peaceful solution to the conflicts in South Ossetia and Abkhazia would be an extra guarantee for building up a prosperous and modern state.

348. All major reforms are on their way. However, creating an appropriate legislative framework is certainly important, but not enough. The political will accompanying its implementation will be the determining factor in breaking with old habits and mentalities.

349. Georgia has entered one of the most critical stages in its reform process. As long as it continues on a democratic path, it will succeed no matter who will win the presidential and parliamentary elections in 2008. However, any resorting to violence may jeopardise all achievements of the previous years. Hence steering the country on the democratic course is the key task for the government today.

Reporting committee: Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

Reference to committee: Resolution 1115 (1997)

*Draft resolution*unanimously adopted by the committee on 22 January 2008

Members of the committee: Mr Serhiy **Holovaty** (Chairperson), Mr Leonid **Slutsky** (1st Vice-Chairperson), Mr György **Frunda** (2nd Vice-Chairperson), Mr Konstantin Kosachev (3rd Vice-Chairperson), Mr Aydin Abbasov, Mr Pedro **Agramunt**, Mr Jaume Bartumeu Cassany, Mrs Meritxell **BatetLamaña**, Mr Ryszard **Bender**, Mr

133. Williamson, R., South Caucasus: Perceptions and Challenges of the Region, Wilton Park Paper, December 2006.

József Berényi, Mr Aleksandër **Biberaj**, Mr Luc **Van den Brande**, Mr Patrick Breen, Mr Mevlüt **Çavuşoğlu**, Mr Sergej Chelemendik, Ms Lise **Christoffersen**, Mr Boriss **Cilevičs**, Mr Georges **Colombier**, Mr Valeriu **Cosarciuc**, Mrs Herta **Däubler-Gmelin**, Mr Joseph Debono Grech, Mr Juris **Dobelis**, Mrs Josette **Durrieu**, Mr Mátyás **Eörsi**, Mr Per-Kristian Foss, Mr Jean-Charles Gardetto, Mr József Gedei, Mr Marcel **Glesener**, Mr Charles Goerens, Mr Andreas **Gross**, Mr Michael **Hagberg**, Ms Gultakin **Hajiyeva**, Mr Michael **Hancock**, Mr Davit **Harutyunyan**, Mr Andres **Herkel**, Mr Kastriot **Islami**, Mr Miloš Jeftić, Mrs Evguenia **Jivkova**, Mr Ali Rashid Khalil, Mr Andros Kyprianou, Mr Jaakko **Laakso**, Mrs Sabine **Leutheusser-Schnarrenberger**, Mr Eduard **Lintner**, Mr Pietro Marcenaro, Mr Mikhail Margelov, Mr Bernard Marquet, Mr Dick **Marty**, Mr Frano Matušić, Mr Miloš **Melčák**, Mrs Assunta Meloni, Mrs Nadezhda Mikhailova, Mr Neven **Mimica**, Mr João Bosco Mota Amaral, Mr Zsolt Németh, Mr Theodoros Pangalos, Ms Maria **Postoico**, Mr Christos Pourgourides, Mr Andrea Rigoni, Mr Dario **Rivolta**, Mr Armen Rustamyan, Mr Oliver Sambevski, Mr Kimmo **Sasi**, Mr Andreas **Schieder**, Mr Samad **Seyidov**, Mrs Aldona Staponkienė, Mrs Elene **Tevdoradze**, Mr Mihai Tudose, Mr Egidijus **Vareikis**, Mr Miltiadis **Varvitsiotis**, Mr José Vera Jardim, Mrs Birutė Vėsaitė, Mr Robert Walter, Mr David Wilshire, Mrs Renate **Wohlwend**, Mr Boris Zala, Mr Andrej Zernovski.

N.B.: The names of the members who took part in the meeting are printed **in bold**

Secretariat of the committee: Mrs Ravaud, Mrs Chatzivassiliou, Mrs Odrats, Mr Karpenko.