



Office for Democratic Institutions and Human Rights

**Information Submitted to the
Office of the United Nations High Commissioner for
Human Rights
as a Stakeholder in the
Universal Periodic Review of Georgia**



WARSAW, 23 MARCH 2015

OSCE/ODIHR Submission of Information about an OSCE participating State or Partner for Co-operation under consideration in the Universal Periodic Review Process

Participating/Partner State: Georgia

UPR Session and Date of Review: 23d Session, 2-13 November 2015

Background

Georgia is a participating State of the Organization for Security and Co-operation in Europe (OSCE) and has thus undertaken and has recently reaffirmed a wide range of political commitments in the “human dimension” of security as outlined in relevant OSCE documents.¹ The OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) has been mandated by OSCE participating States, including Georgia, to assist them in implementing their human dimension commitments. OSCE/ODIHR assistance includes election observation and assessment activities as well as monitoring and providing assessments, advice and recommendations relating to implementation of commitments in the fields of human rights, democracy, tolerance and non-discrimination, and the situation of Roma and Sinti in the OSCE area. The present submission provides publicly available country-specific information that may assist participants in the Universal Periodic Review process in assessing the situation in Georgia and its implementation of past recommendations, as well as to formulate new recommendations that may be relevant to enhancing the enjoyment of human rights and fundamental freedoms.

Election-related activities

Presidential Election, 27 October 2013. Following an invitation from the Ministry of Foreign Affairs of Georgia and in accordance with its mandate, the OSCE/ODIHR deployed an Election Observation Mission (EOM) on 19 September to observe the 27 October presidential election. The EOM consisted of a core team of 16 international experts based in Tbilisi and 28 long-term observers. Mission members were drawn from 24 OSCE participating states. For Election Day, the OSCE/ODIHR EOM joined efforts with delegations from the OSCE Parliamentary Assembly, the Parliamentary Assembly of the Council of Europe, the European Parliament, and the NATO Parliamentary Assembly. In total, 401 observers were deployed from 45 countries. The final report concluded that “the 27 October presidential election was efficiently administered and transparent, and took place in an amicable and constructive environment. During the election campaign, fundamental freedoms of expression, movement, and assembly were respected and candidates were able to campaign without restriction. The media was less polarized than during the 2012 elections and presented a broad range of viewpoints. On election day, voters were able to express their choice freely.”²

Parliamentary By-Elections, 27 April 2013. Following an invitation from the Ministry of Foreign Affairs of Georgia, the OSCE/ODIHR deployed an Election Expert Team (EET) on 16 April 2013 for the 27 April parliamentary by-elections. The by-elections were held in three single-mandate constituencies. The OSCE/ODIHR EET consisted of six election experts drawn from as many OSCE participating States. The OSCE/ODIHR EET assessed

¹ Compendium of OSCE Human Dimension Commitments, vol 1 & 2; Astana Commemorative Declaration, 2010.

² See the full report at: <http://www.osce.org/odihr/elections/11030>.

the legal framework, election administration, campaign finance, media, and complaints and appeals. In line with OSCE/ODIHR methodology, the EET did not undertake a comprehensive and systematic observation of the electoral process or Election Day procedures. Therefore, the EET final report was limited in scope, did not offer an overall assessment of the electoral process and should be read in conjunction with the OSCE/ODIHR EOM Final Report for the 1 October 2012 parliamentary elections. According to the final report, the parliamentary by-elections were competitive and candidates were able to campaign freely, but aspects of the legal framework could benefit from further review.³

Parliamentary Elections, 1 October 2012. Following an invitation from the Ministry of Foreign Affairs of Georgia and based on the recommendation of a Needs Assessment Mission (NAM) conducted from 11 to 15 June 2012, the OSCE/ODIHR deployed an EOM on 22 August to observe the 1 October 2012 parliamentary elections. The mission comprised a core team of 16 experts and 28 long-term observers. For Election Day, the OSCE/ODIHR EOM joined efforts with delegations from the OSCE Parliamentary Assembly, the Parliamentary Assembly of the Council of Europe, the European Parliament, and the NATO Parliamentary Assembly. In total, 393 observers from 42 countries were deployed. The final report noted that “The 1 October parliamentary elections marked an important step in consolidating the conduct of democratic elections in line with OSCE and Council of Europe commitments, although certain key issues remain to be addressed. The elections were competitive with active citizen participation throughout the campaign, including in peaceful mass rallies. The environment, however, was polarized and tense, characterized by the frequent use of harsh rhetoric and a few instances of violence. The campaign often centred on the advantages of incumbency, on the one hand, and private financial assets, on the other, rather than on concrete political platforms and programs.”⁴

Municipal Elections, 30 May 2010. Following an invitation from the Ministry of Foreign Affairs of Georgia and based on the recommendation of a NAM conducted on 17–19 February, the OSCE/ODIHR deployed an EOM on 16 April 2010 to observe the 30 May 2010 municipal elections. The OSCE/ODIHR EOM consisted of 14 experts and 24 long-term observers from 22 OSCE participating States. For Election Day, the OSCE/ODIHR EOM joined efforts with a delegation of the Congress of Local and Regional Authorities of the Council of Europe. Overall, 203 short-term observers were deployed. The final report concluded that “The municipal elections marked evident progress towards meeting OSCE commitments and other international standards for democratic elections. However, significant shortcomings remained including deficiencies in the legal framework, its implementation, an uneven playing field, and isolated cases of election-day fraud. The authorities and the election administration made clear efforts to pro-actively address problems. Nevertheless, the low level of public confidence, noted in previous elections, persisted. Further efforts in resolutely tackling recurring misconduct are required in order to consolidate the progress and enhance public trust before the next national elections.”⁵

Legislation reviewed by ODIHR

Upon request by authorities of a participating State, and OSCE field operation or another OSCE institution, the OSCE/ODIHR reviews draft or enacted legislation of OSCE participating States on topics relating to the human dimension of security for its conformity

³ See the full report at: <http://www.osce.org/odihr/elections/103437>.

⁴ See the full report at: <http://www.osce.org/odihr/98399>.

⁵ See the full report at: <http://www.osce.org/odihr/elections/71280>.

with OSCE commitments and other international standards. The legal reviews and opinions, often produced in co-operation with the Venice Commission of the Council of Europe, are available at www.legislationline.org.

In 2011-2014, the following legal opinions (on topics other than elections) were issued on enacted and draft legislation of Georgia:

Joint Opinion on the Draft Election Code of Georgia (Opinion No. 617 / 2011 issued jointly by OSCE/ODIHR and the Venice Commission on 19 December 2011). This opinion noted that “the draft Code is generally a complete and methodical law conducive to the conduct of democratic elections. The draft Code includes the necessary elements for organising and administering elections and addresses some of previous recommendations of the Venice Commission and OSCE/ODIHR. The draft Code takes steps to ensure that: elections are conducted in a transparent and open manner by providing rights for observers and public access to election materials and information; registered candidates have access to broadcast and print media; voting is accessible to persons with disabilities and persons who cannot vote in their designated polling station; and ballots are available in minority languages.”⁶

OSCE/ODIHR Opinion on the Draft Law on the Elimination of All Forms of Discrimination of Georgia (Opinion-Nr.: DV-GEO/241/2013 [AIC]), issued on 18 October 2013. This Opinion requested by the First Deputy Minister of Justice of Georgia in October 2013, was prepared with the aim of assessing the draft law against the background of its compatibility with relevant international human rights standards and OSCE commitments. The OSCE/ODIHR found that the draft law constituted a genuine attempt to address all forms of discrimination in a very comprehensive manner, covering both private and public spheres. The draft law included detailed provisions aiming to guarantee the independence of the equality body, to be established by the draft law, as well as a very well-articulated complaints-handling procedure. It was recommended to introduce derogatory preferential regimes such as temporary special measures/affirmative action measures and to incorporate a provision on the methods for the selection and appointment of the Inspector’s Deputies to ensure that procedures are open and consultative. It was proposed to broaden the personal, material and temporal scope of functional immunity for the Inspector, his/her Deputies and his/her staff. It was further recommended to criminalize serious cases of discrimination (such as serious forms of sexual harassment, racist discourse, dissemination of ideas based on racial superiority and expressions of racial hatred, and incitement to racial discrimination) and include in the draft law cross-references to the respective provisions of the Criminal Code. A number of recommendations were taken into consideration. The law was adopted on 2 May 2014.

OSCE/ODIHR Opinion the Draft Amendments to the Legal Framework on Preventing and Combatting Domestic Violence in Georgia (Opinion-Nr.: DV-GEO/241/2013 [AIC]), issued on 17 December 2013. This Opinion requested by the Chairperson of the Healthcare and Social Issues Committee of the Georgian Parliament on 31 October 2013⁷, was prepared with

⁶ See the full joint opinion at: [www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL\(2011\)094-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2011)094-e).

⁷ The legal framework covers the following laws of Georgia: the Law on the Elimination of Domestic Violence, Protection of and Support to its Victims; the Code on Administrative Offences; the Administrative Procedural Code; the Civil Code; the Criminal Code; the Criminal Procedures Code; the Imprisonment Code; the Law on Legal Status of Foreigners and Stateless Persons; the Law on Procedure of Execution of Non-custodial Penalties and Probation; the Law on Refugee and Humanitarian Status; the Law on Medical Activity; and the Law on Legal Aid.

the aim of assessing the draft law against the background of its compatibility with relevant international human rights standards and OSCE commitments. Georgia aimed to develop a comprehensive legal and institutional framework for preventing domestic violence, protecting victims from abuse, as well as bringing perpetrators to justice. It was recommended to introduce provisions on the liability of public officials for failing to investigate and prosecute acts of domestic violence, also specifying the type of liability, and relevant procedure. The Opinion proposed to introduce a procedure whereby a victim of domestic violence may seek civil remedies for damages against State authorities that have failed to take the necessary preventive or protective measures within the scope of their powers. The Opinion also recommended the revision of certain provisions governing criminal liability for committing acts of domestic violence and the procedures and criteria for issuing restrictive and protective orders. It was further recommended to introduce special procedures to prevent direct contact between the perpetrators and the victims at all stages of criminal investigations and in court proceedings. It was also recommended to amend the Criminal Procedure Code to ensure that criminal investigations and proceedings are not wholly dependent upon a complaint filed by the victim and that proceedings may continue even if he/she withdraws the complaint. The recommendations are still under consideration. In June 2014, Georgia signed the Council of Europe's 2011 Convention on preventing and combating violence against women and domestic violence; the ratification is still pending.

Joint OSCE/ODIHR – Council of Europe Opinion on the Criminal Procedure Code of Georgia (Opinion-Nr.: CRIM -GEO/257/2014 [RJU]), issued on 22 August 2014. This Opinion requested by the Chairman of the Georgian Parliament in April 2014, was prepared jointly with the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DG I) of the Council of Europe with the aim of assessing the draft law against the background of its compatibility with relevant international human rights standards and OSCE commitments. The OSCE/ODIHR and the Directorate found that the Criminal Procedure Code is generally compliant with international standards and relevant good practice, though some improvements are still needed to reduce the risk of excessive plea-bargaining and sentencing disparities and to enhance the rights of the accused in the pre-trial and trial phase, as well as with respect to trials *in absentia*. It was recommended to ensure that reasonable suspicion shall exist for both the offence committed and possible evasion of justice/commission of crimes and require courts to reason their decisions on preventive detention. The Opinion recommended to reconsider the role of juries in sentencing or to involve judges in the process of giving reasons for sentencing. It was further recommended to specify that accepting evidence from witnesses not cross-examined by the defence should be a measure of last resort if alternative means are inappropriate or impracticable, and that such evidence shall be corroborated by other evidence. The Opinion also recommended increasing victims' rights to information, assistance and compensation. These recommendations were reportedly forwarded to the working group under the auspices of the Ministry of Justice for consideration.

OSCE/ODIHR Assessment of the Legislative Procedure in Georgia (Legis Paper-Nr.: 256/2014 [YA]), issued in January 2015. This Assessment was conducted under the auspices of a Memorandum of Understanding signed between the Parliament of Georgia and OSCE/ODIHR on 24 February 2014. The OSCE/ODIHR initiated the process of conducting a comprehensive assessment of the legislative process in Georgia in March 2014. The assessment report was published in January 2015 and is a situational analysis of the formal

procedures and actual practices in Georgia that apply to the preparation, drafting, enactment, publication, communication and evaluation of legislation. The Assessment, based on an analysis of the legal framework and findings made during a country visit of the OSCE/ODIHR Assessment Team in spring 2014, discusses the salient aspects of the legislative drafting / law making process in the country and identifies the existing concerns and risks. It also identifies a number of goals to be achieved in order to enable the law-making system to function efficiently and result in high-quality legislative outcomes.

The following concerns have been identified: lack of proper understanding of the importance of good policy making for good law-making; stakeholder consultations, while envisaged in legislation, in practice seem to be generally of an ad-hoc nature, and coincide largely with the wide discretionary powers of the decision-makers in the Government and the Parliament; the regulatory impact assessment is not embedded in the law-making process as an institutional mechanism; lack of guidance on legislative drafting, and of specially trained legal drafting staff; inadequate resources available for the drafting process; the legislative system is overloaded with initiatives that are to be translated into a law; and problems of implementation of laws.

Tolerance and non-discrimination issues, including incidents of and responses to hate crime

OSCE participating States have made a number of commitments to promote tolerance and non-discrimination and specifically to combat hate crime, and the OSCE/ODIHR supports states in their implementation of those commitments. In this context, the OSCE/ODIHR produces an annual report on hate crime – *Incidents and Responses* – to highlight the prevalence of hate crimes and good practices that participating States and civil society have adopted to tackle them. It also helps participating States to design and draft legislation that effectively addresses hate crimes; provides training that builds the capacity of participating States' criminal justice systems and the law-enforcement officials, prosecutors and judges that staff them; raises awareness of hate crimes among governmental officials, civil society and international organizations; and supports the efforts of civil society to monitor and report hate crimes.

Information concerning Georgia in OSCE/ODIHR's most recent hate crime reporting cycle (2013)⁸ includes the following:

Information from the Georgian authorities: For the 2013 report, the National Point of Contact for Georgia did not submit a completed questionnaire or provide figures.

Information from civil society organizations and groups and intergovernmental organizations: Additionally, ODIHR sent requests for information on hate crime incidents in Georgia to inter-governmental organizations and to international and local civil society organizations and groups. On incidents based on bias against Muslims, the Georgian Young Lawyers' Association (GYLA) reported three assaults carried out by groups: a physical assault carried out against an Imam as he entered his mosque; a case of physical assault and threats against Muslim worshippers, during which a Koran was desecrated; and an incident of threats against an Imam and his wife, who was also physically assaulted.

⁸<http://hatecrime.osce.org/georgia>

On bias against Muslims, the United Nations High Commissioner for Refugees (UNHCR) reported three incidents of physical assault against worshippers in a mosque, and one case of threats and physical assault against an imam.

On bias against Christians and members of other religions, the European Association of Jehovah's Christian Witnesses / Jehovah's Witnesses – Georgia reported two physical assaults causing serious injuries, 19 other physical assaults, three incidents of threats, 20 incidents of damage to property and one incident of graffiti. The United Nations High Commissioner for Refugees (UNHCR) also reported 17 incidents against Jehovah's witnesses, including nine physical assaults and threats and six cases of damage to property.

On incidents based on bias against lesbian, gay, bisexual and transgender people, Identoba, the Women's Initiatives Supporting Group (WISG), ILGA-Europe and the Georgian Young Lawyers Association (GYLA) reported one attack carried out by a group during an event marking the International Day against Homophobia and Transphobia, in which the perpetrators spat and threw stones at attendees and supporters of the event, causing serious injuries to some participants. Identoba and WISG reported three separate physical assaults against one gay man. Identoba and GYLA reported one attack involving several physical assaults against three transgender women in a bar and a series of threats against three staff members of Identoba. WISG and GYLA reported a further two physical assaults, one of which caused serious injury, carried out by groups against a total of four gay men, as well as four incidents of threats. Identoba reported a further nine physical assaults, including five resulting in serious injuries and two carried out by groups. The victims included a gay man, three transgender women, one of whom was attacked by 25 people, and a gay man and transgender woman who both needed surgery as a result of their injuries.

Starting with its 2012 reporting cycle, ODIHR introduced a system of key observations for all countries, based on OSCE Ministerial Commitments related to hate crime recording and monitoring. For its 2013 reporting cycle, ODIHR made the following observation in relation to Georgia: Georgia has not reported on hate crimes separately from cases of hate speech and/or discrimination.

Roma and Sinti issues

NTR

Country-specific ODIHR monitoring, assessment, co-operation and assistance activities (other than elections)

Trial Monitoring. ODIHR conducted a trial monitoring project in Georgia, starting in February 2013 and concluding with the publication on 9 December 2014 of its Georgia Trial Monitoring Report.⁹ Upon invitation by the Georgian Government, ODIHR monitored the criminal trials in 14 cases involving former Government officials, covering a total of 327 hearings over 20 months. The monitoring assessed the compliance of the court proceedings in these cases with international fair trial standards and related OSCE commitments, but also with the national legal framework. The report provides recommendations to the Georgian judicial authorities and other stakeholders engaged in criminal justice reform in Georgia on how to improve the respect for selected fair trial rights, both in law and court practice. Problematic practices highlighted in the report include the use of pre-trial detention as a preventive measure, a lack of transparency on judicial appointments and transfers of judges,

⁹ Available at <http://www.osce.org/odihr/130676?download=true>

effective rules of evidence, protection of witnesses, timeliness of trials, reasoning of judicial decisions, the conduct of trials in absentia and issues related to the presumption of innocence.

Voter Registration. In partnership with the Central Election Commission of Georgia and IFES, ODIHR organized a roundtable on increasing the accuracy of voter lists, which took place on 22 November 2011 in Tbilisi. Participants at the roundtable discussed a number of issues that related to the accuracy of voter lists in Georgia, focusing on international standards and good practices as well as Georgian experiences in developing voter lists. The roundtable also provided a platform for discussion on linkages between population registration and voter registration which affect the accuracy of voter lists. The event brought together more than 60 participants from political parties, NGOs and international donor and development agencies, as well as local and international experts and representatives of Georgian media, and produced concrete recommendations on policy measures to improve the accuracy of voter lists in the country.

Other assessments and recommendations contained in ODIHR reports on thematic human issues

Gender Equality and Democratic Governance. In 2012-2014, ODIHR assisted the Parliament of Georgia in initiating the process of revising an adopting a code of ethics for Members of Parliament. In 2012, ODIHR published a *Background Study: Professional and Ethical Standards for Parliamentarians*¹⁰. The Background Study, translated into Georgian, seeks to support participating States when developing and implementing codes of ethics for Members of Parliament by identifying the main concerns and possible obstacles that need to be considered while reforming, developing and designing parliamentary standards of conduct, including, but not limited to, codes of conduct. In a series of events that brought together Members of Parliament, parliamentary staff and civil society representatives, ODIHR provided a platform to discuss challenges, share good practices¹¹. As to women's representation in the Parliament of Georgia, it stands at 11,3 per cent¹² which is significantly below the 1995 UN Beijing Platform for Action target of 30 per cent women in decision-making and the 40 per cent representation of women in parliaments and other elected assemblies recommended by the Council of Europe¹³.

¹⁰ Available at <http://www.osce.org/odihr/98924>

¹¹ The Final Report on *Conference: codes and Standards of Ethics for Parliamentarians* is available at <http://www.osce.org/odihr/90913?download=true>

¹² ODIHR assessment, based on data compiled by the Inter-Parliamentary Union, for lower houses of parliament. See <http://www.ipu.org/wmn-e/world.htm>, as of 1 January 2015.

¹³ The UN Economic and Social Council originally proposed the 30 per cent target to be achieved by 1995. In its 1995 Beijing Platform for Action, the United Nations recalled that few countries had achieved this goal and urged Member States to take actions to achieve the target as a means to build a 'critical mass' of women's representation in political and public life; see <http://www.un.org/womenwatch/daw/beijing/platform/decision.htm>. Also Council of Europe PACE Resolution 1489 (2006), Mechanisms to ensure women's participation in decision-making; see <http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=17414&lang=EN>.