

Georgia: Making Cohabitation Work

I. OVERVIEW

Georgia's peaceful change of government after the October 2012 parliamentary elections was an encouraging and rare example of a democratic post-Soviet power transfer. President Mikheil Saakashvili and the new Prime Minister, Bidzina Ivanishvili, each received well-deserved praise – Saakashvili for quickly accepting the defeat of his United National Movement (UNM), and Ivanishvili, who led his Georgian Dream (GD) coalition to victory after a bitter campaign, for saying he was ready to work with his arch-rival during a delicate year-long “cohabitation”. The new government now needs to use the ten months before the 2013 presidential elections to prioritise reforms that strengthen the independence and accountability of state institutions.

Saakashvili, who is term-limited from standing again, is due to remain in office until October 2013, when presidential elections will be held and a new constitution will come into force. During this period, he should continue to honour his pledge to refrain from exercising the extensive powers still legally available to him under the old constitution, lest that lead, as it almost inevitably would, to a confrontation with unpredictable consequences. Given Georgia's chronic, often violent disorder especially during its first decade of independence in the 1990s, any destabilisation of this still delicate situation could entail serious risks.

The new Ivanishvili government has an opportunity to win broader trust by demonstrating that it is concentrating on critical governance issues, not political score-settling. This is a key to managing the extremely high expectations among those who voted for Georgian Dream. Many of his supporters – whether due to campaign promises, or as a consequence of his immense personal wealth – anticipate an unrealistically quick improvement in living standards. It is vital that the reform agenda be communicated regularly to the public, for instance through cabinet meetings whose deliberations are reported in all media outlets. Regular, publicised meetings between the president and prime minister, however distasteful both may consider them, would boost stability.

Tensions have been growing between the new and old government due to the arrest of former and current officials with ties to the UNM on charges ranging from abuse

of office to torture. While past abuses should be investigated, it is vital that arrests not be perceived as selective, victors' justice, and so detract from the need to build support for institutional reform. Investigations should prioritise severe crimes; a criminal cases review commission and amnesties and compensation should be considered, so as to ensure that the still fragile judiciary is not stretched to the breaking point addressing complaints related to the past government's behaviour. President Saakashvili's legacy and that of his UNM party would also suffer if he and his closest allies were to attempt to portray every examination into possible misdoings as politically motivated.

The immediate priority of the new government should be to build trust in the judiciary, the penal service and the powerful interior ministry. The courts, as well as prosecutors, must be given real independence from political pressures. Without viable recourse to a legal system enjoying broad public acceptance, other state institutions will not be able to develop properly, and politicisation will continue to affect the entire governing system. Business and investor confidence, vital to economic stability and growth, requires an unbiased legal system that provides protection and guarantees against harassment from the authorities. Encouragingly, the Ivanishvili team has already prepared far-reaching legislation aimed at de-politicising the judiciary, including the High Council of Justice.

Georgia has an ethnically mixed population. Some 15 per cent are minorities, including 12 per cent who are ethnic Azeris or Armenians, so the Ivanishvili government also needs to take bold steps to make clear that inter-ethnic or inter-confessional confrontations or xenophobic manifestations – largely dormant in recent years – will not be tolerated and will be prosecuted under statutes outlawing hate crimes.

During the campaign, many Georgian Dream officials had promised to quickly improve relations with Russia, but the new government has already indicated it will not significantly change its Euro-Atlanticist foreign policy focus. It flatly rules out a full resumption of diplomatic ties with Russia while Moscow maintains “embassies” and a large military presence in breakaway South Ossetia and Abkhazia. Rather than attempt to tackle these difficult issues first, the new government is pragmatically seeking common ground in less controversial spheres. This includes boosting the Georgian economy through the full resump-

tion of normal trade relations. The appointment of a special representative and offer to engage in unconditional dialogue with Russia was a positive initial step.

If Georgia's leaders succeed in overcoming the challenges of the next ten months with vigilance and patience, the country will be able to serve proudly as a true development model for the region. Compromise, considerable restraint and hands-on diplomacy are necessary to prevent squandering of fragile democratic gains or, worse yet, re-ignition of the often violent instability that marked the first decade of independence. More specifically, it will be important to:

- ❑ abide by the spirit of the new constitution that officially comes into force only in October 2013, including by holding well-publicised meetings between the president and prime minister. If amendments to the new constitution are necessary, they should start with those recommended by the Council of Europe's Venice Commission to strengthen the parliament's oversight powers;
- ❑ ensure that the judiciary and the prosecution services are immune from political interference by reforming the High Council of Justice (HCOJ) and the chief prosecutor's office;
- ❑ focus, while investigating former officials, on their involvement in severe crimes, and consider setting up an independent criminal cases review commission and an amnesty and compensation program to help address the thousands of complaints being received.
- ❑ de-politicise the internal affairs ministry (MIA) by legislating maximum civilian oversight and transparency and accepting capacity building and monitoring by local and international expert groups; and
- ❑ focus on non-political areas where progress in outreach to Russia is attainable in the short term, for example, by both countries, as a first step and even while diplomatic relations remain frozen, opening trade liaison missions in Moscow and Tbilisi respectively.

The EU, U.S. and international organisations should help to mitigate tensions during the cohabitation period by:

- ❑ maintaining constant diplomatic engagement.

II. COHABITATION: MANAGING A DELICATE BALANCE

The victory of Georgian Dream (GD), a broad coalition led by billionaire and political newcomer Bidzina Ivanishvili, over President Saakashvili's ruling United National Movement (UNM) in October's 2012 parliamentary elections, has forced a highly unusual "cohabitation" system on Georgia, between a prime minister and president who are bitter rivals. Managing it until October 2013, when presidential elections and a new constitution are expected, will require extreme restraint and cooperation among hostile political forces. However, it is not only in the national but also in the two leaders' best interests to work together over the next ten months, observing some basic ground rules.

Post-election expectations, especially among Ivanishvili supporters but also Georgia's international partners are very high. Even a perception of resumed cut-throat political infighting, however, could have an immediate negative effect on the economy, foreign cooperation and investment that in turn could create deep social disillusion and lead to unpredictable consequences, even unrest. The discovery of several arms caches in various parts of the country, one alleged to have been stashed away by ex-interior ministry officials, contributes to concerns about the dangers that might be associated with high political tensions.¹

¹ On 3 December 2012, the authorities reported confiscating more than 100 submachine-guns, including various types of Heckler & Koch weapons with silencers, in the attic of a Tbilisi home. Interior ministry officials refused to speculate on what the weapons might be intended for and said an investigation is ongoing. Crisis Group interview, 13 December 2012. See also "Ministry of Defence (MoD): 'Large Weapons Cache Uncovered in Tbilisi'", Civil Georgia, 4 December 2012. The officials said another cache was found in the southern Samtkhe-Javakheti region, including 24 metres of explosive fuses, Kalashnikov automatic rifles, bayonets, 175 5.45mm calibre magazines, 47 7.62mm calibre magazines, two hand grenades and a hunting rifle. Ibid. In another case, on 26 November, unregistered firearms and ammunition, including four assault rifles, a submachine gun and 900 rounds of ammunition, were alleged to have been found in the headquarters of a regional branch of the ministry's Department of Constitutional Security (KUD) in Zugdidi, western Georgia. "Interior Ministry Says 'Unregistered' Firearms Found in Zugdidi", Civil Georgia, 27 November 2012. Three people were detained for alleged illegal possession of AKM (Kalashnikov modernised automatic) rifles, "Makarov" pistols and two rifles in Tbilisi and in Kobuleti, western Georgia. "Large amount of firearms seized by law enforcement officers", interior ministry, 11 December 2012; "One person detained for illicit weapons possession", MIA, 4 December 2012.

On a recent positive note, Saakashvili and the GD government concurred on the selection of a new army chief of staff in early December. The U.S. embassy and NATO hailed the agreement as a sign of the two political forces' willingness to cooperate. The fact that the president and the defence minister, Irakli Alasania, publicly appeared together to make the announcement also sent a constructive signal.²

A. HOW COHABITATION IS SUPPOSED TO FUNCTION AND THE NEW CONSTITUTION

Cohabitation is made more difficult because the rules of the game are changing as Georgia transits from one constitution to another. The "new constitution" as it is referred to, is actually a sweeping package of amendments passed in 2010 that is due to take effect after the October 2013 presidential elections.³ The changes were passed when President Saakashvili's UNM enjoyed a two-thirds parliamentary majority. A preponderance of powers will move from the president to the prime minister, who in effect becomes not only the head of government, but also the chief executive authority over both domestic and foreign policy.⁴ While the parliament will gain the authority to nominate the prime minister (presently a presidential function) and approve the cabinet, it will still have too few oversight functions.⁵

The new constitution is not yet in force de jure, but it already regulates much of political life de facto. Thus, despite his electoral defeat, Saakashvili formally retained the authority to nominate UNM allies to the prime ministership and several other senior posts (including defence minister and interior minister). But since Georgian Dream won a solid parliamentary majority,⁶ no such figure stood a chance at confirmation. Upon conceding the election, therefore, he asked Georgian Dream to select a prime minister, and as a consequence he formally nominated his arch-foe, Ivanishvili, who then chose his own cabinet.

Also in the spirit of the new constitution, Saakashvili has vowed not to use most of his other powers during the "cohabitation", such as to dismiss key "power ministers". He has subsequently appointed a few regional governors, but he also accepted the GD candidate for chief prosecutor, though the incumbent had not been obliged to resign. Saakashvili says he will focus on foreign affairs for the remainder of his term, especially continuing to develop Georgia's ties with the European Union (EU) and NATO.⁷ Such a division of responsibilities could mitigate tensions during the cohabitation period.

While some have recommended that the new constitution be brought into force before the presidential elections, this is highly unlikely, as the GD parliamentary majority is substantially short of the two thirds (100 seats) required to enact such a change. Any new amendments require a similar two-thirds majority for adoption, thus a degree of bipartisan concurrence, so should focus on addressing recommendations made by the Council of Europe's Venice Commission to increase the parliament's oversight of budgetary matters and the work of ministries.⁸

² "Saakashvili presents new Army Chief of Staff"; and "U.S. Embassy Hails Agreement on New Chief of Army Staff", Civil Georgia, 5 December 2012. "NATO Urges Georgia to Stay on Reform Path", Civil Georgia, Tbilisi, 5 December 2012.

³ "The constitutional and political order are separate now". Crisis Group interview, Georgian minister, Tbilisi, 1 November 2012. In 2009, a State Constitutional Commission was created to prepare amendments to the 1995 constitution that had already been substantially amended in February 2004 and on seventeen subsequent occasions thereafter. The main opposition parties boycotted, and the amendments were passed on 15 October 2010. For detailed discussion, see Crisis Group Europe Briefing N°58, *Georgia: Securing a Stable Future*, 13 December 2010.

⁴ The president will remain head of state and commander-in-chief of the armed forces but will not have the right to initiate laws or propose the state budget. The parliamentary majority – not the president – will appoint the prime minister under the new constitution.

⁵ The Venice Commission, the Council of Europe's advisory body on constitutional matters, commented that the new constitution still constrains parliamentary oversight mechanisms for state expenditures and ministerial accountability. Parliament's budget role is limited, since only the government initiates legislation, and parliament cannot amend budget legislation without the government's consent. "Final Opinion on the Draft Constitutional Law on Changes and Amendments to the Constitution of Georgia", Venice Commission, 5 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).

⁶ The Georgian Dream (GD) coalition garnered 55 per cent of the party-list vote, and together with its victories in single-mandate constituencies, a total of 85 of 150 seats. Three GD members resigned their seats to take up ministerial positions, leaving the GD with 82 seats. Six members also quit the UNM to become independent after the election, leaving the UNM with 59 seats. The six subsequently set up an independent parliamentary faction. A by-election to fill the three vacant parliamentary seats will be held sometime in 2013.

⁷ President Saakashvili said he would "fully" dedicate "one year of my remaining presidential term" to bringing Georgia's European integration "to [the] next level, that involves free trade, visa free rules, [EU] association agreement and the emergence of the prospect for EU membership". "Saakashvili Meets EU's Van Rompuy in Brussels", Civil Georgia, 14 November 2012.

⁸ "Final Opinion on the Draft Constitutional Law", Venice Commission, op. cit.

B. CONTENTIOUS AND POTENTIALLY DESTABILISING ISSUES

1. Overt disagreements between Georgian Dream and UNM

After a generally stable first month in which many ministries cooperated on the transfer of control, cohabitation quickly bogged down amid accusations and counter-accusations from the two rival political camps over arrests and investigations of several former senior UNM officials, many of whom had served in the interior ministry.

In the most high-profile case, on 6 November, Bacho Akhalaia, who had served in various ministerial posts – penitentiaries, defence and, briefly, interior – was questioned by prosecutors, detained and eventually charged with “exceeding official powers” by “insulting the dignity of victims”.⁹ The case involves a 2011 incident when, as defence minister, he allegedly hit four soldiers with the wooden end of a knife, verbally abused them and ordered them locked in a cell for several days. The army chief of staff, Giorgi Kalandadze, who was alleged to be present with Akhalaia, was arrested on charges related to the same incident, as was another high-ranking army commander. Saakashvili had promoted Kalandadze to chief of staff just a month before the arrest, after he and GD officials allegedly disagreed over the appointment. The two army men are out on bail and awaiting trial.¹⁰ Akhalaia, however, who also faces subsequent charges of torture for a 2010 incident involving the alleged beating of soldiers is being held without bail. He denies all charges.¹¹

⁹ “Bacho Akhalaia Arrested”, Civil Georgia, Tbilisi, 7 November 2012.

¹⁰ “Arrest of Akhalaia and Two Senior Army Commanders”, Civil Georgia, Tbilisi, 7 November 2012.

¹¹ Akhalaia resigned as interior minister just before the election after video footage surfaced portraying what appeared to be physical and sexual abuse of prisoners. Georgian human rights activists had long criticised him for promoting abuses in the penitentiary system, over which detractors alleged he still in effect wielded control. He was one of three former government officials, including Dmitri Shashkin (defence minister) and Zurab Adeishvili (justice minister), who were reported to have left the country after the GD victory. Akhalaia resurfaced on 5 November in Georgia’s second city, Kutaisi, saying in a TV interview that he was ready to cooperate with any investigation. The UNM labelled his arrest “political persecution” and demanded his release on bail. The new general prosecutor, Archil Kbilashvili, reportedly claimed it was only after Akhalaia was detained that “new allegations began to flow in from citizens who were somehow encouraged” to testify against him. Ellen Barry, “Prosecutions in Georgia Target ex-Official”, *The New York Times*, 29 November 2011.

Twelve high-ranking interior ministry officials have been charged with illegal confinement and surveillance, including of GD leaders, property damage and exceeding official powers. Prosecutors said one of the suspects confessed.¹² Also in November, the former head of the interior ministry’s General Inspection unit was arrested for alleged possession of drugs and weapons. Charges of misappropriation of state property were added later.¹³

Arrest warrants have been issued for Data Akhalaia, former head of the interior ministry’s secretive Special Operations Department (SOD), Gia Alania, another SOD officer, and Soso Topuridze, head of the ministry’s Constitutional Security Department (KUD), for alleged torture and misuse of power involving a January 2005 incident in which they are alleged to have beaten up two subordinate law enforcement officers.¹⁴ All three suspects are thought to be out of the country. Oleg Melnikov, a former KUD official, was arrested in Ukraine on charges related to the same case. Prosecutors are seeking his extradition.¹⁵

¹² This case involves the alleged abduction of Ivanishvili’s former bodyguard, who disappeared a few days before the elections and reappeared in a video message saying he made covertly recorded audio files of some Georgian Dream leaders. GD officials countered that the tapes were faked. “Charges against 11 Interior Ministry Officials and Tbilisi Vice-Mayor Unveiled”, Civil Georgia, 16 November 2012. Four of the 11 were later released on bail.

¹³ Tengiz Gunava, former chief of the interior ministry’s General Inspection (an internal investigations unit), was arrested on 15 November. Gunava, who was released on \$6,060 bail, said the allegations were “fabricated”, and that a handgun and drugs he was charged with allegedly possessing had been “planted”. Less than two weeks later, he was detained again for allegedly embezzling 3,000 litres of petrol as well as GEL 49,500 (\$30,000) during 2012: “Former Senior Police Official Arrested Again”, Civil Georgia, 29 November 2012.

¹⁴ Alania spent two years in prison in relation to the high-profile 2006 case of Sandro Girgvliani who was murdered in Tbilisi on 28 January 2006. Jailed by a Tbilisi court in July 2007, he received a presidential pardon in 2009. The charges against the men include abuse of powers. Data Akhalaia faces an additional charge of illegal imprisonment. The prosecutor’s office said that on 5 January 2005, he summoned a senior police officer and his colleague to KUD’s headquarters, where he, along with Topuridze and other KUD operatives, beat them for allegedly “insulting” Tako Salakaia, wife of then interior minister Vano Merabishvili, at a Tbilisi restaurant. “დათა ახალაია ბრალი დაუსწრებლად წაუყენეს” [“Data Akhalaia Officially Charged”], *24 Hours*, 5 December 2012. “Two former senior interior ministry officials face torture charges”, Civil Georgia, 30 November 2012.

¹⁵ Oleg Melnikov also spent two years in prison in relation to the Sandro Girgvliani murder case before receiving a presidential pardon. “Ex-police officer, wanted in Georgia, arrested in Ukraine”, Civil Georgia, 8 December 2012.

The leader of the former UNM ruling party, the once-powerful interior minister (2004-2012), Vano Merabishvili, is under investigation for the alleged use of a “fake passport” during an official December visit to Armenia.¹⁶ On 15 December, Merabishvili’s uncle, Levan Tumanishvili, was arrested on charges of tax evasion and illegal logging.¹⁷

Giorgi Kelbakiani, a construction firm owner accused of taking kickbacks in a scheme involving Tbilisi city budgetary funds, was arrested on 21 November and released on \$90,000 bail.¹⁸ He is a close friend of the mayor of Tbilisi, Gigi Ugulava. The head of the notorious Gldani prison, Alexander Mukhadze, was charged in absentia on 28 November with beating and torturing to death a prisoner.¹⁹ The former UNM police chief of the city of Borjomi was detained on torture and rape charges over alleged incidents in 2009.²⁰ A current UNM parliamentarian and former Tbilisi chief prosecutor, David Sakvarelidze, was summoned for questioning involving alleged property usurpation. He denied any connection to the case and has refused to appear.²¹ Former UNM parliamentarian Kakha Getsadze, who in early November was elected city executive by the local municipal council in the western city of Zestaponi, was arrested ten days later on charges he pistol-whipped a man and smashed the window of a government-owned car during a 2011 brawl.²²

A near constant parade of senior EU, NATO and U.S. officials have visited Tbilisi over the past two months, repeat-

edly calling on the new authorities to avoid “selective justice”, ensure rule of law and prosecute politically-sensitive cases fairly. “Everybody wants to see criminals prosecuted, but it needs to be done in a way that fully acknowledges the needs of due process and transparency”, the U.S. Assistant Secretary of State for European and Eurasian Affairs, Philip H. Gordon, told Prime Minister Ivanishvili chief, Catherine Ashton, expressed similar concerns during a stop in Tbilisi.²³ U.S. Secretary of State, Hillary Clinton, after a discussion with Georgia’s new foreign minister in Washington, further indicated a sense of growing concern.²⁴

The UNM accused the government of going on a “witch hunt” that had damaged the country’s relationship with the West.²⁵ Georgian Dream responded by accusing the former ruling party of “distorting the facts” through a lobbying campaign in Western capitals.²⁶ Ivanishvili attempted to placate misgivings by inviting NATO to monitor investigations related to the arrests and promising to ensure transparency of prosecutions.²⁷ Not only international, but also domestic organisations, as well as the ombudsman’s office, should accept such offers and publicise their findings, which could help inspire trust in the legal process and so lower tensions around politically sensitive cases.²⁸

Georgian lawyers and human rights activists say it is far too early to judge whether the arrests have been politically motivated, but they add that the harsh rhetoric employed by both the UNM and GD might be perceived as putting pressure on the judiciary.²⁹ Investigations should prioritise severe crimes, to avoid any perception that particular political personalities are being targeted for relatively minor offences. The justice ministry and the chief prosecutor should continue to release information about investi-

¹⁶ Merabishvili accompanied President Saakashvili to Armenia on 30 November to participate in a summit of the European People’s Party (EPP) “Eastern Partnership” leadership. “Police to summon Merabishvili for questioning over ‘fake passport’”, *Civil Georgia*, 1 December 2012.

¹⁷ “Merabishvili’s Uncle Faces Charges over Alleged Tax Evasion”, *Civil Georgia*, Tbilisi, 15 December 2012.

¹⁸ Kelbakiani is charged with “legalisation of illegal income” and faces up to twelve years in prison. He calls the charges “absurd”. The interior ministry also argued that his construction firm has not paid taxes “for years”. “Construction firm executive released on bail”, *Civil Georgia*, 21 November 2012.

¹⁹ “Georgian Prosecutor’s Office accuses former prison administration of murdering espionage suspect”, *Kavkazky Uzel*, 29 November 2012.

²⁰ He was arrested for allegedly ordering his subordinates to rape a detainee with the leg of a chair, beat him, and burn him with cigarettes. “Ex-police chief in Borjomi arrested over alleged abuse of detainee”, *Civil Georgia*, 30 November 2012.

²¹ Parliamentarian Sakvarelidze says he will answer questions only in public, as he enjoys parliamentary immunity. The finance ministry’s investigation department also summoned Sakvarelidze regarding the 2006 privatisation of a large Tbilisi park “Statement by Chief Prosecutor’s Office”, *GHN*, 12 December 2012.

²² “Head of Zestaponi municipality arrested”, *Civil Georgia*, Tbilisi, 29 November 2012.

²³ “Ashton meets Saakashvili, Ivanishvili in Tbilisi”, *Civil Georgia*, Tbilisi, 26 November 2012.

²⁴ “We are very much supportive of the peaceful transition to power that occurred as a result of this election by the new government, and we do hope that everything that is done with respect to prosecuting any potential wrongdoers is done transparently in accord with due process and the rule of law as is befitting of the Georgia[n] Dream and the aspirations and sensitivities of the Georgian people”, Clinton said. “Secretary Clinton, Georgian FM Meet in Washington”, *Civil Georgia*, 30 November 2012.

²⁵ Crisis Group interviews, UNM officials, Tbilisi, November-December 2012.

²⁶ “Senior GD MPs: Criticism from NATO Result of UNM’s ‘Distorted’ Information”, *Civil Georgia*, 13 November 2012. Josh Rogin: “Georgia prime minister takes on *The Washington Post*”, *The Cable-Foreign Policy*, 28 November 2012.

²⁷ “PM Ivanishvili meets U.S. Assistant Secretary of State”, *op. cit.*

²⁸ In their work, local NGO watchdogs regularly monitor criminal and administrative court proceedings and publicise their findings.

²⁹ Crisis Group interviews, lawyers and legal experts, Tbilisi, November 2012.

gations in a prompt and transparent manner so as to help reduce tensions.

Another area of dispute was the 2013 budget that the parliament unveiled in November. The UNM protested that cutbacks for the Presidential Administration and the National Security Council (NSC), which is under the president's control, not the majority-GD parliament, were "politically motivated".³⁰ The Ivanishvili government countered that the NSC budget, which took the biggest hit (90 per cent), lacked transparency and that many funds being slashed had been used to hire foreign lobbyists on behalf of the then-ruling party.³¹

Illustrating the awkwardness of "cohabitation", Ivanishvili and Saakashvili made simultaneous but separate visits in November to Brussels during which they had no contact with each other.³² Visiting Brussels that month, Saakashvili stated:

We didn't have to hand over, under the present Constitution, the Ministry of Justice, Prosecution Office, Ministry of Defence or Ministry of Interior. We did give it to them because we thought that... they're fully responsible for what they were supposed to do I cannot hide that I'm concerned by some of the developments already, after handing over power.³³

This unleashed concern among Georgian journalists, political pundits, and GD officials that the president might

yet attempt to use the formal powers he retains, thus creating a deep political crisis.³⁴

2. Balancing central and local government powers

Georgia is divided into nine regions, each with a governor appointed by the president.³⁵ There are also 64 local legislative councils (*sakrebulo*s) that in turn choose local executives (*gamgebelis*). Tbilisi is the only city with a directly elected mayor, Gigi Ugulava, a top UNM leader.

After the UNM's parliamentary defeat, GD supporters rallied in several regions demanding that the party's elected local officials resign, even though their terms run until 2014. In at least eleven cases, such mayors and local council members did resign or switched allegiance to Georgian Dream.³⁶ On 26 November, a few hundred GD supporters forced their way into the city administration building in the town of Martvili, demanding the pro-UNM mayor resign. Fistfights broke out. The police did not intervene, and no one was detained, giving rise to questions about the government's commitment to protect elected local bodies. The UNM is demanding probes into what it says are cases of intimidation of local officials, as are several Georgian NGOs.³⁷ GD officials, who have promised to address violations, should make every effort to eliminate any perception that their supporters have a green light to engage in harassment and arbitrary or selective punishment.³⁸

³⁰ Crisis Group interview, NSC official, Tbilisi, November 2012. Under the proposed budget, funding for the presidency would fall from \$8.53 million (2012) to \$5.56 million in 2013. The NSC chairman, currently Giga Bokeria, is appointed by the president. Prime Minister Ivanishvili responded that the budget was being tailored to meet basic social needs as promised during the election campaign. "We will not allocate funds which are aimed for the luxury of one person", Ivanishvili said on 2 November. He explained that of the GEL 24.78 million (\$14.86 million) NSC budget, GEL 23 million (\$13.79 million) was allotted to the non-transparent item of "measures for national security policy", which he said included payments to lobbyists. "Govt plans to cut funding of presidency, NSC, Tbilisi Municipality", Civil Georgia, 2 November 2012.

³¹ His critics alleged that Ivanishvili was spending more than \$1 million a month on election lobbying, while Ivanishvili said the figure was much less. The Georgian government listed \$1.83 million in 2012 for government lobbying activities to promote Georgia's political interests. "Georgian Elections: Furious battle for PR minds", BBC, 20 September 2012.

³² "Saakashvili to visit Brussels", Civil Georgia, 10 November 2012.

³³ Mikheil Saakashvili, Speech at the Carnegie Endowment for International Peace, 14 November 2012.

³⁴ Crisis Group interviews, Georgian journalists, politicians, political analysts, Tbilisi, November 2012.

³⁵ Adjara, (along with Abkhazia, which is not under central control) is defined as an "autonomous" republic. The head of the region's local parliament (Adjara Supreme Council) is nominated by Georgia's Prime Minister, based on which party forms a majority in the body through elections. These were held simultaneously with the national elections on 1 October 2012. Georgian Dream won a majority in the Adjara Supreme Council, and Ivanishvili picked 32-year-old Archil Khabadze, head of his affiliated Cartu Bank's Batumi branch office, to lead its autonomous government.

³⁶ This reflects the fact that some local council officials are not highly ideological but rather functionaries who view the GD as simply the latest "ruling party", just as many of them saw the UNM before and, in Soviet times, the Georgian Communist Party.

³⁷ Crisis Group interview, UNM official, Tbilisi, November, 2012. See also "Statement of NGOs on the Pressure on Local Self-Governments Agencies", 19 November 2012 "Statement about the developments in Martvili" (in Georgian), International Society for Fair Elections and Democracy (ISFED), 28 November 2012.

³⁸ "ნაციონალები" "ოცნებას" ზეწოლაში ადანაშაულებენ" ["Nationals accuse Dreamers of intimidation"], News.ge, 1 November 2012; Tinatin Khidasheli, MP from the Georgian Dream

The biggest dispute between the centre and local bodies is likely to be over budget allocations. Local governments depend on central money for about 80 per cent of their financing, so respect and cooperation are paramount. The situation in Tbilisi is particularly acute, with the sides at odds over who should pay for various social benefits before the new central budget comes into effect in January 2013.³⁹ The finance minister suggested that the capital may have misused the funds intended for those programs and was now trying to “evade covering these expenses”. The mayor, a close Saakashvili ally, insists he is being targeted in an effort to force him out.⁴⁰ When he tried to join a cabinet meeting to air his grievances, he was ejected amid an acrimonious verbal exchange with Prime Minister Ivanishvili.⁴¹

To avoid any perception of politicisation, the government should carry out reforms that clearly delineate central and local government responsibilities. In a positive development, an advisory council made up of local and international organisations has been set up in the regional development and infrastructure ministry to work on this issue. A solution agreed in principle by the UNM and GD is the direct election of all municipal mayors.⁴²

3. The burden of high public expectations

Fulfilling economic promises will require political stability. No quick fix can significantly improve living standards. Unlike its neighbour, Azerbaijan, Georgia does not have massive reserves of exportable crude oil or natural gas. Despite stable economic growth over the past eight years, the World Bank classifies the country as “lower middle level income level”. The poverty level fell to 21 per cent in 2010, down from 29 per cent in 2003. The official unemployment rate for 2011 was 15 per cent, but a poll that year found that 62 per cent of respondents considered themselves unemployed, a figure that was interpreted as indicating widespread underemployment.⁴³

coalition, televised interview, Georgian Public Broadcaster, 13 November 2012.

³⁹ “Tbilisi municipality, government, in dispute over social programs funding”, Civil Georgia, 3 November 2012.

⁴⁰ Tbilisi Mayor Ugulava during a televised interview with the Georgian Public Broadcaster (TV1), 13 November 2012.

⁴¹ “At govt meeting, Tbilisi Mayor shown door”, Civil Georgia, 9 November 2012. Ugulava argued that Tbilisi mayors had always been able to attend government meetings in the past. “Dictatorship being established in Georgia – Gigi Ugulava”, Interpress-News, 15 November 2012.

⁴² “Saakashvili Addresses New Parliament”, Civil Georgia, 21 October 2012.

⁴³ Caucasus Barometer 2011, Caucasus Research Resource Centre, at www.crrc.ge/oda/. The GDP growth rate, 7 per cent in 2011, rose to 8 per cent during the second quarter of 2012. World Bank

External debt is expected to reach 59 per cent of GDP in 2012, only slightly higher than in 2011 but nearly triple the 21 per cent of 2008.⁴⁴ The 60 per cent threshold is considered problematic for small, developing countries like Georgia that must pay markedly higher interest rates for issuing debt or borrowing on world financial markets.⁴⁵ A \$4.5 billion aid and loan package provided after the 2008 war with Russia has been fully disbursed. The EU now plans a new €46 million macro-financial assistance package over two and a half years, in addition to the €180 million in aid it has allocated for 2011-2013.⁴⁶ The significant foreign direct investment the previous government hoped would help mitigate its highly negative external debt balance has not materialised.⁴⁷ The World Bank maintains that the risk associated with the increasing burden of debt repayments is softened by stable economic growth and prudent public finance management and thus poses no immediate default or devaluation risk.⁴⁸

Tackling social problems will be one of the most challenging tasks for the Georgian Dream government, as expectations for immediate improvements are high. Prime Minister

online data, <http://data.worldbank.org/country/georgia>; “World Bank – Georgia Partnership Country Program Snapshot”, 2012. “Georgia Poverty Dynamics 2003-2010”, World Bank, 1 June 2011. The high perceived “unemployment” rate is considered to reflect that many workers hold jobs for which they feel over-qualified and that they consider are not connected to their educational or professional backgrounds. Crisis Group interviews, political and economic analysts, Tbilisi, November 2012.

⁴⁴ See Crisis Group Europe Briefing N°58, *Georgia: Securing a Stable Future*, 13 December 2010, p. 7.

⁴⁵ Crisis Group interview, World Bank official, Tbilisi, November 2012. Estimates and assessments of the economic situation vary. For a more optimistic outlook, see an EU assessment at <http://ec.europa.eu/world/enp/docs/2012>.

⁴⁶ The assistance is aimed at addressing the economic consequences of the conflict with Russia and the global financial crisis. It will support the economic reform agenda of the government, as well as measures to foster economic and financial integration with the EU, in particular by exploiting the potential offered by the future Association Agreement. For more information, see www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2012-0472+0+DOC+XML+V0//EN&language=EN#BKMD-10. “Georgia National Indicative Programme 2011 – 2013”, European Neighbourhood and Partnership Instrument, http://ec.europa.eu/world/enp/pdf/country/2011_enpi_nip_georgia_en.pdf.

⁴⁷ Foreign direct investment increased from a reported \$814 million in 2010 to \$1.12 billion in 2011. However, the World Bank said, the current account deficit continued to widen in the first quarter of 2012, as rapid import growth continued to outpace export growth. The current account deficit deteriorated further, from 10.3 per cent of GDP in the first quarter of 2011 to 11.3 per cent in the first quarter of 2012. “World Bank – Georgia Partnership”, op. cit.

⁴⁸ Crisis Group telephone interview, World Bank official, Tbilisi, 28 November 2012.

Ivanishvili has already been forced to disavow a campaign promise to cut electricity tariffs in half. He now proposes a ten per cent cut in 2013, saying there was no money available to do more.⁴⁹ The proposed 2013 state budget is \$5.3 billion, but revenues are projected at only \$4.4 billion, greatly reducing the scope for new social spending.⁵⁰ A December study by the Economic Policy Research Centre (EPRC), a local group of experts supported by the Open Society Georgia Foundation, painted a sobering picture and argued that:

[T]he new government will have to become more realistic already during the next budget cycle and admit that rapid fulfilment of major parts of pre-election promises is not feasible. We believe that it would be much more rational rather than throwing billions of GEL in[to] unreasonable expenses.⁵¹

A series of strikes marred the government's first month, as thousands of workers demanded an end to arbitrary dismissals as well as better pay and working conditions. The most serious were in Poti, the country's biggest Black Sea port and main transit hub. For several weeks, miners from the central Imereti region also stopped work. Railway traffic across the country was halted for two hours on 24 October as the 10,000-strong workforce went on strike. White-collar electrical grid workers from Tbilisi's electric utility staged an isolated strike, protesting past layoffs, though the power supply was not disrupted.⁵²

Georgia scores high marks for its business-friendly environment, but there is no minimum wage, and employees can be dismissed without warning or justification.⁵³ In its most recent yearly assessment, the EU noted: "The issue of labour rights continues to be a serious concern, including the insufficient implementation of core I[n]ternational L[abour] O[rganisation] conventions".⁵⁴ The new government should

consider re-establishing the labour inspectorate – abolished in 2006 – or setting up another mechanism to monitor compliance with international labour law standards.

Another sign of discontent is the post-election occupation of buildings, both state and privately-owned, by internally displaced persons (IDPs) from Abkhazia and South Ossetia.⁵⁵ Within a six-week period after the election, over 1,900 IDP families had newly "occupied" [squatted] in 51 buildings, an act the government minister in charge of IDP resettlement called a "criminal violation". Providing durable housing for IDPs, including the over 200,000 from Abkhazia, is a problem that has haunted several administrations. The Saakashvili government's resettlement program, which aimed to improve IDP living standards and privatise their property, had only benefited some 78,000 IDPs before the occupation action.⁵⁶ The new authorities are again promising alternative housing, warning that those who have occupied buildings recently and who already own property will be evicted.⁵⁷

For the economy to rebound, local businesses need confidence that arbitrary interference will not impede their development. Crisis Group described in 2010 how some of them spoke of pressure from the tax authorities, and how owners had little confidence in the courts for redress.⁵⁸ After the elections, businessmen began to complain more openly about state pressure and forced property usurpation. Some directly accused senior officials of complicity. Transparency International has called on the new authorities to investigate allegations of property usurpations.⁵⁹

⁴⁹ "PM vows at least 10% electricity, gas tariff cut", *Civil Georgia*, 28 November 2012.

⁵⁰ "Revised 2013 Budget Presented", *Democracy and Freedom Watch*, 9 December 2012.

⁵¹ "Analysis and Recommendations on 2013 State Budget of Georgia", Economic Policy Research Centre (EPRC), Tbilisi, December 2012.

⁵² "Strikers demand better work conditions and higher salaries", *Georgia Today*, 8 November 2012. "Employees of Georgian Railway to stage a two-hour warning strike", *InterpressNews*, 24 October 2012.

⁵³ Labour strikes previously had resulted in layoffs and even arrests. The post-election period was an opportunity for workers to protest long grievances. Given the economic disruption that prolonged port and rail closures would cause, the government negotiated with some companies to meet some of the demands.

⁵⁴ "Implementation of the European Neighbourhood Policy in Georgia: Progress in 2011 and recommendations for action", European Commission, Brussels, 15 May 2012.

⁵⁵ After the war in South Ossetia and Abkhazia in the early 1990s, ethnic Georgians were forced to flee. The government permitted IDPs to seek shelter in empty state-owned buildings, such as derelict hospitals, hotels and schools. Tens of thousands continue to live in these supposedly temporary accommodations. Saakashvili's administration evicted some in 2010-2011, offering monetary compensation or alternative housing. But many still remain without permanent housing solutions.

⁵⁶ After the 2008 war, the vast majority of the new, approximately 25,000 IDPs from South Ossetia received compensation and housing. The government says 63,931 of 234,888 IDPs from Abkhazia them have received new housing, while 14,413 have received monetary compensation in exchange for moving out of makeshift quarters in state-owned buildings. Another 77,392 are registered from the Gali district (Abkhazia), where many live only on a sporadic basis, while spending much of their time over the Administrative Border in Georgian-controlled territory. Crisis Group communication, press office, internally displaced persons, resettlement and refugees ministry, 16 November 2012.

⁵⁷ "Davit Darakhvelidze: If IDPs don't leave occupied buildings, then the police will intervene", *Ipn.ge*, 8 November 2012.

⁵⁸ Crisis Group Europe Briefing, *Georgia: Securing a Stable Future*, op. cit.

⁵⁹ A businessman, David Begiashvili, described an incident in which, he alleged, high-ranking officials of the interior ministry,

On 6 October 2012, Prime Minister Ivanishvili held his first official meeting with business leaders. He promised to create a more conducive business environment, urged them to be open about their problems and made clear he would not tolerate monopolies or cartels, of which many businessmen and consumers had complained.⁶⁰ The government has also prioritised the establishment of an anti-monopoly agency.

4. Rebuilding the breadbasket

Agriculture, in which economists argue Georgia has a comparative advantage due to its fertile and varied climate zones, is lagging badly. Although subsistence farming accounted for 73 per cent of rural employment in 2011, its share of GDP is only 9 per cent, a significant decrease from 25 per cent in 2004.⁶¹ The new government has expressed a strong interest in reviving agriculture and food processing; the proposed 2013 budget calls for a much broader allocation to the sector.⁶²

The government has also promised to create a “rural development fund”, worth some GEL 1 billion (\$606 million), that would give low interest rate loans to farmers in order to stimulate production. However, some experts express caution, saying that the funding, structure and amount of government financial support for this fund have not been clearly defined. Legal and structural problems that plague agriculture, such as a lack of clarity concerning land ownership rights, also must be resolved.⁶³

the prosecutor’s office and tax authorities participated in a campaign against him, resulting in the forced usurpation of his property. He received political asylum in Switzerland. “What are businessmen’s accusations against former government and colleagues?”, Transparency International Georgia, 15 November 2012.

⁶⁰ “Ivanishvili meets business leaders”, Civil Georgia, 6 October 2012.

⁶¹ Crisis Group communication, Georgian economist Vladimer Papava, 1 December 2012. “World Bank - Georgia Partnership”, op. cit.

⁶² The proposed 2013 budget calls for a more than 50 per cent rise in overall support for agriculture, from \$181 million in 2012 to \$278 million. “Analysis and Recommendations on 2013 State Budget”, EPRC, op. cit.

⁶³ “Unfortunately despite large-scale activities and donor aids, implemented in the land reform field since the ‘90s of the last century, tenure of the big majority of agricultural lands is still unregulated, and it is impossible to understand which part of the land fund is owned by the state and which part by the private sector. It should be mentioned that in the conditions where ownership right is not fully guaranteed, an investor and, generally, capital, would never direct large financial means to this sector”. Ibid, pp. 18-19.

Despite the challenges, a lifting of the Russian embargo on Georgian produce, wines and mineral water could help boost exports significantly. The finalisation of a Deep and Comprehensive Free Trade Agreement (DCFTA) with the EU could also offer more export opportunities.⁶⁴

5. Minority issues

Ethnic minorities are 15 per cent of the population. Generally, they are compactly settled in the southern regions of Samtskhe-Javakheti and Kvemo Kartli and have usually voted conservatively, preferring to back the governing party rather than risk the social and political consequences of siding with the opposition.⁶⁵ In 2012, the UNM government’s more tolerant image helped it win more than 70 per cent of the vote in minority districts.⁶⁶ But GD leaders have pledged protection and integration of minorities, including increased representation in government, improved educational rights and the protection of their culture and traditions. The new reintegration minister says he plans to intensify the focus on minority issues, in addition to working on Abkhazia and South Ossetia.⁶⁷

Shortly after the October election, in the western village of Nigvziani, some Muslim residents were prevented from assembling in their newly-opened place of worship by Orthodox Christian neighbours. The chairman of the parliamentary committee for human rights, Eka Beselia, claimed success in mediating between community leaders and said that Muslim residents would be able to continue their religious practice. However, human rights organisations issued a statement saying the issue had not been properly

⁶⁴ In 2012, the EU planned an “Agriculture Support Programme” with a total budget of €40 million. European Commission, “Implementation of the European Neighbourhood Policy in Georgia”, op. cit., p. 8.

⁶⁵ Crisis Group interview, Georgian political analyst, Tbilisi, November 2012. See also Jonathan Wheatley, “Obstacles Impeding the Regional Integration of the Javakheti Region of Georgia”, working paper # 22, European Centre for Minority Issues, September 2004: “Generally, the population [ethnic minorities] has voted for the party that represents the government in Tbilisi, not out of any real enthusiasm for the government’s policies but through the perception that the government at least provides stability and will not tolerate ethnic tensions or conflict”. Also see Crisis Group Europe Report N°178, *Georgia’s Armenian and Azeri Minorities*, 22 November 2006.

⁶⁶ The UNM took 80 per cent in the Armenian-majority Akhalkalaki and Ninotsminda municipalities and 79 and 70 per cent respectively in Marneuli and Dmanisi, populated by ethnic Azeris. “Georgia Elections 2012”, Civil Georgia.

⁶⁷ Founding Declaration of “Georgian Dream”, Political Coalition, 21 February 2012. Crisis Group interview, Paata Zakareishvili, reintegration minister, Tbilisi, 1 November 2012.

resolved, and restricting religious practice should be treated as a crime.⁶⁸

The now-opposition UNM also castigated the GD government for its handling of the matter, emphasising that it had prevented such manifestations when it was in power.⁶⁹ The stigmatising of ethnic minorities raises the ugly spectre of the immediate post-independence period (the early 1990s), when discrimination and tensions were rampant. The new authorities should make clear that xenophobia and religious persecution will not be tolerated.

6. Holding the Georgian Dream coalition together

There are no signs so far of any deep formal splits within the ruling coalition. However, its electoral bloc consists of more than six political parties, some with very different personal and political goals. Success in dealing with all of the challenges facing the country may determine Georgian Dream's eventual cohesion. Prime Minister Ivanishvili made it clear the day after the electoral victory that he wanted competition within the bloc, because he considered the formation of differing "factions" within the coalition a healthy way to promote political pluralism. The GD now has three political groupings in the parliament.⁷⁰

The first is Ivanishvili's own Georgian Dream-Democratic Georgia party, which has no clear-cut ideological bent and unites individuals with diverse backgrounds. Several GD-DG party members control key ministries (finance, energy, culture, interior and foreign affairs, as well as the chief prosecutor's office). A second, the centre-right Republican Party, is led by a lawyer, Davit Usupashvili. It staunchly supports a parliamentary system of governance and has as its main goals increasing local self-government, promotion of a liberal economic system and judicial reforms. Paata Zakareishvili from this party is reintegration minister, and Usupashvili is parliament speaker. The third faction, Our Georgia-Free Democrats (OGFD), led by Defence Minister Alasania, advocates a presidential republic, albeit with a strong parliament. It consists of many former diplomats (Alasania was Georgia's envoy to the UN for several years) and former allies of President Saakashvili.

All three factions support Euro-Atlantic integration. A few smaller GD parties, with too few seats to form their own faction, have expressed opposition to NATO membership in the past. They include the "National Forum" and "Industry Will Save Georgia".

Before becoming prime minister, Ivanishvili on various occasions stated that he intended to serve in the office for no more than two years.⁷¹ Now he has begun to say he will stay as long as necessary.⁷² Georgian Dream has not yet identified a preferred presidential candidate. After the new constitution comes into effect, the president will play a more limited and formal role as Georgia's international face. Due to the high visibility and respect he built abroad while serving as UN envoy, political insiders say, this makes Alasania a likely choice.⁷³

III. THE URGENT REFORM AGENDA

Over the past nine years, the young leadership under President Saakashvili rebuilt moribund institutions and implemented sweeping reforms, transforming Georgia from a failing state into a modernising, functional one. A "zero-tolerance" crime policy drastically reduced petty corruption, street crime, and the gangs of "thieves-in-law".⁷⁴ Chronic power outages that had persisted for more than a decade were eliminated. The government undertook large infrastructure works to improve roads and public buildings.

However, state building and improved infrastructure did not automatically mean better democratic governance, as acknowledged by UNM leaders themselves.⁷⁵ Lack of transparency in some institutions, notably the judiciary and certain law enforcement bodies, as well as attempts to limit the geographic reach of opposition TV outlets, remained major shortcomings. These issues will be impossible to resolve – regardless of who is in power – if steps are not taken to make the judiciary independent from political pressure and impartial.

⁶⁸ "ახალი ხელისუფლების "ახალი სტილი" რელიგიური დაპირისპირების კრილში" ["New government's 'new style' in the context of religious confrontation"], RL/RFE Georgian service, 5 November 2012. "GYLA Reacts to the Developments in the Village of Nigvziani", statement, Georgian Young Lawyers Association, 6 November 2012.

⁶⁹ Crisis Group interview, UNM official, Tbilisi, 5 November 2012.

⁷⁰ "Ivanishvili Claims at Least 100 Seats in Parliament", Civil Georgia, 20 October 2012; "Ivanishvili Calls for More 'Internal Competition' within GD", Civil Georgia, 10 December 2012.

⁷¹ Crisis Group interview, Bidzina Ivanishvili, Tbilisi, 5 June 2012.

⁷² Ivanishvili: 'I will Run in Next Elections If Needed', Civil Georgia, Tbilisi, 22 November 2012.

⁷³ Crisis Group interviews, political analysts and political figures, Tbilisi, January 2011-December 2012.

⁷⁴ "Thieves-in-law" is a term ascribed to criminals seen as enjoying unofficial immunity and high status in the criminal underworld, in Georgia and across the ex-USSR. They are considered the "elite" of the post-Soviet world of organised crime.

⁷⁵ Crisis Group interviews, UNM leaders, October-November 2012.

A. BUILDING A TRUSTED JUDICIAL SYSTEM

Reform of the judiciary is of paramount importance. Without major improvements to generate public trust that the courts can offer effective redress, ordinary citizens will have a low degree of confidence that they can be protected from arbitrary or politically motivated excesses.

1. The state of the judiciary

Since the Saakashvili administration came to power in 2004, extraordinary powers given to the executive on the grounds that quick radical reform was needed produced a system in which the courts essentially came under the political control of the executive branch and the ruling UNM. Several prominent, independent-minded justices were summarily fired.⁷⁶ This political control was exercised through the High Council of Justice (HCOJ), the all-powerful body for judicial administration.⁷⁷ All fifteen HCOJ members were in effect ruling party appointees: two directly by the president, four by the UNM-dominated former parliament and nine chosen by the HCOJ itself from among the Conference of Judges (a body that includes all judges at every level).⁷⁸

That the acquittal rate in criminal cases is just 2 per cent, a number of legal experts suggested, indicates that defendants do not have a realistic chance of obtaining a fair hearing.⁷⁹ That very low rate encourages many defendants to accept plea bargains. Under the previous government, 87.5 per cent of all cases ended in plea bargains in which defendants agreed to pay damages to avoid jail.⁸⁰ In November

2011, amendments to the Criminal Procedure Code required judges to assess not only the legality, but also the fairness of plea bargain agreements. This was a step in the right direction, but a relatively small one, since it did not address the risk that, particularly in high-profile cases, both judges and prosecutors could still be exposed to political pressures.

Lawyers also have apparently been influenced to accept back-room deals by justice ministry officials to avoid their client's arrest. A prominent lawyer described a multi-million dollar fraud case in which he was "encouraged" by the ministry not to file criminal charges against a mid-level interior ministry official allegedly complicit in protecting a group of swindlers who had defrauded their business partner. Justice ministry officials were said to have promised the case would be resolved through civil proceedings in exchange for a pledge that no criminal charges would be filed against the ministry employee.⁸¹

High-level interference has widely been considered a problem in especially prominent cases. A damning 2011 judgment of the European Court of Human Rights (ECHR) in the case of Sandro Girgvliani, who was beaten and died after an altercation with interior ministry officials, asserted systemic deficiencies in law enforcement and the judiciary. The ECHR wrote that:

[It] was struck by how the different branches of State power – the Ministry of the Interior, as regards the initial shortcomings of the investigation, the Public Prosecutor's Office, as regards the remaining omissions of the investigation, the Prisons Department, as regards the unlawful placement of the convicts in the same cell, the domestic courts, as regards the deficient trial and the convicts' early release, the President of Georgia, as regards the unreasonable leniency towards the convicts, and so on – all acted in concert in preventing justice from being done in this gruesome homicide case.⁸²

⁷⁶ Crisis Group Europe Report N°189, *Georgia: Sliding Towards Authoritarianism?*, 19 December 2007.

⁷⁷ More specifically, the High Council of Justice is entitled to train, promote, appoint and dismiss judges, as well as launch disciplinary proceedings. This results in the concentration of significant powers within one body not counterbalanced by the powers of other bodies in the court system. "Report on Judiciary 2012", Coalition for an Independent and Transparent Judiciary, 5 May 2012, available at www.coalition.org.ge/en/article119/Report_on_Judiciary_2012.

⁷⁸ The chairman of the High Council of Justice, Konstantin Kublichvil, has wide and overlapping powers. He is not only the chairman of the Supreme Court, but also head of the HCOJ, as well as of the Conference of Judges, the Administrative Committee of Conferences, the Plenum of the Supreme Court and even the Independent Council of the High School of Justice. "Findings and Recommendations on the Judiciary, Monitoring the Courts, Criminal Law and Administrative Punishment" (in Georgian), Transparency International Georgia, 22 November 2012.

⁷⁹ Crisis Group interviews, lawyers, local human rights activists, Tbilisi, November 2012.

⁸⁰ An EU progress report on Georgia's implementation of its European Neighbourhood Policy (ENP) commitments underlined

problems relating to "the strong position of the prosecutor and the lack of independence of the judiciary". "Implementation of the European Neighbourhood Policy in Georgia Progress in 2011 and recommendations for action", European Commission, 15 May 2012.

⁸¹ Crisis Group interview, private practice lawyer, Tbilisi, November 2012.

⁸² "Final Judgement on the case of *Enukidze and Girgvliani v. Georgia*", European Court of Human Rights, 24 April 2011. The 28-year-old commercial bank official's tortured body was found on the outskirts of Tbilisi in 2006 after an incident with a high-ranking interior ministry official in the presence of the then interior minister's wife. The case became symbolic and has resurfaced repeatedly in Georgian politics because of persisting allegations that the investigation aimed to cover up possible

The Georgian authorities failed to conduct “a meaningful investigation”, the ECHR concluded, leading to “inadequate punishment” of those responsible, including a presidential pardon. In respect of the trial, it ruled that “a major deficiency” was the Georgian court’s “persistent refusal to provide the applicants with sufficient time and facilities to study the case materials”. The plaintiffs were awarded €50,000 for non-pecuniary damages.⁸³

Problems were also evident in the run-up to the October elections. In September, the courts consistently convicted nearly all opposition activists detained for such misdemeanours as “hooliganism” or resisting arrest, sentencing many from ten to 40 days in pre-trial detention in administrative proceedings that lacked due process.⁸⁴ GD officials claimed 60 individuals had been arrested. An “Inter-agency Commission”, set up to consider elections violations, confirmed the detention of 44.⁸⁵ Taken together, the cases led legal experts to conclude that “prior to the elections, the judiciary did not protect the rule of law, was loyal to the law enforcement agencies and failed to promote a sense of justice”.⁸⁶

Since the GD victory, there has been an avalanche of citizen complaints alleging abuses or crimes by former officials – some 7,000 were filed by mid-December.⁸⁷ Some of these are likely to concern allegations of miscarriage of justice or instances in which courts made final judgments that in the opinion of the complainants deserve review. Human rights organisations have suggested that an independent criminal case review commission be created by the parliament to address these complaints.

Such a commission would review possible miscarriages of justice in the criminal courts and refer to appeal or allow the reopening of cases in which it considered that fair trial norms had been violated, even when the regular appeal process was exhausted.⁸⁸ In many other cases, citizens’

links to senior interior ministry officials. “ECHR Ruling into Girgvliani Murder Case”, Civil Georgia, 26 April 2011.

⁸³ The mother and grandfather of the victim had sought €300,000 in damages.

⁸⁴ “Georgia: misuse of administrative detention violates rights”, Human Rights Watch, 26 September 2012.

⁸⁵ The Interagency Commission, headed by the National Security Council chief, called on law enforcement agencies to apply reasonable – and less severe – sanctions on arrested political activists. “Georgia Parliamentary Elections 1 October 2012”, preliminary report, OSCE/ODHIR Election Observation Mission, 2 October 2012.

⁸⁶ Crisis Group interview, lawyer, Georgian Young Lawyers Association, Tbilisi, November 2012.

⁸⁷ Crisis Group interview, prosecutor’s office official, Tbilisi, December 2012.

⁸⁸ Crisis Group telephone interview, Giorgi Gogia, senior researcher, Human Rights Watch, 14 December 2012. Another

complaints are likely to be against mid- and low-level officials for abuse or misuse of their authority. Potentially thousands of government officials could be brought in for questioning. To avoid tensions, or completely overloading prosecutors and the courts, a better option could be the establishment of an amnesty and compensation commission that would consider when sanctions against lower-level officials could be lifted, or when citizens have valid grounds for financial restitution.

In any case the new government should be less focused on addressing the wrongs of the past than on establishing strong independent institutions that can guarantee the rule of law in the future. Establishing such bodies may take some time. For now, the government should resist the temptation to abuse the still fledgling independence of the prosecution and judiciary by engaging in quick political reprisals and instead advance justice carefully while submitting to close scrutiny by its domestic and international partners.

2. Strengthening the judiciary and prosecution

The new government must make comprehensive judicial reforms a top priority.⁸⁹ On 12 December, the parliamentary committee on human rights approved significant reforms of the HJOC. These should now go to legislators for discussion and approval. Under the proposed overhaul, there would no longer be political appointees from either the president or the parliament.⁹⁰ Instead, all fifteen members would be chosen by the self-governing Conference of Judges. To eliminate any possible conflicts of interests, members of one judicial body (like the HJOC) would not be able to be members of another (like the Disciplinary Collegium), as is possible at present. This could greatly de-politicise the court system.⁹¹

The new justice minister and chief prosecutor are under pressure to reach quick results. The latter began his work by suspending ongoing trials for two weeks. Some senior prosecutors resigned or were replaced. However, allegations have surfaced that he is requiring prosecutors to sign official letters of resignation that have been collected but not yet acted on. This is being interpreted as a “Damocles Sword”, a means to encourage prosecutors to make

proposal is to set up a truth, justice and reconciliation commission. See Anna Dolidze and Thomas de Waal, “A Truth Commission for Georgia”, Carnegie Endowment for International Peace, 5 December 2012.

⁸⁹ Crisis Group interviews, legal experts and human rights activists, Tbilisi, November 2012.

⁹⁰ “Reform of High Council of Justice Planned”, Civil Georgia, 12 December 2012.

⁹¹ Draft of justice ministry legislative initiatives, made available to Crisis Group.

“correct decisions” or face dismissal. A spokesperson acknowledged that all 600 staff had been requested to file the letters but said that was standard practice. To guarantee prosecutors’ independence, the chief prosecutor should immediately rescind the practice.⁹²

Other reforms under consideration include the reintroduction of video and audio recordings to ensure transparency of court proceedings. The government also proposed that court hearings be recorded by the Georgian Public Broadcaster and made available to all interested parties upon request.⁹³ Legal experts say that most of the changes meet their recommendations.⁹⁴ There should also be a conscious effort to make careers in the judiciary as prestigious and lucrative as possible, with on-the-job skills development, merit-based promotions, salaries and benefits.⁹⁵

B. LAW ENFORCEMENT AND PENITENTIARY REFORM

1. Reforming the powerful interior ministry

The Saakashvili government deserves credit for producing a sharp reduction in crime by turning the police into a professional institution, relatively free from low-level corruption.⁹⁶ The basic police reforms are often referred to as a model, particularly in the post-Soviet space (including Russia). The powerful and consolidated interior ministry, frequently described as the “spine” of the Saakashvili government, oversaw the police force and the security and intelligence services, as well as the border guard and navy.

Numerous local and international reports, however, have criticised law enforcement for using excessive force to disperse protests, with virtual impunity for those responsible. There was never a full probe of the violent dispersal of protests in November 2007; a May 2011 crackdown that included excesses likewise did not result in serious punishment.⁹⁷ Some critics argued that “Georgia has gone a long way toward looking like a benign police state”.⁹⁸

Irakli Garibashvili, the new interior minister and former chief manager of Ivanishvili’s Cartu charity foundation, has said his first priority is “to distance the system from politics It’s very easy to do – there will be no political orders anymore”.⁹⁹ While this is a laudable statement, concrete steps must be taken to open the MIA to more scrutiny, especially by parliament and human rights organisations. Greater parliamentary oversight is not a cure-all, however, since it would still be possible for a ruling party to use its control over committees and hearings to advance political goals. Civilian control of the “power structures” should be codified in law, so the party in power can no longer use them for political advantage or to intimidate opponents.

Specific interior ministry bodies have been criticised for abuse of power and intimidation of political opponents and businessmen, as well as lack of transparency.¹⁰⁰ The new

⁹² Crisis Group interviews, spokeswoman of the prosecutor’s office, international NGO representative and UNM official, December 2012.

⁹³ Audio and video recordings were banned in 2007. Only courts are authorised to record sessions and deliver the recording to interested parties upon their request, but reports show that in practice such recordings were not being made. Lina Gvinianidze, “Judiciary’s Inadequate Level of Transparency as an Intended Governmental Policy”, Democracy and Freedom Watch, 14 November 2012.

⁹⁴ Crisis Group interview, GYLA lawyer, legal experts accredited in a diplomatic mission, Tbilisi, November 2012.

⁹⁵ Hundreds if not thousands of Georgians have obtained legal degrees abroad, many at very prestigious institutions, over twenty years of independence. Some return with high ideals and work a few years in public service, only to leave again due to frustration with low salaries, high work demands and generally low public prestige.

⁹⁶ “Fighting Corruption in Public Services: Chronicling Georgia’s Reforms”, The World Bank, 2012; Alexander Kupatadze, “Georgia’s Fight against Organized Crime: Success or Failure?”, *Caucasus Analytical Digest*, 17 September 2009.

⁹⁷ Crisis Group Report, *Georgia: Sliding Towards Authoritarianism?*, op. cit.; www.freedomhouse.org/report/nations-transit/2012/georgia; http://ec.europa.eu/world/enp/docs/2012_enp_pack/progress_report_georgia_en.pdf. Archil Kbilashvili, chief prosecutor, televised interview, Maestro TV, 10 November 2012. A melee with a few hundred people during the forced dispersal of protesters in May 2011 resulted in five deaths. The official version was that two men were later found dead on the top of a building, apparently electrocuted by power lines. Two others, including a police officer, were said to have been run over by a motorcade belonging to opposition leader Nino Burjanadze when it left the scene as security troops moved in. A fifth person, a protester, reportedly died in hospital nine days after the event due to injuries sustained in a beating. The Georgian Young Lawyers Association NGO concluded that “high-ranking officials who planned the operation and led its execution should be held liable”. The interior ministry merely disciplined some personnel internally before closing the investigation. “Analysis of Human Rights Violations during and related to the Dispersal of the May 26 Assembly”, Georgian Young Lawyers Association, Tbilisi, 2011.

⁹⁸ Thomas de Waal, “Reform in Georgia”, Carnegie Endowment for International Peace, 20 June 2011.

⁹⁹ “Ivanishvili’s Incoming Govt’s Program”, Civil Georgia, 24 October 2012.

¹⁰⁰ According to Transparency International, KUD and SOD were able to directly access all communications in Georgia using equipment they installed in wireless communications service providers’ infrastructure. “Ending unchecked, illegal wire-tapping practices”, Transparency International Georgia, 20 No-

government has proposed dismantling two of them: the Special Operations Department (SOD) and the Constitutional Security Department (KUD), which are formally in charge of fighting organised crime, human trafficking smuggling and terrorism. As noted above, at least twelve ministry officials, most of them from SOD and KUD, have been charged with illegal surveillance of prominent Georgian Dream members from among “a list of thousands of people who were illegally wiretapped by the ministry of interior”.¹⁰¹ The SOD’s and KUD’s functions will be delegated to other departments, including the criminal police agency in charge of investigating serious crimes, the counter-intelligence unit and a new anti-corruption agency. A new “Bureau for Reforms and Development” is also to be established to work on long-term strategies.¹⁰²

Especially until judicial independence is improved, however, the interior ministry will need to ensure that information is made more accessible to the media, experts, researchers and NGOs, whose inputs and concerns should also be considered more carefully. The EU and other international partners can also play an important role in capacity building.¹⁰³ The interior ministry’s academy signed a cooperation agreement with the European Police College (CEPOL) in 2011, but the EU notes that Tbilisi has not acceded to a number of international conventions in the areas of judicial and law enforcement cooperation.¹⁰⁴

2. Prison reform

On 18 September 2012, less than two weeks before the elections, a prison abuse scandal erupted as a result of grainy video footage released by media sympathetic to the opposition that showed the beating and alleged rape of inmates.¹⁰⁵ The allegations and circumstances surrounding the videos have not subsequently been clarified. Yet, the ill-treatment of inmates and poor prison conditions were widely known in society, and many Georgians came

out to protest and demand that officials who committed abuses be prosecuted. Although the authorities said they were equally appalled by the images, human rights activists and the ombudsman questioned their sincerity. They, together with international officials, had long since highlighted such problems. The government acknowledged that it had failed to tackle abuses in the penitentiary system adequately.¹⁰⁶

The Public Defender said in his 2011 report that the mistreatment of inmates “remains one of the major challenges for the Georgian penitentiary” and that impunity only made matters worse. He noted that as investigative structures were generally efficient and professional, “unwillingness to investigate abuses must have been part of a general policy rather than an outcome of institutional deficiency”.¹⁰⁷ There may have been multiple motives behind abuse, or toleration of abuse, including frightening inmates into silence about conditions, coercing them to accept plea bargain deals to raise funds for the state budget, or to break the influence of the “thieves-in-law” rings.¹⁰⁸ But the lack of transparency and accountability that plagued the prison system, like that in a number of state institutions, encouraged impunity among its officials and thus furthered abuse.¹⁰⁹

The previous government’s “zero-tolerance” for crime, including imposition of maximum sentences, resulted in a sharp decrease in violent and street offences but also overcrowded prisons. When the prison population peaked at over 24,000 inmates in July, 2011, Georgia ranked fourth among 216 countries in prison population per 100,000 people, behind only the U.S., Rwanda and Russia.¹¹⁰ Sub-

vember 2012. See also Alexander Kupatadze, “Police Reform in Georgia”, Centre for Social Sciences, September 2012.

¹⁰¹ “ღარიბაშვილი: არსებობს ათასობით ადამიანის სია, რომელსაც მსს უკანონოდ უსმენდა” [“Hundreds of people were illegally wiretapped by the MIA”], *Netgazeti*, 19 November 2012.

¹⁰² In the long term, agencies with security and intelligence functions will be separated from the interior ministry and become independent institutions. “New Georgian Government Confirmed, Announces Program”, Central Asia Caucasus Institute Analyst, 31 October 2012.

¹⁰³ Crisis Group communication, diplomats, Tbilisi, November 2011. Crisis Group communications, NGO representative, December 2012.

¹⁰⁴ “Implementation of the European Neighbourhood Policy in Georgia”, op. cit., p. 13.

¹⁰⁵ “Videos of Inmates Abuse, Rape Emerge”, Civil Georgia, 19 September 2012.

¹⁰⁶ For example, Crisis Group Report, *Georgia: Sliding Towards Authoritarianism?*, op. cit.; and “Georgia: Undue punishment: Abuses against Prisoners in Georgia”, Human Rights Watch, September 2006; also, “Country Reports on Human Rights Practices for 2012”, U.S. Department of State, 2012. Crisis Group interview, Georgian government official, 19 September 2012.

¹⁰⁷ “Annual Report of the Public Defender of Georgia, 2011”.

¹⁰⁸ Crisis Group interview, international NGO representative, Tbilisi, 6 November 2012. Dolidze and de Waal, “A Truth Commission for Georgia”, op. cit.; Gavin Slade, “Georgia: Politics of Punishment,” openDemocracy, 30 September 2012.

¹⁰⁹ There were 91 reported deaths in prison during 2009, 142 in 2010 and 140 in 2011. In 2010, the Ombudsman referred to “the death export” – describing a situation by which dead or dying prisoners were transported to civilian hospitals in order to reduce the death toll in the penitentiary system. “Annual Report of the Public Defender of Georgia”, 2010.

¹¹⁰ This equates to 547 prisoners per 100,000 population. The number of people on probation or parole is a further cause for concern. In February of 2012, 32,750 people were under conditional sentences; this increased to 33,985 in March. “Taking liberties, misusing power; annual human rights report for 2012”, Human Rights Centre, 2012, at www.humanrights.ge/admin/editor/uploads/pdf/Final_Report.pdf.

sequent months saw a decrease and by October, the number of inmates had fallen to 21,425.¹¹¹

The new parliament has started work on a draft amnesty law that could affect hundreds of prisoners.¹¹² However, the justice and interior ministers have warned that to avoid a rise in crime, amnesty should not apply to serious offences. Effective rehabilitation and re-socialisation programs will be needed to prevent recidivism.

Though no reports of physical assault have surfaced since the elections, inmates continue to protest strict prison regimes, poor medical treatment and the appointment of unpopular wardens.¹¹³ Thousands of prisoners went on hunger strike in late October, while others sought to convey a dramatic message by sewing their lips together.¹¹⁴ The new corrections and legal assistance minister (and former public defender), Sozar Subari, attempted to meet demands by dismissing two of the new wardens and replacing some prison doctors. While improving conditions and medical treatment is an important short-term priority, the prison system requires complex reforms tied into broader problems in the criminal justice system, including impunity, probation and medical and psychological help for inmates. Donors should continue to assist with expertise and funds.

In September 2012, the interior ministry created a new prison monitoring group that includes 51 members from local NGOs. Previously, the only body with unlimited access to prisons was the Prevention and Monitoring Centre of the ombudsman's office, while lawyers and members of parliament had limited access. However, critics say the new group has no real influence. One called it a "prison tourism" club, made up primarily of journalists and even one well-known entertainer.¹¹⁵

C. ACCOUNTABLE STATE BODIES

The Saakashvili government implemented public sector reforms by eradicating petty corruption, creating more of an employment-by-merit system and ensuring effective public services. Public sector infrastructure has been rehabilitated and salaries substantially increased. However, as with the judiciary, the public sector was widely suspected of being politicised. Transparency International reported that "civil servants, who are often members of the ruling party, are complicit with the government in utilising state programs and resources for political ends".¹¹⁶

Georgian human rights organisations have appealed to the new government to investigate cases of dismissal from the public sector on political grounds, and the new education minister's first step was to announce creation of a special commission to look into the dismissal of some teachers. The transfer of power has been relatively smooth in most state institutions. Several working groups of Georgian Dream and UNM members were set up for each ministry, so new officials could familiarise themselves with ongoing processes. High-ranking officials have been replaced in most ministries, but middle- and low-ranking bureaucrats appear generally not to have been affected.¹¹⁷ Nonetheless, fears remain that the change of government could ultimately result in widespread politically motivated dismissals. The authorities should instead make recruitment, promotion and dismissal procedures transparent and merit-based and keep involvement of officials who are political appointees to a minimum.

The elections revealed many deficiencies in the public sector. As in the past, the Election Observation Mission of the Organisation for Security and Cooperation in Europe/Office for Democratic Institutions and Human

¹¹¹ "Law on Amnesty Passed with First Reading", Civil Georgia, Tbilisi, 8 December 2012.

¹¹² Officially, 115 prisoners were released by parole commission decisions, while the president pardoned another 519 on the occasion of the St Giorgi (St. George) national holiday on 23 November. "All released prisoners to leave prisons in the first half of day", Ipn.ge, 23 November 2012.

¹¹³ On 4 December 2012, the Council of Europe Commissioner for Human Rights called on the prime minister to carry out effective investigations to identify and punish those responsible for ill treatment. See letter, www.coe.int/t/commissioner/News/2012/121204GeorgiaLetter_en.asp.

¹¹⁴ "Prison System Minister: 'Situation in penitentiary fully under control'", Civil Georgia, 5 November 2012.

¹¹⁵ Crisis Group interview, international human rights official, Tbilisi, December 2012.

¹¹⁶ "European Neighbourhood Policy: Monitoring Georgia's anti-corruption commitments", Transparency International, 2010.

¹¹⁷ "NGOs appeal to the government to investigate politically-motivated dismissals", Statement, International Society for Free Elections and Democracy (ISFED), 29 October 2012. The education, culture, interior and health ministries, as well as local governments, were identified as the most problematic with regard to the transition period. Some media reports suggested mass dismissals occurred in the lower ranks of the patrol police. The interior ministry responded that dismissals were linked to structural reorganisation, not politics. It also outlined instances of "inadequate fulfilment of duties in some units of the patrol police". "Human Rights Centre's statement on groundless dismissal of employees from self-government bodies", Humanrights.ge, 20 November 2012. "შს სამინისტრო საპატრულო პოლიციიდან თანამშრომლების დათხოვნას გამოეხმაურა" ["MIA responded to reports on the dismissal of patrol police employee"], Information Centre Kakheti, 21 November 2011.

Rights (OSCE/ODIHR) noted that “the distinction between state activities and the UNM campaign was at times blurred”.¹¹⁸ Observers have long called for making the civil service non-partisan by restricting its right to participate in election campaigns and restricting the ability of parties and candidates to use state- and municipal-funded resources.¹¹⁹

Many of the problems in state institutions described above – politicisation and lack of accountability, transparency and independence – point to the need for more effective public oversight and a greater role for parliament. In its 2010 assessment of the constitutional amendments that will come into force in 2013, the Council of Europe’s Venice Commission had already noted, for example, that “the role of the parliament in budget matters is too limited”. Even under the new constitution, parliamentary oversight mechanisms, such as scrutiny of state expenditures, holding individual ministers accountable and temporary investigative commissions, are not fully developed.¹²⁰ The Georgian Dream coalition and other legislators should consider how to further strengthen parliamentary oversight of the budget, using the Venice Commission’s recommendations as a basis and consulting widely with constitutional legal experts and civil society representatives.

IV. FOREIGN AFFAIRS

While accusations during the campaign that Ivanishvili was pro-Russian were widespread, foreign policy is unlikely to change significantly under the new government. President Saakashvili says he intends to continue to play an important role deepening ties with the EU and NATO, but foreign policy is in practice under the government’s control. There has been a high degree of cooperation between new and former foreign ministry officials, though few senior UNM-appointed officials have stayed on. Cooperation is necessary to nurture a sense of continuity and avoid increasing the difficulties Georgia faces in balancing its many thorny external challenges. Foremost among those, of course, are the frozen relations with Russia, which gives substantial financial and military support to Abkhazia and South Ossetia, the two entities that broke away from Georgia in the early 1990s and were recog-

nised as “sovereign states” by Moscow after the August 2008 war.¹²¹

A. RELATIONS WITH RUSSIA

Prime Minister Ivanishvili quickly sought to open a dialogue with Moscow by appointing a special representative, a former ambassador to Russia, Zurab Abashidze, but he ruled out resumption of diplomatic ties until Russia retracts its recognitions of the breakaway entities and closes its “embassies” in Sukhumi and Tskhinvali. The Russian reaction was ambivalent. A high-level foreign ministry official politely welcomed Abashidze’s appointment, saying that he was “well-known” in Moscow, and Tbilisi was called on to take further unspecified “concrete steps” that, Russian officials said, should include a stop to efforts to have international forums recognise Russia as an “occupier”.¹²² President Putin and Prime Minister Medvedev have made it clear they are willing to meet Georgian leaders, except Saakashvili, but no handshakes with Ivanishvili are on the immediate agenda.¹²³

A potentially positive step is the possible lifting of the Russian ban – officially explained as health-related – on Georgian wine, mineral water and produce.¹²⁴ Russia’s membership in the World Trade Organization (WTO) may in any event now require it to allow Georgian goods back on its markets. Both countries could take a first step by opening trade representations in their capitals, even while diplomatic ties remain frozen. Their embassy consular sections are still fully functional, and trade ties might reasonably precede an eventual political rapprochement.

Ivanishvili’s election, so far at least, has failed to increase cooperation with the de facto governments in Abkhazia and South Ossetia. During the campaign, some Abkhaz officials, who had said they were ready to negotiate with any Georgian leader except Saakashvili, stated that an Ivanishvili government would open prospects for a real

¹¹⁸ “International Election Observation; Georgia – Parliamentary Elections, 1 October 2012; Statement of Preliminary Findings and Conclusions”, OSCE/ODIHR, 2 October 2012.

¹¹⁹ “European Neighbourhood Policy”, op. cit.

¹²⁰ “Final Opinion”, Venice Commission, op. cit. Establishment of an investigative commission requires one fifth of deputies to initiate the motion, instead of the previous one fourth, and then a majority vote.

¹²¹ See Crisis Group Europe Reports N°205, *South Ossetia: The Burden of Recognition*, 7 June 2010; and N°202, *Abkhazia: Deepening Dependence*, 26 February 2010. Tbilisi lost control over most of both Abkhazia and South Ossetia in wars in 1992-1993, and then even the isolated pockets it retained control over in both entities during the 2008 war with Russia.

¹²² Crisis Group interview, Russian foreign ministry official, Moscow, 9 November 2011.

¹²³ “Ситуация в экономике не кризисная, но она предгрозовая” [“Economic Situation not in Crisis, but in a state of pre-menace”], *Kommersant*, 29 November 2012.

¹²⁴ A foreign ministry official said, “we don’t see any [political] obstacles in resuming import of Georgian products”, Crisis Group interview, Moscow, 9 November 2011.

dialogue.¹²⁵ But this has not been followed up, even though the new reintegration and defence ministers have long had good personal and working relationships with the Abkhaz. A recent statement from Sukhumi ridiculed Georgian offers to negotiate directly and promote trade links and other confidence-building measures as a thinly veiled attempt to force Abkhazia back under Tbilisi's rule.¹²⁶ Georgian-Abkhaz relations will be the subject of a subsequent Crisis Group report, but a line of argument has it that the Abkhaz cannot afford to jeopardise their financial and military support from Moscow by making even a modest gesture toward the Georgian government.¹²⁷

The real Russia-Georgia conflict is over NATO. Moscow has long declared it would prevent Georgian membership by any means necessary.¹²⁸ Having created expectations of improved ties with Russia, the new government now faces the stark reality that little tangible change can be expected in the near future.

B. OTHER CHALLENGES

Successive governments have faced the difficult balancing act of keeping good relations with Azerbaijan and Armenia, two neighbours that have been in a hot or cold war with each other for twenty years. Azerbaijan especially has become a key strategic partner as the supplier of natural gas at deeply discounted rates, in effect provid-

ing a large subsidy to Tbilisi.¹²⁹ Even though Azerbaijani gas that will eventually go to the EU via Georgia has few other transit routes, a long history of dependence on the now lost Russian gas reinforces a sense in Tbilisi that it cannot risk its ties with Baku.¹³⁰

The new government learned just how sensitive those relations are when it proposed re-opening a long-closed rail link with Russia via Abkhazia. Though this was evidently meant as an olive branch for Moscow and the Abkhaz, it also emphasised that the reopening would mean train traffic could be restored between Russia and Armenia via Georgia. Azerbaijani officials reacted with alarm, because they believe Russia, which already has a military base and security agreement with Armenia, could use the rail link to export arms and in effect establish a "land bridge" between allies with no common border. An Azerbaijani ruling party legislator, expressing the views of the Aliiev government, said that if the rail link was restored, Baku would consider assisting or even recognising Abkhazia and South Ossetia.¹³¹ Georgia quickly retracted the proposal, which had been in discussion for more than a decade.

Though perhaps too delicate to approach at this early stage with any optimism, restoration of normal regional rail and road links would be an inevitable component of any eventual repair of ties with Russia and resolution of the Abkhaz and South Ossetian conflicts. It should be kept on the table even if geopolitical realities like the Azerbaijan-Armenian conflict prevent any quick decision.

¹²⁵ "Abkhazia cannot be uninterested in the events in Neighbouring Georgia – security council secretary Stanislav Lakoba", Apsnypress, 5 October 2012.

¹²⁶ "Direct bilateral negotiations with Georgia are out of the question", Apsnypress, 23 October 2012. "Vyacheslav Chirikba: the old approaches, established schemes at the Geneva process are in need of re-thinking", *ibid*, 22 November 2012.

¹²⁷ "Abkhazia cannot be uninterested in the events in Neighbouring Georgia – security council secretary Stanislav Lakoba", Apsnypress, 5 October 2012. "Direct bilateral negotiations with Georgia are out of the question", *ibid*, 23 October 2012. "Vyacheslav Chirikba: the old approaches, established schemes at the Geneva process are in need of re-thinking", *ibid*, 22 November 2012. Russian financial aid was 98.4 per cent of the South Ossetian and 75 per cent of the Abkhazian budgets in 2011. "В Южной Осетии принят бюджет с дефицитом более 500 млн рублей" ["Budget of South Ossetia has a deficit of 500 million Russian Rubles"], *Kavkazsky Uzel*, 28 December 2011.

¹²⁸ Regarding Georgia's NATO aspirations, the then Russian president, Dmitri Medvedev, told top military that "the peace-enforcement operation" [2008 war] with Georgia was "absolutely necessary". "If we had faltered in 2008, the geopolitical arrangement would be different now and a number of countries in respect of which attempts were made to artificially drag them into the North Atlantic Alliance, would have probably been there [in NATO] now". "Medvedev: August war stopped Georgia's NATO Membership", *Civil Georgia*, 21 November 2011.

¹²⁹ In 2008, Azerbaijan's state oil company, SOCAR, signed a five-year deal to supply natural gas to Georgia at well-below world market rates (\$167 for 1,000 cubic metres for commercial enterprises, \$143 for consumers). "Georgia unveils some aspects of Azeri gas deal", *Civil Georgia*, 18 October 2008.

¹³⁰ The overwhelming majority of Azerbaijani oil and gas exports are via pipelines that cross Georgia into Turkey. Georgia also is a main rail/road link to Turkey and Europe. Until recently, it was totally dependent on Russia for natural gas at prices roughly double what it now pays Azerbaijan. The gas pipeline linking the two countries was repeatedly bombed or sabotaged by unknown groups on Russian territory, often plunging large parts of the country into darkness in winter.

¹³¹ "If railway communication with Armenia is restored (through Abkhazia), Azerbaijan may support separatist regimes in Abkhazia and South Ossetia", Musa Gasymlu, member of the Azerbaijan parliament declared. "Азербайджанский парламентарий предупредил правительство Грузии о последствиях проармянской политики" ["Azerbaijani MP warned Georgian government about the possible implications of pro-Armenian policy"], *Day.az*, 7 November 2012.

V. CONCLUSION

Its ballot-box transfer of power in 2012 elevated Georgia to a category fundamentally higher in terms of democratic development than virtually all other post-Soviet states.¹³²

This was all the more remarkable since it had been widely cited as a textbook case of a “failed state” until 2003, with a destroyed infrastructure and economy, totally dysfunctional state institutions and something approaching anarchy as its governance model.

What was painfully earned could be easily squandered, however, if Prime Minister Ivanishvili and President Saakashvili, together with their political allies, cannot forge a minimally constructive working arrangement during their complex cohabitation. Resisting the political temptation to engage in intrigue, score-settling or retribution will be a real test of whether fragile gains can be maintained. The new government needs to demonstrate that it is focused squarely on governing and pursuing urgent priorities like creating an independent judiciary, without which other state institutions cannot develop properly. Hands-on diplomatic involvement by friends – consistent support and concern that cannot be misinterpreted as meddling – is also vital to ensure stability.

Tbilisi/Istanbul/Brussels, 18 December 2012

¹³² The Baltic countries of Estonia, Latvia and Lithuania, now EU member states, are the exception.

APPENDIX A

MAP OF GEORGIA



APPENDIX B

PARLIAMENTARY ELECTIONS 2012

PARLIAMENTARY ELECTIONS 2012

» Parliament seats

» Majoritarians

» Proportional

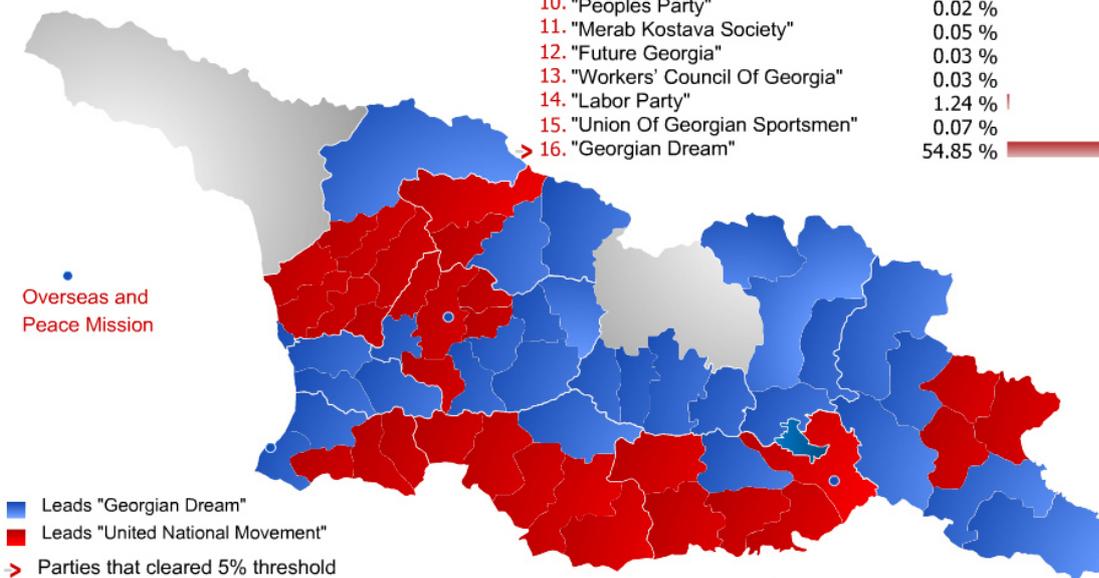
Overall Results

Party-list mandates by CEC current data:

44 ■ - "Georgian Dream"

33 ■ - "United National Movement"

1.	"Free Georgia"	0.27 %
2.	"National-Democratic Party"	0.14 %
> 3.	"United National Movement"	40.43 %
4.	"For Fair Georgia"	0.19 %
5.	"Christian-Democratic Union"	2.05 %
6.	"People Movement"	0.03 %
7.	"Freedom – Path Of Zviad Gamsakhur"	0.05 %
8.	"Kartuli Dasi"	0.11 %
9.	"New Rights"	0.43 %
10.	"Peoples Party"	0.02 %
11.	"Merab Kostava Society"	0.05 %
12.	"Future Georgia"	0.03 %
13.	"Workers' Council Of Georgia"	0.03 %
14.	"Labor Party"	1.24 %
15.	"Union Of Georgian Sportsmen"	0.07 %
> 16.	"Georgian Dream"	54.85 %



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