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HUMAN RIGHTS CENTRE

**Human
Rights
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Women's
Network**

GEORGIA

Concerns and recommendations to be addressed by EU and Georgian authorities in the framework of the European Neighbourhood Policy

November 2008

On the occasion of the upcoming EU-Georgia Cooperation Council in November 2008, FIDH and its Georgia partners, Human Rights Centre (HRIDC), Human Rights Priority and Caucasus Woman's network, wish to draw your attention to the Human rights situation in Georgia.

The armed conflict of August 2008 has attracted the attention of the international media on the region. Our member and partner organisations have been closely monitoring the development of the events and highlighted out serious violations of International humanitarian law (use of force against the civilian population, arbitrary executions and allegations of torture and rape, use of prohibited weapons, looting, property damage, the situation of Internally Displaced Persons).

However, within the context of the EU-Georgia Cooperation Council, our organisations consider that the resolution of the conflict should not overshadow the serious concerns on the human rights situation in Georgia. These concerns should be reflected in the EU's declarations to the Georgian authorities, as part of the commitment it took to monitoring the evolution of human rights, notably within the instruments of the European Neighbourhood Policy.

This briefing note calls upon the EU to raise specific concerns and recommendations on the following issues:

- **Elections**
- **Control of the media**
- **Violations of freedom of demonstration with disproportionate use of force**
- **Detention conditions**
- **Political prisoners**
- **Women's rights**

Elections

FIDH, HRIDC, Human Rights Priority and Caucasus Woman's network are deeply concerned by the many obstacles to free and fair elections that were documented during Georgia's parliamentary elections of May 2008. In its Statement of Preliminary Findings and Conclusions, the International Electoral Observation Mission (IEOM) concluded that *“overall, these elections clearly offered an opportunity for the Georgian people to choose their representatives from amongst a wide array of choices. The authorities and other political stakeholders made efforts to conduct these elections in line with OSCE and Council of Europe commitments.”* However, the IEOM *“identified a number of problems which made this implementation uneven and incomplete.”*

This overall positive assessment, despite the recognition of a *“number of problems”* should not hide the numerous cases of fraud documented both by the OSCE and by independent organisations. According to OSCE's own report *“tension inside polling stations was reported from a significant 6 per cent of visits, and tension or unrest in the vicinity, from 3 per cent.”* The OSCE report also states that *“in 1 per cent of polling stations visited, intimidation of voters, observers, proxies or PEC members was noted, and in 3 per cent, observers saw persons trying to influence voters.”* Furthermore, the IEOM noted *“instances where observers and proxies were prevented from carrying out their tasks, pressured, intimidated, or expelled from polling stations. They also noted “cases where domestic observers and proxies exceeded their authority, assisting or interfering in the process. Unauthorized persons, mostly police and party activists, were seen in 4 per cent of polling stations; there were 16 reports of such persons interfering in or directing the work of the PEC.*

According to FIDH member organisations in Georgia, the level of violence was such during this election that, for the first time, local election monitors were forced to be removed from the polling stations they had been assigned to monitor¹. Blatant pressure against Georgian citizens was documented during the pre-election campaigns. People were threatened with job losses, with being jailed, or being told that their family members would have problems.²

The Human Rights Centre could not monitor the final, and often most controversial stage of the elections, the vote counting, during the Parliamentary Elections because of the increasingly unsafe situation in many of the polling stations. Several observers including Nana Pajava (in Zugdidi) and Gela Mtvlishvili (in Kakheti) were victims of physical violence and had their cameras broken.³ None of these incidents have been investigated.

FIDH member and partner organisations in Georgia strongly regret that Georgian society, after having repeatedly witnessed elections marked by fraud and pressure over the last decade, has lost confidence in its institutions. The lack of trust in the democratic election process and in the ability of state institutions to guarantee political impartiality could have serious consequences on the political orientation of the country as a whole.

Our organisations urge the Georgian authorities to:

- Ensure a proper and independent investigation of the numerous irregularities that have been noted by OSCE IEOM and local independent observers.
- Take all necessary measures to prevent such irregularities in the 2009 presidential elections.
- Guarantee an independent, transparent and serious appeal process for challenging decisions

¹ See HRIDC report: « Georgia's parliamentary elections – Unprecedented brutality and election fraud » June 2008: <http://www.humanrights.ge/admin/editor/uploads/pdf/HRIDC%20Election%20Report.pdf>

² Ibid

³ Ibid

- of the electoral commission and electoral violations
- Implement all recommendations of the OSCE/ODHIR Election Observation Mission Final Report

Our organisations urge the EU to:

- Push for the implementation of these recommendations by Georgia and bring its support to Georgian authorities in this process.
- Closely cooperate with the OSCE in the assessment of the implementation of OSCE/ODHIR report recommendations.
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Control of the Media

FIDH, HRIDC, Human Rights Priority and Caucasus Woman's network are very preoccupied by the violations of freedom of expression in Georgia. In particular, our organisations are concerned by the increase of direct political pressure on independent media and by repeated attacks on journalists. This assessment is shared by the UN Human Rights Committee that expressed in November 2007 its « *concern that acts of harassment against journalists in Georgia have not been properly investigated by Georgia* ».

The November 7th 2007 raiding of the *Imedi* TV set in motion a process of fear and intimidation that further restricts citizens and civil society from being able to exercise freedom of speech and participate in the political process. The instances of cancellation of the broadcasting of *Imedi* and *Caucasia* after the November 2007 events are still to be investigated.

TV *Maestro* has faced major administrative problems when its management started to broadcast analytical programs related to current political affairs. The case related to the cancellation of the broadcasting license of *Maestro* is pending before the court.

Saba Tsitsikashvili, journalist and monitor of the Human Rights Centre's office in Shida Kartli was physically and verbally assaulted by representatives of Shida Kartli's regional government. The journalist was first assaulted on September 1st during the "protest chain" against the Russian occupation of the village of Karaleti. Lado Vardzelashvili, Shida Kartli's Governor and Zurab Chinchilakashvili, Deputy Governor, have openly expressed their continued discontent with Saba Tsitsikashvili and, with total impunity, assaulted the journalist in front of many witnesses. On the 12th of September 2008, Tsitsikashvili was threatened by Gia Durglishvili, also known as "Kohkta", who warned him that if he did not stop his journalistic work not only he, but also his family, would suffer "big problems".

Thus the Georgian authorities should be urged to:

- Implement UN HRC recommendations to « *guarantee freedom of speech and of the press and other media and ensure that complaints in this regard are promptly investigated, and that perpetrators are prosecuted and punished* »;
- Strictly respect its commitment taken in the EU-Georgia Action plan to « *ensure freedom of the media. Encourage proper implementation of the Law of Georgia on Broadcasting and the Law of Georgia on Freedom of Speech and Expression* ».

Violations of freedom of demonstration with disproportionate use of force

FIDH, HRIDC, Human Rights Priority and Caucasus Woman's network are deeply concerned by

the absence of an independent investigation into the excessive use of force against protesters who were calling for the resignation of President Saakashvili in Tbilisi on the 7th of November 2007.

On that day, Georgian riot police dispersed the protesters with truncheons, water cannons and tear gas. Police representatives pursued and violently beat people throughout the day. The Public Defender of Georgia, Sozar Subari, was severely beaten whilst trying to stop three policemen from beating a prostrate man. Witnesses reported that the law enforcement units also used a special acoustic system for dispersing the protesters.

The Ministry of Health declared on November 7th that about 600 people sought medical assistance. Some victims were suffering from tear gas poisoning; others were hospitalized with injuries caused by rubber truncheons and rubber bullets. Scores of people were detained, including M. Giorgi Khaindrava, one of the leaders of the opposition.

The excessive use of force by the Georgian authorities and the absence of impartial investigation had already been denounced on several occasions, including by the UN HRC in November 2007

In this context Georgian authorities should:

- Implement the UN HRC recommendations « *to eradicate all forms of excessive use of force by the law enforcement officials. [Georgian authorities] should in particular:*
 - *Ensure the prompt and impartial investigation of complaints concerning the actions of law enforcement officials, and make public the results of such investigations*
 - *Initiate criminal proceedings against alleged perpetrators;*
 - *Provide training to law enforcement officers with regard to the criminal nature of the excessive use of force, as well as on the principle of proportionality when using force. In this regard, the Committee draws to the attention of the State party the 1990 United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;*
 - *Provide compensation to the victims and/or their families. »*

FIDH, HRIDC, Human Rights Priority and Caucasus Woman's network urge the EU to:

- Push for the establishment of an independent investigation of the November 2007 crackdown on demonstrators.

Detention conditions

The reform of the penitentiary system is one of the EU-Georgia Action Plan's key priorities⁴. Moreover, the EU has financially contributed to this reform through its Rapid Reaction mechanism. Nevertheless, detention conditions on the ground are still extremely preoccupying. FIDH, HRIDC, Human Rights Priority and Caucasus Woman's network are extremely concerned by the fact that the minimum average of square metres per prisoner in new prisons, including in the Rustavi prison that benefited from EU funding during its rehabilitation work, does not comply with international standards. Finally, our organisations are preoccupied by the persistence of ill-treatment in prisons.

In its November 2007 Concluding Observations, the UN Human Rights Committee also expressed its « *concern about the persistence of adverse conditions in a number of prisons in the State party, namely gross overcrowding, poor rations and quality of food, inadequate access to natural light and fresh air, insufficient personal hygiene conditions, and about the large number of deaths of prisoners allegedly due to the prison conditions that amount to ill-treatment in some detentions*

⁴ ec.europa.eu/world/enp/pdf/action_plans/georgia_enp_ap_final_en.pdf

*facilities*⁵”.

The problem of overcrowding is not a new phenomenon in the Georgian prison system; however, over 2006-2007 there has been a record increase in the number of inmates. Compared to the number in 2003 – 6274 inmates - there has been an increase in the prison population of more than 200%; the number has grown to 19244 inmates.⁶ The excessive number of inmates, combined with the devastating conditions that prisoners have to endure, can lead, in certain cases, to inhuman and degrading treatment, which has a destructive effect on the prisoners’ physical and mental health.

The Decree of the Minister of Justice, dated 28 February 2007, provides maximum capacity for each penitentiary institution. It is based on the Georgian Law on Imprisonment (article 33.2.) and sets the minimum square metres per inmate to 2 m² per adult man, 2.5 m² per adult woman and 3.5 m² for juvenile detainees. These minimum standards are far below the European standards on detention conditions⁷. Moreover, the number of inmates often exceeds the official capacities of the institutions.

In practice, despite efforts made to improve living conditions, the newly built prisons are also well below European standards. For example, the average minimum square metre per prisoner is 3 m² in the newly built Kutaisi, Rustavi and Gldani prisons, this does not comply with the requirements set by the European Committee for Prevention of Torture and the European Court of Human Rights. Furthermore, there are no arrangements for prisoner activities in new establishments.

In November 2007, the UN Human Rights Committee welcomed the « *significant reduction in allegations of ill-treatment of persons in custody* » but regretted « *the persistence of reports of acts of ill-treatment by the police, especially during the arrest of suspects* ».

In spite of the reduction, FIDH, HRIDC, Human Rights Priority and Caucasus Woman's network can unfortunately testify that there are still numerous allegations of ill-treatment in prisons. For example, a Lawyer of the Human Rights Centre, Nino Andriashvili, was informed by inmates of Gldani Prison (No 8) of systematic beating of prisoners by the prison staff: Inmates would be taken during the night to the roof of the prison (where the walking area is located) and beaten.

In this respect, Georgian authorities should implement the recommendations of the UN Human rights committee with regards to :

- Detention Conditions, by taking “immediate, firm, positive and coordinated measures” to,
- improve the conditions of all persons deprived of their liberty both before trial and after conviction, fulfilling all requirements outlined in the United Nations Standard Minimum Rules for the Treatment of Prisoners. In particular, the gross overcrowding should be ended at once.
- Develop and implement alternatives to imprisonment”;
- Immediately putting an end to ill-treatment in prison and in particular,
 - a) Ensure prompt and impartial investigation of complaints concerning allegations of torture or other ill-treatment, and initiate criminal proceedings against alleged perpetrators;
 - b) Ensure proper reparation for victims;

⁵ Human Rights committee, 91st session, Concluding observations of the HRC, November 2007

⁶ Data from the website of the Ministry of Justice: www.justice.gov.ge.

⁷ Commentary on Recommendations Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules, Council of Europe Publishing, 2006, p. 46-47

c) Establish independent and competent national mechanisms for the prevention of torture, in accordance with the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, such as the actual Office of the Public Defender;

d) Ensure a comprehensive action plan against torture and other ill-treatment for the future, taking into consideration the recommendations made by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment of punishment following his visit to Georgia in 2005.

FIDH, HRIDC, Human Rights Priority and Caucasus Woman's network call upon the EU to:

- Strongly support Georgia in the implementation of the UN HRC and Special Rapporteur recommendations;
- Ensure that the works rehabilitation projects funded by the EU strictly respect international and EU standards for detention conditions;
- Systematically react and condemn, on the basis of the EU guidelines on torture, the cases of ill-treatment that are put to its attention.

Political prisoners

The number of individuals arrested in Georgia on political grounds is increasing, both due to their participation in the opposition's structures, and after the repressive measures of the law enforcement bodies after the November 2007 events.

Merab Ratishvili

A critical case is the one of Merab Ratishvili, that his attorneys as well as the National Ombudsman consider as being a political detention.⁸ Merab Ratishvili is charged with the illicit purchase and keeping of narcotics. Immediately following his arrest, a search was made of his home without an official warrant nor witnesses, where drugs were "discovered". Both M. Ratishvili's lawyers and his wife claim that the drugs were not there before the search.

Merab Ratishvili reported that during his custody, officials from the Georgian Internal Ministry visited him periodically; they requested him to make a false statement against opposition leaders, and psychological and physical violence was used against him.

Merab Ratishvili's phone conversations were being tapped, following an order based on the fact that unidentified people had sold drugs to a certain Meladze. On October 26th several hours before detention, two calls were received from the same number, lasting only 25 seconds, where an unidentified person mentioned the word "sugar" which was translated by the law enforcement agents as "methadone." This phone conversation was the evidence used to justify his arrest.

Transcripts of the phone conversation, which were submitted to his lawyer, and evidence that was compiled didn't understand what sugar transaction was about, and who exactly lured him. This person's name was never identified, however, Ratishvili was arrested and detained based solely on that recorded conversation. He was sentenced to 8 years of imprisonment in July 2008 (Art. 260, part 1 of paragraph III of Penal Code of Georgia (illegal purchasing and maintaining of significantly large

⁸ Merab Natroshvili's case was raised in Georgian Public Defender's report of the second half of 2007.

amounts of drugs).

Giorgi Amiranashvili

Giorgi Amiranashvili, head of the Kutaisi's office of the political party *Ertiani Sakartvelostvis* (United Georgia) and a supporter of Irakli Okruashvili (former Minister of Defence and political refugee in France), was arrested in Kutaisi ahead of the November 2007 events. At dawn, on October 25th, his home was raided by members of the Constitutional Security Department. The CSD officers wore masks and broke windows and doors to enter the house. They then arrested him, allegedly without an official warrant. He was then detained under the charge of membership to a criminal organization. Amiranashvili has not been tried as of yet and he is still detained in a pre trial detention isolator cell in Kutaisi Prison #2.

Amiranashvili is suspected of having committed a crime, back in February 2007, by talking on the phone to Kakha Tsanava, member of a criminal organization and a prisoner at Rustavi Prison # 1. Amiranashvili was arrested 8 months after this phone-call. However, the investigation would have proven that Amiranashvili was talking to Kakha Chogovadze and not to Kakha Tsanava.

In addition, weapons would have been found in his house during the search, that are considered by Amiranashvili as having been planted there by the police when conducting the search. He was charged with Article 223, Part I (membership of criminal groups, carrying a prison term of 5 to 8 years), and Article 236 Part I (caring weapon, carrying a prison term upwards of 3 years). His trial should take place in Autumn 2008.

Other public officials

Furthermore, former public officials were arrested under Article 180 (financial crime); Article 181 (extortion), Article 182 (misappropriation and waste of state budgetary funds and Article 332 (abusing of power) of the Georgian Criminal Code. Our organisations are concerned by the fact that several of them were arrested around November 2007 events while criminal liability has been imposed on them months and even years after they resigned from their former positions.. For example, Dimitri Godabrelidze was detained on November 27th 2007 on charges of illegal activities while working in the Marneuli District Agricultural Department back in 2003; Marlen Nadirdze was arrested on November 6th 2007 and charged with illegal activities when working as deputy Governor of the Shida Kartli Region, namely accepting a bribe and stealing two TV sets from a regional shop. Davit Kantaria was arrested on August 23rd 2007, for his illegal activities in 2002-2003 when he served as Mayor of Poti.

Some participants of the November 7th protest demonstration were charged under Georgian Criminal Code, Article 187 (damaging or destroying property), article 353 (resistance, threatening or violent behaviour against law enforcers and public officials), as in the cases of Zaal Kochladze, arrested on November 8th; Levan Barabadze, arrested on November 10th; Levan Minashvili, arrested on November 19th; Ilia Tsurtsunia, arrested on November 13th; Rostom Oniani, arrested November 9th. Participants of the November 7th protest demonstration who resisted the riot policemen were charged under the Criminal Code Article 225 (public disorder) as in the cases of Davit Maghlakelidze; Lasha Sirbiladze; Ilia Koiava; Zviad Khargelia, while no police representatives were arrested for brutal and unjustified force which was used in dispersing a peaceful demonstration.

FIDH, HRIDC, Human Rights Priority and Caucasus Woman's network urge the Georgian authorities

- To release the persons arrested for political reasons or to bring clear charges against them and to guarantee their right to a fair trial, in accordance with the International Covenant on

Civil and Political Rights, ratified by Georgia.

- ***Our organisations urge the EU***
- To address this issue with their Georgian counterparts and to urge the Georgian authorities to stop the harassment of political activists.

Women's rights / domestic violence

FIDH and its member and partner organisations are very preoccupied by the situation of women's rights and violence against women in Georgia. Domestic violence is a widespread phenomenon, which is rarely addressed at the institutional level. Our organisations strongly deplore the lack of consultation and follow-up to recommendations made by women and women's organisation and the fact that this core issue is not sufficiently taken into account in EU-Georgia relations. In particular, we strongly regret the absence of any serious reference to women's rights in the EU-Georgia Action plan.

Discrimination in the labour market

During the discussions on the new Labour Code in 2006, Georgian authorities showed very little willingness to cooperate with women's organizations in discussing shortcomings in Georgian legislation and ignored the recommendations put forward by a coalition of Women's organisations.

Following its adoption, the UN Committee for the Elimination of Discrimination Against Women expressed its «*concern about the negative impact on women of the new labour code, which liberalises the regulation of employment in Georgia and does not include provisions on equal pay for work of equal value and against sexual harassment in the workplace*»⁹.

More generally, the CEDAW Committee was «*concerned about the occupational segregation between women and men in the labour market and the gap in their wages.*» Several cases of women fired during the maternity leave or unable to get back their job and position at the end of their maternity leave confirm this worrying trend.

Discrimination of participation in public and political life

Despite the quantity and quality of active women in independent and civil society institutions, women's representation in elected bodies and assemblies in Georgia is extremely poor. This assessment, compared with a clear increase in the percentage of women's participation in civil society institutions, leads us to conclude that there are obvious barriers that do not allow women to participate on an equal basis.

The CEDAW Committee shared this analysis by expressing its «*concern about the continuing under-representation of women in public and political life and in decision-making positions, including in diplomacy, the executive bodies of the Government and local government, as well as in Parliament.*»¹⁰

Violence against women: an increased phenomenon during the August 2008 crisis.

The August 2008 war resulted in a new set of problems related to women's rights. Internally Displaced women are facing large-scale problems of healthcare, disease and absence of medical treatment, access to clean water and sanitation.

Caucasus Woman's network collected 15 women's testimonies related to rape and attempted rape during the war period. The lack of a secure environment to prevent further violence and to address

⁹ CEDAW Concluding Comments – August 2006

¹⁰ CEDAW Concluding Comments – August 2006

past violations, remains a concern regarding an eventual return to the villages in buffer or occupied zones. Collating testimonies of sexual violence can take years, taking into account the post-traumatic period of the victims and the taboo regarding crimes of this nature. As examples of previous armed conflict in Georgia have shown, some 15 years can pass between the crime and the victim applying for legal assistance to bring legal action against the perpetrators. No special measures have been taken so far by the government to assist psychologically, medically or legally the alleged victims of such crimes.

The Georgian authorities should therefore be called to:

- Engage in a regular constructive dialogue with Women's rights organisations;
- Address the discrimination against women in the labour market and implement CEDAW committee recommendations in this respect:
 - Intensify its efforts to ensure that all job creation programmes are gender-sensitive and to increase women's access to new technology;
 - Strengthen efforts to eliminate occupational segregation, both horizontal and vertical, and to adopt measures to narrow and close the wage gap between women and men by applying job evaluation schemes in the public sector connected with wage increases in sectors dominated by women;
 - Introduce provisions on equal pay for work of equal value as well as to introduce provisions on sexual harassment, in accordance with the Committee's general recommendation;
 - Analyse the impact on women of the new labour code and make necessary amendments, and include in its next report information on such analysis and the action taken.
 - Address the under-representation of women in public and political life by implementing CEDAW recommendations to:

-Take sustained measures, including temporary special measures in accordance with article 4, paragraph 1, of the Convention and the Committee's general recommendations 25 and 23;

-Accelerate women's full and equal participation in elected and appointed bodies, including at the international level. Such measures should include the establishment of benchmarks, numerical goals and timetables, as well as conducting training programmes on leadership and negotiation skills for current and future women leaders;

-Undertake awareness-raising campaigns about the importance of women's participation in public and political life and at decision-making levels;

•Implement the CEDAW recommendations on violence against women:

•To place high priority on the implementation of the Law on the Elimination of Domestic Violence, Protection and Assistance of the Victims of Domestic Violence;

•To ensure that all women who are victims of domestic violence, including rural women, have access to immediate means of redress and protection, including protection orders, and access to a sufficient number of safe shelters and legal aid. It calls on the State party to ensure that public officials, especially law enforcement personnel, the judiciary, health-care providers and social workers, are fully familiar with applicable legal provisions, and are sensitized to all forms of violence against women and adequately respond to them.

•To conduct research on the prevalence, causes and consequences of domestic violence to

serve as the basis for comprehensive and targeted intervention and to include the results of such research in its next periodic report.

- Ensure a proper independent investigation on allegations of rape during the August 2008 conflict;
- Bring support to State institutions and independent organisations assisting the victims of these crimes;
- Include a section on women's rights in the revised version of the EU-Georgia Action Plan.

FIDH, HRIDC, Human Rights Priority and Caucasus Woman's network urge the EU to:

- Include a section on women's rights in the revised version of the EU-Georgia Action Plan;
- Put this issue higher on the agenda of the EU-Georgia JLS Subcommittee;
- Strongly push for the implementation of CEDAW recommendations within the framework of its political dialogue with the Georgian Government;
- Support the Georgian Government in the implementation of these recommendations.