

## Georgia: Securing a Stable Future

### I. OVERVIEW

Two and a half years after the war with Russia, Georgia's political life is increasingly turning towards preparations for the 2012-2013 elections and debates around divisions of power after a recent overhaul of the constitution. The substantial amendments, which come into force in 2013 at the same time as President Mikheil Saakashvili steps down due to a term limit, will give much greater power to the prime minister. The next two years will go a long way in determining whether the country progresses toward a truly stable, modern democracy, or deteriorates into a fragile, pseudo-pluralistic and stagnating system. The government and political opposition movement need to use that crucial period to create public trust in democratic institutions. The best way to achieve this is by engaging in meaningful dialogue to ensure a fair election cycle, strengthened rule of law, economic stability and the legitimacy of the future government.

Much speculation centres on the role Saakashvili will play after he leaves the presidency. Detractors allege that the constitutional amendments are intended to allow him to continue to dominate the country from the newly empowered position of prime minister. He denies this, says that he has not decided on his future course, and the amendments were not made for any specific individual. His ruling United National Movement (UNM) argues that the constitutional changes were necessary to improve the balance of power and facilitate the implementation of reforms and that they meet long-held demands of opposition parties to cut back presidential powers. The changes in fact did very little to create a more parliamentary-based system, and the haste in which they were pushed through was criticised by international observers.

Saakashvili's government defied widespread speculation that it would be driven from power after the 2008 war with Russia. Instead, the UNM greatly solidified its position in May 2010 local elections. It comfortably won the Tbilisi mayor's office and a majority in all 69 municipal councils. Nevertheless, polarisation between the government and the ideologically diverse opposition parties – and the latter's inability to formulate any common agenda or message – remain serious impediments for implementing reforms and establishing a mature democratic system. Only seventeen opposition deputies are taking part in the

150-seat parliament, while sixteen others who won seats are boycotting. Positively, the government and fifteen opposition parties agreed in November 2010 to begin negotiations to overhaul the electoral code.

The generous \$4.5 billion Georgia received from 38 countries and fifteen international organisations over three years to help post-war recovery – a mix of direct budgetary assistance, humanitarian aid, loans and support to infrastructure development – guaranteed economic stability in the short term, but these funds are running out, and neither foreign direct investment nor exports have picked up. Tbilisi is thus likely to face substantial challenges to repay the foreign debt and cover the trade deficit. The government also needs to do more to support local entrepreneurs.

Over the past two years, the government initiated important reforms in the judiciary and the media, but more is needed to build public confidence in local institutions. Many Georgians still perceive judges as dependent on the executive branch and overly respectful of the prosecution, especially as the acquittal rate in criminal cases is 1 per cent. Property rights abuse continues without effective legal redress. The media is freer than elsewhere in the region but deeply polarised along political lines and tends to emphasise editorial opinion more than straight reporting; the most important TV outlets are still heavily influenced by the government.

The authorities should address these shortcomings together with those raised by international observers of the 2010 local elections, so as to facilitate smooth conduct of the next electoral cycle in 2012, as well as promote stability over the longer term. More specifically, they should:

- ❑ engage in a good-faith dialogue with opposition groups regarding electoral reform; take up recommendations from international and local organisations on the electoral code; investigate previous election violations and intimidation cases; and eliminate partisan abuse of public resources during elections;
- ❑ develop a fully independent judiciary, including by taking steps to ensure that high-profile political, human rights and property usurpation cases are fairly reviewed; and
- ❑ pursue substantive, productive dialogue with multiple political forces, civil society representatives and busi-

ness leaders while designing and implementing key reforms.

In return, opposition groups should:

- ❑ contribute actively to the work of the electoral reform group and to a wider dialogue by putting forward practical action plans on issues of concern; and
- ❑ publicly disavow violence, while using only legal means to address grievances.

The international community, including the European Union (EU), U.S., Organisation for Security and Cooperation in Europe (OSCE) and other relevant organisations, should contribute to domestic progress by:

- ❑ prioritising in discussions with the government issues such as fair elections and close monitoring of the electoral process, as well as independence of the judiciary, rule of law and a fully free and transparent media environment.

This briefing concentrates on the domestic situation and recommends areas of needed reforms as the country heads into a crucial political cycle. Subsequent reporting will examine the continuing conflict with Russia, including the presence of thousands of Russian troops in Abkhazia and South Ossetia in violation of the 2008 ceasefire agreements. While President Saakashvili usefully announced in November a unilateral non-use-of-force policy, applicable to those troops, this military presence contributes to an atmosphere of uncertainty in Georgia, as do occasional violent incidents near the Administrative Boundary Lines (ABLs). The international community needs to continue to press Moscow to withdraw to positions held before the 2008 conflict, facilitate the return of displaced ethnic Georgians to their homes in those two territories and allow access to the EU Monitoring Mission (EUMM). A recent spate of bombings in Tbilisi, which the Georgians said had been ordered by a Russian military officer in Abkhazia – a claim denied by Moscow – adds to the uncertainty.

## II. THE POLITICAL BALANCE

### A. POLITICAL STABILITY AND OPPOSITION DYNAMICS

#### 1. Government, succession and ruling elites

The government is highly centralised, both vertically and horizontally. President Saakashvili and a relatively small group of insiders are responsible for critical decision-making and the running of the state. Frequent changes in ministerial portfolios do not seem to negatively affect

governance.<sup>1</sup> In Georgia's close-knit society, personal relationships are generally more determinative of policy influence than formal cabinet positions.<sup>2</sup>

The UNM, which Saakashvili heads, holds an overwhelming majority in parliament, which the opposition acknowledges leaves it with no meaningful impact on the legislative process.<sup>3</sup> It says its power is limited "to the extent the ruling elites allow".<sup>4</sup> Opposition members who are boycotting the parliament allege that those who have kept their seats have been co-opted to help the government project a democratic image.<sup>5</sup> The UNM denies this and points to criticism it received from Christian Democratic Movement (CDM) deputies over the recent constitutional amendments, which led to some changes in the texts before that party voted for them.<sup>6</sup>

The UNM controls all local councils after a landslide victory in the 2010 local elections. Municipalities are weak and lack real autonomy. Regional governors are appointed by the president (after 2013 by the prime minister). The ruling party maintains a powerful social network through which it can mobilise supporters, especially during elections, when it sets up a system of district coordinators through whom it monitors popular sentiment.<sup>7</sup> Loyalists

<sup>1</sup> In November 2010, the first deputy foreign minister, Giga Bokeria, was named head of the National Security Council, indicative of his prominence in broad policymaking. Temuri Yakobashvili, the state minister for reintegration (dealing with issues related to South Ossetia and Abkhazia) was nominated to be ambassador to the U.S. Eka Tkeshelashvili, 33, is to be his replacement.

<sup>2</sup> See Crisis Group Europe Briefing N°51, *Georgia: The Risks of Winter*, 26 November 2008.

<sup>3</sup> The Parliament has 150 seats. 115 are occupied by members of the ruling party, seventeen by opposition deputies and one by an independent. Sixteen opposition deputies are boycotting the body because of what they argue were elections irregularities. One UNM member has died and not been replaced.

<sup>4</sup> Crisis Group interview, opposition parliamentarian, Tbilisi, September 2010.

<sup>5</sup> Crisis Group interviews, opposition representatives, Tbilisi, August 2010.

<sup>6</sup> The Christian Democratic Movement sharply criticised the procedures and timeframe allocated for the constitutional debates on several occasions. Its leader, Giorgi Targamadze, argued at a 22 September 2010 round-table on the constitutional reform organised by the Open Society Georgia Foundation (OSGF), that the quality, not quantity, of discussion was the key factor for a successful process, and the time for public discussion was too limited. Eventually, however he voted for the amendments.

<sup>7</sup> Many apartment buildings in Tbilisi had their own district UNM coordinator, who was tasked to organise the party campaign. Crisis Group was told of a case in the run-up to the May 2010 local elections in which the coordinator allegedly pressured neighbours to vote for the UNM, saying they should think about their state-sector jobs. Coordinators also surveyed

hold key positions in municipalities, schools and even in civil society.<sup>8</sup>

Saakashvili remains relatively popular, especially after Russia's post-war recognition of South Ossetia and Abkhazia and public anger allowed him to solidify his position.<sup>9</sup> Some analysts and opposition figures argue the Russian factor allowed the president to portray himself in domestic politics as a "pro-Western hero against Russian villains".<sup>10</sup> This has contributed to speculation he will seek another high-level position after he completes his maximum two terms as president in 2013.

Publicly at least, Saakashvili has not ruled out becoming prime minister, telling *Le Monde* in June 2010, "too many uncertainties remain for now. Who knows what the economic situation will be in two years, or the condition of constitutional reform, or my mood and political rating?"<sup>11</sup> Diplomats and insiders with access to him say they do not believe he has made up his mind what precise political post he would like after 2013, if his party wins the previous year's parliamentary elections. A respected opinion poll found that 26 per cent of respondents support the idea of him becoming prime minister, while 32 per cent oppose it.<sup>12</sup> Senior Georgian authorities claim to be acutely aware that a move to that post would damage the government's democratic image internationally,<sup>13</sup> especially as it seeks to contrast itself with the Russia of ex-president,

now Prime Minister Vladimir Putin's Russia, a major "ideological competitor ... in terms of model of development".<sup>14</sup>

Speculation abounds about whom Saakashvili will back as his successor. Some of the most likely prospects for the premiership or presidency include the popular mayor of Tbilisi, Gigi Ugulava, and the speaker of the parliament, David Bakradze. Some observers suggest that he could even back an opposition figure, former ambassador to the UN Irakli Alasania, thus allowing the UNM to promote a more inclusive image,<sup>15</sup> but at least one senior government official finds this scenario highly unlikely.<sup>16</sup>

A rising star is the 35-year old education minister, Dmitri Shashkin, until 2009 the corrections and legal assistance minister, "coordinator of the second wave of democratic reforms"<sup>17</sup> and a former official in both the army and interior ministry. He is of mixed Georgian and Russian parentage and speaks Russian flawlessly. In an apparent attempt to counter Moscow's charges that he is anti-Russian, Saakashvili has pointed this out and spoken of Shashkin's bright potential as a "Georgian national statesman".<sup>18</sup> However, government insiders say he is not a plausible successor.<sup>19</sup>

One who is unlikely to aspire to become president or prime minister but is well placed as possibly the most powerful member of the president's inner circle, is Interior Minister Ivane Merabishvili.<sup>20</sup> His ministry is often tasked with responsibilities outside its ostensible jurisdiction. In 2007, Saakashvili tapped Merabishvili to implement an anti-

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and registered voters at polling stations. Though this was not in violation of the electoral code at the time, some local observers considered it a form of pressure. Crisis Group interviews, civil society representatives, Tbilisi residents, Tbilisi, May and August 2010. The government points out that other parties also have district coordinators and engage in similar organisational activity.

<sup>8</sup> See Crisis Group Europe Report N°189, *Georgia: Sliding Towards Authoritarianism?*, 19 December 2007.

<sup>9</sup> "Public attitudes towards elections in Georgia", Caucasus Resource Research Centres (CRRC) for National Democratic Institute (NDI), Tbilisi, July 2010. According to the survey, 9 per cent of respondents think Georgia is definitely going in the right direction, 42 per cent of respondents think Georgia is going mainly in the right direction; 6 per cent say Georgia is definitely going in the wrong direction, 11 per cent that it is mainly going in the wrong direction, 15 per cent think the situation is not changing, and 17 per cent said they were undecided.

<sup>10</sup> Graafls, Haindrava, Sharashenidze, "Georgia Post-2013: The Road to the Presidential Elections and Beyond", *Caucasus analytical Digest*, No.19, 13 August 2010.

<sup>11</sup> "Saakashvili: 'La sphère d'influence russe a diminué de façon spectaculaire'" [Saakashvili: "The sphere of Russian influence has declined dramatically"], *Le Monde*, 6 June 2010.

<sup>12</sup> "Public Attitudes towards Elections in Georgia", op. cit.

<sup>13</sup> Crisis Group interviews, ruling party representatives, government officials, Tbilisi, September-October 2010.

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<sup>14</sup> "Saakashvili: 'Georgia is Russia's Major Ideological Competitor'", *Civil Georgia*, 4 September 2010; "Saakashvili Defends President's Role in New Constitution", *Civil Georgia*, 4 September 2010.

<sup>15</sup> Crisis Group interviews, analysts, Tbilisi, September-October 2010.

<sup>16</sup> Crisis Group interview, Tbilisi, November 2010.

<sup>17</sup> This "title" seems largely symbolic. Crisis Group interviews, political analysts, Tbilisi, November 2010.

<sup>18</sup> Saakashvili noted: "Dmitri leads, personally for me, the most important ministry – the Education Ministry. I hope time will pass, and historians will evaluate his work as the activity of an important, Georgian national statesman; then certainly he will hold other posts; he can achieve everything. Today, there is the situation in Georgia when any person, either Shashkin or ... a representative of any other ethnic group can become the president, because we have created a situation, wherein the Georgian people perceive themselves as one whole". "Saakashvili Praises Education Minister," *Civil Georgia*, 29 August 2010.

<sup>19</sup> Crisis Group interview, Tbilisi, November, 2010.

<sup>20</sup> Merabishvili has never exhibited political ambitions beyond running his ministry, something which has perhaps contributed to his longevity there. Crisis Group interviews, analysts, Tbilisi, August-September 2010.

monopoly policy,<sup>21</sup> and after the 2008 war, he was charged with building new housing for displaced Georgians (IDPs) from South Ossetia,<sup>22</sup> an emergency mission that senior officials say the interior ministry is best resourced and most capable to carry out.<sup>23</sup>

The ministry is a key power base for Saakashvili. It has largely been rid of petty corruption and bribery, though the police still are sometimes accused of acting with impunity. During the sparsely attended 2009 opposition rallies – otherwise peaceful and tolerated for months by the government – there were instances in which opposition protesters were roughed up by unknown men alleged to be plain-clothes police or government sympathisers.<sup>24</sup> While crimes against police officers were quickly investigated, those involved in physical attacks on opposition activists or demonstrators were rarely brought to justice.<sup>25</sup>

The armed forces have been substantially downsized. Defence funding has been slashed 52 per cent between 2008 (GEL 1.547 billion, \$878 million) and the planned 2011 outlays (GEL 748.7 million, \$425.4 million).<sup>26</sup> About 200 senior officers were made redundant over the past year, together with around 500 civilian defence ministry personnel. This appears to be mostly due to financial constraints, though there is some speculation about the political loyalty of certain army units, as evidenced by an alleged 2009 “mutiny” that resulted in the arrest of several officers.<sup>27</sup>

## 2. Constitutional Amendments

In June 2009, President Saakashvili initiated an extensive revision of the constitution, in order to try to defuse tensions following the prolonged but small opposition protests and to honour a 2004 pledge to return many powers to the legislative branch after an interim period of firm executive power. He and his team had argued five years earlier that a strong executive was needed, at least temporarily, because of grave economic, corruption and crime problems and the almost totally dysfunctional governance system bequeathed by former President Eduard Shevardnadze. The 1995 constitution was substantially amended in February 2004 and subsequently changed on seventeen further occasions, creating a strong presidency.<sup>28</sup> The result was a weak legislature that was dominated by the ruling party and did not aggressively oversee public institutions.<sup>29</sup>

When the State Constitutional Commission was created in 2009 to prepare amendments, the political parties behind the 2009 protest rallies refused to join.<sup>30</sup> In the end, it was composed of six parliamentary parties and nine NGOs, as well as several academics and state officials. It submitted its proposed amendments on 19 July 2010, and parliament adopted them on 15 October.<sup>31</sup>

Opposition groups and leading civil society organisations accused the government of haste; appealed to the parliament to allow more discussions;<sup>32</sup> protested they did not have sufficient time to analyse and react; and said there was a lack of media coverage and public debate. Some opposition activists complained that pro-government national television, as well as Channel 1 of Georgian Public

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<sup>21</sup> “Curb Monopolies To Prevent Price Hikes – Saakashvili Tells Ministers”, *Civil Georgia*, 24 October 2007.

<sup>22</sup> See Crisis Group Europe Briefing N°53, *Georgia-Russia: Russia Still Insecure and Dangerous*, 22 June 2009.

<sup>23</sup> Crisis Group interview, Tbilisi, November 2010.

<sup>24</sup> The three-month long demonstrations, which blocked important streets in the capital for several weeks, were generally peaceful; diplomats commented that the government in most respects showed commendable restraint. Crisis Group interviews, summer 2009.

<sup>25</sup> “In most cases ... law enforcement agencies took victims’ reports but ... took no other action. In some cases, the victims were able to name their assailants, or the license plate numbers of the vehicles they used, yet police did not appear to apprehend the attacker or take further investigative steps”. “Letter to Georgian Authorities Regarding Attacks on Protesters”, Human Rights Watch, 7 May 2009. See also “2009 Human Rights Report: Georgia”, the U.S. Department of State, 11 March 2010.

<sup>26</sup> The 2010 budget was GEL 775 million (\$423 million).

<sup>27</sup> Crisis Group interviews, military analysts, Tbilisi, November, 2010. The Georgian announced a mutiny attempt at the Mukhrovani military base outside Tbilisi on 5 May 2010; a senior officer and some soldiers and civilians were arrested.

<sup>28</sup> It gave the president the right to dissolve parliament if it did not ratify the budget and vote confidence in his cabinet. He could initiate and veto legislation, abolish or suspend any law. This was justified by officials as necessary to implement reforms without exhaustive and time-consuming legislative procedures, but it was long a concern for opposition groups. The president was also given the authority to appoint ministers.

<sup>29</sup> Crisis Group interviews, opposition parliamentarians, political analysts, Tbilisi, August-September 2010.

<sup>30</sup> They argued that the UNM would ignore their proposals. Crisis Group interviews, opposition politicians, Tbilisi, August 2010.

<sup>31</sup> The commission initially adopted a draft law on the proposed amendments on 11 May 2010, but it adopted a revised version in July. The Legal Committee of the parliament submitted the final version on 22 September; the first reading was on 24 September, the second on 1 October.

<sup>32</sup> “Opposition Calls not to Hurry with New Constitution”, *Civil Georgia*, 19 July 2010; “Appeal of Georgian Young Lawyers Association, Transparency International Georgia, and the Mikheiladze Foundation to Parliament of Georgia for Extension of Period Allocated for Constitutional Draft Review”, 26 August, 2010. [www.transparency.ge/en/post/press-release/appeal-georgian-young-lawyers-association-transparency-international-georgia-and-](http://www.transparency.ge/en/post/press-release/appeal-georgian-young-lawyers-association-transparency-international-georgia-and-)

Broadcaster (GBP), did not provide a forum for alternative views or meaningful discussion of the amendments.<sup>33</sup>

The UNM responded that the draft was introduced to citizens in more than two dozen country-wide public meetings held by commission members, all broadcast on several TV channels, and that a website was also dedicated to the reform. The government noted there were other urgent matters to deal with, like reforming the electoral code.<sup>34</sup> But given that the majority of constitutional changes will not enter into force until December 2013, more discussion could have allowed greater public buy-in and increased the revised constitution's credibility across the political spectrum.

The Venice Commission, the Council of Europe's advisory body on constitutional matters, which the government had asked to assess the proposed amendments, requested the parliament to wait for its final opinion before acting.<sup>35</sup> The government eventually postponed the final vote until a few hours after that opinion was issued. A top official explained: "The Venice Commission's recommendations had not changed over a long period of dialogue, and we did not expect their final verdict to change either. So we waited to see if their final judgement would differ. We did not expect it to, and in the end, it did not. Therefore, there was no point in putting off a vote any longer".<sup>36</sup> However, several Western diplomats regarded the haste with which the amendments were adopted as disrespectful of the advisory mechanism.<sup>37</sup>

Saakashvili had called for changes to the constitution that would guarantee "... a balanced system, ... where there will be space for strong presidential power, as well as a strong parliament [and] an independent judiciary".<sup>38</sup> The authors of the draft describe the new structure as a mixed model in which the president is to act as "an arbiter" between the legislature and the executive.<sup>39</sup> Yet, it is clearly

a semi-presidential system in which the parliament's influence remains limited.

The amended constitution will diminish the powers of the president and increase those of the prime minister, who becomes the head of government, with executive authority over domestic and foreign policy. He, together with the cabinet, is to be elected by a simple parliamentary majority. The president remains head of state and commander-in-chief of the armed forces, but without the right to initiate laws, introduce the state budget or hold an official post in a political party.<sup>40</sup> The procedure for impeachment of the president has also been simplified.

The parliamentary majority gains the authority to nominate the prime minister and approve the cabinet but otherwise has few new oversight functions. If parliament fails to approve the new government three times, the president is entitled to dissolve the legislature and call for new elections. To pass a motion of no-confidence in the government, deputies would again have to vote to do so three times. The president would have substantial power in the procedure, able to endorse or reject a new prime minister, even one supported by more than half the parliamentarians.<sup>41</sup> This procedure could in theory take as much as four months.

Some recommendations of the Venice Commission and the opposition to further strengthen the parliament were not adopted. The commission considered the president's ability to dissolve parliament not compatible with the European concept of a "constructive vote" of no-confidence and the timeframe of the procedure excessively long.<sup>42</sup> In

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Georgian constitution differs from each of the other mixed-model European constitutions. Crisis Group interview, constitutional lawyer, Tbilisi, October 2010.

<sup>40</sup>The Venice Commission concluded that with regards to reduction of presidential powers, the "amendments provide for several important improvements and significant steps in the right direction", but the delimitation of competences between president and government is not always clear. "Final Opinion on the Draft Constitutional Law on Changes and Amendments to the Constitution of Georgia". 15 October 2010. [www.venice.coe.int/docs/2010/CDL-AD\(2010\)028-e.asp](http://www.venice.coe.int/docs/2010/CDL-AD(2010)028-e.asp).

<sup>41</sup> Paragraph 2, Article 81.

<sup>42</sup> Crisis Group discussions, constitutional lawyers, Tbilisi, September 2010. The constructive vote of no confidence is illustrated by the German system, in which for such a vote to have effect, deputies must also elect a new chancellor; the German federal president has no jurisdiction to interfere. This maintains a balance of power while avoiding a power vacuum. Some experts argue that the Georgian model contravenes fundamental principles of the constitutional law. Irakli Kobakhidze, "Constitutional Changes and Unusual Formula of the Vote of No-Confidence" (in Georgian), expert view, Georgian parliament. [www.parliament.ge/publicdebates/kobakhidze.doc](http://www.parliament.ge/publicdebates/kobakhidze.doc). "First Preliminary Opinion on the Draft Constitutional Law on Changes

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<sup>33</sup> Crisis Group discussions, opposition and civil society representatives, Tbilisi, 22 September 2010.

<sup>34</sup> Crisis Group discussions, UNM representative, Tbilisi, 22 September 2010; "Constitutional Amendments Initiated", Civil Georgia, 21 July 2010.

<sup>35</sup> "European Experts' Key Advice on Constitutional Reform", Civil Georgia, 17 September 2010.

<sup>36</sup> Crisis Group interview, Tbilisi, November, 2010.

<sup>37</sup> Crisis Group interviews, Tbilisi, November 2010.

<sup>38</sup> "New Draft Georgian Constitution Unveiled", RFR/RL, 12 May 2010. Later he also noted that, "We are moving to a more complicated system, as the new system will be based on several power centres". "Saakashvili on New Constitution", Civil Georgia, 10 September 2010. He has not commented on them since the changes were adopted by parliament.

<sup>39</sup> Only six countries in Europe practice a mixed model, all differing substantially from each other. For instance, the French president is a powerful figure, the Croatian very weak. The

response, UNM representatives maintained that the process will ensure stability and a balance of powers.<sup>43</sup>

Other parliamentary oversight mechanisms, such as scrutiny of state expenditures, holding individual ministers accountable and the setting up of temporary investigative commissions are also constrained. For instance, only the government has legislative initiative in budget matters; the parliament cannot amend the budget without the government's consent. The Venice Commission concluded that "the role of the parliament in budget matters is too limited ..."<sup>44</sup> Even after 2013, therefore, much power and influence will remain with the executive.

### 3. Opposition dynamics

Although Georgia has more than 200 registered political parties, only ten are relatively active, and none individually pose a viable threat to current authorities. The Alliance for Georgia, formed in the run-up to the 2010 local elections by Irakli Alasania's Our Georgia – Free Democrats, the Republicans and the New Rights Party, was a rare attempt to unify opposition groups but failed to garner much support.<sup>45</sup> Its best showing was a 19.05 per cent vote for Alasania as mayor of Tbilisi.

Much of the opposition is divided by personal ambitions, as well as wide ideological and tactical differences. Some largely undermine their domestic and international credibility by their preference to concentrate on overthrowing the entire government, legally or illegally, rather than working through state institutions or defining clear social and economic programs. For example, soon after the bloody events in Kyrgyzstan in early 2010, Zurab Noghaideli, a former prime minister and now leader of the Movement for Fair Georgia, proclaimed that the "Bishkek scenario" would be repeated in Georgia if the government falsified election results. During a briefing for journalists reported by print media, he appeared to threaten Interior Minister Merabishvili that ballot fraud might "cost him his life".<sup>46</sup>

Until recently, the vast majority of the opposition supported a pro-Western foreign policy; however, this has

changed over the past year. Noghaideli was the first significant opposition politician to travel to Moscow after the 2008 war, where he signed a cooperation agreement with the ruling United Russia party, arguing that Georgia should start a dialogue with Moscow without preconditions.<sup>47</sup> In May 2010, Nino Burjanadze, the former speaker of parliament and current leader, with Noghaideli, of the Democratic Movement–United Georgia party (DMUG),<sup>48</sup> appeared with Prime Minister Putin at a ceremony laying the foundation for a new World War II memorial in Moscow. Putin was then quoted saying that Russia is ready to have a dialogue with "all the constructive political forces in Georgia".<sup>49</sup> Neither figure, however, has support ratings above the low single digits.

Some analysts assert that Russia "has not given up the hopes for a home-grown regime change",<sup>50</sup> by establishing contacts with Georgian opposition politicians<sup>51</sup> and the general public, while rejecting engagement with the current government. Several opposition leaders are critical of rapprochement with Moscow; indeed the Noghaideli and Burjanadze trips were a main reason the opposition failed to unite more fully before the 2010 municipal elections. The Alliance for Georgia, called for unity under the motto "All minus one", meaning that Noghaideli's party and his pro-Moscow slant should be excluded

Opposition groups have an opportunity in coming months, however, to positively impact the political process by participating in electoral and media reform talks. They could also do more to develop their national membership, party infrastructure, political programs, public outreach and media cooperation. Otherwise, their weakness and the polarised political atmosphere risk continuing to frustrate citizens and undermine trust in democracy.

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and Amendments to the Constitution of Georgia", Venice Commission, 31 July 2010. [www.venice.coe.int/docs/2010/CDL\(2010\)062-e.asp](http://www.venice.coe.int/docs/2010/CDL(2010)062-e.asp).

<sup>43</sup> Crisis Group interview, UNM parliamentarian, Tbilisi, September 2010.

<sup>44</sup> "Final Opinion", Venice Commission, op. cit. Establishment of an investigative commission requires first, one fifth of deputies to initiate the motion, instead of one fourth; secondly, parliament must pass the regulation with a majority vote.

<sup>45</sup> The other opposition bloc was formed by the small "Movement for Fair Georgia" and two tiny parties.

<sup>46</sup> "Noghaideli: 'Ballot Fraud May Cost Merabishvili His Life'", Civil Georgia, 7 April 2010.

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<sup>47</sup> "Ex-PM Noghaideli Signs Cooperation Treaty With Russia's Ruling Party", Civil Georgia, 9 February 2010.

<sup>48</sup> It was not the first time Burjanadze cultivated close ties with Russia. In 2009, her husband was photographed with a former Russian official and Georgian diaspora representatives from Russia with allies in the Kremlin. "Burjanadze's Husband Becomes Focus Of Georgia Political Intrigue", RFE/RL, 27 March 2010. Members of her party were arrested for alleged involvement in illegal arms purchases and plotting political violence before the 2009 demonstrations, allegations which she denies. For details on her background, see Crisis Group Briefing, *Georgia: The Risks of Winter*, op. cit.

<sup>49</sup> "Putin: Ready For Talks with Constructive Forces in Georgia", Civil Georgia, 9 May 2010.

<sup>50</sup> Graalfs, Haindrava, Sharashenidze, op. cit.

<sup>51</sup> Kakha Kukava from the tiny opposition Conservative Party and Koba Davitashvili from the relatively unknown opposition People's Party also paid visits to Moscow.

### III. THE ECONOMY

Georgia's stability is highly dependent on further economic development and growth. As an opposition leader noted, the "economy decides the political future".<sup>52</sup> Despite post-war shocks, global economic crisis, a fall in domestic and foreign investment and a steep decline in growth amid rising unemployment and the burden of IDPs from South Ossetia, the economy contracted in 2009 by only 4 per cent<sup>53</sup> – far less than what many feared and what happened in the early 1990s, after the Soviet Union collapsed. International rating agencies emphasise "high political risk" as a major factor that negatively impacts the macro-economic outlook.<sup>54</sup> The government averted a macro-economic crisis through what the World Bank deemed "an appropriate macro-economic policy mix". But more than anything, foreign aid and loan pledges of \$4.5 billion at the October 2008 donors conference maintained stability.<sup>55</sup>

The government projects that, by the end of 2010, \$4.2 billion will have been disbursed, with the remaining \$300 million lasting only until mid-2011.<sup>56</sup> Analysts nonetheless predict that the general economic situation will remain stable for the short term, at least through 2011.<sup>57</sup> GDP growth rates are expected to be 4-5 per cent in 2010 and 2011.<sup>58</sup> The budget deficit, which reached 9.2 per cent of GDP in 2009, has fallen to around 6.3 per cent.<sup>59</sup>

Yet, foreign direct investment (FDI), tax revenue<sup>60</sup> and revenue from privatisation, which drove growth pre-2008, plummeted in 2009-2010 due to the war, the privatisation

of most major assets and the global economic crisis.<sup>61</sup> The government is trying to counter these trends by promoting investment in tourism, infrastructure and export development and emphasising the country's comparatively low tax rates, liberal regulatory environment and twelfth-place rating globally in the World Bank's "Doing Business" ranking. Transparency International (TI) also recently released the findings of a survey, in which 77 percent of respondents answered that the government had been "extremely effective" or "effective" in fighting corruption – by far the highest figure among 86 countries surveyed.<sup>62</sup> Prime Minister Nika Gilauri said, "we expect \$400 million of foreign investment in the energy sector alone next year [2011]", and pointed to government plans to develop Georgia's role as an energy corridor linking the Caspian and Black Seas.<sup>63</sup>

However, substantial challenges remain due to dependence on foreign funds and imports and the high current account deficit. Foreign debt, which increased from 21 per cent of GDP in 2008, to 31.4 per cent in 2009 and 38 per cent in 2010, is projected to rise to 43.2 percent in 2011.<sup>64</sup> With several large repayments due in 2012-2013, it is likely to increase further.<sup>65</sup> The government has been floating the idea of issuing new Eurobonds to finance the growing repayment burden and essentially roll over existing debt. It will be a challenge to generate foreign exchange, as Georgia imports even many basic foodstuffs and finds it difficult to develop an export sector that formerly was oriented towards Russia, especially in agriculture, food processing and industry.<sup>66</sup>

<sup>52</sup> Crisis Group interview, Tbilisi, September 2010.

<sup>53</sup> "World Bank Group Country Partnership Strategy", September 2009.

<sup>54</sup> "Full Rating Report", Fitch Ratings, Georgia, May 2010.

<sup>55</sup> A 2010 World Bank and UN report stated that the "budget support has averted a collapse of domestic demand triggered by reduced consumer and lender confidence and has significantly supported employment". "Georgia: Joint Needs Assessment, a Second Progress Report on Donor Funding in Support of Post-Conflict Recovery and Reconstruction", 15 June 2010.

<sup>56</sup> "Georgian Economic Overview October 2010", Government of Georgia, May 2010. [https://docs.google.com/viewer?url=www.investinggeorgia.org/upload/file/Economy\\_Overview\\_2010\\_October1.pdf](https://docs.google.com/viewer?url=www.investinggeorgia.org/upload/file/Economy_Overview_2010_October1.pdf).

<sup>57</sup> Crisis Group interview, Tbilisi, August 2010.

<sup>58</sup> "The World Bank Group Country Partnership Strategy", op. cit.

<sup>59</sup> "Georgia Cannot Live on Frogs Alone", *The Economist*, 18 November 2010.

<sup>60</sup> Tax revenue fell by 13 per cent in 2009. "Georgian Economic Review 2009", Georgian-European Policy and Legal Advice Centre (GEPLAC), Tbilisi, 2009. [www.geplac.ge/eng/economic\\_review.php](http://www.geplac.ge/eng/economic_review.php).

<sup>61</sup> Foreign direct investment (FDI) through the second quarter of 2010 plummeted to \$196.9 million, a rough annual rate of just \$400 million, as compared to \$2.01 billion in 2007 and \$1.56 billion in 2008. Revenue from privatisations totalled only GEL 36 million [\$20.5 million] in the first half of 2010. "Privatizatsiis gasachiri" ["Difficulties of Privatisation"], Radio Tavisupleba, 10 August 2010; "Foreign Direct Investments Statistics", Georgian national statistics office. [http://geostat.ge/index.php?action=page&p\\_id=140&lang=eng](http://geostat.ge/index.php?action=page&p_id=140&lang=eng).

<sup>62</sup> "Global Corruption Barometer", Transparency International (TI), 2010 Report, [http://www.transparency.org/policy\\_research/surveys\\_indices/gcb/2010/results](http://www.transparency.org/policy_research/surveys_indices/gcb/2010/results).

<sup>63</sup> "Georgia's Economy May Expand at Pre-Russia-War Pace by 2012, Premier Says", Bloomberg, 5 August 2010.

<sup>64</sup> "Georgian Economic Overview Q1 2010", Georgian government, May 2010. [www.georgia.gov.ge/pdf/2010\\_05\\_06\\_17\\_01\\_46\\_1.pdf](http://www.georgia.gov.ge/pdf/2010_05_06_17_01_46_1.pdf); "Sixth Review Under the Stand-By Arrangement", International Monetary Fund, 24 June 2010.

<sup>65</sup> In 2013, the government will have to repay \$500 million it issued as Eurobonds in 2008 and \$300 million to the IMF. "Monitoring the State Budget of Georgia", Centre of Economic Policy Research, Tbilisi, 2010. [www.osgf.ge/files/publications/2010/CEPR\\_Budget\\_Monitoring.pdf](http://www.osgf.ge/files/publications/2010/CEPR_Budget_Monitoring.pdf). Crisis Group interview, economic analyst, Tbilisi, August 2010.

<sup>66</sup> "Georgia Cannot Live on Frogs Alone", op. cit.

Seeking to increase revenues and supplement a shrinking budget, the government rigorously levies fines and “financial inspections” on local businesses. Reportedly, around 1,000 businesses in Tbilisi were temporarily closed in March 2010 for financial inspections, though almost all reopened, usually after only several days.<sup>67</sup> The strategy of supplementing the budget with fines and punishments has been criticised by opposition figures and businesspeople, among others, as “shaving” or “racketeering”.<sup>68</sup> A Transparency International (TI) report termed as “tax terrorism” the manner in which the state uses the Financial Police “as an instrument for the law and order and political control”.<sup>69</sup> A prominent entrepreneur, speaking about problems companies face with the judiciary, went further, claiming, “pre-trial detention, they use that all the time, either to shake down businessmen, or to get them out of politics”.<sup>70</sup>

President Saakashvili admitted on 3 December that “shortcomings still remain in the relations between the state and the entrepreneurs; a lot of entrepreneurs ... still have a feeling that they ... are treated unfairly by the state; cases are still frequent, when the punishment is more severe than the violation deserves”.<sup>71</sup> 73 per cent of surveyed businesspeople maintained they lack sufficient financing to enlarge, though it is not clear whether this is due to a deliberate policy or a general unavailability of credit.<sup>72</sup> For return to pre-war economic growth levels, however, it is critical that the government create an open and restriction-free environment for local business. Public sector-private sector dialogue should be a priority to ensure fiscal and budgetary transparency and more effective problem-solving measures for local businesses.

Unemployment is another substantial challenge. Official statistics claim a 17 per cent jobless rate in 2009, but polls show that 71 per cent of respondents consider themselves unemployed, even if they are labelled as self-employed – essentially a euphemism for acute underemployment.<sup>73</sup>

Despite GDP growth since 2004, many Georgians feel their living standards have not improved.<sup>74</sup> This suggests economic reforms have often not sufficiently affected the lives of common people, for instance, in the agricultural sector, which employs over half the population. Rural poverty remains a serious problem, despite a rise in areas under cultivation.<sup>75</sup>

#### IV. REFORM AGENDA

In 2007 and 2008, Crisis Group recommended that the authorities engage in political dialogue with the opposition and undertake a series of reforms, including strengthening checks and balances between government branches, increasing decentralisation and guaranteeing judicial independence, the rule of law and an independent media.<sup>76</sup> The government pursued some of these recommendations, especially in the judicial sector, where lifetime appointments, laws making it a crime for officials to intervene in the legal process, dramatic pay hikes for judges, jury trials and other reforms have been introduced.

The majority of opposition parties also agreed that any transfer of power must be accomplished only through constitutional means. However, much remains to be done. For example, the Election Observation Mission (EOM) of the OSCE’s Office for Democratic Institutions and Human Rights (OSCE/ODIHR) for the 2010 local elections offered recommendations on improving the electoral environment that need to be taken up as the 2012-2013 elections approach. If the government formulates key electoral and further judicial reforms, does so with broad civic engagement and implements them, it will go a long way toward strengthening governance, democracy and stability. But if it fails to do so, the political system will remain dangerously weak.

<sup>67</sup> “Recesiis pinali” [“The End of the Recession”], *Liberali*, 18 March 2010.

<sup>68</sup> Crisis Group interviews, Tbilisi, September 2010; “Recesiis pinali”, op. cit.; “2010 will be a continuation of the 2009 crisis year”, *Georgia Today*, issue 496, 5-11 February 2010.

<sup>69</sup> “The Georgian Taxations System – an Overview”, Transparency International (TI), 9 June 2010.

<sup>70</sup> Crisis Group interview, November 2010.

<sup>71</sup> “Saakashvili on ‘Shortcomings’ in Relations with Businesses”, *Civil Georgia*, 4 December 2010.

<sup>72</sup> “Small and Medium Business in Georgia”, Young Economists Association, Tbilisi, 2009. The survey revealed that 80 per cent of all enterprises registered by April 2009 were classified as small and 13 per cent as medium-sized. [www.economists.ge/p\\_hotos\\_publ/08\\_09/80.pdf](http://www.economists.ge/p_hotos_publ/08_09/80.pdf).

<sup>73</sup> For official figures, see the national statistics office, op. cit.; “Public attitudes toward elections in Georgia”, op. cit.

<sup>74</sup> “CRRC Data on economic well-being in the Caucasus”, Tbilisi, 2009. [http://investor.ge/issues/2009\\_6/14.htm](http://investor.ge/issues/2009_6/14.htm).

<sup>75</sup> “Georgia Human Development Report 2008: Reforms and Beyond”, UN Development Programme, Tbilisi, 2008. A study found that more than 40 per cent of the population has a daily income of \$2 or less in Samtkhe-Javakheti, Racha, Shida and Kvemo Kartli regions. “Care Caucasus USPV Survey”, Care International, 16 June 2010. [www.care-caucasus.org.ge/en/main.php?id=1276500236](http://www.care-caucasus.org.ge/en/main.php?id=1276500236).

<sup>76</sup> Crisis Group Report, *Georgia: Sliding towards Authoritarianism?*, op. cit.; Crisis Group Briefing, *Georgia: The Risks of Winter*, op. cit.



## A. REVISING THE ELECTORAL CODE

Prior to 2010, the election law was amended based on the recommendations of a working group composed of eight parties, including some that boycott the parliament.<sup>77</sup> Changes include the appointment of a new chairman of the Central Election Commission (CEC), the introduction of a 30 per cent voter-participation threshold for the first-ever election of the capital's mayor and the extension of a deadline for submitting complaints and appeals from 24 to 48 hours. The launch of any new large government programs during the campaign period was prohibited to curtail misuse of administrative resources in support of government candidates, and additional funding was made available for eligible parties to recheck voter lists.<sup>78</sup> These changes, previously recommended by the Venice Commission, were hailed by the OSCE/ODIHR.<sup>79</sup>

The OSCE/ODIHR EOM noted that the 2010 local elections "marked evident progress" towards international standards. It concluded that the CEC managed them in a transparent and inclusive manner and made clear efforts to address problems proactively. The campaign was generally calm, and election day was well managed and transparent in the majority of polling stations visited by observers.<sup>80</sup>

However, "significant shortcoming remained including deficiencies in the legal framework, its implementation, an uneven playing field, and isolated cases of election-day fraud". The abuse of administrative, financial and human resources in support of individual candidates or the UNM was also deemed a problem.<sup>81</sup> Local observers reported, for example, that the Tbilisi mayor's office provided special benefits to pensioners registered in the city, including a 10 GEL (\$6) rise in pensions, discount cards for public transportation and 25 GEL (\$14) in medication vouchers.<sup>82</sup> Local observers concluded that these benefits,

which appeared to be intended to assist the incumbent's campaign, ran counter to self-governance legislation, as pension policy is not within local government jurisdiction. The benefits also appeared to violate the 2006 social security reform, which recognises needs-based government aid, not aid allocated to specific categories.<sup>83</sup> Central government authorities responded that local governments are authorised to mobilise resources for public and social services.<sup>84</sup>

To avoid the prohibition against public servants engaging in campaigning, over 1,300 state workers took paid or unpaid leave in April and May 2010 to work for the UNM. While doing so, however, many utilised administrative resources and in effect simultaneously performed their official duties from UNM field offices.<sup>85</sup> International observers stated that "the distinction between the state and the ruling party was sometimes blurred, and there was not always a clear distinction between the official and party functions of public officials".<sup>86</sup>

New amendments to the code should clearly prohibit direct or indirect misuse of all public resources – financial, material, technical and human – for campaigning purposes by candidates, public officials or others.<sup>87</sup> Candidates, for example, should not be permitted to use state-funded events for their campaigns. Some abuses of administrative resources have been addressed and investigated.<sup>88</sup> However, representatives from local election-observing NGOs maintain that these investigations are insufficient, and the government should adopt a clearer non-tolerance policy.<sup>89</sup>

The government must also fully address, investigate and penalise all attempts to intimidate political opponents. During the 2010 local elections, there were cases of intima-

<sup>77</sup> Several opposition parties refused to participate, further minimising their influence and effectiveness.

<sup>78</sup> "Georgia's Progress Report on Implementation of the ENP Action Plan", Office of the European and Euro-Atlantic integration state minister, January-June 2010. [www.eu-integration.gov.ge/uploads/ENPREPORT2010Januaty-June\\_FINAL.doc](http://www.eu-integration.gov.ge/uploads/ENPREPORT2010Januaty-June_FINAL.doc).

<sup>79</sup> For more detail, see "Georgia Municipal Elections, 30 May 2010", final report, OSCE/ODIHR EOM; and "Joint Opinion on the Election Code of Georgia as amended through March 2010", Council for Democratic Elections, 33rd meeting, Venice Commission, 83rd plenary, Strasburg/Warsaw, 9 June 2010. [www.venice.coe.int/docs/2010/CDL-AD\(2010\)013-e.asp](http://www.venice.coe.int/docs/2010/CDL-AD(2010)013-e.asp). Such progress led two prominent opposition candidates to recognise the May local election results, a previously unheard of practice.

<sup>80</sup> "Georgia Municipal Elections", final report, op. cit.

<sup>81</sup> Ibid.

<sup>82</sup> Pensioners also received medication vouchers before the 2006 local and 2008 presidential and parliamentary elections. No such vouchers were issued in 2007 or 2009. "Use of Ad-

ministrative Resources for Election Campaign", TI, Tbilisi, 29 March 2010.

<sup>83</sup> Ibid.

<sup>84</sup> "Response to Transparency International Report on the Use of Administrative Resources during the May 30, 2010 Electoral Campaign", Inter-Agency Task Force for Free and Fair Elections (IATF), 21 April 2010. [www.president.gov.ge/index.php?lang\\_id=ENG&sec\\_id=280&info\\_id=5163](http://www.president.gov.ge/index.php?lang_id=ENG&sec_id=280&info_id=5163).

<sup>85</sup> "Exemplary Elections? Monitoring Report of Local Elections", Human Rights Centre (HRIDC), 2010. <http://humanrights.ge/admin/editor/uploads/pdf/monitoringisqarTuliversia.pdf>; "Georgia Municipal Elections", final report, op. cit.

<sup>86</sup> "Georgia Municipal Elections", final report, op. cit.

<sup>87</sup> "Joint Opinion on the Election Code of Georgia", op. cit.

<sup>88</sup> "Report of Pre-Election Campaign", IATF, 25 May 2010. [www.president.gov.ge/index.php?lang\\_id=ENG&sec\\_id=280&info\\_id=5213](http://www.president.gov.ge/index.php?lang_id=ENG&sec_id=280&info_id=5213).

<sup>89</sup> "Response to Transparency International Report", op. cit.; Crisis Group interview, monitoring organisation representative, Tbilisi, September 2010.

tion against opposition party members and activists.<sup>90</sup> One occurred in the Svaneti region,<sup>91</sup> when on 3 May, several opposition candidates were summoned by the local administration chief (*gamgebeli*) and pressured to drop out of the race.<sup>92</sup> Four candidates signed the withdrawal statements, another four refused. The *gamgebeli* was fired as a result,<sup>93</sup> the regional governor, who was also present, was sent on vacation and investigated but later resumed his duties.<sup>94</sup> Government officials say he was reinstated because, though he was in the room, he did not take an active part in the intimidation.<sup>95</sup> However, the presence of a governor at such a meeting raises a serious ethics issue.

On a positive note, fifteen opposition parties have begun talks with the government on reforming the electoral code. In May, eight put forward suggestions, including to ask the OSCE/ODIHR to do a formal review of the code with the view to eliminating inconsistencies, gaps and ambiguities, many of which stem from frequent amendment. They also underlined issues regarding the composition of election administrations, voter lists, election-day procedures and the handling of complaints.<sup>96</sup> The authorities should engage in a good-faith dialogue, take up recommendations from international and local organisations and, most importantly, address previous election violations.

## B. THE JUDICIARY

The judiciary is also of utmost importance for gaining and maintaining popular trust in the electoral process. In its report on the 2008 presidential and parliamentary elections, the OSCE/ODIHR mission stated that the courts lacked impartiality in considering appeals from opposition parties and monitoring organisations. The 2010 EOM noted that “most appeals were dismissed by the courts, even when during the hearings substantial evidence and

testimonies on violations were presented”.<sup>97</sup> Such problems need to be addressed to encourage opposition parties and the general populace to use the courts rather than street protests to express their political grievances.

Judicial reform has been on the agenda of several governments. President Saakashvili promised a “wave of democratisation”, focusing on the judiciary after having acknowledged its weaknesses and lack of independence.<sup>98</sup> Laws have been passed and amended in the past few years to reduce interference in judicial decision-making. Authorities now have less influence on the selection of judges, and it is explicitly illegal to try to influence a judge’s decision.<sup>99</sup> Judges’ salaries were raised from the monthly \$40-\$150 in place prior to 2007 to \$1,360-\$2,600.<sup>100</sup> Court budgets were increased and technical equipment improved.

A main component of the reform was reorganisation of the High Council of Justice, the body that oversees the judicial system. Composed of judges, two UNM members and one opposition party member, it is now headed by the chairman of the Supreme Court rather than the president of the republic. Beginning in 2013, all judges except those on the Supreme Court will receive lifetime appointments. A new Code of Criminal Procedure (CCP) introduced jury trials in criminal cases as of October 2010.<sup>101</sup> The chairman of the Supreme Court, who is overseeing the reform process, believes that the legislative and structural changes guarantee the independence of judges.<sup>102</sup>

International organisations facilitating judicial reform also approve these steps but note more needs to be done to ensure trust.<sup>103</sup> Many Georgians perceive the judiciary as still dependent on the executive branch.<sup>104</sup> A recent poll found that only 17 per cent of respondents trust the judi-

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<sup>90</sup> “The Final Report on Monitoring the May 30, 2010 Local Self-Government and By-Elections of Parliament of Georgia”, International Society for Fair Elections and Democracy, 6 August 2010; “The second interim report on the pre-election environment monitoring results, April 23-May 22, 2010”, Georgian Young Lawyers Association, May 2010.

<sup>91</sup> An isolated mountain region whose 60,000 inhabitants speak a separate language (Svan) related to Georgian.

<sup>92</sup> “Press Release on Pre-election Monitoring”, TI, 11 May 2010.

<sup>93</sup> Crisis Group interview, government official, Tbilisi, November 2010.

<sup>94</sup> In total, 112 registered political party representatives and 161 candidates – the vast majority from the opposition – withdrew.

<sup>95</sup> “Use of Administrative Resources for Election Campaign”, op. cit.

<sup>96</sup> Crisis Group interview, senior Georgian government official, Tbilisi, November 2010.

<sup>97</sup> “Opposition Lays out Election Reform Proposal”, Civil Georgia, 4 October 2010.

<sup>97</sup> “Georgia Municipal Elections”, final report, op. cit.

<sup>98</sup> “Saakashvili Speaks of ‘New Wave’ of Democratic Reforms”, Civil Georgia, 16 September 2008; also, Crisis Group Briefing, *Georgia: The Risks of Winter*, op. cit.

<sup>99</sup> See “Law on Communication Rule with the General Court Judges”; “Organic Law on General Courts”.

<sup>100</sup> An average salary in the non-commercial sector at the end of 2009 was GEL 635 (\$350).

<sup>101</sup> “It takes time and significant resources to establish a fully functioning jury system, which will be difficult to implement nationwide”. See Crisis Group Briefing, *Georgia: The Risks of Winter*, op. cit.

<sup>102</sup> “Sasamartlo repormis mnishvnelovani etapi dasrulda” [“An important phase of the judicial reform is over”], 24 Hours, 31 December 2009. <http://24saati.ge/index.php/category/news/justice/2009-12-31/2471>.

<sup>103</sup> Crisis Group interview, international organisation representative, Tbilisi, October 2010.

<sup>104</sup> Crisis Group interviews, analysts, Tbilisi, August 2010.

ciary and 6 per cent believe it is independent.<sup>105</sup> Businessmen, journalists and ordinary citizens who maintain that the state has violated their rights said they do not view the judiciary as independent or interested in protecting their rights.<sup>106</sup> A local human rights organisation reported: “Judges mostly render independent verdicts in civil cases, but they are subordinate to pressure from the executive ... and the prosecutor’s office when it comes to administrative and criminal cases. Independent court decisions in criminal cases are an exception rather than a rule”.<sup>107</sup> A human rights activist said, “administrative courts played an important role in legalising arrests of activists and prosecution motivated by political persecution”.<sup>108</sup> Observers said judges practice self-censorship and generally rule for the government in politically sensitive or controversial cases.<sup>109</sup>

High court fees, the often long duration and complexity of court proceedings and the lack of information on reforms contribute to a deficit of public trust.<sup>110</sup> The rate of acquittals in criminal cases is 1 per cent, which leads many to believe the judiciary is a rubber stamp for the prosecutor’s office.<sup>111</sup>

Property rights abuses – flagged in past Crisis Group reports – continue without effective judicial redress. According to a legal expert from Transparency International Georgia, it is common court practice to rule for the state.<sup>112</sup> A disturbing case involves alleged violations associated with the construction of a new seaside resort in Anaklia, in the western Zugdidi region.<sup>113</sup> Some local residents claimed they were either forced by the local prosecutor’s office to hand over their land to the government or it was expropriated.<sup>114</sup> Crisis Group obtained copies of registra-

tion documents confirming the appropriation of land owned by a villager who was given no compensation, in apparent violation of the spirit of eminent domain procedure.

At least one plaintiff sued the government. He claimed to have bought land and registered it in 2008, using paper-based documentation. Two years later the local government informed him that he did not possess proper documentation and said his 47 hectares overlapped land the state had sold to a private company in 2009. The court endorsed the public registry’s argument that the applicant’s original paper-based documentation “does not fully identify the real estate” and “cannot be compared” to the information provided in the digital documentation the applicant filed only in 2010.<sup>115</sup> Other residents did not go to court, because they distrusted the judiciary and feared retaliation from local authorities.<sup>116</sup>

A good deal of controversy surrounds the new practice of plea bargaining<sup>117</sup> that is used with increasing frequency – according to 2009 statistics in an estimated 60 per cent of criminal cases. Authorities say that it facilitates a more effective and timely judicial system, combats organised crime and reduces prison overcrowding, all longstanding problems.<sup>118</sup> Critics argue that it has become a revenue source rather than an instrument of justice. In the first eight months of 2010, it brought in fines of GEL 33 million (\$19 million) for the state.<sup>119</sup> Given the 99 per cent conviction rate, a defendant who refuses a plea bargain is almost guaranteed a jail sentence. Critics stress that the practice reinforces the perception that the justice system is dominated by the prosecutor’s office.<sup>120</sup> It has some clear advantages but needs to function within an effective and respected system.

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<sup>105</sup> “Basic Knowledge and Perception Survey about the Judicial System of Georgia”, Social Research Initiative, for UNDP, 2009.

<sup>106</sup> Crisis Group interviews, Tbilisi, Zugdidi, August-September 2010.

<sup>107</sup> “Trial Monitoring Report: Judiciary and Human Rights in Georgia”, Human Rights Centre, Tbilisi, 2009. [www.humanrights.ge/admin/editor/uploads/pdf/report-ENG.pdf](http://www.humanrights.ge/admin/editor/uploads/pdf/report-ENG.pdf).

<sup>108</sup> Giorgi Ckheidze, “Judicial Reform Initiatives: Results Oriented?”, in *Spotlight on Georgia*, Foreign Policy Centre, 2009.

<sup>109</sup> Crisis Group discussions, group of experts, Tbilisi, 2009.

<sup>110</sup> “Istanbul Anti-Corruption Action Plan”, OECD Anti-Corruption Network for Eastern Europe and Central Asia, second round of monitoring, Georgia, 31 March 2010.

<sup>111</sup> “European Neighbourhood Policy: Monitoring Georgia’s Anti-corruption Commitments”, TI, 2010.

<sup>112</sup> Crisis Group interview, TI Georgia, Tbilisi, October 2010.

<sup>113</sup> After President Saakashvili promised to turn Anaklia into the best summer resort area in Georgia within a few years, the government initiated large construction projects that it plans to privatise upon completion.

<sup>114</sup> Crisis Group interviews, local population, Anaklia, Zugdidi region, August 2010. See also “New Anaklia – on Private Land”,

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[humanrights.ge](http://humanrights.ge), 28 June 2010. [www.humanrights.ge/index.php?a=main&pid=12064&lang=eng](http://www.humanrights.ge/index.php?a=main&pid=12064&lang=eng).

<sup>115</sup> The applicant’s 2008 filing was in accordance with paper-based documentation requirements that had been in effect until 2007. He attempted to correct this failing in 2010 by submitting to the public registry the digital documentation that had subsequently been required. Decision of the Zugdidi Regional Court, 4 October 2010. Crisis Group interview, TI lawyer, Tbilisi, October 2010.

<sup>116</sup> Crisis Group interviews, local population, Anaklia, Zugdidi region, August 2010.

<sup>117</sup> While plea bargaining is widely accepted in the U.S., many countries, like the UK, have rejected the practice.

<sup>118</sup> “Plea Bargaining in Georgia”, TI, February 2010.

<sup>119</sup> Ibid.

<sup>120</sup> Crisis Group interview, NGO representative, Tbilisi, October 2010.

## C. THE MEDIA

Georgia's print and broadcast media are considered freer than those of almost all former post-Soviet republics, though transparency and pluralism have tended to decline since the "Rose Revolution" in 2003.<sup>121</sup> The electronic media is deeply polarised along party lines and viewed as serving the interests of one or another political group.<sup>122</sup> Pro-government outlets engage in advocacy journalism and provide little space for opposing viewpoints. Conversely, the opposition allies with its own – less widely available – partisan outlets. As a result, few neutral and unbiased forums exist.

The diversity of news, topics and opinions broadcast by pro-government channels is limited. Moreover, pro-government TV stations like Rustavi 2, Imedi-TV and to a lesser extent TV Channel 1 – the Georgian Public Broadcaster – which have exclusive rights for nationwide coverage, sometimes report similar topics in the same sequence, leading critics to assert that they are directed by the government.<sup>123</sup>

When discussing media freedom, analysts typically refer to editorial policy and assert that "the owners of media outlets play the greatest role in determining a TV station's editorial policy". Their directives are announced at producers' meetings, and communicated to journalists, together with the themes to be covered and methodology used. This micromanagement allegedly includes determining the proper vernacular and vocabulary for print and broadcast pieces. The phrase "it came down from above" has become part of journalists' private vocabulary.<sup>124</sup> Another major problem is that many journalists consider their job security is dependent upon self-censorship, whether they work for pro- or anti-government outlets. A media expert noted that, in the case of pro-government outlets, "they learned how to work. They know they should not report use of administrative resources during elections, problematic IDP issues, etc. Very often you witness cases when ministers do not know how to comment, and journalists dictate the information they need".<sup>125</sup>

A positive move has been the conversion of Georgian Public Broadcaster's Second Channel TV, which is available on regular VHF broadcasting in most major cities, to an all-political, public-access outlet. Registered parties are allowed one hour per month to air their views without censorship, and there is extensive coverage of press conferences and other political events. Some viewers complain the format is dry, but this appears to refer to format, not political content.

Print media has proved more independent, but the economic crisis hit newspapers hard; circulation has decreased, and their existence largely depends on international funding.<sup>126</sup> The regional print media has been vocal on local issues, but journalists complain they are often labelled hostile by local officials, who decline to provide comments and information.<sup>127</sup> One regional journalist filed 70 lawsuits against the government for violations of public information law between 1 January 2007 and 25 August 2010.<sup>128</sup> On balance, the impact of the print media, internet and radio is relatively insignificant, as TV remains the primary source of information for 88 per cent of the population.<sup>129</sup>

The appointment of a board of trustees for the Georgian Public Broadcaster was a significant achievement that gives representation to civil society and helps de-politicise the outlet.<sup>130</sup> Some positive changes were observed during the May 2010 election campaign, when it provided a balanced picture and aired more debates to allow citizens to make more informed choices.<sup>131</sup> However, all other channels tilted strongly toward or against the government.<sup>132</sup> After the elections, political talk shows and debates on pro-government channels were shut down for four months, ostensibly because of the summer holiday programming.

During electoral periods, most print and broadcast media are still regarded as tools for political manipulation. In order for reforms to take root and become sustainable, the government must ensure the transparent ownership and financing of all media outlets. Additionally, all nationwide TV channels need independent editorial mechanisms.

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<sup>121</sup> "Television in Georgia – Ownership, Control and Regulation", TI, 29 November 2009; Crisis Group Briefing, *Georgia: The Risks of Winter*, op. cit.

<sup>122</sup> "Biased reporting is unacceptable to 75 per cent of respondents, but most feel that the impartiality of TV news is compromised". "Georgia Comprehensive Media Research: Summary Findings", CRRC, August-November 2009. [www.epfound.ge/files/geo\\_media\\_research\\_report\\_en\\_1.pdf](http://www.epfound.ge/files/geo_media_research_report_en_1.pdf).

<sup>123</sup> Crisis Group interview, media expert, Tbilisi, August 2010.

<sup>124</sup> "European Neighbourhood Policy", op. cit.

<sup>125</sup> Crisis Group interview, media analyst, Tbilisi, August 2010.

<sup>126</sup> Crisis Group interview, media expert, Tbilisi, August 2010.

<sup>127</sup> Crisis Group interview, journalist, Zugdidi, August 2010.

<sup>128</sup> Crisis Group interview, journalist, Gurjaani, September 2010.

<sup>129</sup> "Georgia Comprehensive Media Research", op. cit.

<sup>130</sup> In September 2009, parliament increased the council of trustees to fifteen. The ruling and opposition party groups each nominate seven members, civil society one, an improvement over the previous practice that allowed only parties to nominate. In December, parliament elected three members favoured by NGOs. "13 Parties Agree On Terms of Political Channel", Civil Georgia, 22 February 2010.

<sup>131</sup> A leading opposition figure applauded the GPB campaign coverage. Crisis Group interview, Tbilisi, May 2010.

<sup>132</sup> "Georgia Municipal Elections", final report, op. cit.

## **V. CONCLUSION**

Georgia is politically and economically stable in the short term, but it will face sizeable political and economic challenges in 2012-2013. The government and the opposition have recently entered into dialogue to revise the electoral code; similar cooperation should develop around other issues, related to the judiciary, the media and the economy. Most opposition parties no longer desire change through the streets, which provides the government with an opportunity to engage them to reinforce democratic practices and legitimise the election process. It is vital to demonstrate that, no matter who wins, the country can choose its government through fair contests at the ballot box, even in the still extraordinary post-war climate.

Faithful implementation of electoral and judicial reforms would end the revolutionary period that has continued since independence in 1991 and move the country toward sustainable democratic governance. The current government should understand that its domestic legitimacy, as well as continued international political and financial support, is contingent on the successful implementation of further reforms and a credible leadership transition.

**Tbilisi/Istanbul/Brussels 13 December 2010**

## APPENDIX A

### MAP OF GEORGIA

Administrative map of Georgia



## APPENDIX B

### ABOUT THE INTERNATIONAL CRISIS GROUP

The International Crisis Group (Crisis Group) is an independent, non-profit, non-governmental organisation, with some 130 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international decision-takers. Crisis Group also publishes *CrisisWatch*, a twelve-page monthly bulletin, providing a succinct regular update on the state of play in all the most significant situations of conflict or potential conflict around the world.

Crisis Group's reports and briefing papers are distributed widely by email and made available simultaneously on the website, [www.crisisgroup.org](http://www.crisisgroup.org). Crisis Group works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

The Crisis Group Board – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring the reports and recommendations to the attention of senior policy-makers around the world. Crisis Group is co-chaired by the former European Commissioner for External Relations Christopher Patten and former U.S. Ambassador Thomas Pickering. Its President and Chief Executive since July 2009 has been Louise Arbour, former UN High Commissioner for Human Rights and Chief Prosecutor for the International Criminal Tribunals for the former Yugoslavia and for Rwanda.

Crisis Group's international headquarters are in Brussels, with major advocacy offices in Washington DC (where it is based as a legal entity) and New York, a smaller one in London and liaison presences in Moscow and Beijing. The organisation currently operates nine regional offices (in Bishkek, Bogotá, Dakar, Islamabad, Istanbul, Jakarta, Nairobi, Pristina and Tbilisi) and has local field representation in fourteen additional locations (Baku, Bangkok, Beirut, Bujumbura, Damascus, Dili, Jerusalem, Kabul, Kathmandu, Kinshasa, Port-au-Prince, Pretoria, Sarajevo and Seoul). Crisis Group currently covers some 60 areas of actual or potential conflict across four continents. In Africa, this includes Burundi, Cameroon, Central African Republic, Chad, Côte d'Ivoire, Democratic Republic of the Congo, Eritrea, Ethiopia, Guinea, Guinea-Bissau, Kenya, Liberia, Madagascar, Nigeria, Rwanda, Sierra Leone, Somalia, Sudan, Uganda and Zimbabwe; in Asia, Afghanistan, Bangladesh,

Burma/Myanmar, Indonesia, Kashmir, Kazakhstan, Kyrgyzstan, Nepal, North Korea, Pakistan, Philippines, Sri Lanka, Taiwan Strait, Tajikistan, Thailand, Timor-Leste, Turkmenistan and Uzbekistan; in Europe, Armenia, Azerbaijan, Bosnia and Herzegovina, Cyprus, Georgia, Kosovo, Macedonia, Russia (North Caucasus), Serbia and Turkey; in the Middle East and North Africa, Algeria, Egypt, Gulf States, Iran, Iraq, Israel-Palestine, Lebanon, Morocco, Saudi Arabia, Syria and Yemen; and in Latin America and the Caribbean, Bolivia, Colombia, Ecuador, Guatemala, Haiti and Venezuela.

Crisis Group receives financial support from a wide range of governments, institutional foundations, and private sources. The following governmental departments and agencies have provided funding in recent years: Australian Agency for International Development, Australian Department of Foreign Affairs and Trade, Austrian Development Agency, Belgian Ministry of Foreign Affairs, Canadian International Development Agency, Canadian International Development and Research Centre, Foreign Affairs and International Trade Canada, Czech Ministry of Foreign Affairs, Royal Danish Ministry of Foreign Affairs, Dutch Ministry of Foreign Affairs, European Commission, Finnish Ministry of Foreign Affairs, French Ministry of Foreign Affairs, German Federal Foreign Office, Irish Aid, Japan International Cooperation Agency, Principality of Liechtenstein, Luxembourg Ministry of Foreign Affairs, New Zealand Agency for International Development, Royal Norwegian Ministry of Foreign Affairs, Slovenian Ministry of Foreign Affairs, Swedish International Development Agency, Swedish Ministry for Foreign Affairs, Swiss Federal Department of Foreign Affairs, Turkish Ministry of Foreign Affairs, United Arab Emirates Ministry of Foreign Affairs, United Kingdom Department for International Development, United Kingdom Economic and Social Research Council, U.S. Agency for International Development.

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**December 2010**

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## **Regional Offices and Field Representation**

Crisis Group also operates out of over 25 different locations in Africa, Asia, Europe, the Middle East and Latin America.

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