

## GEORGIA

*Note: Except where otherwise noted, figures and other data do not include the separatist, occupied regions of South Ossetia and Abkhazia.*

### EXECUTIVE SUMMARY

The constitution of Georgia provides for an executive branch that reports to the president, a unicameral parliament, and an independent judiciary. President Mikheil Saakashvili was reelected in January 2008 in an election that international observers found consistent with most Organization of Security and Cooperation in Europe (OSCE) democratic election commitments. However, the OSCE also highlighted significant problems, including widespread allegations of intimidation and pressure, flawed vote-counting and tabulation processes, and shortcomings in the complaints and appeals process. These and other problems were also seen in parliamentary elections in May 2008, which OSCE observers concluded were uneven and incomplete in their adherence to international standards. Despite a large number of opposition parties, the executive and parliament were dominated by a single party. Security forces reported to civilian authorities.

The most important human rights problems reported during the year were:

1. Abuse of prisoners and detainees by government officials as well as dangerously substandard prison conditions.
2. Shortfalls in the rule of law, such as concerns about ensuring the judiciary's independent and even-handed application of due process protections.
3. Government interference with unions' fundamental freedom of association in several areas, including interference with strikes, arbitrary dismissals, interference with collection of dues, and harassment and intimidation of labor activists.

Other problems reported during the year included security forces' use of excessive force against demonstrators without criminal accountability, in particular during the breakup of opposition protests on May 26; harassment of members of the political opposition; and continued allegations of politically motivated imprisonment, primarily of individuals incarcerated prior to 2011. There were reports of improper government use of eminent domain to seize private property. Although parliament adopted a law providing for greater transparency of media ownership, citizens had limited access to diverse and unfettered media. While

independent media were active and expressed a wide variety of views, the three largest television broadcasters reportedly had close ties to the government, and direct or indirect government influence over media outlets remained a concern. Protection of religious minorities improved, including parliament's adoption of a law to permit a broad range of religious groups besides the Georgian Orthodox Church to register as legal entities. Problems continued to be reported regarding the resettlement of internally displaced persons (IDPs). Other problems included lack of transparency in business ownership and the conduct of government bids. There were reports of low rates of women in elected positions. There were reportedly high rates of domestic violence. Georgia was primarily a source country, but also a transit country for trafficking in persons.

Although the government took some steps to prosecute and punish officials who committed human rights abuses, investigations into such allegations were frequently terminated or delayed, contributing to an atmosphere of impunity.

De facto authorities in the separatist regions of Abkhazia and South Ossetia remained outside the control of the central government. These authorities continued to be supported by several thousand Russian troops and border guards occupying the areas since the 2008 armed conflict between Russia and Georgia. A cease-fire remained in effect in both Abkhazia and South Ossetia, although incidents of violence occurred in both areas. Russian border guards restricted the movement of the local populations. De facto authorities continued to restrict the rights, primarily of ethnic Georgians, to vote, otherwise participate in the political process, own property, register businesses, and travel. The de facto South Ossetian authorities refused to permit most ethnic Georgians driven out during and after the 2008 conflict to return to South Ossetia. With the exception of the International Committee of the Red Cross (ICRC), international organizations were not allowed regular access to South Ossetia to provide humanitarian assistance.

## **Section 1. Respect for the Integrity of the Person, Including Freedom from:**

### **a. Arbitrary or Unlawful Deprivation of Life**

There were several unconfirmed reports that the government or its agents committed arbitrary or unlawful killings.

In one high profile case, friends of two men found electrocuted on the rooftop of a building near the location of the May 26 protests alleged their deaths were the result of police action. However, two forensic laboratories found the deaths to be

consistent with accidental electrocution. On June 2, a third protest participant died of cardiac arrest, which his family maintained was related to being hit with a tear gas canister fired by police during the protest.

In another case, the Free Democrats political party raised concerns regarding the September 17 death in detention of military officer Sergo Tetradze. Ministry of Defense officials arrested him on charges of espionage on September 17, and Ministry of Corrections officials informed his family of his death in custody one week later. Tetradze's wife stated she saw signs of torture on Tetradze at his hearing 24 hours after his arrest and on his body after his death. Police records indicated Tetradze was held by military police for 19 hours, an unusually long period of time. His medical report at the time of incarceration noted light bruising and excoriations which, according to the report, Tetradze indicated were sustained prior to apprehension. An autopsy reported injuries inflicted with a firm blunt object on at least three occasions, once six-eight days before death, once five-six days before death, and again one day before death. Prison records and the subsequent investigation by the Ministry of Justice indicated Tetradze died of a heart attack on September 23 while receiving treatment for cardiovascular insufficiency in the prison hospital. The cause of death in the autopsy report was inconclusive, although it indicated that he had heart problems and that the injuries likely did not cause his death.

On April 26, the European Court of Human Rights (ECHR) ruled that the authorities failed to conduct an effective investigation into the high-profile 2006 death of Sandro Girgvliani. The court found that the government failed to submit a number of requested items of evidence and noted with particular concern "how the different branches of state power--including the Ministry of the Interior, the prosecution authority, the domestic courts, and the president of Georgia--had all acted in concert in preventing justice from being done" in the case. Gia Alania, chief of the first unit of the ministry's department of constitutional security, and three of his subordinates, Avtandil Aptsiauri, Aleksandre Gachava, and Mikheil Bibiluri, were convicted of murder, but only served three years in prison as a result of a presidential pardon. The ECHR also ruled that the perpetrators acted in a personal capacity and therefore the government could not be held responsible for the killing. The court noted a number of serious flaws in the investigation conducted by authorities.

Media reported that a landmine accident in South Ossetia resulted in one fatality and injuries. However, limited information about events in South Ossetia made it difficult to confirm reports of incidents in this region. The NGO HALO Trust and

the ICRC reported one injury and one death from unexploded ordnance in uncontested Georgian territory. HALO Trust completed mine clearance of occupied Abkhazia and declared it mine-free in November.

### **b. Disappearance**

No politically motivated disappearances in unoccupied Georgia or connected to the conflict in Abkhazia or South Ossetia were reported in 2011. Reliable information from the separatist regions, which were outside government control, remained difficult to obtain.

### **c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment**

The constitution and law prohibit such practices. However, there were reports that government officials continued to employ them with limited accountability. The Public Defender's Office's annual *Situation of Human Rights and Freedoms in Georgia* report for 2010 (released in June) stated that accountability for torture and other inhuman treatment remained a problem and that the Prosecution Service dealt with "almost all cases" superficially, terminating or delaying investigations and failing to conduct forensic medical examinations or postponing examinations until a victim's injuries were untraceable. In addition, officials who conducted investigations into allegations of torture often mischaracterized such acts as abuse of official power, which carried a far lighter sanction. The European Instrument for Democracy and Human Rights (EIDHR) September *Atlas of Torture* noted that beatings and excessive use of force were more likely to be administered based on political motivations, such as against demonstrators criticizing the government.

EIDHR reported noticeable improvements with respect to curbing the excessive use of force as a routine practice during police interrogations and police detention, which they attributed to reforms and increased professionalism. However, they reported police still frequently used excessive force during arrest, interrogation, and transfer of detainees. In the *2010 National Preventive Mechanism Report* (released in spring 2011), the Public Defender's Office noted frequent instances of prison employees mistreating detained and imprisoned individuals. In 2011 such cases were particularly prevalent in Kutaisi Prison No.2. The Public Defender's Office stated that investigations into allegations of mistreatment were inadequate. The public defender also noted that, unlike in pretrial detention facilities and penitentiaries, there were almost no cases of mistreatment in temporary detention cells where detainees were held for up to 72 hours awaiting a hearing, and

individuals convicted of administrative offenses are held up to 90 days. According to the Public Defender's Office and human rights monitors, the incidence of abuse in temporary detention cells remained low due to continued, unannounced, random monitoring of stations by officials of the Ministry of Justice. However, the office reported that physical injuries were observed very frequently on individuals upon admission to police detention facilities.

During the year NGOs and the public defender documented several cases of police officers mistreating detainees, beating or denying them water, food, access to sanitation, or permission to contact family or a lawyer. For example, police allegedly beat Murman Dumbadze while detaining him at the site of the May 26 protests and again when interrogating him at the Dighomi police station. Dumbadze reported that, while one officer was handcuffing him at the protest, a second officer beat him on the head, arms, and legs. He alleged that once he was taken to the police station, he was beaten, kicked, and whipped every two to three hours throughout the night. The police report confirmed injuries, including cuts, a broken nose, and extensive bruising. A criminal investigation by the Chief Prosecutor's Office into the alleged mistreatment continued at year's end.

According to the public defender, mistreatment in penitentiary facilities where pretrial detainees and convicts are held continued during the year. EIDHR stated that the main source of mistreatment shifted from the police to the penitentiary system. The public defender stated that Kutaisi Prison No. 2, Gldani Prison No. 8, and the Medical Institution for Convicted and Indicted Persons had the highest rates of mistreatment in 2011. EIDHR alleged that both the Administration of Prisons and prison guards were involved in the abuse of detainees and added that "special task forces" at the central penitentiary department and in individual prisons were called in to "bring about results."

Prisoner Ahmed Aboliv reported to the public defender that prison guards physically and verbally assaulted him twice on July 25. After being beaten, he allegedly was handcuffed naked in an isolation cell for two hours. After returning him to his cell, prison authorities denied him the medical treatment he requested for pain and nausea. Aboliv's cellmates and the public defender confirmed injuries consistent with the beating allegation. The Ministry of Correction and Legal Assistance initiated an investigation, but an examination on August 10--16 days after the alleged abuse--found no signs of physical injuries. An investigation by the Ministry of Justice continued at year's end.

According to the Ministry of Justice, authorities initiated 20 investigations into allegations of torture, nine into inhuman treatment, and one into the use of duress to compel evidence during the year, compared with 19 allegations of torture and 15 of inhuman or degrading treatment in 2010. During the year the Ministry of Justice reported that 14 cases were terminated and judgments were rendered against two persons (one police officer was convicted of torture, and another individual was convicted of inhuman treatment). In addition four police officers and two prison staff were convicted during the year of abuse of power against persons under their custody.

NGOs and the Public Defender's Office reported that victims often failed to report abuse due to fear of retribution. NGOs also continued to claim that close ties between the Prosecutor General's Office and police hindered the ability of NGOs to substantiate police misconduct, and that the judiciary's lack of professionalism and independence made it unresponsive to allegations of mistreatment. Experts observed that judges referred detainee reports of mistreatment back to the institutions responsible for them. NGOs also cited lack of training for law enforcement officers, low public awareness of the protections afforded citizens, and inadequate standards of transparency and accountability.

Individuals detained in South Ossetia who later returned to undisputed Georgian territory reported incidents of mistreatment and abuse in Ossetian detention centers. Mistreatment included cigarette burns, burns with the hot barrel of a gun, and beatings. Human rights observers estimated half of those detained by the South Ossetian de facto authorities experienced some form of abuse. Due to limited access to occupied South Ossetia, these reports were difficult to confirm.

### **Prison and Detention Center Conditions**

The Public Defender's Office, EIDHR, and many NGOs continued to report that conditions in many prison and pretrial detention facilities were poor and sometimes life threatening. The public defender noted that, while newly constructed facilities met international standards, old facilities still in use were inhumane and deteriorating. Such facilities exposed those incarcerated to overcrowding, inadequate healthcare, insufficient ventilation, and life-threatening conditions.

Most prison and pretrial detention facilities lacked adequate sanitary facilities. In its 2010 report *Situation of Human Rights and Freedoms in Georgia*, the Public Defender's Office noted that, in some penitentiaries, sanitary conditions and overcrowding were poor enough to amount to inhuman and degrading treatment.

The public defender named Zugdidi Prison No. 4, Batumi Prison No. 3, and Tbilisi Prison No.1 as particular problematic sites. In Zugdidi No. 4 and Batumi No. 3, obsolete infrastructure made it impossible to eradicate parasites and rodents. The 2010 *National Preventive Mechanism* report noted that inmates in solitary confinement in Ksani Prison No. 15 were not given soap or toilet paper. The report also noted that prison officials frequently placed inmates in solitary confinement in Gldani Prison No.8 for several days for punitive reasons and deprived them of beds, blankets, and mattresses. According to the public defender, 140 prisoners died within the penitentiary system in 2011, compared with 142 in 2010. Tuberculosis was the leading cause of prisoner death.

The public defender's *Situation of Human Rights and Freedoms in Georgia* report also noted that conditions in temporary detention isolation cells continued to be an acute problem. These facilities were intended to hold detainees accused of crimes and awaiting a hearing for up to 72 hours and not to provide long-term detention. However, isolation cells also housed all individuals convicted of administrative offenses for up to 90 days. According to the public defender, 3,225 persons served terms of administrative detention in the temporary detention isolation cells in 2011. The public defender noted numerous problems, including inadequate space, ventilation, natural light, heating, sanitation, and access to medical services. In many instances, administrative detainees were not provided bedding or access to showers.

The Asatiani Psychiatric Institute in Tbilisi, cited in 2010 for "inhumane and degrading conditions," was closed in 2011 and its patients transferred to newer psychiatric facilities.

Many prisons were severely short of medical facilities, equipment, and medicine. The 2010 *Situation of Human Rights and Freedoms in Georgia* report by the Public Defender's Office asserted that funding inequalities between the civilian health care system and health care in the penitentiary system violated international standards. The report acknowledged progress in reducing overcrowding but emphasized the continued high prison population, noting that overcrowding continued to compound poor conditions and inadequate health care. According to the public defender, eight facilities were overcrowded. As a result some inmates in three facilities did not have their own beds. According to the Ministry of Corrections and Legal Assistance, the inmate population at year's end was 24,114, compared with 24,019 in 2010. Of that population, 6.3 percent were pretrial detainees. The number of conditional early release prisoners increased from 242 in 2010 to 445 during the year. The ministry attributed the stabilization in the

prisoner population from 2010 to 2011 to the use of alternative methods of rehabilitation.

International organizations that monitor prison conditions found that the country's space standards for prisoners were deficient. The *National Preventive Mechanism* report recommended that the country's judicial system employ lighter sentences or alternatives to incarceration for less dangerous criminals.

During the year the Ministry of Justice focused on developing alternatives to incarceration for juveniles, implementing a diversion program for juvenile offenders. A key principle of the program was to allow young offenders to avoid criminal proceedings if they graduated from the program and did not commit further crimes. According to the ministry, 80 juveniles entered the program in 2011, and only four committed a new offense. At year's end there were 162 juveniles in the penitentiary system.

As a result of a December 2010 order which provided the right of religious worship to prisoners and detainees, clergy of minority confessions reported substantial improvements. However, some Muslim leaders reported that incarcerated members of their community still lacked appropriate space to worship. While there were Georgian Orthodox chapels in most prisons, there were no specific nondenominational areas for worship.

Authorities permitted prisoners to submit complaints to judicial authorities as well as to the Public Defender's Office, NGOs, international organizations, and lawyers without censorship. However, NGOs reported prison authorities pressured prisoners and their attorneys to withdraw their applications to the European Court of Human Rights (ECHR). In one case Archil Sakhvadze was allegedly beaten by prison guards in Prison No. 7 in 2010 and told to withdraw his case from the ECHR. According to the Justice Ministry, an examination of Sakhvadze revealed no signs of beating. An investigation continued at year's end.

Prisoners also requested investigations of inhuman conditions. Authorities opened investigations into such allegations, but in many cases never officially completed them, filed charges, or took other disciplinary action against officials alleged to have committed abuses.

The government permitted independent monitoring of prison conditions by international organizations and some local and international human rights groups. The ICRC had full access to prisons and detention facilities in undisputed

Georgian territory and some access to prison and detention facilities operated by de facto authorities in Abkhazia and South Ossetia.

Prison conditions in the two separatist regions were reported to be chronically substandard, although overcrowding reportedly was not a problem.

#### **d. Arbitrary Arrest or Detention**

The constitution and law prohibit arbitrary arrest and detention. However, the government's observance of these prohibitions was uneven.

#### **Role of the Police and Security Apparatus**

The Ministry of Internal Affairs has primary responsibility for law enforcement and controls the police force. During times of internal disorder, the government may also call on the armed forces. The Ministry of Finance has its own investigative service.

While security forces were generally considered effective, there were some reports that members committed abuses with impunity (see sections 1.c. and 2.b.). Government investigations into reports of police abuses of protesters (see section 2.b.) resulted in the firing of four police officers, one demotion, and 11 reprimands, including of senior-level officials. Offenses included abuse of special means of coercion, physical assault of citizens, failure to manage subordinates properly, and failure to follow instructions. The public defender described the disciplinary action as an important deterrent, but insufficient, and called for a criminal investigation of human rights violations documented by his office.

NGOs and the public defender maintained that the incidence of police abuse was higher than the number of cases investigated by the prosecutor general and that failure to conduct systematic investigations and pursue convictions of all alleged abusers contributed to a culture of impunity. Human rights NGOs also asserted that many instances of abuse went unreported by victims due to fear of reprisal or lack of confidence in the judicial system.

According to the Ministry of Internal Affairs, its General Inspection Service imposed more disciplinary actions on law enforcement officers in 2011 than in previous years. Forms of punishment included reprimands, demotions, and dismissals. There were 1,017 such actions during the year compared with 861 in 2010. The ministry also reported that during the year 60 officers were arrested for

committing various crimes, compared with 46 in 2010. Crimes during the year included corruption (seven cases), carrying or using narcotics (four), fraud or excessive use of authority (17), abuse of authority (four), and misappropriation of state property (10).

The Prosecutor General's Office manages all criminal investigations into allegations of torture and mistreatment by government officials. Prosecutors must investigate the use of force by police when a detainee sustains injuries during an arrest. The law requires the office to open an investigation when it receives information about a possible violation, even if from an anonymous source. If prosecutors conclude after investigation that charges are not warranted, their decision can be appealed to a higher level within the office. In some cases, the Prosecutor General's Office continued investigations indefinitely without issuing any findings. In most cases that were completed, the office concluded that the use of force by police was reasonable. The Human Rights Protection Unit in the Office of the Prosecutor General issued regular updates on the status of cases, trials, and investigations of human rights violations.

The police academy provided basic training for 7,000 new police officers and retrained 2,000 police investigators during the year. The curriculum included human rights training and covered the legal basis for the use of force, proper crowd control, hate crime investigation, use of negotiations for managing critical situations with the goal of employing lawful force as a last resort, identification of trafficking cases, and police ethics.

Specialized training on human rights was conducted in cooperation with international partners, such as the Council of Europe.

### **Arrest Procedures and Treatment While in Detention**

Law enforcement officers must have a warrant to make an arrest except in exceptional cases where there are no less restrictive alternative measures available. According to the criminal procedure code, an arrest warrant can be obtained only where probable cause can be shown that a person committed a crime punishable by imprisonment, or that he or she may abscond or fail to appear in court, destroy evidence, or commit a new crime. The Georgian Young Lawyers Association (GYLA) reported that most arrests were made without a warrant based on "immediate necessity," and courts later substantiated police action in almost all cases. The public defender considered unsubstantiated arrest warrants to be a systemic problem characteristic of most courts. According to the Ministry of

Justice, there were no reports during the year of officials holding detainees without judicial review for longer than the 72 hours permitted by law.

Upon arrest, a detainee must be advised of all legal rights. Any statements made after arrest but before a detainee is advised of his or her rights are inadmissible in court. The arresting officer must immediately take the detainee to the nearest police station, and the detainee must be indicted within 48 hours or released. The arresting officer must make a record of the arrest immediately after the detainee is brought to the police station. The record should indicate the detainee's identity, place and time of arrest, circumstances of arrest, legal basis for the arrest, physical condition of the detainee at the moment of arrest, and the crime that the detainee is suspected of committing. The record must be signed by the arresting officer and the detainee, with a copy given to the detainee and his or her attorney.

The judiciary's use of bail instead of pretrial detention increased during the year. However, NGOs noted that many defendants were not able to make bail even when it was granted. Property bonds and other alternatives to bail are permitted.

While a detainee has the right to request immediate access to a lawyer and the right to refuse to make a statement in the absence of counsel, respect for this right in practice was uneven. For example, GYLA alleged that, immediately following the detention of strikers in Kutaisi in September (see section 7.a.), police denied holding them, thus preventing them from meeting with their attorneys, even though GYLA representatives could see the strikers through a window.

An indigent defendant charged in a criminal case has the right to counsel appointed at public expense. In practice, all indigent persons appear to have been represented by legal aid counsel at their detention and/or bail hearings. However, persons who could not qualify as indigent and who could not obtain private counsel were often unrepresented at the bail or detention hearing stage of a criminal case. Court observers noted that, in Tbilisi City Court, such nonindigent persons were unrepresented in 23 percent of bail hearings. This represented a 54 percent decline from 2010, when similarly situated nonindigent defendants went unrepresented in as many as 50 percent of detention or bail hearings.

Approximately 150 protesters were unaccounted for in the period immediately after the May 26 protests, and the public defender stated most detainees were unable to exercise their rights to notify a third party of their whereabouts, consult legal counsel, or have access to medical care. All detainees were accounted for within two weeks, but there was credible evidence that they were moved to

regional facilities without informing family members or the public defender (see section 2.b.).

By law detainees facing possible criminal charges have the right to notify their families of their location within three hours of their arrest, and those charged with administrative offenses have the right to notify family upon request. Detainees frequently reported to the Public Defender's Office that they were prevented from contacting family members after detention. GYLA reported police prevented many detainees from the May 26 protests from contacting family members for up to several days after their detention.

Arbitrary Arrest: The public defender reported cases of arbitrary detention of individuals during the year. NGOs, civil society groups, and opposition party members alleged that politically motivated arbitrary arrest occurred during the year. For example, opposition party members and NGOs alleged that Revaz Khulordava, the deputy head of the opposition Free Democrats faction in the Senaki City Council, was arrested on false, politically motivated charges in November. Khulordava was charged with the September stabbing of a man in Senaki two months after the incident was alleged to have occurred. Multiple witnesses confirmed Khulordava's alibi. Khulordava had frequently criticized the local government for corruption and misuse of funds.

Patterns in allegedly politically motivated arrests noted in GYLA's *Legal Analysis of Cases of Criminal and Administrative Offenses with Alleged Political Motive*, published in June, included arrests for illegal possession of drugs or arms without subsequent examination of evidence, defendants charged with offenses more serious than those actually committed, and small infractions mischaracterized as malicious disobedience to police orders. The period covered in the analysis was 2007-10.

During the year de facto officials of the separatist territories and Russian officials continued to detain many individuals in the separatist regions of Abkhazia and South Ossetia on charges related to their "illegal" crossing of the administrative boundary. Russian border guards typically enforced the boundary-crossing rules imposed by de facto authorities by handing individuals over to those authorities. Most individuals were released within five days, but some were held considerably longer. Georgian authorities also detained a number of individuals near the administrative boundary on various charges, including illegal entry into the country. Such individuals often carried only Russian passports with visas to travel in Georgia.

There were reports of arbitrary arrests of ethnic Georgians, particularly in Tskhinvali and Gali regions of South Ossetia and Abkhazia. Detainees reported they were not given a reason for their arrest nor were they seen by a prosecutor. Human rights groups alleged de facto authorities arbitrarily detained ethnic Georgians and held them in order to negotiate prisoner exchanges between de facto officials and Georgian authorities.

Pretrial Detention: The law provides safeguards for a speedy trial through strict time limits for detentions, hearings, and trials, and observers found that judges strictly enforced these requirements. However, pretrial detention at times was lengthy. A high number of judicial vacancies at the trial-court level may have contributed to some delays in scheduling trials. Criminal cases were delayed or postponed most commonly based on requests from the parties to further negotiate a plea bargain, or because a witness had not appeared as scheduled to give testimony. The Ministry of Corrections reported that 6.3 percent of the penitentiary system population consisted of pretrial detainees.

Amnesty: According to the Ministry of Corrections and Legal Assistance, the president pardoned 787 convicts in 2011, compared with 1,299 in 2010.

#### **e. Denial of Fair Public Trial**

While the constitution and law provide for an independent judiciary, outside influence on the judiciary remained a problem. Transparency International Georgia's *Georgia National Integrity System Assessment* for 2011 noted that the judiciary "suffers from undue influence exerted by the Prosecutor's Office and the executive authority during the adjudication of criminal cases, as well as cases where the political leadership's interests are at stake" and that the judiciary's "inadequate level of independence" undermined its ability to exercise oversight of the executive branch. However, the assessment also found that bribery in courts has been eradicated and that judges were believed to be independent in their handling of the majority of civil cases. The public defender's report for 2010 identified inadequate substantiation of court decisions at various stages as an endemic problem in the judiciary across the country.

Court observers noted that judges enforced criminal procedure code standards, adopted in 2009, for ensuring in-custody appearances for defendants within 24 hours of arrest, an initial appearance before a court on an indictment within 48 hours of arrest, and a detention hearing within 72 hours of arrest. Judges held

prosecutors to the code's standards for disclosing case evidence to the defense, and complaints of failure by the prosecution to disclose evidence in a timely or complete manner were limited. However, observers noted that judges struggled at times with criminal procedure code language that allows the defense to request assistance from the court in obtaining court-ordered evidence. Judges also showed some reticence in following up on complaints from defendants regarding alleged actions by police or prosecutors that affected the defendant's access to counsel, ability to call defense witnesses at trial, or ability to fully cross-examine police or prosecution witnesses at trial. Judges showed marked improvement in their desire and ability to maintain order in their courts and in demanding higher professionalism from court participants.

Many NGOs complained that judicial authorities continued to act in favor of the ruling party if there was a perceived government interest in the case. Some NGOs and opposition groups alleged that, in cases involving opposition activists, the courts tended to rule in favor of the government. GYLA's analysis of 2007-10 cases viewed as politically motivated found that the judiciary always upheld the position of the prosecution in such cases. GYLA also identified refusal to grant defense requests and disproportional punishment among common court actions.

A report by the Council of Europe's commissioner for human rights, Thomas Hammarberg, released in June pointed to prosecutors' failure to react to procedural violations committed by the Ministry of Internal Affairs and the ministry's failure to prosecute cases of mistreatment or excessive use of force by law enforcement officials as reinforcing the perception that prosecutors acted selectively on behalf of the government.

The code of administrative offenses reportedly lacks sufficient due process provisions. For example, although the code provides for prison sentences of up to 90 days for violations, it reportedly does not require police to inform individuals of their rights or the reason for their arrest, nor does it permit defendants to present evidence or witnesses for their defense in court. Authorities reportedly used the code to detain opposition protesters during the year and in recent years.

During the year NGOs and observers continued to criticize the lack of transparency in the selection, appointment, and disciplining of judges. Despite the use of objective written examinations to create a pool of potential qualified appointees and publication of the names of all potential candidates for public comment, the judicial appointment process was criticized as not sufficiently transparent, and selection criteria were not sufficiently based on merit.

During the year the High Council of Justice's Judicial Ethics and Disciplinary Procedure Department received 880 complaints involving judges and started disciplinary proceedings in all cases. The majority of complaints were deemed unsubstantiated or faulty. The High Council of Justice questioned judges in seven cases and referred two to the Disciplinary Board of the Common Courts. In previously pending cases, the board dismissed one judge, reprimanded 11, and put four on notice. No judges or prosecutors were convicted on corruption charges during the year.

The Prosecutor's Office and Ministry of Justice are responsible for disciplinary action for violations of the ethics code by prosecutors. During the year 37 prosecutors from the Chief Prosecutor's Office were subject to disciplinary actions ranging from notice to reprimand. Two prosecutors were charged criminally in a formal court indictment.

### **Trial Procedures**

The law presumes defendants are innocent. Defendants have the right to a trial by jury only in cases of aggravated murder and attempted aggravated murder and only in Tbilisi. During the year the Tbilisi City Court conducted the country's first two post-Soviet jury trials. Most legal observers considered the trials fair and well run. In all other criminal cases, defendants have a right to a public trial (except where national security, privacy, or protection of a juvenile is involved) and to be present at their trial. In practice, the right to a public trial was not always respected. Legal observers noted that some judges closed trials without providing reasons and at other times prevented observers from attending hearings. The law allows for trial in absentia in certain cases in which the defendant has fled the country.

Defense counsel has the right to meet individuals accused of a crime without hindrance, supervision, or undue restriction. However, NGOs and lawyer associations complained that, in practice, long lines and cumbersome entry checks at penitentiary institutions hindered their access to detainees to prepare cases. The Georgian Bar Association reported several cases of harassment of defense attorneys, including physical assault and confiscation of recording material by police, and physical assault, rape threats, and confiscation of case notes by penitentiary officials.

During the year, according to statistical data provided by the Supreme Court, 19 defense lawyers were charged with fraud for misappropriation of client funds.

Sufficient information was not available to determine whether these lawyers were objects of undue pressure by the government. However, in March the Georgian mission of the International Observatory for Lawyers described cases of lawyer intimidation in which defense lawyers were arrested and sentenced on fraud charges on the grounds of “ineffectual legal assistance.” GYLA asserted that these lawyers were working on “sensitive” cases or were considered “opposition” lawyers and targeted as such. For example, according to GYLA, on July 27, Ramin Papidze, attorney for an opposition party branch in Batumi, was fined and sentenced to 10 days’ detention for alleged misbehavior in the courtroom. According to GYLA, the judge based sentencing exclusively on testimony of court bailiffs who, witnesses alleged, assaulted Papidze prior to the hearing.

Defendants may question and confront witnesses against them and present witnesses and evidence on their own behalf at trial. Defendants and their attorneys have access to the prosecution’s evidence relevant to their cases at any point during criminal proceedings and may make copies at their own expense. The prosecution must disclose all evidence to the defendant no later than five days prior to the pretrial hearing. Court observers reported that the prosecution complied with these rules.

A convicted defendant has the right of appeal. However, appeals under the administrative and criminal codes were difficult in practice. Under the criminal procedures code, defendants have one month to file an appeal, and appeals must be completed within three months in cases where the appellant is imprisoned and within 12 months otherwise. However, in criminal cases, courts were allowed up to two weeks to provide court records to defense attorneys, thus reducing the attorneys’ time to prepare an appeal. Administrative sentences which entail incarceration must be appealed within 48 hours and within 10 days otherwise. In administrative cases courts provided records three days after the trial, thus forcing attorneys to prepare appeals of cases involving incarceration without the court’s written judgment. Appeals must be signed by the defendant, and attorneys reported difficulty in locating and accessing their clients in the penitentiary system, impairing their ability to submit the appeal on time. Human rights monitors also reported that court decisions in administrative trials were often “perfunctory” and that in criminal trials appeals were rejected without an adequate explanation.

Monitoring groups pointed to the country’s low acquittal rates in criminal cases and low rates of successful appeals as possible indicators of executive branch pressure on the judiciary. Transparency International/Georgia’s 2010 report cited a 1 percent acquittal rate in criminal cases. The Ministry of Justice, on the other

hand, cited a 4.6 percent acquittal rate in 2011, compared with a 6 percent rate in 2010. The discrepancy between these rates appears to be attributable to Transparency International's inclusion of all cases, including those concluded through plea bargaining, whereas the ministry included only those cases which proceeded to trial.

By law a court must certify that a plea bargain was reached without violence, intimidation, deception, or illegal promise, and that the accused had the opportunity to obtain legal assistance. Approximately 65 percent of plea agreements contained a fine as a penalty along with either a prison term or a suspended prison sentence. Some legal observers noted that many judges were very attentive to the rights of the defendant during the entry of a plea agreement, while others failed to apprise the defendant of important rights and legal protections. The June report of the Council of Europe's human rights commissioner noted that, in practice, judges relied almost exclusively on evidence presented by the prosecutor in plea agreements. The UN Working Group on Arbitrary Detention reported June 24 that 90 percent of cases that went through court concluded in plea bargain arrangements "with minimal intervention from judges." The Council of Europe reported that lawyers, instead of working towards their clients' acquittal, often advised them to plea-bargain for a reduced sentence.

According to the Supreme Court, the use of plea bargaining increased from 80 percent of cases in 2010 to 88 percent in 2011. During the year observers remained concerned about the potential lack of fairness and transparency in the implementation of plea bargaining. For example, in an April resolution, the Parliamentary Assembly of the Council of Europe noted "questions raised about the increasing frequency of plea bargaining." The resolution recommended that officials address such concerns "as they affect public trust in the fairness of the justice system." Experts agreed that the core problem was not in the law but in the law's application, as reported by Transparency International/Georgia in a December 2010 report. While noting the benefits of plea bargaining, including increased efficiency and cost savings in the court process, providing relief to overcrowded prisons, and in fighting organized crime and corruption, Transparency International/Georgia raised significant concerns about the fairness of the system, highlighting the imbalance between the powers of the prosecution and the judiciary and the system's lack of transparency in the application and collection of fines. There are no explicit criteria for calculating fines, and during the year NGOs alleged that defendants facing equal charges frequently received very different sentences according to their ability to pay.

## **Political Prisoners and Detainees**

Several NGOs, opposition parties not represented in parliament, and family members alleged that the government continued to hold political prisoners and detainees. Their estimates of the number varied, with NGO estimates in the dozens. The government, NGOs, and opposition leaders disagreed on the definition of a political prisoner. The public defender did not name any political prisoners or detainees in his 2010 report and received no requests for assistance regarding political prisoners in 2011. The parliamentary Human Rights Committee disagreed with assertions that the government held political prisoners.

The Council of Europe's commissioner for human rights, Thomas Hammarberg, reported in June that most individuals on lists of persons considered to have been sentenced on political grounds had participated in opposition protests held in November 2007 and spring 2009. Raising concerns about the fairness of their trials, Hammarberg noted that he received "a considerable number of credible allegations and other information indicative of serious deficiencies marring the criminal investigation and judicial processes in a number of criminal cases against opposition activists. This casts doubt on the credibility of the charges retained and on the final convictions."

The government permitted international and domestic organizations to visit persons claiming to be political prisoners or detainees, and some organizations did so during the year.

## **Regional Human Rights Court Decisions**

During the year the ECHR ruled against the government in three cases involving alleged violations of the European Convention on Human Rights. According to the Ministry of Justice, authorities paid compensation in two of the cases by year's end.

NGOs reported pressure on individuals to withdraw their applications to the ECHR, a development that the Human Rights Center described as a new trend during the year.

## **Civil Judicial Procedures and Remedies**

The constitution provides for an independent and impartial judiciary in civil matters, but there were concerns about the professionalism of judges and

transparency in their adjudication. The constitution and law stipulate that a person who suffers damages resulting from arbitrary detention or other unlawful or arbitrary acts, including unlawful human rights violations, is entitled to bring a civil action. Individuals have the right to appeal court decisions involving the alleged violation of human rights by the state to the ECHR after domestic avenues of appeal have been exhausted.

### **Property Restitution**

GYLA reported several cases in which it offered legal assistance during the year to groups that claimed the government improperly used eminent domain to seize property in Tbilisi at unfairly low prices, particularly associated with the Tbilisi Railway Bypass Project. In addition there were concerns about the lack of due process and respect for the rule of law in a number of property rights cases. NGOs reported the government created artificial barriers for local residents seeking to register property (historically owned by their families for generations but not documented) in Svaneti and selectively allowed government sales or registration of the same land by developers. Transparency International/Georgia reported that the government had begun compensating land owners in the region by year's end, although only a small percentage had received compensation. GYLA and other NGOs also associated the creation of tourist zones in early 2011 with illegal revocation of historic ownership rights in Svaneti, Anaklia, Gonio, and Black Sea-adjacent territories.

In Abkhazia the de facto law prohibits property claims by ethnic Georgians who left Abkhazia before, during, or after the 1992-93 war, thereby depriving internally displaced persons of their property rights in Abkhazia.

In a December 2010 decree, South Ossetian de facto authorities invalidated all real estate documents issued by the Georgian government between 1991 and 2008 relating to property held in the Akhgori region. The decree also declared that all property in Akhgori belongs to the de facto authorities until a "citizen's" right to that property is established in accordance with de facto legislation, effectively denying displaced ethnic Georgians of their property rights in the region.

### **f. Arbitrary Interference with Privacy, Family, Home, or Correspondence**

The constitution and law prohibit such actions without court approval or legal necessity and prohibit police from searching a residence or conducting undercover

or monitoring operations without a warrant. However, these prohibitions were not always respected.

NGOs continued to report that police conducted searches without first obtaining warrants. NGOs reported that police often obtained warrants after the fact and many citizens were unaware of their right to delay a search of their home by one hour to summon two objective third-party witnesses to the search. Under the law, if authorities conduct a search or seizure without a warrant because of urgency, they must apply for the warrant within 24 hours of the search; otherwise, the evidence collected is considered invalid. According to GYLA, these warrants are almost always approved.

During the year some opposition figures and NGOs expressed concern about government surveillance. They alleged that surveillance included monitoring of e-mails and cellular telephones and surveillance from private cars by officials they believed to be from the Ministry of Internal Affairs.

Reports that tax authorities targeted specific companies and persons for searches for political reasons decreased in 2011 due to reforms at the Revenue Service (see section 4).

There were several reports that relatives of union or opposition party members were harassed, demoted, dismissed from employment, or arbitrarily arrested (see sections 1.d. and 7). Throughout the year members of NGOs and individuals reported arbitrary harassment, job loss, and arrest that they alleged were related to the activities of family members. For example, on September 16, Asmati Kangoshvili, a teacher, former journalist, and member of the Chechen diaspora community in the Pankisi Gorge region, was arrested for alleged possession of drugs. Witnesses claimed that neither she nor her home was searched before her arrest and believed that the small amount of drugs allegedly found on her person was planted by police. Local townspeople, her students, and relatives believed her arrest was related to suspected criminal activity by her brothers and cousin. On September 19, she was fined 5,000 lari (approximately \$2,980) and released. No further action was expected in the case.

#### **g. Use of Excessive Force and Other Abuses in Internal Conflicts**

Separatist conflicts in the regions of Abkhazia and South Ossetia remained unresolved. While the security situation stabilized to the point that no military conflict was reported in the areas, other incidents of violence were reported.

Human Rights Watch reported that more than two years after the 2008 conflict, the Georgian government had not effectively investigated international human rights and humanitarian law violations committed during the conflict.

While there was little official information on the human rights and humanitarian situation in Abkhazia and South Ossetia due to limited access to these regions, many allegations of abuses persisted. The EUMM facilitated conflict resolution (including conflicts involving human rights problems) among Georgian, Russian, and de facto authorities in the occupied regions by regularly patrolling near the conflict areas and facilitating contacts among the sides in the framework of the Incident Prevention and Response Mechanisms (IPRMs). However, despite the 2008 cease-fire agreement's provisions, the EUMM was denied access to the occupied regions. Patrols could be conducted only on the undisputed Georgian side of the administrative boundary lines.

The Gali region of Abkhazia, where many ethnic Georgians live, remained tense because of limitations on freedom of movement, as well as reports of kidnapping, arbitrary arrests, and deaths in custody. There were numerous reports of extortion, looting, and robbery by Russian and Abkhaz de facto forces and criminal gangs, especially during the harvest season when local farmers regularly faced extortion of a portion of their income. Russian military forces and de facto militias limited the ability of international observers to travel in Abkhazia to investigate claims of such abuses. Russian military forces and de facto militias did not allow access to South Ossetia.

### **Killings**

On June 28, the Tbilisi City Court found 15 persons guilty of terrorism in connection with three explosions in Tbilisi in 2010, killing one woman. An Abkhazia-based Russian military officer, Yevgeny Borisov, was sentenced in absentia to 30 years in prison; ethnic Georgian Mukhran Tskhadaia, based in Gali, was sentenced in absentia to life imprisonment; and a second Gali-based ethnic Georgian, Melo Tskhadaia, was sentenced in absentia to 30 years in prison.

### **Abductions**

During the year there continued to be reports of abductions along the administrative boundaries of both occupied regions.

Government and Abkhaz commissions on missing persons reported that nearly 2,000 Georgians and Abkhaz remained missing as a result of the 1992-93 war in Abkhazia; the ICRC began chairing a new coordination mechanism during the year between Georgian and Abkhaz participants aiming at clarifying the fate of these individuals. South Ossetian de facto authorities reported that 116 persons were still missing from conflicts in 1991 and 2008. The ICRC continued to assist authorities to inform the families of the whereabouts of missing relatives.

## **Section 2. Respect for Civil Liberties, Including:**

### **a. Freedom of Speech and Press**

#### **Status of Freedom of Speech and Press**

The constitution and law provide for freedom of speech and press; however, there were credible reports that the government restricted freedom of speech and press.

Freedom of Speech: Individuals were generally free to criticize the government publicly and privately without reprisal, although there were some notable exceptions. Some individuals told foreign monitors they were reluctant to discuss, or had stopped discussing, sensitive topics by telephone due to concern about government telephone tapping. NGOs reported that a lack of investigation for harassment of human rights defenders diminished dissenting voices and watchdog groups, especially outside of Tbilisi. They also claimed that the government used the legal process to silence critical voices.

Freedom of Press: Although independent media were active and expressed a wide variety of views, direct or indirect government influence over media outlets remained a concern. According to Transparency International Georgia's *Georgia National Integrity System Assessment* for 2011, while "the country has mostly progressive and liberal laws governing the establishment and operation of media entities, in practice the media remain less transparent, accountable, and independent." While print media frequently criticized senior government officials during the year, some individuals affiliated with newspapers reported facing pressure and intimidation for doing so. Few newspapers were commercially viable. According to Transparency International's 2011 *Georgian Advertising Market* report, opposition-oriented print media struggled to attract advertisements due to limited circulation and reported government pressure on businesses. *Batumelebi*, an independent local newspaper in Batumi, stated that one potential advertiser cancelled after being told by government officials to do so. Patrons in

politics and business typically subsidized newspapers, which were subject to their influence. Journalists reported distribution of print media was further hampered by the establishment of a new kiosk chain in Tbilisi, replacing old kiosks which primarily distributed newspapers. Licenses to rent the new kiosks were largely auctioned to companies selling fast food, cigarettes, and lottery tickets because smaller newspaper distributors could not match their bids.

Television was the most influential medium and the primary source of information on current events for more than 80 percent of the population. The three largest television broadcasters were the state-owned Georgian Public Broadcaster (GPB) and the privately owned Rustavi-2 and Imedi TV, the country's two most popular stations. All three reportedly had close ties to the government, generally had a progovernment editorial policy, and were the largest providers of coverage on a national level. Pro-opposition stations Kavkasia and Maestro expressed views more critical of the government, but their audience was concentrated in Tbilisi, which constituted 26 percent of the country's population.

A December report on the Georgian advertising market by Transparency International Georgia stated "the fact that a number of key companies are controlled by relatives or close friends of current government officials or former high-level government/ruling party members raises not only questions about conflicts of interest, but also about competitiveness and political independence...." The report also noted that the head of the Georgia National Communications Commission (GNCC), charged with regulating electronic communication, owned a major advertising agency, which represented a direct conflict of interest.

On April 8, parliament amended the law on broadcasting to provide for transparency of media ownership. The amendments prohibit ownership of broadcasters by offshore-registered firms; require broadcasters to submit an annual revenue breakdown to the GNCC; require the GNCC and broadcasters to make ownership information publicly available on their respective Web sites; and require the GNCC and broadcasters to align ownership structures with the new requirements by January 2012, when the amendments are scheduled to go into effect. The GNCC created a Web site where media ownership information was published and forms and databases were available to collect information on media revenues. By year's end all major television broadcasters had provided the GNCC with ownership information. Broadcasters were required to provide information on revenues by February 2012.

Violence and Harassment: There were reports during the year of the physical and verbal assault of journalists by police, confiscation of journalists' cameras by authorities, and intimidation of journalists by government officials due to their reporting. Journalists affiliated with pro-opposition media outlets reported unequal access to government buildings, anonymous telephone threats, and surveillance by unknown people while covering stories.

GYLA reported that security force members injured 24 journalists while dispersing the May 26 protest. The public defender noted that police fired rubber bullets at journalists, verbally and physically abused them, and impeded their work. In many cases mistreatment occurred after journalists presented press credentials to police. GYLA reported nine incidents of illegal seizure of professional equipment from journalists. Journalists alleged that authorities damaged other equipment, and destroyed or erased photographic, video, and audio material. On December 26, the Tbilisi City Court ordered the Ministry of Internal Affairs to reimburse journalists and media organizations 2,302 lari (\$1,370) for lost or damaged camcorders and medical treatment for injuries sustained during the May 26 protest.

On July 7, authorities arrested four photographers on charges of spying for Russia but subsequently gave them suspended sentences in a pretrial plea bargain. Media and advocacy groups questioned the lack of transparency and overall handling of the case, in particular how suspects for a crime as serious as espionage could be given suspended sentences. The government responded that the level of cooperation provided by the photographers in identifying other persons engaged in espionage was the basis for the lenient sentence. The lack of government transparency led more than 40 reporters to claim the photographers were targeted for either taking or publishing graphic photographs of police dispersing the May 26 protest. The Ministry of Internal Affairs asserted that recorded wiretaps and taped confessions substantiated the espionage charges. The watchdog group Coalition for Media Advocacy noted that the arrests and lack of transparency in the case triggered a sense of insecurity among the media.

The Revenue Service released information regarding the tax amnesties granted to all television stations in 2010. Progovernment station Rustavi 2, GPB, and independent, Batumi-based station TV25 were the major beneficiaries of the amnesty because they had the highest debt levels.

Censorship and Content Restrictions: Throughout the year NGOs, independent analysts, and journalists accused high-ranking government officials and opposition politicians of influencing editorial and programming decisions through their

personal connections with news directors and media executives and by directing advertising using their personal connections with business owners. Transparency International Georgia's *National Integrity System Assessment* for 2011 noted that the government "is generally understood to have established control over the country's most influential television stations through their acquisition by government-friendly businessmen, forcing journalists employed by these stations to practice self-censorship."

The International Research and Exchanges Board's *Media Sustainability Index 2011*, which covered 2010, again reported that partisanship pervaded the news industry. Mainstream television broadcast progovernment content, while smaller outlets promoted opposition viewpoints.

The GNCC issues broadcast licenses as either a "general license" for news and political programming or an "entertainment only" license that strictly limits content, thereby giving the commission substantial control over programming. In 2011 the GNCC began issuing licenses for the first time since 2008. By law the GNCC must issue licenses according to public interest surveys. According to a survey by Tbilisi-based BCG Research published on March 4, Georgian viewers preferred entertainment shows over news programs. Media analysts noted that these findings were inconsistent with survey information from the Caucasus Research Resource Center. The GNCC issued or renewed 25 broadcast licenses in 2011, including several licenses to outlets considered pro-opposition.

Journalists said they self-censored reporting that did not reflect the media owners' views out of fear of losing their jobs. Authorities also reportedly intimidated journalists into censoring their reports. Gela Mtivlishvili reported that a former prosecutor threatened him by e-mail regarding his reporting. The public defender recommended opening an investigation into the report. Opposition party representatives and media advocates reported that they believed journalists either did not cover or lightly covered events that showed the government in a negative light out of concern that critical pieces would not be aired or could potentially cost them their jobs.

Nongovernment Impact: In November a conflict between the owners of opposition Maestro TV and its managing firm temporarily severely limited Maestro's broadcasting capability and disrupted all news programs. The channel was one of the country's few independent broadcasters, and disruption of its regular programming was a source of concern for civil society.

Media in the separatist regions of South Ossetia and Abkhazia remained tightly restricted by de facto authorities and Russian occupying forces.

Mari Otarashvili, a journalist for the independent *Rezonansi* newspaper, reported the Georgian governor (in exile) of the Akhgori region, Zurab Pitskhelauri, threatened her, attempted to blackmail her, and advised her to write her articles “correctly” on several occasions during the year. Otarashvili was one of the few Georgian journalists reporting in occupied South Ossetia with the permission of de facto authorities, and her reporting was often critical of local government officials.

### **Internet Freedom**

Outside of Abkhazia and South Ossetia, there were no government restrictions on access to the Internet or reports that the government monitored e-mail or Internet chat rooms. However, amendments to the Law on Operative-Investigative Activity, adopted in November 2010, oblige communication companies to make private information available for government investigations, providing law enforcement officials with access to private e-mails, chat rooms, and open and closed conversations on the Internet.

Insufficient information was available about Internet freedom in the occupied territories.

### **Academic Freedom and Cultural Events**

There were no government restrictions on cultural events. There were reports of academic appointments and dismissals due to political affiliation. Education experts questioned the promotion of several school “mandators,” hired directly by the Ministry of Education to maintain school security, to positions in school resource centers and as principals.

## **b. Freedom of Peaceful Assembly and Association**

### **Freedom of Assembly**

The constitution and law provide for freedom of assembly. Authorities routinely granted permits for assemblies during the year. However, the government’s respect for this freedom was mixed, and authorities forcefully dispersed several protests. Human rights organizations expressed concerns about provisions in the law, including prohibitions on demonstrations by one person or by noncitizens,

and a requirement that political parties and other organizations give prior notice and obtain permission from local authorities to assemble on a public thoroughfare five days in advance, thereby precluding spontaneous demonstrations.

The law governing administrative offenses prohibits the blocking of streets “artificially” and “deliberately,” either by protesters themselves or with “various types of constructions and/or objects.” The maximum prison term for a number of administrative offenses--including these actions--is 90 days. In contrast, under the criminal procedures code, pretrial detention for criminal charges is 60 days. Authorities amended the Law on Public Assembly and Demonstrations on July 1 to allow courts to prohibit rallies within 65 feet of court buildings and give state agencies and ministries the power to do the same.

The law allows police to use nonlethal projectiles for riot control, and law enforcement officials on occasion used excessive force against protesters. NGOs noted the excessive use of force by police, including attacks on journalists and protesters who were not resisting arrest, and lack of transparent investigations had a dampening effect on freedom of assembly. For example, on January 3, police dispersed demonstrators holding a nonviolent hunger strike in Heroes Square, used excessive force against peaceful onlookers, and detained 11 persons on improper charges. The 11 detainees were charged with petty hooliganism and disobeying police orders. The public defender’s investigation concluded that at the time of the arrests, the protesters were in compliance with the law and that there was no evidence to support the charges. The investigation corroborated witnesses’ version that police used excessive force to illegally terminate the protest. The report noted that video footage showed plainclothes police officers detaining protesters without presenting any form of documentation. In one case the wife of a protester was punched in the face by a plainclothes officer. A Ministry of Internal Affairs internal investigation resulted in the dismissal of one officer, and ministry officials reported the victim received 8,000 lari (\$4,760) in moral damages in a subsequent lawsuit.

Five days of protests turned violent on May 26, when police forcefully dispersed approximately 1,000 protesters in front of the parliament building when their permit expired. The confrontation occurred after protest leaders declined the government’s request to move to a different venue in order to clear the road for the Independence Day parade scheduled for May 27 and blocked the main street with barricades. The protesters, some of whom came armed with sticks, metal pipes, and Molotov cocktails, ignored warnings from municipal officials that force would be used to clear the area if they did not voluntarily disperse. Police

beat, arrested, and shot protesters and journalists in the vicinity with rubber bullets. Some police also failed to display identification numbers, making accountability difficult. Two persons--one protester and one police officer--were killed, reportedly by the vehicles of the protest leaders as they left the area at high speed, and two other protesters were found electrocuted on a nearby rooftop. Dozens of protesters were injured, and GYLA estimated that authorities detained 160 persons. Observers noted that the government had a legal right to clear the protest while agreeing that certain police, mainly from special force units, employed disproportionate force.

### **Freedom of Association**

The constitution and law provide for freedom of association. However, the government's respect for this right was selective in practice. There were some allegations during the year that members of trade unions and opposition parties and their families and associates were selectively targeted for prosecution by law enforcement agencies and were subjected to stricter penalties than other citizens upon conviction. There were also allegations of pressure on opposition figures, NGOs, teachers, and union members, including surveillance and actual or threatened job loss (see sections 3 and 7).

#### **c. Freedom of Religion**

See the Department of State's *International Religious Freedom Report* at [www.state.gov/j/drl/irf/rpt](http://www.state.gov/j/drl/irf/rpt).

#### **d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons**

The law provides for freedom of movement within the country, foreign travel, emigration, and repatriation for Georgian citizens, but this freedom was limited in practice in Abkhazia and South Ossetia by de facto authorities and Russian occupying forces. The government cooperated with the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations in providing protection and assistance to internally displaced persons, refugees, returning refugees, asylum seekers, stateless persons, and other persons of concern.

Georgian law imposes limitations on foreigners moving into and out of Abkhazia and South Ossetia. It also imposes special requirements on persons conducting economic activities in the occupied regions. There were no reports that Georgian

authorities unduly restricted any international humanitarian organizations. Russian and Abkhaz de facto authorities limited international organizations' ability to operate in Abkhazia. Russian and South Ossetian de facto authorities blocked virtually all international organizations, including humanitarian organizations, from regular access to South Ossetia.

De facto authorities and Russian forces in the occupied regions of Abkhazia and South Ossetia restricted freedom of movement, restricting the free movement of the local population across the administrative boundary for medical care, pension services, religious services, and education. Checkpoints operated by Russian border guards and de facto militia often obstructed citizens' movement within these regions and between these regions and areas controlled by the Georgian government. Although Abkhaz de facto authorities maintained that the administrative boundary with the rest of Georgia was officially closed, they allowed limited crossings at the Rukhi Bridge. In July 2010 they introduced a permit system that formalized a process of granting permission to cross the boundary for 100 Russian rubles (\$3) for a single trip. South Ossetian de facto authorities allowed limited crossings in and out of the Akhagori region, whose remaining inhabitants are primarily ethnic Georgians. International observers were able to gain limited access to Abkhazia, but only a small number gained occasional and extremely restricted access to South Ossetia. South Ossetian de facto authorities continued to refuse humanitarian access to most international organizations, including the UNHCR.

In September 2010, according to media reports, South Ossetian de facto authorities announced that ethnic Georgian residents of the region would face restrictions, such as a fee to cross the administrative boundary, unless they obtained South Ossetian "passports." This requirement had not taken effect by year's end.

An Abkhaz "citizenship" law allows dual Russian-Abkhaz but not dual Georgian-Abkhaz "citizenship." Ethnic Georgians living in Abkhazia were required to acquire Abkhaz "citizenship" to open businesses, establish bank accounts, vote in elections, run for office, travel freely, or own property.

### **Internally Displaced Persons (IDPs)**

The UNHCR estimated that there were a total of 270,528 IDPs from the conflicts in 1992-93 and 2008 in the country during the year. The UNHCR estimated that of the approximately 127,000 individuals displaced as a result of the 2008 conflict, essentially all those who had applied for assistance received a durable solution in

undisputed Georgian territory by the end of the year. Additionally, as of December the UNHCR counted 128,864 persons as being in an “IDP-like” situation needing protection and humanitarian assistance. This number included individuals who returned to Abkhazia, South Ossetia, and areas adjacent to the administrative boundary with South Ossetia and Abkhazia as well as those displaced in the 2008 conflict who were subsequently relocated.

By year’s end most IDPs displaced in 2008 had received formal IDP status under national legislation. However, IDP status was not established for some individuals who claimed to have been displaced in the 2008 conflict. These individuals, described by officials as “IDP status seekers,” included persons who had never been registered with Georgian authorities, such as persons who had never been registered at birth or were displaced from regions that prior to 2008 were not under Georgian control, persons whose departure from South Ossetia could not be established as having been caused by the conflict, or persons who could not prove their former residence in the occupied territories. These included, in particular, some persons who may own property in the Akhalkalaki region of South Ossetia but may have moved for economic, educational, or other reasons prior to the conflict. As there was some seasonal movement of persons to and from Akhalkalaki, it was at times difficult to establish where an individual was settled at the time of the conflict. Various agencies, including the government, UNHCR, and NGOs, employed different methods in estimating the number of IDPs.

During the year IDPs from the 2008 conflict continued to receive assistance, including a monthly, status-linked cash payment from the government, as well as some help from the international donor community. The Ministry for IDPs from the Occupied Territories, Refugees, and Accommodations continued to provide for IDPs and promote their socioeconomic integration and create conditions for their return in safety and dignity. The government took steps during the year to rehabilitate, purchase, or build new housing or offer cash payments in lieu of providing housing to IDPs from the conflicts in the early 1990s and 2008. Such steps resulted in improved housing for 4,734 IDPs. The government moved from a reactive approach (getting as much housing up as quickly as possible) to a long-term solution approach (providing durable solutions to IDPs from both conflicts). More than 6,000 IDP households, primarily those displaced in conflicts in the 1990s, nonetheless continued to live in substandard or squalid buildings and were in areas with insufficient access to services and economic opportunities.

The government continued to work to provide adequate permanent housing for all IDPs, although the needs of IDPs far exceeded the resources available. In

December 2010 the government estimated it would cost approximately 585 million lari (\$348 million) to provide adequate shelter for all IDPs in the country. During the year the government undertook a broad review of its IDP action plan in consultation with the UNHCR, donors, and international protection NGOs.

After a series of controversial IDP evictions in June-August 2010, the Ministry for IDPs from the Occupied Territories, Refugees, and Accommodation and the UNHCR, in consultation with international organizations and donors, updated government procedures to provide for eviction of IDPs from shelters in a manner consistent with humanitarian standards. For example, the updated procedures require providing IDPs at least 10 days' notice of their removal and clear information regarding alternative housing options. In January 535 IDP households were evicted from 19 "temporary shelters" in Tbilisi using the new procedures. UNHCR protection staff reported that the evictions took place relatively peacefully with minor scuffles at two sites, one of which resulted in arrests. International and civil society organizations criticized government missteps in the execution of the evictions, in particular some limitations that were placed on access by international monitors. Few evicted IDPs accepted the government's offers of housing outside of Tbilisi but rather appeared to have found accommodations in the capital on their own.

In July and August, authorities evicted an estimated 100 IDP households from sites in central Tbilisi. These included both illegal "temporary shelters" and registered and legal collective centers in which IDPs had rights of occupancy under the law. The government's legal basis for evicting IDPs from their registered accommodations was not clear. According to the law, IDPs shall not be "expelled from a legal residence without compensation" that allows them to secure housing comparable to the housing from which they were evicted. Some local advocacy organizations asserted that the compensation offered by the government was insufficient to meet this standard, and at least one civil suit by an evicted IDP was pending before the courts at year's end.

Abkhaz de facto authorities continued to prevent repatriation of the approximately 235,000 persons displaced by the 1992-93 war, despite their 1994 agreement with Georgia, Russia, and the UNHCR, which called for the safe, secure, and voluntary return of IDPs who fled during the war. Approximately 45,000 of these IDPs, many working as seasonal laborers, returned to the Gali and Ochamchire regions of lower Abkhazia, but Abkhaz de facto authorities refused to allow the return of IDPs to other regions of Abkhazia. IDPs living elsewhere in Georgia were

prevented from reclaiming homes in Abkhazia, based on a 2008 “law” that expropriated all “abandoned property” from 1992-93.

### **Protection of Refugees**

Access to Asylum: The law provides for the granting of asylum or refugee status, and the government has established a system for providing protection to refugees.

Temporary Protection: The government provided temporary protection to individuals who may not qualify as refugees. Two Russian soldiers who defected to Georgia from South Ossetia in 2009 remained in the country with protected status as asylum seekers at year’s end. In both cases the government assisted the applicants with temporary protection while they applied for asylum. Neither asylum case was resolved by year’s end.

### **Stateless Persons**

The law provides citizenship at birth if one or both parents are citizens. It also gives citizenship to children of stateless individuals born on the country’s territory. The law provides that an adult may become a citizen if he or she satisfies the following requirements: (a) has been permanently residing on the country’s territory during the previous five years; (b) knows the state language; (c) is familiar with its history and laws; and (d) has a job or owns real estate on the country’s territory, conducts business, or owns shares in a Georgian company or industry. A person seeking naturalization is expected first to give up any previous citizenship.

According to December 2010 government statistics, 1,987 de jure stateless persons were identified and registered by the authorities. The UNHCR and government’s aligned figure for the number of stateless individuals was 1,781. Due to delays in issuing birth certificates and other documentation problems (especially among minority communities), the actual number of stateless persons in the country was believed to be higher. Some were believed to be Chechens who volunteered for repatriation to Russia but were rejected because they were never registered in Russia and did not have documented Georgian citizenship. This confusion was compounded for persons who lived in the occupied territories.

Children lacking birth certificates were unable to participate in social aid or educational programs. Often children were not registered because their parents had no documentation. The UNHCR identified 9,931 persons living throughout the country as lacking necessary documentation. At year’s end more than 63

percent of these had received free legal aid, assistance in obtaining documentation to establish their birth, confirmation of their right to Georgian citizenship, and identity papers.

The Civil Registry Agency (CRA) had four offices to register IDPs and issue documents to those lacking them due to the destruction of the national archives on the South Ossetian side of the administrative boundary. In 2008 the CRA counted 2,500 IDPs without documentation, of which approximately 1,700 were assisted through the NGO Legal Development and Consultations Group and the agency.

### **Section 3. Respect for Political Rights: The Right of Citizens to Change Their Government**

The constitution and law provide citizens with the right to change their government peacefully. However, the government's record in the conduct of presidential and parliamentary elections in 2008 was mixed.

#### **Elections and Political Participation**

Recent Elections: International observers found presidential elections in January 2008 consistent with most Organization of Security and Cooperation in Europe (OSCE) democratic election commitments. However, there were significant problems, including widespread allegations of intimidation and pressure, flawed vote-counting and tabulation processes, and shortcomings in the complaints and appeals process. These and other problems also marred parliamentary elections in May 2008, which OSCE observers concluded were uneven and incomplete in their adherence to international standards.

According to the OSCE election observation mission, while the May 2010 municipal elections marked progress towards meeting OSCE and Council of Europe commitments, there were still significant shortcomings, including deficiencies in the legal framework and its implementation, an uneven playing field for candidates, and isolated cases of election-day fraud. Observers reported a variety of violations including instances of likely ballot box stuffing, cases of multiple voting, proxy voting, and series of seemingly identical signatures of voters on voters' lists. The observers also noted procedural violations in one-fifth of the vote counts and one-fourth of the vote tabulations they monitored. The OSCE mission received allegations of violations from opposition parties and NGOs, including reports of pressure on opposition candidates to withdraw. NGOs and opposition parties reported that supervisors pressured government employees

to vote for and donate to the ruling party with the implication that failure to do so might result in a loss of employment. The OSCE also reported allegations that businesses were reluctant to donate to some opposition parties due to fear of reprisals. The OSCE mission noted that election materials were available in minority languages but not in all areas inhabited by minorities.

The Ministry of Justice reported five election commission members were charged and convicted of election fraud or election interference in various regions of the country for acts committed during the 2010 municipal elections. In most cases election results for the districts were annulled. The investigation of several cases in Mestia continued.

In preparation for 2012 parliamentary elections, parliament adopted a new electoral code on December 27 which incorporated many recommendations from NGOs and the Venice Commission. The new code provides that any party that receives 5 percent of the total vote would win at least six seats in parliament and be accorded a parliamentary faction and corresponding privileges, prohibits the use of administrative resources for political purposes, improves postelection complaint procedures, reduces residency requirements for candidates for parliament, requires media to treat candidates equitably, and provides financial incentives for parties to increase the number of women on their parliamentary lists. The code also provides for the establishment of a commission to address pre-election complaints beginning in July 2012. However, the new code fails to address the Venice Commission's primary recommendation to strengthen the equality of the vote by reconstituting single mandate election districts to be comparable in size.

Political Parties: There are no legal restrictions on political party formation beyond registration requirements, and the electoral code adopted in December allows an individual to run for office without party affiliation. However, members of some organizations linked to the political opposition asserted that they were unduly singled out for harassment and prosecution. Members of some opposition parties reported threatening calls warning them to refrain from party participation and surveillance by local police from unmarked cars. An NGO reported being filmed while entering a hotel conference room to meet with an opposition party. Opposition party members also alleged teacher dismissals due to party affiliation.

After billionaire Bidzina Ivanishvili announced in October that he intended to establish an opposition political party to compete in the 2012 parliamentary elections, there were reports that government officials targeted individuals and businesses associated with him for politically motivated harassment. In one

illustrative example, materials imported by Ivanishvili for business and political purposes were repeatedly and inexplicably found to be damaged following their release from customs. Moreover, representatives from Ivanishvili's Cartu Group reported the percentage of their imports delayed by additional inspection increased from 10 percent to 100 percent since Ivanishvili entered politics. An independent monitoring company contracted by Cartu Group confirmed that Cartu imports were undamaged prior to customs entry and damaged after customs released the cargo.

Pursuant to Article 32 of the Law on Citizenship, the government canceled the Georgian citizenship of Ivanishvili and his wife, Ekaterine Khvedelidze, on October 11, several days after Ivanishvili publicly acknowledged possessing French citizenship while declaring his intention to renounce it. Article 32 provides that a person loses his or her Georgian citizenship if he or she acquires another citizenship. Both Ivanishvili and Khvedelidze challenged their loss of citizenship in court. In a December 27 decision, the Tbilisi City Court found that the government had overreached in the case of Khvedelidze, since she had acquired her Georgian citizenship after her French citizenship, and annulled the government's order revoking her Georgian citizenship. The court upheld the government's decision in the case of Ivanishvili, who had acquired his Georgian citizenship before his French citizenship. Ivanishvili's appeal of the court's decision was pending at year's end.

Opposition-linked individuals and organizations continued to report pressure on potential donors. On December 28, parliament amended the Law on Political Unions to regulate campaign and political party financing. The amended law prohibited corporate donations to political parties and provision of money, goods, or services to voters by parties; required all financial contributions to parties be made by wire transfer to ensure transparency; limited the overall amount a party can receive from public and private sources in a year to 0.2 percent of the country's GDP; and delegated financial oversight of party financing to the government's auditing agency, the Chamber of Control. However, local and international observers raised concerns about several amendments, including the vagueness of the criteria for determining political bribery and which individuals and organizations would be subject to the law.

Participation of Women and Minorities: There were nine women in the 150-seat parliament. One of the seven vice speakers was a woman, as was the chair of parliament's procedural committee. There were three women in the 19-member cabinet and six women on the 19-judge Supreme Court.

According to the final OSCE report on the May 2010 municipal elections, women were underrepresented in leadership positions in the election administration as well as among the candidates for and members of city councils. However, they were well represented in lower-level election commissions. The OSCE mission found that many parties put forward candidates belonging to national minorities and that election materials were made available in minority languages, but not in all areas inhabited by minorities. The new electoral code provided financial incentives for parties to increase the number of women on their parliamentary lists, as recommended by the Venice Commission.

There were three ethnic Armenians and three ethnic Azeris in parliament, as well as one member of a minority in the cabinet. There were no members of minorities in the Supreme Court or Constitutional Court. Higher-level city managers included ethnic minority leaders.

The de facto authorities in Abkhazia continued to restrict the rights of citizens to vote and to participate in the political process through a “citizenship” law that forced ethnic Georgians to give up their Georgian citizenship to vote or participate in regional elections. Even those ethnic Georgians willing to apply for Abkhaz “passports” generally did not receive them because of extensive delays and were, therefore, unable to participate. Ethnic Georgians in South Ossetia were also required to accept a South Ossetian “passport” and “citizenship” to participate in political life.

Abkhazia held de facto “presidential elections” in August, and South Ossetia did likewise in November. Neither contest was considered free and fair due to the large number of internally displaced persons who were prohibited from voting. In South Ossetia public concerns about the integrity of the election results, including a seemingly biased decision by the de facto “supreme court,” led to public demonstrations and a political crisis that was settled through Russian mediation.

#### **Section 4. Official Corruption and Government Transparency**

The law provides criminal penalties for official corruption, and the government implemented these laws effectively against low-level corruption. Several government officials were indicted on corruption charges during the year. According to survey data, less than 1 percent of Georgians reported paying a bribe in the previous year to obtain a public service.

Some officials were indicted on corruption charges during the year. In February seven officials from the Ministry of Health were arrested for misuse of office and misappropriation of state funds from a public healthcare insurance program. In August the mayor of Ozurgeti was charged with accepting a bribe and embezzling 180,000 lari (\$107,000) from the city budget.

NGOs and independent media raised concerns about the government's close connection to some businesses and a lack of transparency in ownership structures and the conduct of bids. Transparency International/Georgia identified as among the most pressing concerns in 2011 the need to inject more transparency into the procurement system and privatization processes. For example, Transparency International and independent media outlets criticized as nontransparent the August auction of management rights for the Tbilisi television tower to a company, Golden Com, formed only a week prior to the auction. Golden Com was the only company participating in an abbreviated 11-day bidding period. Transparency International also noted insufficient transparency of internal auditing of municipal institutions and inadequate accountability for reserve funds linked to high-ranking officials. In other cases the government was reported to have used heavy-handed practices or leveled questionable fines against companies.

NGOs and members of the international community raised concerns regarding the government's handling of the case of two Israeli businessmen who won a 168 million lari (\$100 million) arbitral award against the government and were subsequently arrested on bribery charges. The businessmen, Ronny Fuchs and Zeev Frankiel, were secretly filmed offering senior Georgian officials a multimillion dollar bribe to convince them to drop the government's appeal of the award. They were convicted of bribery but characterized their conviction as entrapment. According to their attorneys, the government offered to settle the bribery case if Fuchs waived his right to the arbitral award. In September Fuchs alleged that he had been harassed by prison officials. President Saakashvili granted both men a presidential pardon on December 2 after they negotiated a reduced settlement for the arbitration award.

During the year the government adopted some new measures to combat corruption, for example, introducing an electronic procurement system to make data of state agencies more transparent to citizens. Reforms at the Revenue Service, including the adoption of a new tax code, appointment of a new Revenue Service head, and creation of a business ombudsman, reduced the ability of Revenue Service officials to apply political pressure. Reports that businesses experienced oppressive and work-stopping audits decreased during the year. The transition to risk-based audits

and the option for private audits reduced the perception of political abuse by the Revenue Service.

The Ministry of Justice took some steps during the year to curb bribery, prosecuting 69 public officials for accepting bribes, of whom 60 were convicted. In addition five public officials were convicted of paying a bribe. There were no convictions of officials for trading in influence or of judges or prosecutors for corruption-related offenses. The Ministry of Justice's Inspector General's Office actively enforced internal ethics and disciplinary rules in the Prosecution Service.

The law requires public officials to submit yearly declarations of their own and family members' financial incomes and property for tax inspection. The Bureau of Declarations received the financial declarations, and the Prosecutor's Office investigated government corruption cases.

The law provides for public access to government meetings and documents. In practice, however, the government sometimes did not provide access. According to 2010 Transparency International/Georgia field tests, agencies provided satisfying responses in 79 percent of cases. Although the law states that a public agency shall release public information immediately or no later than 10 days after receiving a request, agencies sometimes delayed release indefinitely. NGOs noted that a 100 lari (\$60) fee for court information was burdensome and limited the ability to access information. In addition the freedom of information law restricts third-party access to information on cases involving the government in international courts.

### **Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights**

Domestic and international human rights groups in most cases operated without government restriction, investigating and publishing their findings on human rights cases. Some NGOs enjoyed close cooperation with the government, and officials were cooperative and responsive to their views, while others complained they had insufficient access to government officials and their views were ignored. Some NGOs also reported instances of official harassment.

The major human rights problems that caused tensions between the government and NGOs during the year were the alleged mistreatment of prisoners, excessive use of force and subsequent lack of transparency in investigations relating to the

May 26 protests, harassment of human rights defenders and journalists, the conduct of IDP evictions, and a lack of transparency in cases against journalists.

In a July 20 statement, the NGO Human Rights Center noted continued challenges to democratic freedom, citing increased use of police force to disrupt demonstrations, incidents of police intimidation of human rights NGOs, and pressure against media and civil society.

UN and Other International Bodies: De facto authorities in Abkhazia allowed some international organizations, including several UN agencies, to operate there on a limited basis, but only the ICRC had a specific human rights mandate. De facto authorities in South Ossetia allowed no international organization except the ICRC to operate there on a regular basis, but a few organizations, including the Council of Europe and the OSCE, gained extremely restricted and intermittent access, also without a human rights mandate.

Government Human Rights Bodies: NGOs continued to view the Public Defender's Office as the most objective of the government's human rights bodies. The constitutionally mandated office monitored human rights conditions and investigated allegations of abuse. The public defender's authority does not include the power to initiate prosecution or other legal actions, but he can recommend action, and the government must respond. The office generally operated without government interference and was considered effective. However, the public defender reported that the government often responded partially or not at all to inquiries and recommendations. Ministries which demonstrated patterns of partial, delayed, or nonresponses to requests for information included the Ministry of Correction and Legal Assistance, Ministry of Justice, Ministry of Defense, and Ministry of Internally Displaced Persons from the Occupied Territories, Refugees, and Accommodations.

The public defender has the right to make nonbinding recommendations to law enforcement agencies to investigate particular human rights cases. The public defender must submit an annual report on the human rights situation for the calendar year, but can make periodic reports as the office deems necessary. Government offices must respond to all requests for information from the Public Defender's Office within 10 days. The office may not report on torture unless the victim gives clear consent. De facto authorities in the occupied territories did not grant the office access to those territories. The parliamentary Committee on Human Rights and Civil Integration, the Ministry of Internal Affairs' Human

Rights Division, and the National Security Council's human rights advisor had mandates to investigate claims of abuse.

By law the prosecutor general is charged with protection of human rights and fundamental freedoms. The Human Rights Unit of the Office of Chief Prosecutor monitored overall prosecution and supervision of compliance with national and international human rights standards. The unit reviewed statistical and analytical activities within the prosecution system and was responsible for considering and responding to human rights recommendations of national and international human rights institutions.

## **Section 6. Discrimination, Societal Abuses, and Trafficking in Persons**

The constitution and law prohibit discrimination based on race, gender, religion, disability, language, or social status. However, the government did not always enforce these prohibitions effectively.

### **Women**

Rape and Domestic Violence: Rape is illegal, but spousal rape is not specifically addressed by criminal law. Criminal cases of rape generally could be initiated only after a complaint by the victim. A first-time offender may be imprisoned for up to seven years; a repeat offender or perpetrator of rapes of multiple victims may receive up to 10 years' imprisonment. If the victim is, or becomes, pregnant, contracts HIV/AIDS, or is subjected to extreme violence, the sentence may be increased to 15 years. If the victim is a minor in any of these cases, the sentence may be increased up to 20 years. During the year investigations were initiated in 126 rape cases, compared with 118 in 2010. Observers believed many instances of rape were unreported due to the social stigma for victims and because police did not always investigate reports of rape.

Domestic and other violence against women was a problem. NGOs believed cases were underreported. According to statistics from the Ministry of Internal Affairs, 445 domestic violence cases were reported to police during the year.

Domestic violence is an administrative offense that is legally defined as a violation of the constitutional rights and liberties of one member of a family by another through physical, psychological, economic, or sexual violence or coercion. Domestic violence is not specifically criminalized. Authorities prosecuted

perpetrators of domestic violence under criminal provisions, such as battery or rape.

The law allows victims to seek immediate protective orders from courts against domestic abusers and authorizes police to issue temporary restraining orders against persons suspected of abusing a family member. Restraining orders were issued in 56 percent of domestic violence cases reported to police during the year, and courts issued 52 protective orders. A court must approve a restraining order within 24 hours of a victim's application. Such orders prohibit the abuser from coming within 310 feet of the victim and from using common property, such as a residence or vehicle, for six months. A victim may request an unlimited number of extensions of a restraining order. Violation of a restraining order results in an administrative fine.

During the year the Ministry of Justice established a fully staffed and trained victim/witness coordinators program within the Chief Prosecutors Office to better provide services to victims of domestic violence and sexual assault. The goal of the program was to increase the number of victims willing to report assaults and follow through on their prosecution.

NGOs reported that police response to domestic violence calls and use of the national referral system for victims improved from 2010 due to training. During the year Tbilisi police patrol inspectors, regional police officers, and prosecutors received domestic violence-related training, as did police officers in eight other cities.

Local NGOs and the government jointly operated a hotline and shelters for abused women and their minor children, although space in the shelters was limited. There were two state-run and two NGO-run shelters for domestic violence victims. All adhered to the same standardized regulations and generally provided the same services. The total capacity of the shelters was 56 women. There were no facilities or support services available for men. There were some complaints that the hotline could not be called toll free from a cellular telephone. Shelters included crisis centers that offered domestic violence victims psychological, medical, and legal assistance. The State Fund, an interagency government department that works with NGOs on gender-based issues, reported that 1,140 consultations were conducted by telephone or in person during the year. The State Fund reported that the shelters hosted 36 women and 53 minor children during the year.

During the year the government/NGO Interagency Council on Gender-based Issues continued a public awareness campaign to publicize the domestic violence hotline, coordinate domestic violence training in partnership with the Prosecution Service and police, and maintain the two state-run domestic violence shelters.

Harmful Traditional Practices: Kidnapping of women for marriage occurred in ethnic minority areas and communities, but was rare. Such kidnappings reportedly often were arranged elopements. Police rarely took action in these cases, although the law criminalizes kidnapping.

Sexual Harassment: Sexual harassment against women in the workplace was a problem. NGOs stated that discrimination against women in the workplace existed, but instances were underreported. While the law prohibits sexual harassment, it was not effectively enforced, and authorities rarely investigated complaints. During the year investigations were initiated in seven cases related to sexual harassment.

Reproductive Rights: Couples and individuals have the legal right to decide freely the number, spacing, and timing of their children. Information was accessible so families and individuals could make reproductive decisions free from discrimination, coercion, or violence.

Discrimination: The law provides for the equality of men and women. However, it was not always implemented in practice. The 2010 Gender Equality Law provides for the establishment of a national women's council, enhancement of women's security, equality in the labor market, and strengthening of women's political participation. The law also introduced gender-responsive planning and budgeting on the part of the government. On May 5, parliament approved a National Action Plan on Gender Equality for the years 2011-13. The Public Defender's Office monitored gender equality cases.

Although some observers noted continuing improvement in women's access to the labor market, women remained primarily confined to low-paying and low-skilled positions, regardless of their professional and academic qualifications, and salaries for women lagged behind those for men. According to the World Bank's *Gender Equality and Development 2012* report, during 2011 women in the country earned on average 60 percent as much as men engaged in similar work. As a result, many women sought employment outside the country.

## **Children**

Birth Registration: The law provides for acquisition of citizenship by birth on the country's territory. It applies to children of stateless individuals. According to statistics from the UN Children's Fund (UNICEF), the births of 97 percent of children under the age of five were registered.

Romani children were usually born at home, and their parents frequently did not register their births with the government. Since official identification is required to receive medical treatment and other public services, the lack of identification and the reluctance of parents to apply for such services could deprive Romani children of access to medical and other services.

Education: The quality of education fluctuated greatly between urban and rural areas and between Tbilisi and the regions. Children of noncitizens often lacked the necessary documentation for school registration, impeding registration in some cases. The quality of education in the occupied regions of Abkhazia and South Ossetia, outside of the government's control, was reportedly poor. In rural areas school facilities were often inadequate and lacked heating, libraries, and blackboards.

Child Abuse: There were some reports of child abuse, particularly of street children, although there was no societal pattern of such abuse. According to the Ministry of Justice, 45 cases of rape, six cases of sexual abuse involving violence, and 26 cases of coercion into sexual acts involving minors were reported during the year.

In May 2010 a child referral mechanism was established to refer children who had suffered abuse to the relevant community and state services in coordination with stakeholders, including police, schools, and social service agencies. According to the Public Defender's Office, during the year 53 cases of abuse of children were reported, of which 14 involved physical abuse and 42 involved neglect and emotional abuse.

Child Marriage: According to UNICEF data, 14 percent of women between the ages of 20 and 24 were married or cohabitating with a partner before they were 18 years old. The legal minimum age for marriage for both men and women is 18, although some exceptions were authorized at 16.

Sexual Exploitation of Children: Commercial sexual exploitation of children and child pornography are punishable by up to three years' imprisonment. Street

children and children living in orphanages were reportedly particularly vulnerable to exploitation. According to the Ministry of Internal Affairs, the number of cases was very small.

There is an explicit statutory rape provision that classifies sexual intercourse with a juvenile as rape. Other sexual crimes carry increased levels of punishment if the victim is a juvenile. The criminal code prohibits sexual intercourse with juveniles under the age of 16, provided the perpetrator is shown to be aware of the age of the victim. In such cases the penalty is a fine and/or incarceration for up to three years.

Displaced Children: Difficult economic conditions contributed to the problem of street children, although the number was not considered to be high and decreased yearly. A study covering the period 2007-08 by the NGO Save the Children indicated that approximately 1,500 children lived and worked in the streets. The Ministry of Labor, Health, and Social Affairs operated a shelter in Tbilisi and, according to the Public Defender's Office, hosted 43 children during the year. The office reported a lack of information about street children and noted inadequate resources were devoted to them. In November the government created an interagency committee composed of representatives of several ministries and UNICEF to better address issues of street children.

There were unconfirmed reports that police harassed street children. Patrol police routinely transferred street children to 24-hour care centers, which lacked resources for treatment and rehabilitation of children, many of whom were substance abusers or suffered from mental disorders.

The conflicts in Abkhazia and South Ossetia displaced thousands of children. Even before the conflicts, UNICEF reported that health services in both regions were scant, immunization rates were lower than elsewhere in the country, schools were deteriorating, and malnutrition was a serious problem.

Many orphanages were unable to provide adequate food, clothing, education, medical care, or facilities and often lacked heat, water, and electricity. According to government statistics, the number of institutionalized children decreased from an estimated 5,000 in 2000 to 440 during the year. The government began working in February 2010 to close or rehabilitate the remaining orphanages.

In an effort to replace large-scale orphanages with smaller scale foster parenting arrangements, 37 small group homes, run by specially employed foster parents and

funded by the state and donor organizations, had been opened throughout the country, 20 of which became operational in 2011. By year's end the government had closed 10 of 20 large-size orphanages, and 144 children were reintegrated with biological families, 81 placed in foster care, and 200 placed in small group homes.

International Child Abductions: The country is a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction.

### **Anti-Semitism**

There were no reports of anti-Semitic acts. The Jewish community was estimated to be 8,000.

### **Trafficking in Persons**

See the Department of State's *Trafficking in Persons Report* at [www.state.gov/j/tip](http://www.state.gov/j/tip).

### **Persons with Disabilities**

The constitution and law prohibit discrimination against persons with physical, sensory, intellectual, and mental disabilities in employment, education, access to health care, or the provision of other state services or other areas. However, the government was not effective in enforcing these provisions. Discrimination, including social, educational, and employment discrimination, against persons with disabilities was a problem. Most schools did not provide appropriate educational services because of a lack of qualified instructors.

The law mandates access to buildings for persons with disabilities and stipulates fines for noncompliance. However, very few public facilities or buildings were accessible, although notably the newly constructed presidential residence, the Ministry of Internal Affairs, Ministry of Justice, Ministry of Education, and Office of the Public Defender's buildings complied with the law.

There were nine major committees in the country that evaluated children with disabilities and assisted with their integration in schools. Approximately 200 schools became accessible during the year by providing access ramps and other facilities. During the year standards for day care centers for children with disabilities were developed and all centers were evaluated based on these standards. The evaluations revealed problems in the majority of centers, including

poor quality of services, lack of adaptation of buildings to special needs, and poor access to learning materials. The Ministry of Education closed five boarding schools for children with disabilities and transferred students to inclusive education facilities during the year. However, families reported the ministry did not provide transitional costs, such as transportation, in many cases.

In the 2010 *Situation of Human Rights and Freedoms in Georgia* report, the Public Defender's Office noted that living conditions at institutions for persons with mental and physical disabilities were poor, including poor ventilation, lack of heat, lack of access to hygiene products, and poor nutrition. Patients who were admitted voluntarily were not allowed to leave of their own free will. The report noted a serious shortage of medical, psychological, and social rehabilitation services so severe that residents could not leave their rooms for years due to the unadapted environment and the lack of wheelchairs.

### **National/Racial/Ethnic Minorities**

Georgian language skills continued to be the main impediment to integration for the country's ethnic minorities; political, civic, economic, and cultural integration challenges also remained. The government took several steps to integrate ethnic minority communities through Georgian-language instruction, education, and participation in several programs seeking to promote civic, cultural, and economic integration of minorities. Access to higher education improved, as did transportation infrastructure to high minority population areas, and several state agencies actively participated in civic integration programs. The European Commission against Racism and Intolerance (ECRI) noted in its June 2010 report that the government continued to provide Georgian-language instruction to members of ethnic minorities serving in the armed forces and police and had developed projects to teach tolerance and respect among students for other ethnic and religious groups. However, NGOs, the public defender, and governmental organizations continued to report instances of discrimination and violence against ethnic minorities during the year. The Public Defender's Office specifically mentioned lack of political participation and unequal access to employment and educational opportunities as persistent problems for minorities in its 2010 *Situation of Human Rights and Freedom* report.

Ethnic Armenians, Azeris, Abkhaz, South Ossetians, and Russians usually communicated in their native languages or in Russian in the areas where they were the dominant ethnic groups. The law requires that ethnic minority students learn

Georgian as a second language. The government continued to provide education in the state language and minority languages in minority regions.

Many NGOs in minority regions stated that they saw an improvement during the year in the number of opportunities for Georgian-language instruction and in the quality of the classes. The government introduced new bilingual textbooks in 40 pilot public schools in minority regions. However, members of minority communities reported many students and some teachers were unable to understand some of the content because 30 percent of the text was untranslated Georgian. Members of the Muslim community also reported some texts treated historic religious accounts and figures disrespectfully. The public defender's Tolerance Center also received complaints from several ethnic minority families that some schools displayed Georgian Orthodox religious objects in schools. A letter addressed to the Ministry of Education from the Tolerance Center, requesting such objects be removed, received no response.

Students were able to take university entrance exams in minority languages and could take advantage of a program under which the government offered and funded one year of intensive Georgian language instruction and four years of university education for students who passed the entrance examinations in minority languages. The number of ethnic minority students enrolled in this program doubled during the year to 432. A quota system required that a minimum of 10 percent of all national university seats be allocated to Armenian and Azeri-speaking students. According to government statistics issued during the year, 245 Armenian, 185 Azeri, and two Abkhaz speakers were admitted to the public universities through the quota system.

Some minorities claimed that the law requiring all government officials to speak Georgian excluded them from participating in government. In addition some government materials distributed to the public were only available in Georgian. According to the Ministry of Reintegration, it translated all major legislative acts into Armenian, Azeri, and Russian.

The Zen School of Public Administration in Kutaisi provided courses specifically for students from minority areas and facilitated integration of future public servants from minority areas into Georgian society.

There was a significant surge in statements in the media against ethnic minorities following the July passage of a law allowing all minority religious organizations registered in Council of Europe countries to register as "entities of public law," a

status previously accorded only to the Georgian Orthodox Church. NGOs reported that Georgian Orthodox clergy, some opposition party leaders, members of the academic community, and others made critical statements in the first few days following passage of the law. The public defender also criticized major NGOs working on minority rights for their allegedly weak response to the surge in hate speech following the adoption of this law. On July 28, the Tolerance Center hosted a roundtable on minorities and hate speech in media and public discourse.

In August authorities dismissed Robert Sturua, artistic director of the National Theater, for making statements considered to be xenophobic.

The Public Defender's Office reported that its investigation continued into allegations Vahagn Chakhalian was beaten in prison in 2010. Chakhalian was serving a 10-year sentence on charges of organizing a riot, hooliganism, and illegal purchase and possession of a firearm. An Armenian NGO alleged the arrest was politically motivated.

The law permits the repatriation of the Muslim Meskhetian population, a national minority group that Stalin deported in 1944. More than 5,800 Meskhetians had filed for repatriation by January 2010. More than 150 returned unofficially over the previous three years, quietly settling in Akhaltsikhe and Abastumani. As of year's end, 300 applications had been reviewed, but there were no official repatriations due to the long and complicated process. According to the NGO Toleranti, due to the relatively small number of Meskhetians, there were no tensions with the local population.

The ECRI reported that Roma appeared to suffer from widespread societal prejudice and marginalization and noted that the government needed to do more to integrate Roma. During the year the European Center for Minority Issues estimated the Romani population at 1,500, with no more than 300 in any one location. The most recent census, conducted in 2002, reported the number of Roma at 472. Roma were found principally in the Tbilisi, Kutaisi, Kobuleti, Kakheti, and Sukhumi regions.

Ethnic Georgians living in the Gali district of Abkhazia had no legal access to education in the Georgian language. In practice, instruction in Georgian occurred, but with limitations. Teachers who did not speak Abkhaz instructed students in Georgian but were often harassed by Abkhaz de facto authorities, who also did not provide funding for teachers of Georgian. Local communities had either to pay for teachers themselves, make arrangements for teachers to cross from undisputed

Georgian territory to teach, or send their children from Abkhazia for Georgian-language lessons. An increasingly strict boundary regime imposed by Russian border guards made the latter two alternatives more and more difficult. There were reports of Russian border guards detaining children attempting to cross the boundary for language lessons.

### **Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity**

Social prejudices against lesbian, gay, bisexual, and transgender (LGBT) persons were strong, and the Georgian Orthodox Church strongly condemned same-sex sexual activity. During the year only two LGBT organizations worked openly because of extensive societal stigma against LGBT persons. Problems reported included incidents of police mistreatment, family violence, and verbal and physical societal abuse. Identoba, an LGBT advocacy and support NGO, reported victims of discrimination and violence were reluctant to report incidents to police for fear of disclosing their sexual orientation to family members and homophobic police reactions.

Identoba reported that in March several young LGBT persons were involved in an argument outside a bar in Tbilisi. When the police arrived to quell the dispute, the participants were transferred to a local police station and questioned. One participant reported that police used homophobic language and sexually harassed the detainees throughout the interrogation until they were released the next morning.

There was an unconfirmed report in September that three German tourists were beaten and thrown into a river in Tusheti after their hosts learned of their sexual orientation. However, no complaints were filed with the local police or the German embassy in Tbilisi, and no investigation was undertaken.

### **Other Societal Violence or Discrimination**

NGOs reported that social stigma resulted in individuals avoiding testing and treatment for HIV/AIDS. Some health-care providers, particularly dentists, refused to provide services to HIV-positive persons. Individuals often concealed their HIV-positive status from employers for fear of losing their jobs.

## **Section 7. Worker Rights**

### **a. Freedom of Association and the Right to Collective Bargaining**

The country's labor code allows all workers, including government employees, to form and join independent unions, protects the right to strike and bargain collectively, and prohibits antiunion discrimination. However, the law restricts the right of employees of law enforcement agencies, medical doctors, firemen, personnel of the Prosecutor General's Office, and the employees of certain ministries (for example, defense) to form and join unions and to strike.

Labor unions asserted that certain provisions of the labor code limit the mechanisms available to workers for the exercise of these rights. At least 100 members are needed for a trade union to be registered, a requirement considered unreasonable by the International Labor Organization's Committee of Experts on the Application of Conventions and Recommendations. The AFL-CIO also noted that the law permits a court to suspend the activity of a trade union if the union stimulates social conflict, a provision susceptible to being misapplied to suspend legitimate trade union activity.

According to trade unions, the law did not establish a coherent process for commencing strikes. Strikes were limited to 90 days in duration and were permissible only in cases of conflict of rights, not conflict of interests. Workers generally exercised their right to strike in accordance with the labor code, but strikes were rare.

The law prohibits employers from discriminating against union members or union-organizing activities, and employers may be prosecuted for violations and forced to reinstate employees and pay back wages. However, the labor code allows employers to terminate employment at will and without cause, providing a pretext to fire employees on discriminatory grounds or for union activism.

The government frequently did not respect these rights in practice or effectively enforce applicable laws. Approximately 10 percent of the employed population was unionized, a proportion that rose to more than 31 percent if persons categorized as self-employed were excluded. The principal association of unions is the Georgian Trade Union Confederation (GTUC), which represented unions in 22 sectors with more than 194,764 unionized workers. There were a few small unions for civil servants, agricultural workers, and artists, but they did not participate in the GTUC. Generally the union membership democratically elected union leaders.

Unions reported government interference in union activity in several areas, including instances of government harassment and intimidation, interference with collection of dues, and arbitrary dismissals. On September 15, three days into a strike at the Kutaisi Hercules Metallurgical plant, police detained 18-40 persons for allegedly blocking access to the factory. The detained strikers were held between three and six hours and were required to sign “protocols” before they were released. GTUC claimed that these were “pledges” promising never to strike or join a union. According to the Ministry of Internal Affairs, the protocol informed the strikers that elements of their actions were illegal.

The Public Defender’s Office and GYLA both stated the dispersal of the strike and subsequent detention of strikers violated the law because the strikers acted in accordance with the law on public assembly and did not block access to the factory. GYLA alleged police obstructed their access to legal representation by denying that the strikers were in custody. The Public Defender’s Office demanded an investigation by the Prosecutor’s Office into the dispersal of the strike and detention of the strikers. The Ministry of Internal Affairs declined to investigate, responding that the strike was not dispersed, only 18 strikers were asked to sign the protocol, and no strikers were formally detained.

The government did not always protect the right to bargain collectively in practice. The practice of collective bargaining was not widespread, and employers are not obliged to engage in collective bargaining even if a trade union or a group of employees wishes to do so.

The government continued to interfere with unions’ ability to collect dues. The government no longer permitted the Educators and Scientists Free Trade Union of Georgia (ESFTUG--the teachers’ union), the National Railway Association Worker’s Union, and the Health Care Workers’ Union to deduct union members’ dues from paychecks, a practice known as the check-off system. The government also prohibited the ESFTUG from collecting dues during union meetings in schools, leaving union members no choice but to electronically transfer dues, a process in which half of the dues were lost to bank transaction fees. The inability to collect dues seriously impaired the unions’ ability to function.

ESFTUG and the Health Care Workers Union reported government interference with union activity during the year. ESFTUG reported that school “mandators” tracked which teachers were union members and alleged that teachers were dismissed due to union membership. The president of the Healthcare Workers

Union reported that government officials in the Ministry of Health offered him alternative employment if he stepped down from his position as union president.

The GTUC and its national unions continued to report serious cases of management warning staff not to organize trade unions and employee dismissals for union activity. For example, in September, after workers at the Hercules metallurgical factory notified management that they had organized a union, the factory allegedly terminated six union board members. Workers subsequently held a warning strike, and 11 more workers were terminated. Ten days later the union began a full strike with participation by approximately 150 workers. Before and during the strike, management allegedly threatened workers who participated in the strike with dismissal. At year's end all but three workers had been rehired after reportedly promising never to participate in a strike again.

### **b. Prohibition of Forced or Compulsory Labor**

The law prohibits all forms of forced or compulsory labor. However, there were reports that men and women were trafficked from and through the country for labor. There were no confirmed reports of foreign victims being trafficked to the country for forced labor.

Also see the Department of State's *Trafficking in Persons Report* at [www.state.gov/j/tip](http://www.state.gov/j/tip).

### **c. Prohibition of Child Labor and Minimum Age for Employment**

Child labor was uncommon, although the Public Defender's Office noted that one of the major deficiencies of the labor code was insufficient attention to the rights of minors. Although official data was not available, a 2007 survey estimated that 77.4 percent of working children were employed intermittently on family farms, while 18.4 percent worked in family enterprises. The International Trade Union Confederation reported that children living in rural areas were slightly more involved in child labor. Children in urban areas were susceptible to trafficking for work in the streets, begging, or selling small items.

The most visible form of child labor was street begging in Tbilisi. The NGO Save the Children estimated that the number of street children decreased to approximately 1,500 in 2009 from 2,500 in 1999. Some experts reported that the number decreased further since that date.

Many minors under the age of 16 worked and performed chores on small family-owned farms in rural areas. In most cases this work was not abusive and not categorized as child labor. However, in some ethnic minority areas, family farm obligations were reported to disrupt the ability to attend school. Some observers suggested that school participation by ethnic minority children was especially low. Some families in rural Kvemo Kartli (an ethnic Azeri region) and Kakheti (where there is also a significant ethnic Azeri population) worked on distant pastures for six to nine months a year, meaning that their children seldom attended school. Statistics were not available.

In most situations the minimum legal age for employment is 16. In exceptional cases, children may work with parental consent at the ages of 14 and 15. Children under the age of 18 may not engage in unhealthy or underground work, and children between the ages of 16 and 18 are subject to reduced working hours and prohibited from working at night. The labor code permits employment agreements with persons under the age of 14 in sports, arts, cultural activities, and for performing advertising services.

The Ministry of Labor, Health, and Social Affairs reported receiving no complaints about child employment, although no single government entity is charged with investigation of child labor allegations unless the case contains criminal elements. The police investigated one such case on referral from the Public Defender's Office.

Also see the Department of Labor's *Findings on the Worst Forms of Child Labor* at [www.dol.gov/ilab/programs/ocft/tda.htm](http://www.dol.gov/ilab/programs/ocft/tda.htm).

#### **d. Acceptable Conditions of Work**

The monthly minimum wage for public sector employees is 115 lari (\$68) and has remained the same since 2005. Minimum wage for private sector employees is 90 lari (\$54) per month. The official subsistence level income is 138 lari (\$82) for the average consumer and 276 lari (\$164) for a family of four. The labor code provides for a 41-hour work week and for a weekly 24-hour rest period unless otherwise determined by a labor contract. According to the code, shifts must be at least 12 hours apart. Pregnant women or women who have recently given birth may not be forced to work overtime without their consent. Overtime is defined as work that exceeds the work hours addressed in the employment agreement. If the employment agreement does not specify business hours, then overtime is considered to be performance exceeding 41 work hours per week. Terms of

overtime labor are defined by agreement between the parties. The labor code also permits an employer to change the hours of work by 90 minutes without renegotiating the terms of any labor contract. NGOs contended that this provision would effectively require employees to work overtime without compensation, a violation of the constitutional prohibition against compulsory labor. The law does not explicitly prohibit excessive overtime.

The government set occupational health and safety standards, but the Public Defender's Office listed the failure to ensure safe conditions for workers as one of the major deficiencies of labor code implementation. There is no government body responsible for workplace monitoring. The Technical and Oversight Inspection Agency had some inspection responsibility, but only for occupations codified as hazardous. There are no government labor inspectors.

After three explosions in a Tkibuli mine in 2010 killed nine miners, workers went on strike in February over workplace safety and pay rates. Although management and the Metallurgical, Mining, and Chemical Workers' Union stated conditions improved, four more workers died in three separate accidents in the mine in 2011.