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## مجلس حقوق الإنسان

الدورة العشرون

البند ٣ من جدول الأعمال

تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

### تقرير المقرر الخاص المعني بالحق في حرية التجمع السلمي والحق في حرية تكوين الجمعيات، ماينا كياي

إضافة

البعثة إلى جورجيا\*\*

موجز

قام المقرر الخاص المعني بالحق في حرية التجمع السلمي والحق في حرية تكوين الجمعيات بزيارة رسمية إلى جورجيا في الفترة من ٦ إلى ١٣ شباط/فبراير ٢٠١٢. وزار المكلف بالولاية مدن تبليسي وكوتايسي وباتومي، وعقد اجتماعات مع مسؤولين حكوميين ومنظمات غير حكومية ونقابات عمالية ومسؤولين في الأحزاب السياسية وممثلي المجتمع الدولي في تبليسي. ويمثل هذا التقرير نتاج تقييم دقيق للحالة السائدة فيما يتعلق بالحق في حرية التجمع السلمي والحق في حرية تكوين الجمعيات. وقد أولى المقرر الخاص الاعتبار الواجب للوثائق التي قدمت من أجل إعداد هذا التقرير، وكذلك للمعلومات التي تم استقاؤها من خلال إجراء مقابلات واسعة النطاق مع الضحايا والناشطين وكبار ممثلي الحكومة.

\* يُعَمَّم موجز هذا التقرير بجميع اللغات الرسمية. ويعمم التقرير المرفق بهذا الموجز باللغة التي قدم بها فقط.

\*\* تأخر تقديم هذا التقرير بهدف تضمينه أحدث المعلومات.

وتشهد جورجيا منذ اندلاع "ثورة الورود" فترة استثنائية من الإصلاحات شملت العديد من مجالات الحياة العامة. لكن المقرر الخاص يرى أنه لا ينبغي اعتبار هذه التحسينات تحصيل حاصل. إذ إن أجواء الخوف وترهيب أعضاء الأحزاب السياسية المعارضة والمجتمع المدني من شأنها أن تهدد هذا المسار على نحو خطير. ولا بد من بذل مزيد من الجهود في ضوء تنظيم الانتخابات البرلمانية في عام ٢٠١٢ والانتخابات الرئاسية في عام ٢٠١٣، لضمان حماية الحق في حرية التجمع السلمي والحق في حرية تكوين الجمعيات.

## Annex

[English only]

### Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his mission to Georgia (6 – 13 February 2012)

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## I. Introduction

1. The Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, undertook an official mission to Georgia from 6 to 13 February 2012, at the invitation of the Government. The visit was carried out pursuant to his mandate to assess compliance with international standards on the rights to freedom of peaceful assembly and of association, and to paragraph 5 (f) of Human Rights Council resolution 15/21, in which the Council mandated the Special Rapporteur to report on violations, wherever they occur, and to draw the attention of the Council and the United Nations High Commissioner for Human Rights to situations of particularly serious concern.
2. Georgia has extended a standing invitation to all special procedures mandate holders. In this context, the mission was planned following a joint urgent appeal addressed to the Government of Georgia on 20 June 2011 regarding allegations of disproportionate use of force by law enforcement authorities to disperse a demonstration held on 26 May 2011. The Special Rapporteur had been keen to visit other regions in Georgia; there was, however, insufficient time to adequately prepare a visit to the breakaway regions of Abkhazia and South Ossetia. The Special Rapporteur would like to visit them in the future, in the framework of a follow-up visit.
3. The Special Rapporteur visited the cities of Tbilisi, Kutaisi and Batumi. In Tbilisi, the Special Rapporteur met with the Minister and the Deputy Minister for Foreign Affairs; the Deputy Chairperson of the Constitutional Court; the Deputy Minister for Corrections and Legal Assistance; the Head of the Legal Department of the Municipality of Tbilisi; the Minister and the Deputy Minister for Labour, Health and Social Affairs; the First Deputy Chairperson, the Chairperson of International Relations Committee and the First Deputy Chairperson of the Legal Affairs Committee of the Parliament of Georgia; the Head of the International Relations Department of the Ministry of Defense; the Vice-President of the Supreme Court and the Chairperson of the Chamber of Administrative Cases; the First Deputy Chief Prosecutor and the Head of the International Law Department of the Ministry of Justice; the First Deputy Minister of Internal Affairs; the Secretary and the Deputy Secretary of the National Security Council; the Public Defender of Georgia; and the Deputy Head of the Justice Department of the Office of the Public Defender. The Special Rapporteur also met with representatives of the United Nations country team and of diplomatic missions. In Kutaisi, he met with the Deputy Governor of Imereti and the Head of Patrol Police of Imereti region. In Batumi, he met with the Chairperson of the Government of the Autonomous Republic of Adjara and the Deputy Head of Patrol Police of Adjara.
4. In each city, the Special Rapporteur met with representatives of political parties, non-governmental organizations and labour unions.
5. The Special Rapporteur thanks the Government and the Ministry of Foreign Affairs for having facilitated the meetings with Government representatives.
6. A special note of appreciation is to be directed to the Public Defender and his Office for the invaluable support offered during the mission.
7. The Special Rapporteur also expresses his appreciation to the United Nations Resident Coordinator and, most notably, deep gratitude to the presence of the Office of the High Commissioner (OHCHR) in Georgia for their excellent and invaluable support during the preparation and conduct of the official visit.
8. The Special Rapporteur believes that the effective enjoyment of the rights to freedom of peaceful assembly and of association is of particular importance in Georgia.

This is relevant considering the way that the current Government was formed. The Special Rapporteur believes that his visit was also timely given the number of legislative amendments adopted in late December 2011 that may have a direct impact on the enjoyment of the rights to freedom of peaceful assembly and of association. In the view of the Special Rapporteur, the country is at a critical point where it can take further steps to improve on its record or take the country backwards in terms of human rights.

9. The Special Rapporteur took into due consideration the views of the authorities of Georgia and the recent history of the country when drafting the present report.

## **II. Historical and political background**

10. Independence was restored to Georgia in 1991. In 2003, massive protests (leading to what became known as the “Rose Revolution”) over fraudulent parliamentary elections, – were held throughout the country.

11. In 2004, Mikheil Saakashvili was elected President of Georgia, a position he still held at the time of the official visit.

12. In 2010, the Parliament of Georgia adopted a set of constitutional reforms, which will come into effect in 2013. With the reforms, Georgia is modifying its current presidential system and moving towards a parliamentary system of government, , by expanding the powers of the Prime Minister and reducing the powers and prerogatives of the President. The President will act as “guarantor of Georgia’s unity and national independence”, while the Prime Minister, as the head of the executive Government, will be directly accountable to Parliament. While theoretically the current President, who is now ineligible to run again for the presidency owing to term limits, may vie to be Prime Minister as the head of the most popular party, these new provisions have been generally welcomed by the European Commission for Democracy through Law (Venice Commission) of the Council of Europe.<sup>1</sup>

## **III. Domestic legal framework**

13. Georgia has a civil law system based on the Constitution of Georgia, the supreme law of the State. The Constitution contains legal safeguards for the protection of human rights and fundamental freedoms. Article 6 of the Constitution clearly stipulates that international treaties “shall take precedence over domestic normative acts” only if they do not contradict the Constitution.<sup>2</sup>

14. The Constitution recognizes the rights to freedom of peaceful assembly and of association. More specifically, article 25 stipulates that “everyone, except members of the armed forces and the Ministry of Internal Affairs, has the right to public assembly without arms either indoors or outdoors without prior permission”. The article also stipulates that this freedom may be subject to prior notification “in the case where a public assembly or manifestation is held on a public thoroughfare”, and that “only the authorities shall have the right to break up a public assembly or manifestation in case it assumes an illegal character. In terms of the right to association, article 26 explicitly recognizes the right of everyone “to form and to join public associations, including trade unions” and the right “to form a

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<sup>1</sup> See the final opinion of the Venice Commission on the draft constitutional law on amendments and changes to the constitution of Georgia (CDL-AD (2010)028), October 2010, pp. 7 and 16.

<sup>2</sup> See [www.parliament.ge/files/68\\_1944\\_951190\\_CONSTIT\\_27\\_12.06.pdf](http://www.parliament.ge/files/68_1944_951190_CONSTIT_27_12.06.pdf).

political party or other political association and participate in its activity in accordance with the Organic Law”. Article 26, paragraph 3, explicitly bans “the formation and activity of... public and political associations aiming at overthrowing or forcibly changing the constitutional structure of Georgia, infringing upon the independence and territorial integrity of the country or propagandising war or violence, provoking national, local, religious or social animosity”. In addition, the same article provides for the “suspension or prohibition of the activity of public or political associations... only under a court decision, in the cases determined by the Organic Law and in accordance with a procedure prescribed by law”. Moreover, article 27 allows the imposition of restrictions on “the political activity of citizens of a foreign country and stateless persons”. Article 33 recognizes the right to strike and, in this regard, the “procedure of exercising this right shall be determined by law. The law shall also establish the guarantees for the functioning of services of vital importance”. Lastly, article 39 guarantees “other universally recognized rights, freedoms and guarantees of an individual and a citizen, which are not referred to herein but stem inherently from the principles of the Constitution”.

15. In terms of the main legislation, at the time of the visit, the rights to freedom of peaceful assembly and of association were governed by the Law on Assembly and Manifestations and the Law on Political Unions of Citizens, both amended in December 2011; the Constitutional Law on Amendments and Changes to the Constitution of Georgia; the Civil Code of Georgia; the Organic Law on the Suspension of Activities and Prohibition of Civil Society Organizations; the Law on Trade Unions; the Criminal Code; the Code on Administrative Offences; the Election Code; and the Labour Code.

#### **IV. International legal standards**

16. In assessing the situation of the rights to freedom of peaceful assembly and of association in Georgia, the Special Rapporteur was guided by several international legal standards. The most relevant were the International Covenant on Civil and Political Rights, and articles 21 and 22 in particular; and the International Covenant on Economic, Social and Cultural Rights, especially with regard to article 8. Both covenants were ratified on 3 May 1994 without reservations.

17. The Vienna Declaration and Programme of Action reaffirmed that all human rights are universal, indivisible, interrelated and interdependent.<sup>3</sup> Owing to the nature of his mandate, the Special Rapporteur also paid attention to the following articles of the International Covenant on Civil and Political Rights: article 7 (prohibition of torture or cruel, inhuman or degrading treatment or punishment); article 9 (right to liberty and security of person); article 14 (right to a fair trial); article 17 (right to privacy); article 19 (right to freedom of opinion and expression); and article 25 (right to take part in conduct of public affairs, and right to vote in genuine periodic elections). In the view of the mandate holder, these rights are complementary to the exercise of the rights to freedom of peaceful assembly and of association insofar as they contribute to the effective enjoyment of these rights.

18. The Special Rapporteur was also guided by other relevant international human rights instruments, including those of the treaty bodies and specialized agencies. More specifically, when drafting the present report, he observed International Labour Organization (ILO) Conventions No. 87 concerning Freedom of Association and Protection of the Right to Organize, ratified in 1999, and No. 98 concerning the Application of the

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<sup>3</sup> A/CONF.157/23, para. 5.

Principles of the Right to Organize and to Bargain Collectively, ratified in 1993; the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms;<sup>4</sup> general comments Nos. 25, 27, 29, 31, 32 and 34 of the Human Rights Committee; general comment No. 2 of the Committee against Torture; the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; and the Code of Conduct for Law Enforcement Officials.<sup>5</sup>

## V. Right to freedom of association

19. The mandate of the Special Rapporteur, as stipulated by the Human Rights Council in its resolution 15/21, defines the scope by which the mandate holder may consider issues involving associations. Notably, in the preamble to resolution 15/21, the Council recognized that the right to freedom of association was an essential component of democracy, providing individuals with invaluable opportunities to, *inter alia*, express their political opinions, engage in literary and artistic pursuits and other cultural, economic and social activities, engage in religious observances or other beliefs, form and join trade unions and cooperatives, and elect leaders to represent their interests and hold them accountable. Accordingly, the mandate holder considers that political parties, trade unions and non-governmental organizations are all covered within the same right, and are therefore considered to be various forms of associations.

20. Moreover, in resolution 15/21, the Human Rights Council also recognized that exercising the right to freedom of association free of restrictions, subject only to the limitations permitted by international law, in particular international human rights law, was indispensable to the full enjoyment of these rights, particularly where individuals may espouse minority or dissenting religious or political beliefs. Article 8 of the International Covenant on Economic, Social and Cultural Rights stipulates that no restrictions or limitations may be put in place “other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others”. Similarly, article 22 of the International Covenant on Civil and Political Rights recognizes the right to association, including the right to form and join trade unions, and includes an additional restriction to protect “public health or morals”.

21. Restrictions on fundamental rights must be applied in a manner that do not diminish nor annul the effect of the right itself. This view has been expressed by the Human Rights Committee on several occasions, in that “the relation between right and restriction, between norm and exception, must not be reversed. The laws authorizing the application of restrictions should use precise criteria and may not confer unfettered discretion on those charged with their execution”.<sup>6</sup>

22. With regard to the situation in Georgia, the Special Rapporteur recognizes the improvements that have taken place in the area of freedom of association since the Rose Revolution. These reforms have certainly enriched the space in which associations can be formed and operate.

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<sup>4</sup> General Assembly resolution 53/144.

<sup>5</sup> General Assembly resolution 34/169, annex.

<sup>6</sup> See Human Rights Committee general comments Nos. 27 (CCPR/C/21/Rev.1/Add.9), para. 13, and 34 (CCPR/C/GC/34), para. 21. In paragraph 6 of its general comment No. 31 (CCPR/C/21/Rev.1/Add. 3), the Committee also makes reference to this point.

23. The Special Rapporteur was particularly encouraged by the adoption, in July 2011, of amendments to the Civil Code allowing religious minority associations to register as legal entities of public law. With the entry into force of the new law, the situation of religious minorities in Georgia has improved considerably. Moreover, the current procedure for the registration of associations, including non-governmental organizations, meets international standards, as it is generally prompt, expeditious, easily accessible and inexpensive.<sup>7</sup>

24. In spite of such good reforms, however, there are concerns about the enabling environment for associations. The Special Rapporteur is concerned that the recent adoption of legislative amendments to the Law on Political Unions of Citizens, together with the application of the existing Labour Code and Election Code, unduly restrict the free exercise of the right to association.

25. With regard to freedom of association, the Special Rapporteur has identified two broad areas of concern: an uneven political playing field, and undue obstacles for trade unions and their members.

### **A. Uneven political playing field**

26. In late December 2011, the Parliament of Georgia passed amendments to the Organic Law on Political Unions of Citizens that could have far-reaching consequences for the functioning of political parties in opposition and civil society organizations. The mandate holder notes that these amendments are at times drafted in ambiguous language, and are fuelling an overall climate of distrust, while violating international human rights law. The Special Rapporteur was pleased to point out, however, that following his visit and preliminary findings on this matter, he was informed by the Government that amendments to the law were adopted in May 2012, after due consultations with civil society.

27. International law imposes obligations on States to respect the right of every individual to associate freely, irrespective of political preferences. Article 22 of the International Covenant on Civil and Political Rights to which Georgia is a State party, allows people to associate without undue restrictions. Moreover, article 25 of the Covenant guarantees the right of all citizens to (a) take part in the conduct of public affairs, directly or through freely chosen representatives; and (b) to vote and to be elected at genuine periodic elections guaranteeing the free expression of the will of the electors.

28. Essentially, the above-mentioned treaty-based provisions are intended to permit fair political competition in societies, enabling citizens not only to openly express their political views, but also to give them a fair chance to change their leaders as they deem appropriate. To that extent, a level playing field in politics is necessary for the enjoyment of the right of association.

29. The above view had already been interpreted by the Human Rights Committee in 1996. In its general comment No. 25 on the right to participate in public affairs, voting rights and the right of equal access to public service, the Committee considered that the right to freedom of association, including the right to form and join organizations and associations concerned with political and public affairs, was an essential adjunct to the rights protected by article 25 of the International Covenant on Civil and Political Rights. According to the Committee, political parties and membership in parties played a significant role in the conduct of public affairs and the election process; States should

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<sup>7</sup> See A/59/401, para. 81 and A/64/226, para. 110.



therefore ensure that, in their internal management, political parties respect the applicable provisions of article 25 in order to enable citizens to exercise their rights thereunder.<sup>8</sup>

30. While the Special Rapporteur acknowledges very positively the simple registration process for associations currently in place, he is seriously concerned about a number of provisions in the adopted amendments and additions to the Law on Political Unions. These provisions relate to the extension of the restrictions on political parties to legal and physical persons, to the scope and responsibilities attributed to the Chamber of Control, and its overall impact on the country's elections. The mandate holder notes that these amendments were adopted in late December 2011.

### **1. Arbitrary restrictions**

31. When drafting the present report, the Special Rapporteur was informed that new amendments to the Law on Political Unions had been adopted in May 2012. In particular, according to this information, funding restrictions prescribed for political parties "apply to a person, who has declared electoral goals and uses related financial and material resources to achieve this goal", and "restrictions to the persons apply only to activities that are related to the use of finances or any other material or non-material resources for political or electoral goals".<sup>9</sup> The mandate holder recognizes that there have been changes since the previous version of the law, adopted in December 2011.<sup>10</sup> Owing to reporting requirements, however, the Special Rapporteur has not been able to verify or consult the said amendments with other relevant stakeholders.

32. According to the legislation amended in December 2011, funding restrictions prescribed for political parties also apply to (a) legal persons who are connected, directly or indirectly, to a political party or are otherwise under the control of a political party or have declared political aims and objectives; (b) legal persons who, by means of representatives or through the assistance of other persons, encourage voters to support or abstain from supporting any political power; and (c) persons who have declared political aims and objectives, those connected to them, as well as persons in business relations with them, who have political and electoral aims or conduct activities that affect the expression of the citizens of Georgia in elections, plebiscites and referendums, these activities being conducted with the aim of avoiding obligations prescribed by the law. Moreover, the same applies if a "legal person is connected, directly or indirectly, to a political party if its expenditures are related, directly or indirectly, to the activity and goals of a political party".<sup>11</sup>

33. Paragraphs 1 and 2 of article 26<sup>1</sup> of the law, as amended in December 2011, extends the restrictions on political party funding to any individual or organization in Georgia. More concretely, these restrictions disproportionately apply to any organization in Georgia with "connections" to parties either directly or indirectly; that may have made political declarations with specific goals and objectives; have encouraged or discouraged voting in elections; or have spent funds on issues that may be seen as related to a political party, either directly or indirectly. Moreover, restrictions also concern any individual in Georgia

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<sup>8</sup> CCPR/C/21/Rev.1/Add.7, para. 26.

<sup>9</sup> May 2012 amendments to the Organic Law of Georgia on Political Unions of Citizens, art. 26<sup>1</sup>, paras. 1 and 5 (unofficial English translation submitted by the Government of Georgia).

<sup>10</sup> 2011 amendments and additions to the Organic Law of Georgia on Political Union of Citizens, published in the Herald of the Parliament of Georgia (1997, #45), (unofficial English translation submitted by the Government of Georgia).

<sup>11</sup> *Ibid.*, art. 26<sup>1</sup>.

with political convictions, including people “connected to them” and in “business relations with them”, aiming at putting them into practice, or conduct activities that can influence the will of voters at any given time, including activities that may aim at challenging these provisions.

34. The Special Rapporteur is concerned with the fact that article 26<sup>1</sup> may seriously deter non-governmental organizations and civil society in general from freely conducting human rights activities on the ground. In the view of the mandate holder, the work of some of these organizations is political by definition and constitutes a crucial component of a free and democratic society. In addition, there is a high risk of targeting ordinary individuals for simply having expressed political opinions in public or in private. If found to be in violation of these ambiguous provisions, any individual, business company or legal entity could be subject to restrictions on property, funds and finance that would otherwise be applied to political parties.

35. Indeed, the legislation provides for restrictions on any individual or association or business company in Georgia for political reasons, which may involve, inter alia, limits to property ownership; a ban on accepting international financial and material contributions from physical and legal persons and non-profit legal persons, except for training purposes or other public arrangements; contributions, except explicitly permitted otherwise, from public institutions with a State share of more than 10 per cent; anonymous donations; a ban on receiving credits or loans from any natural or legal person, except for election campaigns if specifically registered for such a purpose; a limit to the annual overall amount of spending and expenses of up to 0.2 per cent of GDP for the previous year; the same total amount of GDP for parties united in a block; a maximum of 10 per cent of such a share of GDP for expert/consultation services; gifts for holiday celebrations of a maximum of 5,000 lari a year; a maximum of 60,000 lari in donations a year per person; or an annual amount of 1,200 lari in membership fees a year per person.

36. Paragraph 3 of article 26<sup>1</sup> contains an apparent safeguard provision to protect the right to freedom of opinion and expression and the right to participate in the conduct of public affairs by stipulating that “the restrictions listed in the present article may not be used against the freedom of expression and civic engagement”. This may appear to suggest that the effective application of paragraph 3 would seem sufficient to annul the negative effect of the provisions in the two preceding paragraphs. The mere declaration of political and electoral aims, goals or objectives should not, however, be deemed sufficient proof of illicit party financing. Moreover, the law does not clarify what electoral “goals” or “objectives” imply in practice, which could certainly lead to abusive interpretations. In this context, the fear of being subjected to such restrictions may act as a deterrent for individuals, non-governmental organizations, trade unions, private companies and other legal entities, and facilitate self-censorship. As a consequence, it may act in violation of the right to freedom of opinion and expression, the right to participate in the conduct of public affairs, and the rights to freedom of peaceful assembly and of association.

37. During his visit, the Special Rapporteur was informed that most amendments to the Law on Political Unions were motivated to prevent Bidzina Ivanishvili, the wealthiest individual in Georgia, from financing associations or otherwise taking part in the conduct of public affairs in Georgia through means other than by a political party. This would suggest that the recent amendments were motivated by a desire to control the political activities of a specific individual rather than for objective and sustainable reasons.

38. Limiting political party financing is a legitimate endeavour. The Special Rapporteur shares the view of the Human Rights Committee that “reasonable limitations on campaign

expenditure may be justified where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party”.<sup>12</sup> However, in the case of the amendments to the Law on Political Unions, the extent to which the law could affect anyone in Georgia appears to be unreasonably large. International law entitles non-governmental organizations and any legal entity and every individual to support any candidate or political persuasion of their choice without hindrance, subject to campaign finance laws. It is recalled that laws crafted for such subjective purposes often have the effect of violating human rights and are often unsustainable within changing circumstances of life.

39. The mandate holder takes note of the 2011 joint opinion of the Venice Commission and the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe in terms of limiting and restricting the property and funding of political parties to avoid “big business” and illicit donations from “purchasing... political influence”.<sup>13</sup> However, he is cognizant of the fact that a significant number of amendments were introduced at a later stage by the Georgian legislature following the adoption of the joint opinion.<sup>14</sup>

## 2. Chamber of Control

40. Article 34 of the new Law on Political Unions expands the prerogatives of the Chamber of Control to “monitor the legality and transparency of political party funding”. In addition, a new unit to monitor party finances was established in early January 2012. Grave concern is expressed that with the new legislation, the Chamber of Control, a de facto organ of the Executive, may, among other things, conduct audits of financial activities, request information on finances, including on the origins of transferred or received property, or ensure transparency of funding for any citizen or legal person in Georgia. This would give the Chamber of Control extraordinary discretionary authority to inspect the state of financial accounts of any person or organization. Such authority can be exercised, without clear criteria and for its own reasons, without explanation. The Special Rapporteur is of the view that any monitoring authority of campaign finances should be transparent, impartial and independent – and beseeched to be so – in its constitutive authority and in fact.

41. During the conduct of the visit, there were instances where non-governmental organizations had been requested to submit financial declarations for scrutiny under the above-mentioned law, in circumstances that were not transparent. Other allegations were received from private individuals, including activists, human rights defenders and members of trade unions, on similar grounds. Moreover, the Special Rapporteur was informed that the Chamber of Control had used standardized questions to interrogate individuals, allegedly requesting information on their political activity, whether they had distributed documents from the “Georgian Dream”, whether they had been collecting signatures for Mr. Ivanishvili’s citizenship, and whether a financial contribution had been received for that purpose (see paragraph 48 below).

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<sup>12</sup> CCPR/C/21/Rev.1/Add.7, para. 19.

<sup>13</sup> Joint opinion of the Venice Commission and Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe on the draft law on amendments and additions to the Organic Law of Georgia on Political Unions of Citizens, opinion No. 652/2011, CDL-AD(2011)044, 16-17 December 2011, pp. 5-6.

<sup>14</sup> See “Secretary of the Venice Commission answers questions on the law on political unions of citizens”, Council of Europe Office in Georgia, press release, 31 January 2012. Available from [www.coe.int/t/dgap/tbilisi/news/2012\\_31\\_01\\_en.asp](http://www.coe.int/t/dgap/tbilisi/news/2012_31_01_en.asp).

42. Due consideration was taken of the arguments made by senior Government officials that no organization would be held accountable unless decisions had been based on evidence and there were “reasonable grounds” to believe that active support was being given to a political party. Government officials argued that the Chamber of Control was under considerable scrutiny and that monitoring would not target opinions, but rather activities potentially covering up illicit financing. The Chamber of Control was also presented as an independent institution without executive, legislative or judicial powers that does not interfere with business activities, freedom of expression, private property or civil society. Similarly, more transparency and greater role of courts against Chamber decisions were also envisaged.

43. In practice, however, if the Chamber of Control has a suspicion of an illicit activity, whether well- or ill-founded, ambiguous provisions in the Law on Political Unions can empower it to interfere with business relations, compromise freedom of opinion or expression, violate the right to property and privacy, and hamper the work of civil society. At the time of the visit, there was no mechanism in place that could mitigate potential abuse by the Chamber of Control. In theory, human rights violations may be subject to a judicial remedy. However, while physical and legal persons may pursue such legal remedies, the perceived lack of independence of the judiciary in court proceedings could lead activists and human rights defenders to self-censor.

44. The Special Rapporteur was, however, informed that guidelines for the implementation of the law were being drafted by the Chamber of Control.<sup>15</sup> While genuine consultations with civil society are most encouraged, it is still incumbent on the Government to seriously consider reviewing the above-mentioned legal provisions.

45. While drafting the present report, the Special Rapporteur was informed that a high-profile hearing with civil society on political party financing had been held in Parliament. An agreement was reached on a package of amendments that should, inter alia, specify which legal persons fall under such restrictions, reduce fines imposed by the State audit agency, establish rules of procedure for the Chamber of Control, apply no restrictions to non-election campaigning associations that support the capacity-building of political parties, and mandate an additional role for courts. According to the Government, amendments to the Law on Political Unions were adopted in May 2012. The mandate holder encourages the Government to continue with these efforts to ensure even greater protection of fundamental freedoms.

### 3. Genuine competitive elections

46. A significant number of allegations were received regarding unequal access to State resources for election campaigning. In 2008, the OSCE Election Observation Mission in Georgia concluded that, while the campaign for the extraordinary presidential election was overshadowed by widespread allegations of intimidation of and pressure on, inter alia, public-sector employees and opposition activists, “the distinction between State activities and the campaign of the ruling United National Movement ... was blurred”.<sup>16</sup>

<sup>15</sup> Following the visit, the Government also informed the Special Rapporteur that, in March 2012, consultations with non-governmental organizations were organized on the drafting of the guidelines and that the final document was expected to be finalized in June 2012.

<sup>16</sup> OSCE Election Observation Mission final report, Warsaw, 4 March 2008, p. 1.

47. According to the information received, the ability to distinguish between the ruling political party and the State has deteriorated. The Special Rapporteur was informed that technical restrictions had been applied to ensure better access to public resources during election campaigning, including an obligation for entry and mid-level public sector employees to use their own private arrangements to campaign for elections. He appreciates the implicit recognition by the Government that such measures only partially address the problem of lack of equal access to resources. In the light of the parliamentary and presidential elections, to be held in October 2012 and in 2013 respectively, greater effort in this regard is essential to guarantee genuine competitive elections in accordance with international standards.

48. In addition, a significant number of allegations were received regarding acts of harassment and intimidation, as well as of illicit surveillance, of persons believed to be opposition members or supporters, or those who try to challenge the Government. Since similar allegations were also registered during the electoral period of 2008, the authorities are urged to increase efforts to respond to such cases and to take appropriate remedial action.

49. The Special Rapporteur believes that restrictions on campaign finance should not contradict the principle of genuinely free, fair and competitive elections, and that a greater effort to separate the activities of the State and the ruling party is necessary to guarantee a level playing field.

## **B. Undue obstacles for trade unions and their members**

50. When establishing the mandate of the Special Rapporteur in its resolution 15/21, the Human Rights Council specified that the mandate holder should undertake his or her activities such that the mandate would not include those matters of specific competence of ILO and its specialized supervisory mechanisms and procedures with respect to employers' and workers' rights to freedom of association, with a view to avoiding any duplication.

51. The mandate holder is cautious of the fact that matters relating to workers' activities and trade unions fall into the specific area of work of ILO, and he could therefore duplicate existing efforts. He is, however, mindful that avoiding duplication should not mean disregarding the matter altogether. To the extent that the rights to freedom of peaceful assembly and of association provide "individuals with invaluable opportunities to... form and join trade unions and cooperatives",<sup>17</sup> the Special Rapporteur aims to contribute to and promote the work of ILO in this regard and, where possible, to complement it.

52. The Special Rapporteur recognizes the important contribution of ILO with regard to labour matters in Georgia. In particular, he has taken into consideration the recommendations made to the Government of Georgia in 2010 by the ILO Committee of Experts on the Application of Conventions and Recommendations,<sup>18</sup> in particular with those concerning the implementation of Conventions Nos. 87 and 98 and the need to consider revising the Labour Code.<sup>19</sup>

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<sup>17</sup> Human Rights Council resolution 15/21, preamble.

<sup>18</sup> Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A), General Report and observations concerning particular countries, International Labour Conference, 99th Session, 2010, pp. 143-147.

<sup>19</sup> *Ibid.*, pp. 144 and 146.

53. International human rights law places significant importance on labour unions. In particular, article 8 of the International Covenant on Economic, Social and Cultural Rights recognizes the right of everyone “to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests”, and “the right of trade unions to function freely”.

54. The Special Rapporteur also notes with interest the establishment of the Tripartite Social Partnership Commission by decree in November 2009 and a tripartite working group to assess whether the national labour legislation is in line with the findings of the ILO Committee of Experts.<sup>20</sup> He notes that a national tripartite structure has been established with a mandate to address the concerns of social partners in Georgia.<sup>21</sup>

### **1. Right of unions and their members to function freely**

55. The Special Rapporteur considers that labour unions operate in a difficult political environment. He identified an apparent inconsistency between the right to join and form trade unions and the right to strike, as enshrined under article 26 and 33 of the Constitution and the current labour legislation, in particular the Labour Code.

56. A significant number of allegations were received regarding collective dismissals of public and private sector employees for supporting opposition parties. The mandate holder acknowledges that numerous allegations of anti-union dismissals were examined by the ILO Committee on Freedom of Association.<sup>22</sup> In this connection, during the visit a correlation seemed to emerge with regard to the allegations of collective dismissals and the existing restrictions on physical and legal persons concerning the financing of political parties.

57. Indeed, recent allegations of anti-union dismissals in the education sector were received apparently connected to the support of some teachers for the “Georgian Dream” political alliance. The Special Rapporteur is also concerned by the allegations of harassment and intimidation of workers belonging to or who have expressed sympathy or desire to join labour unions.

### **2. Right to form and join unions for the defence of economic and social interests**

58. Current labour laws provide for relatively easy dismissal of workers. The Labour Code stipulates in article 5(8) that “the employer is not required to substantiate his/her decision for not recruiting an applicant”. Moreover, articles 37 (d) and 38 (3) stipulate, respectively, that a labour contract may be terminated for a “derangement”, and that such termination may be “at the initiative of the employer” as long as “the employee... [is] given at least one month of pay, unless otherwise envisaged by the contract”.<sup>23</sup>

59. The Special Rapporteur considers that the above-mentioned flexibility in the legal regime can inhibit the freedom to form, organize and operate trade unions, as employers, whether private or public, have almost unfettered discretion and could easily find excuses

<sup>20</sup> Ibid., p. 144.

<sup>21</sup> International Labour Conference, 99th session, Record of Proceedings, Geneva 2010, p. 16 (Part II/70).

<sup>22</sup> Cases of the ILO Committee on Freedom of Association (2001 – 2011), LibSynd database.

<sup>23</sup> Labour Code of Georgia, available from [www.ilo.org/dyn/natlex/docs/SERIAL/74621/76939/F1017339662/GEO74621.pdf](http://www.ilo.org/dyn/natlex/docs/SERIAL/74621/76939/F1017339662/GEO74621.pdf) (unofficial English translation).

to fire workers who try to form and operate trade unions, which they may not want. In this regard, the Special Rapporteur echoes the recommendations of the Committee of Experts with regard to the Labour Code in the hope that “the necessary measures to revise sections 5 (8), 37(d) and 38 (3) of the Labour Code will soon be taken so as to ensure that the Labour Code provides for an adequate protection against anti-union discrimination”.<sup>24</sup>

60. The mandate holder views the current situation as a matter of serious concern, in particular with regard to the support of union members for the political parties that they might wish to endorse. Trade unions have the right to make political choices for candidates and parties that can further their interests without running the risk of falling under the restrictions of the recent amendments against “relations with political parties”. The effective protection of individuals against unlawful termination of labour contracts in Georgia requires measures other than justjudicial remedies.

## **VI. Right to freedom of peaceful assembly**

61. The rights to freedom of peaceful assembly and of association are closely interrelated and mutually reinforcing, given that, in order to organize a peaceful assembly, some form of organization, either de facto or de jure, is often required. For this reason, the specific international human rights standards that apply in the case of freedom of association – as well as to other basic freedoms (like those referred to in paragraphs 19 to 21 above) also affect peaceful assemblies.

62. In this regard, it is important to reiterate that restrictions to the above freedoms should not be derailed by undue obstacles to the enjoyment of essential rights.<sup>25</sup> In paragraph 4 of its resolution 15/21, the Human Rights Council recalled that, in accordance with the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, the exercise of the rights to freedom of peaceful assembly and of association may be subject to certain restrictions. The Special Rapporteur frames its application with the understanding that their free and unhindered enjoyment is an essential component for democracy, especially “where individuals may espouse minority or dissenting religious or political beliefs”.<sup>26</sup>

63. Even though a notification period of five days is required by law in the event that an assembly blocks transport movement or is held on a road, the mandate holder takes note that peaceful assemblies are normally conducted in Georgia without prior authorization. Given the way the current Government was formed, and in view of the elections scheduled for 2012 and 2013, there is an expectation that the rights of peaceful assembly and of association will be respected.

64. In late December 2011, as part of the package of reforms, amendments to the Law on Assembly and Manifestations were passed by Parliament, ending an extended period of negotiations launched in 2009. The Special Rapporteur notes, however, that, in spite of some improvements, certain problematic provisions remaining in the law restrict freedom of assembly.

65. The Special Rapporteur validated claims made by representatives of civil society that restrictions on peaceful assemblies had been applied – or attempts had been made to

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<sup>24</sup> See report of the Committee of Experts on the Application of Conventions and Recommendations (see footnote 18), p. 146.

<sup>25</sup> See Human Rights Committee general comments Nos. 27, 34 and 31.

<sup>26</sup> Human Rights Council resolution 15/21, preamble.

apply them – in law and in practice to prevent citizens from expressing their views through peaceful protest.

66. At the end of his official visit, the mandate holder assessed the situation in terms of the enjoyment of the right to peaceful assembly. His assessment was based on two broad areas: a policy pattern that selectively restricts some peaceful assemblies, and the events of 26 May 2011.

## A. Restricting peaceful assemblies

67. There is a consensus among the Government, civil society, academia and the international presence in Georgia with regard to the manner in which assemblies are perceived. In November 2007, mass demonstrations were held in front of Parliament. It was the first time that massive rallies had been held since 2003, when mass peaceful assemblies led to the ousting of then President Eduard Shevardnadze.

68. While it is not the intention of the Special Rapporteur to establish the facts surrounding the events prior to and after November 2007, it remains evident that a restrictive pattern emerged with regard to some peaceful protests that appear to have a real potential to challenge the authorities. The mandate holder recognizes the country's fragile transition to democracy and the security risks that inherently exist in this process. However, the constant blaming of an "external hostile power" do not validate the fact that citizens may have specific and particular grievances that they wish to express in this form, which is often a measure of frustration.

69. The policy pattern of restricting peaceful assemblies was enshrined in 2009 at the legislative level by means of significant amendments to the Law on Assembly. The changes to the law seriously limited the exercise of the right to freedom of peaceful assembly.<sup>27</sup> However, in a spirit of cooperation, the Government of Georgia engaged in a number of revisions to the 2009 version of the law with the Venice Commission.

70. The predisposition to improve the legislation in accordance with international standards must be recognized. In particular, in March 2010 the Government of Georgia, based on preliminary comments by two members of the Venice Commission,<sup>28</sup> redrafted some of the 2009 amendments to the law, which were then subject to an interim opinion by the Venice Commission the same month.<sup>29</sup> Meanwhile, in September 2010, a complaint was lodged to the Constitutional Court on some provisions within the law. In April 2011, the Court found unconstitutional several provisions within the 2009 Law on Assembly and the Code on Administrative Offences.<sup>30</sup> In July 2011, the Government of Georgia reviewed the amendments to the Law on Assembly based on the opinions of the Venice Commission

<sup>27</sup> See for instance the report of the Public Defender of Georgia on the situation of human rights and freedoms in Georgia, Freedom of Assembly and Manifestations, 2009, second half, p. 136-142. Available from [www.ombudsman.ge/files/downloads/en/rcbrpcdmwmvalletoggp.pdf](http://www.ombudsman.ge/files/downloads/en/rcbrpcdmwmvalletoggp.pdf).

<sup>28</sup> See comments on the Law on Assembly and Manifestations by Venice Commission members Bogdan Aurescu (CDL(2009)153) ([www.venice.coe.int/docs/2009/CDL\(2009\)153-e.pdf](http://www.venice.coe.int/docs/2009/CDL(2009)153-e.pdf)) and Finola Flanagan (CDL(2009)152) ([www.venice.coe.int/docs/2009/CDL\(2009\)152-e.pdf](http://www.venice.coe.int/docs/2009/CDL(2009)152-e.pdf)).

<sup>29</sup> See the interim opinion of the Venice Commission on the Draft Amendments to the Law on Assembly and Manifestations (CDL-AD(2010)009), 12-13 March 2010. Available from [www.venice.coe.int/docs/2010/CDL-AD\(2010\)009-e.pdf](http://www.venice.coe.int/docs/2010/CDL-AD(2010)009-e.pdf).

<sup>30</sup> Annual report of the Public Defender of Georgia on the situation of human rights and freedoms in Georgia, Freedom of Assembly and Manifestations, 2011, p. 3 (advance unedited version).



and the Constitutional Court ruling. Thereafter, the Government requested a new opinion by the Venice Commission, which was made public in October 2011.

71. The mandate holder would like to join the Venice Commission in welcoming the positive changes introduced in the July 2011 version,<sup>31</sup> introducing, for instance, the principles of proportionality, legality and democratic society in the law; for adding the principle of “clear, direct and present danger” for violence before prohibiting assemblies; for repealing some blanket restrictions on peaceful assemblies; and for the new protection safeguards for journalists. In any event, the Special Rapporteur was informed that the December 2011 version of the law coincided with the later version sent to the Venice Commission in July 2011. He would therefore like to reiterate the concerns already expressed by the Venice Commission and the Public Defender of Georgia with regard to some of the provisions of the law.<sup>32</sup>

72. Most notably, article 2.1 of the Law on Assembly (July 2011) prohibits employees of the armed forces, armed law enforcement bodies, paramilitary and special facilities from exercising the right to peaceful assembly without distinguishing whether the assembly is connected to their official responsibilities and without separating periods of non-official duty. Article 5.3 restricts “citizens of other countries” and those below 18 years of age from organizing peaceful assemblies. The Special Rapporteur is concerned that this provision does not contemplate the right of migrants and minors with regard to peaceful assembly.

73. Moreover, article 8 of the Law on Assembly requires the organizer to notify the assembly “at least five days prior to a scheduled date of the event”, therefore restricting the possibility for holding spontaneous assemblies. The Special Rapporteur welcomes, however, the fact that the Government has lifted the ban on assemblies within a 20-metre perimeter from the entrance of some buildings, such as the Parliament, the presidential administration buildings and courts. He considers, however, that article 9 of the law maintains an excessive restriction and a blanket ban on any assembly within 20 metres of the entrance to some other buildings (such as the Prosecutor’s Office, temporary detention facilities or all police stations); prohibits blocking railways, highways or entrances of buildings without clarifying what constitutes such an “entrance”; and entitles administrative bodies and courts to impose “restrictions” within the 20-metre perimeter without clarifying their prerogatives.

74. Of further concern, despite the improvements, which must be recognized, is article 11.2 (e), which prohibits participants from “deliberately hindering the transport movement”, and article 11<sup>1</sup>, which bans the blocking of transport movement “unless necessary owing to the large number of people”. The Special Rapporteur considers this restriction still excessive, considering that peaceful assemblies continuously block traffic as part of the protest and that this should only be restricted if such a blockage is prolonged unreasonably. In this regard, article 11<sup>2</sup> contains a restriction on any peaceful assembly that affects the normal functioning of those who “live, work, shop, trade and carry on business” as “these persons shall not be interrupted in carrying out their activities”. The Special Rapporteur appreciates that reasonable alternatives can be offered and that such “normal

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<sup>31</sup> See the final opinion of the Venice Commission on the amendments to the Law on Assembly and Manifestations of Georgia (CDL-AD(2011)029), 14-15 October 2011, available from [www.venice.coe.int/docs/2011/CDL-AD\(2011\)029-e.pdf](http://www.venice.coe.int/docs/2011/CDL-AD(2011)029-e.pdf); and its opinion No. 547 / 2009 on the Law on Amendments and Supplements to the Law on Assembly and Manifestations of Georgia, 1 July 2011, available from [www.venice.coe.int/docs/2011/CDL-REF\(2011\)054-e.pdf](http://www.venice.coe.int/docs/2011/CDL-REF(2011)054-e.pdf).

<sup>32</sup> See final opinion of the Venice Commission (see footnote 31) and the annual report of the Public Defender, 2011 (see footnote 30).

functioning” can be interrupted if it is “for a short period of time”; however, further clarification on what actually constitutes a “short period of time” is clearly required. Lastly, the mandate holder appreciates that the previous obligation to end assemblies “immediately” in the event of “mass violation” has been substituted, in article 13, by a rule whereby organizers have 15 minutes to appeal for the break-up of the assembly. In fact, a longer period should be contemplated to expect “a reasonable effort” from the organizer to disperse assemblies, especially in view of preventing law enforcement officials from resorting to the use of force.<sup>33</sup>

## **B. The events of 26 May 2011**

75. The Special Rapporteur held extensive discussions on the events of 26 May 2011 with representatives of the Government, civil society and the international community. He regrets to report that there were stark differences in the narratives of what actually happened on that night.

76. The events were the subject of a joint urgent appeal sent by the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on freedom of opinion and expression, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the rights to freedom of peaceful assembly and of association.<sup>34</sup> A response from the Government was received on 7 July 2011.

77. In the aftermath of a peaceful demonstration, held at Rustaveli Avenue on 25 May 2011, to demand the resignation of the President, another protest was held in front of Parliament. It is alleged that some protesters called for the disruption of the Independence Day celebrations that were expected to take place the following day, on 26 May 2011. After midnight, events quickly deteriorated into a serious episode of violence, leading to the death of four people, including one police officer. A significant number of protesters and police officers were injured, and approximately 160 people were detained.

78. The Special Rapporteur does not intend to establish the facts regarding these events. He understands that the Ministry of Internal Affairs considers that violence was sporadic, and also notes the assessment of several senior Government officials that the police response was by and large proportionate to the threat perceived. He also notes the justification of the Ministry, in particular that police barricades were being removed; there was a general failure in police communications; disproportionate force was due to a lack of proper training; and that the early movement of police units to the north from Freedom Square interspersed the assembly to other areas. Other accounts suggest, however, that the reaction of the Government was intentionally disproportional. Indeed, while the Ministry of Internal Affairs attributed this to a lack of training, there are credible allegations that there were repeated beatings after the protest was dispersed and that protesters were chased by the police and thoroughly beaten up. It was in fact alleged that the police tactics employed to disperse the assembly on the night of 26 May were similar to those employed in November 2007, when protesters were also enclosed inside a perimeter and their exit obstructed. This has raised the suspicion of many stakeholders that the intention was not so much to disperse protesters as to punish and spread fear.

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<sup>33</sup> See OSCE/Venice Commission Guidelines on Freedom of Peaceful Assembly, second edition, para. 168. Available from [www.venice.coe.int/docs/2010/CDL-AD\(2010\)020-e.pdf](http://www.venice.coe.int/docs/2010/CDL-AD(2010)020-e.pdf).

<sup>34</sup> A/HRC/19/44, p. 19.

79. The Special Rapporteur takes note of the efforts made by the Ministry of Internal Affairs to take remedial action and correct its mistakes in managing assemblies, in particular its treatment of protesters and journalists. He acknowledges that, according to the Ministry, the number of punishments for police misconduct increased considerably between 2009 and 2011, and that an inquiry was launched inside the Ministry on police misconduct following the events of 26 May, resulting in disciplinary measures. Furthermore, he welcomes the Ministry's previous engagement with the OSCE Strategic Police Matters Unit on police-related assistance and advice. In this connection, the Special Rapporteur warmly welcomes the predisposition of the Ministry to seriously consider implementing the OSCE/Venice Commission Guidelines on Freedom of Peaceful Assembly.<sup>35</sup>

80. Another issue of serious concern connected to events of 26 May 2011 is the deliberate recourse to administrative detention of up to 90 days for protesters and activists, without adequate procedural safeguards. The Special Rapporteur fully aligns himself with the concerns raised by the Working Group on Arbitrary Detention after its official visit to the country.<sup>35</sup> He is alarmed by the frequency of the use of this form of detention for dealing with protesters. With regard to the protests of 26 May 2011, the mandate holder was informed that this form of detention was used for most, if not all, cases of detention. He was also informed about ongoing plans to extend the period of police custody from 12 to 24 hours in the revised Code of Administrative Offences, which indicates that the authorities may intend to make the legislation even more restrictive. In this regard, the mandate holder received credible allegations pointing to a serious lack of judicial guarantees. He confirmed that police testimonies are given more weight than any other testimony, that judges have a tendency to disregard clear evidence presented on behalf of the defendant, including photographs and video footage, and that courts frequently rely solely on police testimonies for sentencing. Under these conditions, the same police detaining a protester or an activist are the ones whose testimony is given preference before a court proceeding. This suggests that there is a generalized presumption of guilt against activists and protesters, as opposed to the general presumption of innocence recognized under international human rights law.

81. Considering the increasing number of allegations of acts of violence and ill-treatment by law enforcement officials against protesters, these measures deter activists on the ground willing to express dissent through peaceful assembly. Indeed, the mandate holder considers that such measures against protesters appear to violate article 2.1 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, according to which each State party is to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. In its general comment No. 2, the Committee against Torture declared that "States parties are obligated to eliminate any legal or other obstacles that impede the eradication of torture and ill-treatment, and to take positive effective measures to ensure that such conduct and any recurrences thereof are effectively prevented".<sup>36</sup> In addition, these measures also appear to contravene article 9.1 of the International Covenant on Civil and Political Rights insofar as "no one shall be subjected to arbitrary arrest and detention", and the right to a fair trial, as enshrined in article 14 of the same Covenant.

82. The events of 26 May 2011 require a new, independent and transparent investigation. To be credible, it should involve all stakeholders, – including opposition leaders, civil society representatives, the Government and representatives from the

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<sup>35</sup> A/HRC/19/57/Add. 2, paras. 63-68.

<sup>36</sup> CAT/C/GC/2, para. 4.

international presence – to ensure that all views and perspectives are taken into account and that there is accountability for the clear excessive use of force. In absence of that, the perception of impunity and dissatisfaction towards the Government will prevail.

## VII. Conclusions

83. The Special Rapporteur views very positively the ambitious and action-oriented reform programme implemented since the Rose Revolution. The programme quickly resulted in improvements in many aspects of public life, in particularly by significantly improving personal security of the population and reducing the crime rate. The Special Rapporteur encourages the Government to continue along this path and to intensify its efforts to ensure effective promotion and protection of the rights to freedom of peaceful assembly and of association.

84. In this context, the Special Rapporteur is deeply concerned that the Law on Political Unions of Citizens could be used as an excuse to target persons in Georgia for political reasons through the Chamber of Control. Given that article 26<sup>1</sup>, as amended in December 2011, violates basic rights and freedoms guaranteed in international human rights instruments, urgent measures are required to prevent such violations from occurring. The Special Rapporteur commends the fact that, subsequent to his visit, new amendments were adopted in May 2012 to modify some of the said provisions. Owing to reporting requirements, however, the mandate holder has not been able to verify nor consult on the amendments with other relevant stakeholders.

85. The Special Rapporteur is very concerned at the lack of a conducive environment in Georgia allowing political parties to operate as equals. Stark differences with regard to resource allocation were observed in law and in practice, leading the mandate holder to conclude that the right to freedom of association for political parties is being consistently violated. Unless remedial action is taken, citizens in Georgia will not be able to effectively elect leaders to represent their interests and to hold them accountable.

86. Under international law, trade unions and their members have a right to support any political party of their choice. The significant number of allegations received of collective dismissals for having supported political parties requires urgent attention by the Government and ILO.

87. The Special Rapporteur is encouraged by the Government's predisposition to cooperate with the Council of Europe with regard to the Law on Assembly and Manifestations. Nonetheless, serious shortcomings continue to exist after the Venice Commission published its final opinion on the matter. Action is therefore needed to ensure that the right to freedom of peaceful assembly is adequately respected and that any restrictions are exceptional and within what is permissible under international law.

88. Serious disagreements regarding the events of 26 May 2011 between protesters and the police reveal an urgent need to establish the facts. After extensive interviews and consideration of significant documentation on the matter, the Special Rapporteur is of the view that the Government may have had the intention to use force against opposition leaders and protesters.

89. The Special Rapporteur is concerned that the above-mentioned issues could favour a climate of fear and of intimidation of activists, human rights defenders and members of trade unions and opposition political parties. Moreover, laws specifically

aiming to control the activities of one specific person have resulted in a climate of uncertainty and cannot be justified for every Georgian citizen.

## **VIII. Recommendations**

90. With regard to the right to freedom of association, the Special Rapporteur recommends that the Government of Georgia:

(a) Seriously consider repealing paragraphs 1 and 2 of article 26<sup>1</sup> of the Law on Political Unions of Citizens of December 2011. Physical and legal persons should be granted the right to participate in the conduct of public affairs, as well as the right to freedom of opinion and expression without undue restrictions. The Government should also ensure that alternative measures are sought and applied to prevent illicit political party financing;

(b) Seriously consider reviewing the prerogatives of the Chamber of Control, in particular of the new unit responsible for monitoring financing related to political parties, in particular, with regard to the need to substantiate its decisions and the obligation to obtain a judicial instruction before taking any action in the event of reasonable doubt when an illicit activity is suspected, and to ensure that it is transparent, independent and accountable, and seen to be so in law and fact;

(c) Ensure that civil society is systematically consulted before any legislative initiative is adopted. Civil society participation could, for instance, be institutionalized rather than made available on an ad hoc basis;

(d) Increase efforts to ensure that all political parties, including opposition parties, have genuine, equitable and adequate access to State resources for election campaigning. It is especially crucial that the line between the ruling party and the State be clearly defined in order to create a level playing field;

(e) Increase efforts to implement the recommendations of the Venice Commission and OSCE of December 2011 on the draft Election Code;

(f) Increase efforts to ensure full implementation of the recommendations laid out in the reports of the ILO Committee of Experts on the Application of Conventions and Recommendations;

(g) In the above connection, seriously consider signing and ratifying the Additional Protocol to the European Social Charter of the Council of Europe Providing for a System of Collective Complaints.

91. With regard to peaceful assembly, the Special Rapporteur recommends that the Government of Georgia:

(a) Seriously consider amending those provisions in the Law on Assembly and Manifestations that unduly violate the right to freedom of peaceful assembly, in particular, the above-mentioned provisions in articles 2, 5, 8, 9, 11, 11<sup>1</sup>, 11<sup>2</sup> and 13;

(b) Ensure full implementation of the recommendations made by the Public Defender and the Venice Commission on the Law on Assembly and Manifestations;

(c) In national legislation, increase efforts to ensure a general presumption in favour of holding assemblies; the OSCE/Venice Commission Guidelines on Freedom of Peaceful Assembly may serve as a useful tool in such efforts;

(d) Continue efforts to avoid the use of force to disperse lawful and peaceful assemblies; in the case of peaceful but unlawful assemblies, ensure that force is only

employed as a last resort; and that alternative measures are consistently sought to disperse assemblies, in compliance with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the Code of Conduct for Law Enforcement Officials;

(e) Seriously consider establishing an independent commission to thoroughly investigate the events of 26 May 2011, in an inclusive, transparent and participatory manner, and with the involvement of all stakeholders, including opposition political parties, non-governmental organizations, trade unions, activists, human rights defenders and members of civil society;

(f) Ensure full implementation of the recommendations made by the Working Group on Arbitrary Detention in its report,<sup>37</sup> in particular those contained in paragraph 98, subparagraphs (b) to (e) and (h) to (q);

(g) In accordance with the recommendation made by the Working Group on Arbitrary Detention and contained in paragraph 98 (l) of the above-mentioned report,<sup>37</sup> ensure the principle of equality of arms, right to defence and the presumption of innocence of all citizens, including protesters, and discontinue the practice of relying primarily on the testimony of the police when adjudicating cases;

(h) Ensure full implementation of article 2.1 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

92. The Special Rapporteur recommends that civil society actively engage in the monitoring of assemblies, cases where activists and protesters are brought before courts, and cases where persons are brought before the Chamber of Control.

93. The Special Rapporteur recommends that the resources available for the OHCHR presence in the South Caucasus be increased to allow it to conduct activities related to the rights to freedom of peaceful assembly and of association.

94. The Special Rapporteur recommends that the representatives of the international presence in Georgia continue to support the work of civil society organizations.

95. Lastly, the Special Rapporteur recommends that the Public Defender and his office continue its important and remarkable efforts in the promotion and protection of the rights to freedom of peaceful assembly and of association.

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A/HRC/19/57/Add. 2.