



The Oslo Coalition on Freedom of Religion or Belief

Georgian Constitutional Values *versus* Political and Financial Interests:

The Constitutional Agreement's Departure from the Georgian Principle of Equality

by T. Jeremy Gunn in *cooperation with* Dag Nygaard

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An Oslo Coalition on Freedom of Religion or Belief Report

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The Oslo Coalition on Freedom of Religion or Belief
T. Jeremy Gunn
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Introduction

This report examines the text of the 2002 Constitutional Agreement between the State of Georgia and the Georgian Apostolic Autocephalous Church (signed 14 October 2002; ratified 22 October 2002) and some selected issues related to its implementation.¹ It will be shown below that the Constitutional Agreement of 2002, and subsequent actions designed to implement it, were in conflict with Georgia's own deep-rooted constitutional values as well as international human rights standards articulated in treaties ratified by Georgia.

Although this report focuses principally on the legal issues surrounding the 2002 Constitutional Agreement, it should be noted, however, that there are many factual controversies and disputes regarding funding of different religious institutions and alleged discriminatory actions by Georgian state and local officials, particularly with regard to the Muslim community in Georgia. While these issues are highly important as a measure of Georgia's willingness to comply with its own values as well as international norms, their fact-intensive nature makes them fall somewhat outside the focus of this report and the competency of the drafters. We nevertheless urge, in the strongest of terms, that Georgian officials and international observers take seriously and investigate seriously these ongoing controversies.

...

In 2006, Georgia presented itself to the United Nations as a candidate for the UN Human Rights Council. In support of its candidacy, the state of Georgia declared that "*Human rights issues have always represented one of the highest priorities for Georgia [and] the Government of Georgia has unequivocally expressed its commitment to improve [the] human rights situation in the country.*"² This official statement to the United Nations was entirely in accord with the value of tolerance expressed by Ilia Chavchavadze (1837-1907), the revered father of Georgian nationalism (who was later canonized by the Georgian Orthodox Church), who explicitly repudiated both ethnicity and religion as foundations of Georgian citizenship. (See Part II.A.3 below). The current Chairman of Georgia's State Agency for Religious Issues, Zaza Vashakmadze, similarly affirms that "tolerance is a tradition of Georgia" and that there is a "tradition of tolerance toward religious minorities."³

1 Hereafter, the Georgian Apostolic Autocephalous Church will be referred to as the Georgian Orthodox Church or as "the Church."

2 Aide Memoire of Voluntary Pledges and Commitments in Conformity with Resolution A/RES/60/251, Mission of Georgia to the United Nations (12 April 2006) (emphasis added) <http://www.un.org/ga/60/elect/hrc/georgia.pdf>

3 As stated in a meeting with the authors of this report in the State Agency for Religious Affairs' offices in Tbilisi on January 16, 2015.

The current Georgian Constitution of 1995 (as amended) invokes the legacy of Chavchavadze by employing the terms and principles of “equality,” “universally recognized rights,” and “human rights,” as well as the “historical-legal legacy” of the *Georgian Constitution of 1921*. (See Georgian Constitution preamble and articles 3, 7, 9, 14, 16, 19, 22, 23, 35, 38, 39, 47, 82, 83.) The Georgian parliament has ratified numerous human rights conventions that similarly promote the standards of equality, fairness, and non-discrimination. In 2001, Georgia led the way for the entire European community by becoming the first state to ratify Protocol 12 of the European Convention (entry into force in 2005), on the “fundamental principle according to which all persons are equal before the law and are entitled to the equal protection of the law.”⁴

But in exactly the same year – 2001 – that the parliament pledged to the international community that Georgia would adhere to the “fundamental principle [that] all persons are equal before the law,” several Georgian politicians, in collaboration with officials of the Georgian Orthodox Church, were preparing a draft law that would repudiate the longstanding Georgian values of tolerance and equality toward religious minorities and that would provide special privileges to one single religion to the exclusion of all other religions in the country. The proposed law that was being negotiated in 2001 became the Constitutional Agreement of 2002. Unlike the constitutions of 1921 and 1995, the Constitutional Agreement of 2002 never invokes the terms “equality,” “universally recognized rights,” or “human rights.” Rather, it invokes the language of “*joint interests*” of the Orthodox Church and the state (Art. 1.2); “*state support*” of the Orthodox Church (Art. II, V); and “*joint interests, programs, and property* of the State and Church – all to the exclusion of other religions (Arts. IV, V, IX).

The Constitutional Agreement, in rejecting the values of the Georgian Constitution of 1921 (articles 142-144) and the Constitution of 1995 (Article 9), creates numerous financial and legal privileges for to the Orthodox Church that are not granted to any other religion in the state. (Arts. I-XI) The Constitutional Agreement, unlike the Georgian Constitution of 1995 or the Georgian Constitution of 1921, identifies one person (the Catholicos Patriarch) as being outside and above the law by making him “inviolable.” (Art. 1.5) The Constitutional Agreement of 2002 thus marks a dramatic departure from longstanding Georgian constitutional values, and promotes instead financial privileges and other special interests of the richest and most influential non-state institution in Georgia. The constitutional language of the moral and ethical principles of justice, fairness, and equality were transformed into the language of interests, benefits, gifts, and privileges.

Thus, in 2001, at the same time that they ratified Protocol 12, Georgian politicians preemptively amended the Constitution in an attempt to immunize the pending agreement from a constitutional challenge. Rather than ensuring that the draft agreement would comply with Georgian constitutional values, the decision was made to emasculate the Constitution instead.

4 <http://conventions.coe.int/treaty/en/Treaties/Html/177.htm> For the Explanatory Report on Protocol 12, see <http://conventions.coe.int/Treaty/en/Reports/Html/177.htm>.

As will be shown below, the decision to amend the Constitution in 2001 and to adopt the Constitutional Agreement in 2002 in favor of the Georgian Orthodox Church, took place at exactly the same time that numerous violent attacks were being perpetrated against religious minorities in the country, typically with the active collaboration of state and church officials. The Georgian state largely failed to bring the perpetrators to justice – most of whom committed their violent acts in what they saw as support for Georgian Orthodoxy – prompting some of the more courageous victims to bring cases to the European Court of Human Rights. See *Begheluri and Others v. Georgia*, no. 28490/02, 7 October 2014 and *97 Members of the Gldani Congregation of Jehovah’s Witnesses and 4 Others v. Georgia*, no. 71156/01, 3 May 2007. The religious minorities were successful in convincing the European Court of Human Rights that Georgian state officials collaborated with violent religious extremists – acting in the name of Georgian orthodoxy – to suppress the rights of religious minorities. Thus, in the period 2001-2002, the Georgian political establishment, rather than protecting the victims of religious violence or convicting the perpetrators for their crimes as had been pledged to the European community, amended Georgian law to provide additional benefits and protections for the most powerful and influential religious institution in the country on whose behalf the violence was being committed.⁵ A submission to the UN Human Rights Council in 2014 (by an NGO on behalf of the Armenian Orthodox Church in Georgia) stated that the Constitutional Agreement of 2002 **“is the main source of discrimination against religious minorities in Georgia.”**⁶

As will be discussed below, in the years following the adoption of the Constitutional Agreement in 2002, many distinguished outside observers of Georgia also have seen increasing evidence of discrimination and even intolerance directed toward religious minorities in the state. Although not all developments after 2002 have been negative, the political and financial actions of the state have been directed more toward enhancing the economic and political power of the Georgian Orthodox Church than in promoting tolerance and non-discrimination for all Georgian citizens. Rather than coming to the aid of smaller religious communities that have been subject to violence and social, legal, and political discrimination, politicians have aligned themselves symbolically and practically with the powerful church.

5 The differences between the values officially proclaimed and the exclusivist preferences promoted through power politics and on occasion through street violence are ongoing and recurring themes in Georgian political life, and sometimes within the lives of individual politicians. As a political dissenter and human rights activist, Mikheil Saakashvili opposed the Constitutional Agreement of 2002. As the elected President of Georgia after 2003, he largely did not contest it. Under his presidency, however, religious minorities were aided significantly by a revision to the Civil Code (Art. 1509), a move that was opposed by the Georgian Orthodox Church. We contrast the formal statement by the Chairman of the State Agency for Religious Affairs in favor of tolerance with some of the apparent actions of that agency as noted in Part III below.

6 Cultural, Educational and Youth Centre “Hayartun,” Report on Georgia’s Compliance with the International Covenant on Civil and Political Rights (June 2014), ¶ 8 (emphasis added).http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/GEO/INT_CCPR_CSS_GEO_17551_E.pdf

The purpose of this report is to analyze the 2002 Constitutional Agreement between Georgia and the Georgian Orthodox Church in the context of Georgia's constitutional and domestic law as well as its international commitments regarding equality, human rights, and the freedom of religion. This report analyzes both the text of the Constitutional Agreement as well as selected issues regarding its implementation and other practices related to the state's treatment of the Orthodox Church.

Although the full analysis will be provided in greater depth below, the conclusion is that in several fundamental ways the state of Georgia impermissibly discriminates in favor of the Georgian Orthodox Church (and its affiliated institutions) and against other religious organizations in the state – including other Orthodox churches. Thus the Constitutional Agreement and certain actions associated with its implementation reveal an unfortunate departure not only from the values of the Georgian Constitutions of 1921 and 1995, but also from Georgia's traditions of tolerance and from Georgia's pioneering role in expanding new international standards on equality. Rather than jointly promoting Georgian values of tolerance, equality, justice, and human rights, the Georgian Orthodox Church and the State of Georgia are increasingly using each other to promote their “joint interests” of political power and financial gain.⁷

Georgia's declaration to the United Nations in 2006 about its commitment to human rights was a correct statement of Georgian foundational values as conveyed in its Constitutions of 1921 and 1995, and as affirmed by Georgia's adoption of international human rights conventions. It was not, however, a correct statement of Georgia's actual practices during the past two decades with regard to its treatment of religious and ethnic minorities.

7 The Georgian Orthodox Church has even given expensive personal gifts to Prime Ministers (an expensive wristwatch and a horse), who in turn promote significant state financial subsidies and benefits for the Church.

The Oslo Coalition on Freedom of Religion or Belief

This report was prepared under the auspices of the Oslo Coalition on Freedom of Religion or Belief, an international program based at the Norwegian Center for Human Rights, Faculty of Law, University of Oslo. It relies on an international network of representatives from religious and other life-stance communities, researchers, academic institutes, and concerned NGOs.

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The Oslo Coalition has been engaged in activities promoting Freedom of Religion or Belief and equality in Georgia since 2004. Both international legal standards and the “Golden Rule” as ethical norm have been discussed in roundtable meetings with participants from the Georgian Orthodox Church as well as minority churches and religions in the country. This is the reason why the concluding chapter of the report also comprises a brief elaboration on the principle of “The Golden Rule.”

The authors of this report extend their appreciation to officials associated with the State Agency for Religious Affairs for their courtesy in a meeting held on January 16, 2015, as well as for responding to some written questions that are included in Appendices I and II of this report. We also would like to thank many citizens of Georgia, both government officials and private, who expressed to us both their concerns about the religious climate in Georgia as well as their deep attachment to their homeland and fellow citizens. They embodied the spirit of Ilia Chavchavadze – St. Ilia the Righteous – in their attitudes and values.

I. The Historical and Cultural Context of the Constitutional Agreement of 2002

Introduction

Georgia is a country rich in history, culture, traditions, religion, and ethnic diversity. The extraordinary and ancient Georgian language is the most prominent of the South Caucasian (Kartvelian) languages. The language's origins have resisted scholarly clarification, though it appears that a version of it was spoken in the region of Georgia early in the first millennium B.C., or very roughly contemporaneously with the period associated with King David in Jerusalem and the time of the (perhaps apocryphal) Greco-Trojan war. The unique, curvilinear Georgian script emerged in the fifth century in conjunction with Georgia's fourth century conversion to Christianity (see below).

The term "Georgian" (or Kartvel-i), depending on the context, could refer to a citizen of the modern state of Georgia, someone of Georgian ethnicity, the dominant language of the country, the Orthodox Church, or Sakartvelo, the land where the Georgians live. Thus, depending the context on how the term may be used (or abused), some "Georgians" do not live in the land of the Georgians (for example Georgians who live abroad), while some citizens of Georgia, who were born in Georgia and who speak Georgian are not "Georgians" because they are (for example) Muslims of Azeri ethnicity. During the brief presidency of Zviad Gamsakhurdia, overlapping with the breakup of the Soviet Union, the new expression "Georgia for Georgians" could be understood by some as simply calling for the political independence of the Georgian Republic from the Soviet Union, and by others as saying that only those having Georgian ethnicity who are members of the Orthodox Church are "true" Georgians and that others who live within the same state do not really belong. Thus for some, the term "Georgia for Georgians" may emotionally and fondly evoke the heritage of their ancestors, while for others it could be understood to be a divisive expression telling them they do not really belong.⁸ Regardless of how it was interpreted, large numbers of ethnic minorities – particularly Russians – left Georgia after 1991.

The Georgian Orthodox Church has played a central role in Georgian history. Approximately 83% of Georgians profess to be members of the Georgian Orthodox Church. Although exact figures are unknown, it appears that the percentage of members who actually attend mass is considerably lower. Unlike most countries with a low church attendance, it is the young people of Georgia rather than their elders who are relatively more religious and more committed to the church. Georgia, along with Armenia, and Azerbaijan, presents another general exception to the world in the contrast between having low religious attendance but retaining a high degree of popular trust in religious institutions.⁹ For more than a decade, public opinion polls in Georgia repeatedly have ranked Patriarch Ilia II as the "most

8 This phenomenon of using an ambiguous term that seems unifying to some and divisive to others exists throughout the world. "Japaneseness" (Nihonjiron) and "Hinduness" (Hindutvah) are particularly provocative examples of such terms, but similar examples are pervasive. "French" may be used to refer to the citizens of France by some, but it also may be used by others to suggest that Muslim citizens of the country are not really "French" and do not belong.

9 Robia Charles, "Religiosity and Trust in Religious Institutions: Tales from the South Caucasus (Armenia, Azerbaijan, and Georgia)" *Politics and Religion* 3 (2010): 228-261.

trusted” man in the country, frequently at a higher than 95% favorable rating. A 2015 poll by the National Democratic Institute (NDI), however, which in prior years had confirmed the high regard for the Patriarch, identified a significant decline in his approval ranking to 87%. Although this represents a drop of almost 10% in only 13 months (confirmed by an intervening poll), it nevertheless is an exceptionally high ranking for any public figure.¹⁰

Georgia was much more ethnically diverse in 1990, prior to Gamsakhurdia’s campaign of “Georgia for Georgians,” than it is today. The single most significant change has been the emigration of a large percentage of Russians from the country. Figures from the 2002 census place Georgian ethnicity at 83.3 percent (approximately the same percentage as the Georgian Orthodox Church), with Azeris constituting 6.5%, Armenians 5.7%, Russians 1.5%, and others at 2.5%.¹¹ With regard to the religious and ethnic minorities living in Georgia, the *National Integration and Tolerance Assessment Survey Report 2007-2008* concluded that:

Since independence, Georgia has faced deep crisis, and is now going through economic and social recomposition. As a result and despite recent progress in macroeconomic indicators, people’s access to rights, services and life opportunities remains generally impeded in many ways. In this context, and after the nationalist episode of the early 1990s which excluded national minorities from the process of establishing the new state, national minorities face specific structural handicaps and are particularly vulnerable to impoverishment, isolation and under-education.¹² Although reports have been prepared and commissions have been established to respond to the underlying conflicts, the trend since 1990 has not been positive for good inter-ethnic relations.

¹⁰ The results of the 2015 NDI poll were released on May 11, 2015. https://www.ndi.org/files/NDI%20Georgia_April%202015%20Poll_Public%20Political_ENG.pdf (English); https://www.ndi.org/files/NDI%20Georgia_April_2015%20Poll_Public%20Political_GEO.pdf (Georgian). NDI’s August 2014 poll gave him a 91% favorability rating, which was a drop of 5 percentage points from their April 2014 poll that rated him at 96% favorable. <http://www.civil.ge/eng/article.php?id=27616> There is insufficient statistical data to determine whether these sharply dropping poll numbers constitute a significant trend.

¹¹ Georgia conducted a census at the end of 2014, but the figures regarding ethnic groups were not available at the time this report was prepared. Preliminary reports from the 2014 census suggest a continuing decline in the population, the continuation of emigration, and a striking gender majority of females.

¹² National Integration and Tolerance Assessment Survey Report 2007-2008, p. 11 http://www.una.ge/pdfs/publications/survey_report_eng.pdf.

A. Historical Background Prior to 1977

The Georgian Autocephalous Orthodox Church is the oldest and most influential institution in Georgia. It dates its establishment to approximately the year 330, when a woman now known as St. Nino helped convert the court of King Mirian III to Christianity. This makes Georgia one of the first two Christian kingdoms in the world (the other being Armenia). Mirian III, unlike his contemporary Constantine the Great, made Christianity the religion of his realm. (Christianity did not become the official religion of Byzantium until the reign of Theodosius I at the end of the fourth century.) The Georgian Church originally fell under the jurisdiction of the Patriarch of Antioch, which was then the center of Christianity in the east.¹³ While the Georgian Church became autocephalous (independent) after the eleventh century, it came under increasing political pressure from Russia and the Russian Orthodox Church after the fall of Constantinople to the Ottomans in 1453. In 1811, following the annexation of most of Georgia into Tsarist Russia,¹⁴ the Russian Orthodox Church, with the support of the Russian state, abolished Georgian autocephaly and the Church became a mere exarchate of the Russian Church.¹⁵ The return of the autocephaly of the Georgian Church was recognized by the Russian Orthodox Church in 1943 and has been almost universally recognized since 1990.

Following King Mirian III's conversion to Christianity, Georgia has largely been under foreign control with only brief periods of independence. During the fifth century it fell under Persian (Sassanian) domination and after the rise of Islam in the seventh century, much of its history was under Muslim rule. There were brief periods of independence, now considered as Georgian "golden ages," from the eleventh to early thirteenth centuries. This period ended brutally with the Mongol invasions of the early thirteenth century, the same invasion that decimated Baghdad along with many other cities. The following years saw Georgia ruled by different Muslim empires (Khanides, Timirids, Ottomans, and Safavids). The final expulsion of Muslim rule in the eighteenth century did not result in long-lasting independence, but was a mere respite before the Russian Empire began its encroachments, as described immediately above.

The movement of modern Georgian nationalism and independence from Russia is generally traced to young Georgian men studying in St. Petersburg in the second half of the nineteenth century. The most prominent and influential among them was Ilia Chavchavadze (1837-1907), the scion of an aristocratic Georgian family. He and others were inspired particularly by contemporaneous German and Italian nationalist movements. Chavchavadze returned to Georgia and promoted the Georgian language, newspapers, social clubs, and education. He is today widely acknowledged as "the Father of the nation" and the "uncrowned King of Georgia." Although a member of the Orthodox Church and Georgian by ethnicity, the nationalism he promoted was neither religious nor ethnic, but a civic nationalism formed around the Georgian language. Although he was assassinated in 1907, he is credited with launching the short-lived Georgian independence from 1918-1921, and he was the inspirational figure used to symbolize Georgian strivings for independence from the Soviet

13 Antioch continued to be the home to a "multitude" of Georgians up through the thirteenth century. <http://www.doaks.org/research/byzantine/fellows/2004-2005/antioch-96920131268-byzantine-provincial-art-from-georgia-and-greek-illuminated-manuscripts>

14 Portions of Georgia were subsumed into the Russian empire as follows: Kartli and Kakheti (1801), Mingrelia (1803), Imeretia (1804), and Abkhazia (1810). Wright, "The Geopolitics of Georgia," 135.

15 This action was in apparent violation of the 8th canon of the Third Ecumenical Council at Ephesus in 431.

Union in the late 1980s. Recognizing his importance, the Georgian Orthodox Church canonized him as “Saint Ilia the Righteous” in 1987. (For his positive attitudes toward the rights of religious minorities in Georgia, see Part II.A.3 below.)

Following the Bolshevik Revolution in Russia in 1917, Georgia declared its independence in 1918. In 1921, Georgia promulgated its first constitution, which was perhaps the most progressive and egalitarian constitution of any country in the world at the time.

Unfortunately, Georgia’s independence did not last long. Within weeks after the Constitution was promulgated, the Red Army captured Georgia and placed it under the rule of the Union of Soviet Socialist Republics. In 1936, occupied Georgia became one of the 15 Republics of the Soviet Union, and the Georgian Church continued as an exarchate of the Russian Orthodox Church.¹⁶ During Soviet times in Georgia (1921 to 1990/1991), the Soviet state seized many of the once-extensive property holdings of the Georgian Church, including farmlands, orchards, monasteries, churches, and commercial enterprises. Many of the complicated religious issues in Georgia today are consequences of Soviet policies and the Church’s understandable wish to have its seized properties returned.¹⁷

B. 1977-1992: Movement toward Independence and Gamsakhurdia

In late 1977, one year before John Paul II of Poland was elected Pope, Ilia II became the new Catholicos-Patriarch of the Georgian Orthodox Church with a pledge to reform and rejuvenate the Church. Immediately thereafter, a series of events launched the movement of Georgian independence from the Soviet Union. In April 1978, the (Moscow-subservient) Supreme Soviet of Georgia succumbed to pressure from the Kremlin to drop Georgian as the sole official language of the Republic. Demonstrations against this move occurred throughout the country, leading to a massive demonstration favoring preservation of the official status of the language by as many as 20,000 people in Tbilisi on April 14. The First Secretary of the Georgian Communist Party, Eduard Shevardnadze, convinced officials in Moscow to withdraw this plan, which was officially abandoned by Georgia’s Supreme Soviet immediately thereafter. April 14 in Georgia is now celebrated as the “Day of the Georgian Language.” “As never before, the Georgian Orthodox Church became a potent symbol in the resistance of the Georgians to the USSR. Along with the Georgian language, the Church was understood to be a reminder of Georgia’s distinctiveness and as a symbol of resisting the wrongs inflicted by Moscow.”¹⁸

16 The Russian Church acknowledged the autocephaly of the Georgian Orthodox Church in 1943.

17 While this wish is fully comprehensible, there are many other religious and non-religious entities in Georgia that similarly wish to have their seized properties returned, or to receive appropriate compensation. Unfortunately for them, they do not have the same political influence as does the Georgian Orthodox Church.

18 Stephen H. Rapp, Jr., “Georgian Christianity,” in *The Blackwell Companion to Eastern Christianity*, edited by Kenneth Parry (Malden, MA: Blackwell Publishing, 2007), 152.

In 1979, Ilia became President of the World Council of Churches, thereby helping to draw international attention to the religious situation in Georgia. In the 1980s, underground movements calling for independence for Georgia grew in strength, paralleling the rise of the Solidarity trade union in Poland. Although playing a less prominent role than that of the Catholic Church in Poland, the Georgian Orthodox Church came to be regarded as a symbol of opposition to the Soviet Union. The most prominent dissident in Georgia at the time was Zviad Gamsakhurdia, the leader of the Georgian Helsinki Group and the son of one of Georgia's most-revered authors. The Church's canonization of Georgian nationalist Ilia Chavchavadze – "Saint Ilia the Righteous" – in 1987, as was mentioned above, was part of this increasing pressure for independence. The most famous Georgian in the Soviet Union in the 1980s was Eduard Shevardnadze, who served as Soviet Foreign Minister from 1985 to 1990. He was seen at the time as a relative "liberal," "moderate," and "reformer" within the cabinet of Mikhail Gorbachev. In 1988, workers' strikes against the Soviet Union occurred throughout Georgia, concurrent with the "Singing Revolution" in Estonia and the movements towards independence in the Soviet Baltic Republics of Latvia and Lithuania.

The year 1989 was perhaps the most significant in the collapse of Soviet Communism. During that year, all of the eastern European allies of the Soviet Union overthrew their communist governments. One of the first prominent events of that dramatic year began in early April 1989, when large, peaceful, "sit-in" demonstration took place in front of the House of Government (today's Parliament building) in Tbilisi for several days. Patriarch Ilia spoke to the assembled crowd. Shortly after midnight on April 9, Soviet troops brutally suppressed the peaceful demonstration, killing 20 people and injuring hundreds of others.¹⁹ That event became known in Georgia as the Tbilisi massacre and is now commemorated annually as the "Day of National Unity." Rather than halting the movement for independence, the Soviet Union's brutal response galvanized public support in Georgia for independence. Two years to the day later, on April 9, 1991, the Supreme Council of the Georgian Soviet Socialist Republic officially repudiated Soviet occupation of their country and declared Georgian independence from the Soviet Union.

Immediately after independence was declared, the country's most famous dissident, Zviad Gamsakhurdia, who had recently risen to become the Chairman of the Supreme Council, was overwhelmingly elected President. In what has now become a recurring pattern in Georgian politics, Gamsakhurdia began his presidency with overwhelming popular support and an impressive electoral victory based on a platform of reform and ending corruption. But soon afterwards, in this repeating Georgian pattern, Gamsakhurdia adopted tactics that his opponents denounced as authoritarian and corrupt. To help legitimize his rule, he also began the pattern, also adopted by all of his successors, of associating himself prominently and symbolically with the Georgian Orthodox Church.

Gamsakhurdia's Georgia aligned itself closely with the Georgian Orthodox Church. The Church was crucial to Gamsakhurdia's vision of Georgian unity. He made prominent public appearances with Patriarch Ilia, and the state government specially endorsed the proselytizing efforts of the Georgian Church. In addition, the mantra 'Georgia for Georgians' was often heard.

¹⁹ The Tiananmen Square protests in Beijing, China, began one week later.

Gamsaxurdia reasoned that a strong Georgia depended first and foremost upon ethnic unity among the Georgian majority; the non-Georgian populations of the republic were termed ‘guests’ and, in Gamsaxurdia’s mind, should not expect equal rights with the majority.²⁰ This first post-Soviet presidency was troubled from the beginning, as Gamsakhurdia was forced to respond simultaneously to internal ethnic divisions, conflict in Ossetia, and mounting accusations of his authoritarianism and corruption. Toward the end of 1991 and the beginning of 1992, a coup overthrew the government, sending the formerly popular national hero into an ignoble exile in Chechnya.

C. 1992-2003: Shevardnadze and the Constitutional Agreement of 2002

By March 1992, Eduard Shevardnadze, the former First Secretary of the Communist Party in Georgia (1972-1985) and former Soviet Foreign Minister (1985-1991), returned to Georgia and effectively became the head of state. As a leading political figure in the Soviet Union, Shevardnadze had been, like most of his fellow Communists, a devout atheist. And yet when the political tide turned, he, like several other atheists who became heads of the newly independent states of the former Soviet Union, underwent a highly publicized religious “conversion” and became a member of the Georgian Orthodox Church.²¹ When Shevardnadze first returned to Georgia in 1992, he, like Gamsakhurdia, began with a reputation as a reformer who would bring an end to corruption. While Chairman of Parliament (1992-1995), which effectively made him head of state, Georgia drafted and adopted the Constitution of 1995. The new Constitution was remarkable for its heightened standards of human rights – indeed it was one of the strongest in the world – with its support for equality and tolerance for the diverse ethnic, religious, and racial peoples of the country.²² Shevardnadze served as President under the new Constitution from 1995 until his forced resignation in 2003.

Unfortunately, internal strife in Georgia did not end following the coup that overthrew Gamsakhurdia. There was an attempted assassination of Shevardnadze in August of 1995, as he was on his way to the ceremonial signing of the new Constitution. Shevardnadze initially had a great deal of popular support and in November of 1995, he received an overwhelming

²⁰ Rapp Jr., “Georgian Christianity,” 153.

²¹ Among other Soviet atheists who conveniently found religion after 1990, we may include, Vladimir Putin (Russia), Islam Karimov (Uzbekistan), Heydar Aliyev (Azerbaijan), Alexander Lukashenko (Belarus), and Leonid Kuchma (Ukraine). Perhaps the only thing more dispiriting than these politically profitable religious conversions is the subsequent warm embrace that they received from religious authorities. For a discussion of religion in the territories of the formerly atheist Soviet Union see Mark D. Steinberg and Catherine Wanner, eds. *Religion, Morality, and Community in Post-Soviet Societies* (Washington, DC: Woodrow Wilson Center Press, 2008).

²² The drafting of what became the Georgian Constitution of 1995 took place between 1993 and 1995. The principal Georgian political force behind the new constitution was President Shevardnadze. The Venice Commission of the Council of Europe, with its expertise on constitutional law in Europe, reviewed drafts and made comments supporting the direction in which the draft constitution moved. The principal controversy in Georgia was not over its stated principles on human rights and equality, but whether Georgia should adopt a presidential system (as in the United States and France) or a Parliamentary system (as in the majority of European states). Shevardnadze’s advocacy of a presidential system did not undercut the core human rights values of the 1995 Constitution. See Stephen F. Jones, *Georgia: a Political History since Independence* (London: I.B.Tauris, 2013), 101.

percentage of the vote for President, a feat that was repeated four years later in 2000. Nevertheless, Shevardnadze's presidency, like that of Gamsakhurdia before him, was marred by accusations that his election was tainted by significant voter fraud and that his presidency was authoritarian. Ethnic strife, corruption, and separatist movements plagued his presidency. He also was the victim of assassination attempts.

Between 1999 and 2002, Georgia witnessed dozens of brutal assaults against religious minorities in the country, with the most virulent attacks being directed at the small Jehovah's Witness community.²³ The principal instigator of the attacks was a defrocked Georgian Orthodox Church priest, father Basil Mkalavishvili. Although both the government and the Orthodox Church formally denounced the attacks, little was actually done to prevent them. Indeed, as later adjudged by the European Court of Human Rights, government officials (national and local), who had been warned in advance of many of the impending attacks, not only refused to provide protection for the intended victims, but also in many cases actively supported the violence. The shock troops for the attacks were Georgians who claimed to be promoting the values of the Georgian Orthodox Church against its enemies. When some of the perpetrators were arrested, courts typically refused to convict. Indeed, the failure to convict the perpetrators led many of the victims to seek relief from the European Court of Human Rights, which in 2007 and 2014 ultimately found that the victims during this period had indeed been subjected to "torture [and] inhumane or degrading treatment or punishment" in violation of the anti-torture article of the European Convention of Human Rights (article 3). Rather than aiding the victims or stopping the perpetrators, Georgian state officials shielded the criminals and ignored the victims. It was not until 2004 that father Basil was finally arrested. Ultimately he was not convicted for his repeated attacks on religious minorities, but for violently resisting arrest. As adjudged by the European Court, the problem was not one of simple religious persecution, but actual torture of religious minorities conducted in the name of Georgian Orthodoxy.

In mid-2001, the European Commission Against Racism and Intolerance (ECRI) prepared a report on the then-current situation in Georgia. (The report was published in June 2002). Consistent with what would later be acknowledged by the European Court of Human Rights, ECRI describes the situation in Georgia for religious minorities in stark and uncompromising terms. (ECRI First Report on Georgia, 2002, ¶¶ 49-52) ECRI observed that "violent attacks and harassment of members of minority religions are mostly carried out by extremist elements of the Georgian Orthodox community." (¶ 50) What was doubly troubling for ECRI was the absence of an adequate response from legal authorities and "widespread societal tolerance apparently afforded to these extremist elements." (¶ 50) The European Court of Human Rights subsequently affirmed these observations made by ECRI. In its later 2006 Report, the European Commission Against Racism and Intolerance noted that although the attacks against religious minorities had decreased somewhat, serious problems continued. (ECRI Second Report on Georgia, 2006, ¶¶ 49-50)²⁴

23 For decisions of the European Court of Human Rights that pertained to these brutal attacks, see *Begheluri and Others v. Georgia*, no. 28490/02, 7 October 2014 and *97 Members of the Gldani Congregation Of Jehovah's Witnesses and 4 Others v. Georgia*, no. 71156/01, 3 May 2007. See also Part III.C below.

24 As of the time of this writing, ECRI has delivered its third report to the government of Georgia for comment, but it has not yet been made public. The report is expected to be made public in early 2016.

In 2001, as he was attempting to consolidate his fractious rule, President Shevardnadze did not pressure the Georgian Orthodox Church to use its moral influence to help stop the brutal persecution being conducted in its name, but instead attempted to develop stronger political and symbolic ties with the Georgian Orthodox Church. Just as the Church sought special benefits for itself, so Shevardnadze hoped to obtain stronger support from the Church. It was in this context that negotiations took place for what would become the Constitutional Agreement of 2002 that would grant additional power and influence to the Church. Thus, at exactly the time that ECRI was expressing its deep concern about the brutal attacks by extremists within the Orthodox Church, the absence of police support for the victims during a time of societal tolerance for these extremist acts, the focus of political and legal discussion in Georgia about religion was not responsive to ECRI's published concerns or directed toward support for the victims of violence, but on providing additional constitutional, legal, and financial support for the Georgian Orthodox Church.

Negotiations for what would become the Constitutional Agreement of 2002 between the Georgian state and the Georgian Orthodox Church took place during 2001. Recognizing that the anticipated privileges for the Orthodox Church would violate the express terms of the Constitution of 1995, the Constitution was amended in 2001 in order to prevent a constitutional challenge once the agreement was adopted. The focus of political interest was not on protecting religious people who were victims of torture and degrading treatment as later found by the European Court of Human Rights, but on supporting the richest and most powerful non-state institution in Georgia, the Orthodox Church (many of whose members were contributing to the violence). In October of 2002, President Shevardnadze and Catholicos Patriarch Ilia II of the Georgian Apostolic Autocephalous Orthodox Church signed a "Constitutional Agreement" to promote their mutual interests. The Parliament and the Orthodox Synod duly ratified this Constitutional Agreement within a week.

The Constitutional Agreement, born out of the mutual interests of a weakened politician and a Church seeking financial and political benefits for itself, consists of 12 articles that identify certain rights, privileges, and obligations on the state and the Georgian Orthodox Church. (These 12 articles will be analyzed in Part III.B below.) During the time that the Constitutional Agreement was being discussed in 2001 and 2002, there were discussions with other religious bodies – most notably the Roman Catholic Church – about similar arrangements being made with them. Many of the smaller religions in Georgia agreed to an earlier draft of the constitutional agreement with the understanding that they too would in the future be eligible for similar treatment. (Several now assert that they were misled in the process and that they never agreed to the document as finally adopted.) During the subsequent decade Georgia has not entered into any similar agreements with any of the other religious organizations that operate in Georgia. President Shevardnadze himself approved a draft agreement with the Roman Catholic Church, but dropped it in the face of harsh opposition by the Georgian Orthodox Church. (The Papal nuncio from the Vatican had arrived in Georgia to sign the accord before he learned that Shevardnadze had decided not to go forward.) International observers, including ECRI, have criticized the Constitutional Agreement for its granting of unfair advantages towards the Orthodox Church and implicit discrimination against religious minorities. (ECRI Second Report on Georgia, 2006, ¶¶ 53, 55-56)

Although Shevardnadze had hoped to secure additional political support for his faltering regime through the adoption of the Constitutional Agreement of 2002, it was not to be the case. The Rose Revolution the following year (2003) led to his ouster. A major legacy of Shevardnadze's final, failed year in office was, however, the Constitutional Agreement of 2002.

D. 2003-2012/2013: President Saakashvili

In 2003, the popular “Rose Revolution” forced the resignation of Shevardnadze and paved the way for the eventual election of Mikheil Saakashvili as the new president and the coming into parliamentary power of his party, the United National Movement. Following the pattern set by Gamsakhurdia and Shevardnadze before him, Saakashvili won the election for president (2004) by a large margin with promises of reform, transparency, liberalization of the laws, and promotion of human rights. Also like his two predecessors, Saakashvili initially promoted some important reforms, but over time was increasingly accused by his opponents of using his power to suppress dissent and to ignore the opposition. During his final years in office, Saakashvili was subjected to the same charges of corruption and authoritarianism as faced by his predecessors. A striking physical symbol of the Saakashvili presidency is the vast Avlabari Palace constructed on a hill overlooking Tbilisi, which was planned to serve as his residence and as presidential offices.²⁵

Prior to his presidency, Saakashvili had been a vocal opponent of the Constitutional Agreement of 2002. Immediately after his election, however, he made no effort to repeal it.²⁶ Rather than distancing himself from the Georgian Orthodox Church’s influence over the rights of religious minorities and its increasing influence over Georgian politics, Saakashvili quickly embraced the Church in highly visible and symbolic acts associated with his investiture both in 2004 and following his reelection in 2008. In 2004, he traveled to the holy Gelati monastery complex in Kutaisi to receive a blessing from the Ilia II at the tomb of the revered King David IV (the Builder).

Some modest efforts were taken during the Saakashvili presidency to respond to ethnic issues. In August 2005, Georgia created the Civil Integration and Tolerance Council with the goal of promoting ethnic tolerance and seeking to better integrate minorities into the cultural and political life of the country. Similarly, in 2009, the National Concept for Tolerance and Civic Integration and its Action Plan were approved. However admirable the motivations for these projects and however committed were those involved, they have thus far had little practical effect.

The most dramatic and disturbing events in Georgia during the presidency of Saakashvili occurred in 2008 in the Russo-Georgian war that took place in Ossetia and in other parts of Georgia. There are strikingly different opinions regarding who should bear principal responsibility for this tragic human catastrophe, with some blaming an aggressive Russian state led by Vladimir Putin while others accuse Saakashvili of being provocative and incompetent. While conflicts with outside states typically rally religion to the cause of nationalism, the Georgian Orthodox Church curiously did not insert itself into the fray and afterwards actually criticized Saakashvili, arguably the first time since independence that the Church publicly criticized a head of state on an important issue.²⁷ In the interesting world of Georgian politics, this led many to believe that the Georgian Orthodox Church was, in contradiction with longstanding suspicion of Russian imperialist intentions, supporting Russian interests over those of Georgia.

25 When the new political party Georgian Dream came to power in 2012 and 2013, it initially pledged to convert the Avlabari Palace into a modern university. The newly elected president announced that he would move to a more modest villa in downtown Georgia once it had been restored. By the beginning of 2015, however, President Margvelashvili changed his mind and decided to remain in the Avlabari Palace built by his opponent, Saakashvili.

26 He was able to secure an important amendment to the Civil Code in 2010, which will be discussed below.

27 http://www.rferl.org/content/Georgian_Orthodox_Church_Patriarch_Criticizes_Saakashvili_For_War_/1853790.html

Although Saakashvili continued to seek approval from the Church and pursued symbolic alliances with it during the remainder of his presidency, he did undertake one very important action, against the expressed wishes of the Georgian Orthodox Church, to promote some legal rights for religious minorities in Georgia. Prior to 2011, Article 1509 of the Civil Code provided religious groups only with the opportunity to register as legal entities under private law. This perpetuated a vast discrepancy between the rights of the Orthodox Church, which was a legal entity under public law and entitled to a wide array of state benefits. In 2011, the Civil Code was amended by Saakashvili's party to allow virtually all religious organizations to register as legal entities under public law, thus granting them some tax and other benefits that the Constitutional Agreement had granted only to the Orthodox Church. While the 2011 amendments to Civil Code article 1509 certainly did not eliminate all differences between the Orthodox Church and others, it was an important and positive step toward providing religious minorities with some official credibility that they had not previously experienced. Unfortunately, the Orthodox Church strongly denounced this change, and a majority of the Georgian public agreed with their Church.²⁸ Interestingly, however, after denouncing the amendment, the Georgian Orthodox Church made a significant conciliatory statement where it acknowledged certain rights of other religious entities to equality. (For the statement, see Part II.A.2 below)

The most important constitutional change in Georgia between 2003 and 2013, which does not immediately pertain to the subject of this report, was the adoption of a constitutional amendment in 2010 that shifted the locus of executive power from the office of President to that of the Prime Minister. The shift in power became effective following the presidential elections of 2013.

E. After 2012: The “Georgian Dream” Party and the Constitutional Agreement

Following the recurring Georgian pattern, a new voice of opposition arose during the Saakashvili administration, accusing him of corruption and authoritarianism. This time the leader of the opposition was Bidzina Ivanishvili, a self-made billionaire who amassed his fortune as a young man in post-Soviet Russia while in close contact with Russian oligarchs.²⁹ Upon returning to Georgia, he built himself a massive home and business center overlooking Tbilisi that rivals the Presidential palace, and began a series of highly publicized philanthropic endeavors. He created a new political party in April 2012 called “Georgian Dream,” whose name came from a popular rap song written and performed by his then-teenage son. Six months later, in the 2012 parliamentary elections, the new Georgian Dream party and allied coalition parties swept Saakashvili's UNM from power. Ivanishvili became the new Prime Minister, and the assumption was that he would become the principal political power in Georgia once the constitutional amendment of 2010 became effective and shifted power to the parliament and the Prime Minister. Although Ivanishvili originally promised that he would effectively serve only as interim Prime Minister until the constitutional amendment took effect, many were understandably skeptical. With the

28 Barbare Janelidze, “Secularization and Desecularization in Georgia: State and Church under the Saakashvili Government (2003-2012),” in *Religion, Nation and Democracy in the South Caucasus*, edited by Alexander Agadjanian, Ansgar Jödicke and Evert van der Zweerde (Abingdon, UK: Routledge, 2015), 72-75.

29 *Forbes* estimates Ivanishvili's fortune in 2015 to be 5.2 billion dollars. <http://www.forbes.com/profile/bidzina-ivanishvili/>

election of his political rival to the post of Prime Minister, President Saakashvili largely withdrew from active involvement in Georgian politics even though he officially continued as President until 2013.

The presidential elections of October 2013 brought Giorgi Margvelashvili to power. Although originally supported in his run for president by prime minister Ivanishvili and the Georgian Dream political coalition, relations between the two men deteriorated after Margvelashvili's presidential victory. A symbol of the growing deterioration in their relationship came following the new president's decision to remain in the Avlabari Presidential Palace built by Saakashvili rather than convert it into a university as had been planned. The billionaire Ivanishvili (beginning when he was prime minister) has repeatedly declared it entirely inappropriate for the president of such a poor country to live in such a splendid residence.

Like Gamsakhurdia before him, the newly elected president came from academia and was a political dissident who gained prominence by accusing his predecessor of being authoritarian and corrupt. He also won the presidential elections by a commanding 62% of the vote. With the election of his one-time ally Margvelashvili to the presidency, Ivanishvili, true to his word, resigned as prime minister shortly after the 2013 presidential elections. His political influence, however, has not ended. He arranged for his protégé, the young Irakli Garibashvili (born in 1982), to succeed him as prime minister. It is widely believed that "private citizen billionaire" Ivanishvili – for better or for worse – is the real power behind the prime minister and the parliament. From the perspective of his critics, Ivanishvili is believed to hold the real power but is spared actual responsibility for governing. And, true to the pattern, there are already persistent allegations against him regarding how he made his fortune and how he has used it.³⁰ There are also reports that he is now promoting a Russian-style hard line approach against NGOs. One of the leading accusers of Ivanishvili's corruption, of his ties to Russian oligarchs, and his promotion of Russian interests, is none other than Mikheil Saakashvili, who now promises to return from exile in Ukraine and end the corruption in Georgian politics.³¹ During the course of 2015, relations between Ivanishvili and President Margvelashvili deteriorated significantly.

Although it is too early to assess fully the consequences of Georgian Dream on the rights of religious and ethnic minorities in the country, it is nevertheless reasonably safe to say that there are no significant positive developments. European Union adviser Thomas Hammarberg issued a report in September 2013, a year after Georgian Dream gained control of Parliament and just before the Presidential elections of 2013.³² Hammarberg is one of the best-known and most highly regarded European authorities on human rights, and had served for the previous six years as the Council of Europe's Commissioner for Human Rights. Unfortunately, Hammarberg's report recognized the continuing instances of violence against religious communities continued throughout 2013.³³

30 For an English-language article discussing this, see <http://www.eurasianet.org/node/70911>.

31 <http://www.eurasianet.org/taxonomy/term/3638>

32 Thomas Hammarberg, Georgia in Transition: Report on the human rights dimension; background, steps taken and remaining challenges (September 2013) http://eeas.europa.eu/delegations/georgia/documents/virtual_library/cooperation_sectors/georgia_in_transition-hammarberg.pdf.

33 Ibid., 26 n. 62, cites a particularly disturbing report by the highly regarded observer Felix Corley of the NGO Forum 18 http://www.forum18.org/archive.php?article_id=1854.

Among the recurring problems noted by international observers and human rights groups are the frequent inflammatory and discriminatory public comments by political officials about religious, ethnic, and sexual minorities.³⁴ Media coverage of ethnic and religious issues favors majoritarian interpretations and gives little access to minorities. Georgian officials, both at the state and local level typically are reluctant or unwilling to bring charges against those who engage in violent and abusive acts against religious and ethnic minorities. On May 17, 2013, violent crowds – led by Georgian Orthodox Church priests – assaulted people who demonstrated in favor of gay rights. Regardless of the merits of the Church’s position on homosexuality, priests should have been condemned for their violent attacks and prosecuted for their illegal brutality. The state, however, has shown an unwillingness to investigate and bring charges against violent people who continue to act in the name of the Georgian Orthodox Church and Georgian identity.

These days, the repeated episodes of intolerance and violence against religious minorities are of utmost concern. When it comes to religious intolerance, the reaction of the current authorities, both at the political level and in terms of interventions by law enforcement, has been generally unsatisfactory. One of the most unfortunate episodes occurred in the village of Chela in the Samtskhe-Javakheti region, when in August [2013] the local authorities ostensibly removed a minaret on licence grounds, sparking unnecessarily violence.³⁵

In September 2014, opponents of a planned Muslim madrassa butchered a pig in front of the building and then nailed its head onto the door. While the incident was widely condemned by Georgian political officials, little, if anything, was done to prosecute the perpetrators. Another example that brought international attention was the decision by local official in Mokhe to convert what formally had been a mosque into a community center. (Some Christian Orthodox believers claim that it was a church before becoming a mosque.) When Muslims demonstrated against the planned conversion in October 2014, there were many reports of police crackdown that used excessive force to suppress dissent.

The reaction of the local authorities in these situations has been inadequate. The perception of implicit complicity between the aggressors and the authorities, including the law enforcement, may have contributed to repetition and expansion to other villages of such incidents. This is unacceptable. Central and local Government should make it clear that harassment, threats and violence on religious grounds are not acceptable and will be punished to the full extent of the law. Members of the Parliament should play a key role in terms of awareness. The attitude of the Public Defender in this regard has been exemplary. Georgia’s Reintegration Minister’s presence during Friday prayers has served as a reminder to local authorities of their responsibility towards diffusing tensions among neighbours of different faiths.³⁶

34 Hammarberg, *Georgia in Transition*, 23.

35 *Ibid.*, 26.

36 *Ibid.*

The people against whom these attacks are being committed are citizens of the state of Georgia who in most instances were born in the country, as were their parents. Unfortunately, influential people in Georgia – political leaders and, sadly, religious leaders – contribute to this hostility either by their verbal encouragement or by their refusal to strongly condemn acts of violence being committed in the name of the majority religion and the dominant ethnicity. One would hope that Christian religious leaders would be at the forefront of denunciation of violence in the name of their religion rather than being complicit with it.

Shortly after Mr. Hammarberg's report to the European Union was issued, Nils Muižnieks, the Council of Europe's Human Rights Commissioner, made a fact-finding trip to Georgia and spoke with both government officials and members of religious-minority communities. (The Georgian government subsequently issued a response to the report.³⁷) The 2014 report raises several troubling factual issues. Muižnieks properly raised the problematic issue of the Constitutional Agreement of 2002 (Muižnieks Report, ¶¶ 108, 113) and several reported incidents involving religious minorities and ethnic communities that suffer the ongoing effects of social discrimination and legal discrimination, and whose claims of discrimination similarly are received with a profound lack of interest and seriousness by the authorities. (Muižnieks Report, ¶¶ 102-113) He noted, in particular, compelling allegations of intolerance and discrimination against Muslims (Islam is the second largest religion in the country) and Jehovah's Witnesses (Muižnieks Report, p. 4, ¶¶ 83, 102, 103, 105, 106, 109, 115) Moreover, there appears to be little, if any, effective enforcement of antidiscrimination laws in Georgia. (Muižnieks Report, p. 4, ¶105) The UN Human Rights Committee's fourth periodic report on Georgia, issued on August 19, 2014, came to the same basic conclusion, stating that Georgia needed to take additional steps to insure that the government of Georgia needed to do more to make clear that acts of intolerance are not acceptable and to take serious measures to bring perpetrators to justice.³⁸

Coinciding with these instances of popular hostility toward religious minorities that were, for the most part, either supported by state and local officials or were not dealt with effectively by the political and legal system, the state of Georgia meanwhile invested significant political and financial capital in promotion of the financial interests of the influential Georgian Orthodox Church. While it is important to note that there was one specific instance when four non-Orthodox religions were provided a grant of state aid, the overwhelming financial and material support by the state has been directed at the one religious institution that was in already in the strongest position. The religious institution that was the recipient of the vast majority of state aid made certain to reward its political supporters. In one of the strangest cases of backward priorities, the Patriarch of the Orthodox Church decided on September 13, 2013, that it would be appropriate to give a very expensive Ulysse Nardin wristwatch to the richest man in Georgia – who also happened to be prime minister at the time. The Patriarch gave the next prime minister a horse. Rather than aiding the poorest of his fellow citizens (Matthew 25:40), the Patriarch gave expensive gifts to the richest and most powerful men in Georgia.

37 2014 Council of Europe Commissioner of Human Rights, Report by Nils Muižnieks following his 2014 visit to Georgia (12 May 2014) and 2014 Comments by the Georgian Government on the Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe (Undated English version). The majority of the Muižnieks report focused on issues other than religion, including particularly the justice system. The report nevertheless included a serious discussion of issues related to religious minorities, wherein he identified many potentially troubling issues. (Muižnieks Report, ¶¶ 90-95, 102-119) The state's reply briefly covered some religion-related issues, but left most largely untouched.

38 UN Human Rights Committee, Concluding observations on the fourth periodic report of Georgia, CCPR /C/GEO/CO/4, 19 August 2014, ¶ 18.

The Commissioner was able to identify a positive development in Georgia at the time of his visit: proposed anti-discrimination legislation. (Muižnieks Report, p. 4, ¶¶ 61, 74) In their reply, the Georgian authorities provided detailed updates on developments in the draft law. (Georgia Reply to Muižnieks, pp. 6-7). Unfortunately, the draft legislation failed to be approved – so this once-hopeful sign has subsequently been rendered null.

After Georgian Dream came into power (in parliament and the presidency), it established two governmental agencies to focus on religious issues. Once again, however, the entities were not established to respond to the pressing issues of serious religious discrimination and violence against the persecuted that had repeatedly been highlighted by the European Court of Human Rights, the European Union, and the Council of Europe, and ECRI, but to promote once again the interests of the dominant religion in the state. In May 2013, **Governmental Resolution N63** (May 21, 2013; effective 2014) was amended regarding **“Issues Provided by the Constitutional Agreement between the State of Georgia and the Georgian Apostolic Autocephalous Church,”** and on February 19, 2014, following the seizure of the presidency and the parliament, the government established the State Agency for Religious Issues. A separate entity was created pursuant to **Government Resolution N 177** (January 27, 2014) **“On the Establishment of the Legal Entity of Public Law – State Agency of Religious Issues and on Approval of its Statute.”** Both entities use the political power of the state to aid the Georgian Orthodox Church. There is no equivalent organization that represents the interests of religious minorities in the state. Rather than addressing the pressing problem that is widely recognized – religious discrimination against religious minorities – the two new state entities focus their attention on providing additional aid to the religious institution that suffers the least discrimination in the state.

II. Georgian Foundational Principles of Equality and Human Rights

A. Georgian Acceptance of the Human Rights Norm of Equality

Unfortunately, there are many politicians, religious leaders, and even intellectuals in the world who denounce the international human rights norm of equality as being “western,” or “European,” or “imperialist,” or as being inconsistent with “local” or “traditional” values. Fortunately, however, the Georgian state, the Georgian Orthodox Church, and the “father of Georgian nationalism” (Ilia Chavchavadze) are all on record as endorsing human rights and equal treatment of all citizens. A recent public opinion poll has shown that the Georgian population as a whole also is largely in agreement. Approximately 70% of Georgians believe that it is either important or very important to protect the rights of religious minorities, while only 8% think it is not important.³⁹

1. Declaration of the State of Georgia to the United Nations

As briefly noted in the Introduction above, and as will be developed further below, Georgia presented itself to the United Nations in 2006 as a candidate for the UN Human Rights Council. In support of its candidacy, Georgia declared that ***“Human rights issues have always represented one of the highest priorities for Georgia [and] the Government of Georgia has unequivocally expressed its commitment to improve [the] human rights situation in the country.”***⁴⁰

2. Declaration of the Georgian Orthodox Church

The Georgian Orthodox Church also is officially on record as having formally accepted human rights norms. During a period of controversy in Georgia in 2011 related to the amendment of the Civil Code article 1509 that broadened protections for many religious minorities in Georgia, the Holy Synod of the Orthodox Church, after initially opposing the amendment, nevertheless stated:

Whilst the Georgian Orthodox Church accepts and respects universal norms and values enshrined in international conventions and the Constitution of Georgia, it declares that all Georgian citizens regardless of their religion, as well as every religious organization, are equal before the law. Religious freedom shall not depend on the membership of a congregation. According to the Constitution of Georgia and the Concordat, which represents the will of the Georgian people, the exclusive legal status of the Georgian Autocephalous Orthodox Church by no means restricts or denies freedom of worship and equality before the law of other religious associations.⁴¹

39 Caucasus Barometer, April 2015, <http://caucasusbarometer.org/en/na2015ge/MRELIQ/>

40 Aide Memoire of Voluntary Pledges and Commitments in Conformity with Resolution A/RES/60/251, Mission of Georgia to the United Nations (12 April 2006) (emphasis added) <http://www.un.org/ga/60/elect/hrc/georgia.pdf>

41 Sophie Zviadze, “Georgian Orthodox Church and Human Rights: Challenges to Georgian Society,” in Religion and Human Rights: An International Perspective, edited by Hans-Georg Ziebertz and Gordan Črpić (Heidelberg: Springer, 2015), 55.

Even though this 2011 statement by the Holy Synod insists on a special status for the Georgian Orthodox Church, it nevertheless recognizes that ***the Church's status does not undermine the fundamental principle of equality or the applicability of human rights norms*** to all religions in Georgia. Although it might seem to outside observers that, as a practical matter, it is impossible to reconcile the privileged status for one church at the same time with equality for all religions that is proclaimed as a core value, it nevertheless needs to be underscored that the official position of the Georgian Orthodox Church affirms the fundamental Georgian values of human rights generally and religious equality for all believers specifically.

3. Ilia Chavchavadze, the “Father of the Georgian Nation”

In 1987, when Georgia was only one of 15 republics of the former Soviet Union, the Georgian Orthodox Church canonized Prince Ilia Chavchavadze (1837-1907) as “Saint Ilia the Righteous.”⁴² The year 1987 saw not only the canonization of Saint Ilia, but also the formation of a dissident organization named the Ilia Chavchavadze Society, which became the first organizational step in the movement towards Georgian independence from the Soviet Union.⁴³ Although he had died 80 years earlier, “Saint Ilia” was the motivating spiritual symbol behind Georgian independence and nationalism from Russia in the nineteenth century and from the Soviet Union in the twentieth. Today he is widely revered throughout his homeland as “the Father of the nation” and the “uncrowned King of Georgia.”

It was Chavchavadze, more than any other single person, who has been credited with the rise of the Georgian nationalism that created the first modern Georgian state (1918-1921). A fervent supporter of national unification and independence movements in other lands in nineteenth-century Europe, he advocated Georgian separation from Tsarist Russia by promoting the Georgian language, public education, the publication of newspapers, agricultural improvement, and respect for civil society. Although he was assassinated before the promulgation of the first Georgian constitution in 1921, he is broadly considered to be the dominant spiritual force behind both Georgian independence and the 1921 Constitution. In canonizing Saint Ilia, the Orthodox Church in effect placed its imprimatur on Chavchavadze’s life’s work.

Even though Chavchavadze was a member of the Orthodox Church and was ethnically Georgian, the nationalism that he promoted for his beloved homeland was based neither on religion nor ethnicity – but on attachment to Georgian civil society as consolidated through the Georgian language.⁴⁴ To be Georgian was, for him, a civic choice rather than pre-ordained by religion or ethnicity. Whereas in some nationalist movements language had been used divisively to separate “true citizens” from outsiders, Chavchavadze’s promotion of the Georgian language was designed to do exactly the opposite. He advocated education generally and language studies in particular in order to **reduce** divisions among

42 He was the first saint canonized by a church during Soviet times. Roudik, *Culture and Customs*, 91.

43 Svante E. Cornell, *Small Nations and Great Powers: A Study of Ethnopolitical Conflict in the Caucasus* (London: RoutledgeCurzon, 2001), 147, 153.

44 For a discussion of Chavchavadze’s role, see Aleksandre Gabisonia, “Formation of the Georgian National Discourse,” *Identity Studies in the Caucasus and the Black Sea Region* 4, (2012). The citations to Chavchavadze come from Gabisonia. For the role of language in Georgian identity, see Graham Smith, Vivien Law, Andrew Wilson, Annette Bohr, and Edward Allworth, “Language Myths and the Discourse of Nation-Building in Georgia,” in *Nation-Building in the Post-Soviet Borderlands: The Politics of National Identities* (Cambridge: Cambridge University Press, 1998), 167-96.

Georgians, and not as grounds for dividing them.⁴⁵ Indeed, with reference to non-Georgian speaking Muslims, Chavchavadze believed that language was not to be used to ostracize them. Referring to Turkish-speaking Muslims, he said that they are “our brothers and sisters ... we share a common past ... they were forcefully cut off from their fatherland ... they are equally lawful citizens of Georgia.”⁴⁶ He referred to Muslim Ajars not as illegitimate inheritors of the lands of conquerors, but as “our brothers, our flesh and blood, our compatriots, our comrades-in-arms, our ancient cradle of education; our old Georgia is today with us ... and if we will care for it, it will stay with us forever.”⁴⁷ For Chavchavadze, Muslims living in Georgia were to be considered as equal citizens of Georgia, regardless of whether they spoke Georgian or were ethnically Georgian. In a letter that Chavchavadze wrote to a school principal in Muslim Ajaria, he said: “it was my personal choice and decision to send you for such a responsible job. Georgian Muslims must be treated very carefully; remember, they are our brothers ... they are Georgians.”⁴⁸

B. Georgian Constitutional Law on Equality and Human Rights

1. The 1995 Constitution’s Preamble and the 1921 Constitution

The Preamble to the Georgia Constitution of 1995 (subsequently amended) proclaimed that it established a “democratic social order” and a “rule-of-law based social state” in order to “secure universally recognized human rights and freedoms.” It declared its fidelity to the principles of the Georgian Constitution of 1921.

The 1921 Constitution, which was widely praised throughout the world upon its adoption, was one of the most progressive, innovative, and enlightened constitutions of its time. It was far in advance of the American, French, and Weimar constitutions. Indeed it may be said with justification that the Georgian principles of human rights and equality were articulated far in advance of European and international human rights standards. Constitutions throughout the world that were drafted subsequently only slowly came to adopt the values that had already been proclaimed in Georgia. The 1921 Constitution declared that “all citizens are equal before the law” (1921, Art. 16), abolished capital punishment (1921, Art. 19), proclaimed the legal equality of men and women (1921, Art. 39), prohibited discrimination against ethnic minorities (1921, Art. 131), and stated, with regard to religious discrimination, that:

Every citizen enjoys full liberty of conscience. He cannot be prosecuted nor have restrictions brought upon his political or civil rights for reason of his religion or convictions. Everybody has the right to profess his own religion, to change same, or not to have any religious creed. No person has the right to evade his political or civil obligations by calling upon his religion or convictions except in cases provided by law. The actions of a religious character modify in no way the civil rights or position of anybody. (1921, Art. 31)⁴⁹

45 Gabisonia, “Formation,” 72.

46 Ibid., 76.

47 Ibid.

48 Ibid.

49 <https://matiane.wordpress.com/2012/09/04/constitution-of-georgia-1921/>

With regard to the relationship between religion and the state, the Constitution of 1921 declared:

Article 142

The state and the church are separate and independent one from the other.

Article 143

No confession or creed enjoys special privileges.

Article 144

It is forbidden to make any levies on the resources of the state or the bodies of self-government for the needs of any religious order.

These traditional Georgian constitutional principles of 1921, which were officially endorsed and incorporated into the 1995 Constitution (and restated in the constitutional amendments of 1999, 2000, 2001, 2002, 2004, 2006, and 2010), favored equality, opposed religious, racial, ethnic, and gender discrimination, separated religion from the state, prohibited special privileges for any particular religion, and forbade the use of state funding for religions. These standards were not imposed on Georgia from the outside by western Europeans or by Americans or by modern human rights treaties or by western secular humanists, but emerged from the heart of Georgia's own constitutional values.

The Constitution of 1995, the first free Georgian constitution since 1921, reaffirmed and renewed these traditional Georgian constitutional values that had been suppressed during Soviet times. (For the adoption of the Constitution of 1995, see Part I.C above.)

2. Equality and Human Rights in the 1995 Constitution (as amended)

Human rights. The core principles articulated in the Georgian Constitution of 1921 were renewed in the Constitution of 1995, which strongly upheld the principles of human rights as **both** Georgian **and** international values. As mentioned above, the Preamble pledged support to “universally recognized human rights and freedoms.” Article 7 requires the state to “protect universally recognised human rights and freedoms as eternal and supreme human values.” Thus, according to Article 7, human rights and freedoms were created neither by the Georgian Constitution nor international conventions, but are “eternal and supreme.” As “eternal and supreme” values, they presumably may never legitimately be weakened, abused, or ignored. Other constitutional provisions similarly recognize human rights not as rights created by a constitution or treaties, but rights that exist prior to constitutions and treaties and that therefore should never be ignored. (Constitution articles 7, 38.2, 39, 45) Other provisions of the Constitution more generally assume the existence of such rights and assign responsibilities for their protection. (Constitution articles 3, 6, 43, 74.2, 89.1(f))

Equality and the prohibition of religious discrimination. As in the Constitution of 1921, the Constitution of 1995 repeatedly identifies equality as a core value. Articles 14 and 38.1 emphasize its core nature.

Everyone is born free and is **equal before the law** regardless of **race**, colour of skin, language, sex, **religion**, political or other opinions, national, **ethnic** and social affiliation, origin, property or social status, place of residence. Const. Article 14

Citizens of Georgia shall be equal in their social, economic, cultural, and political lives **irrespective of national, ethnic, religious**, or language of origin . . . Article 38.1

Many other clauses of the Constitution refer to the principle of equality more generally. (Constitution, arts. 31, 36.1, 38, 49, 70, 85)

One of the important aspects of equality, as repeatedly emphasized in the Constitution, and particularly in the highlighted texts in articles 14 and 38.1 above, is the prohibition of religious discrimination. The Constitution does not simply prohibit religious discrimination; it upholds the freedom of religion as a core constitutional principle. Article 9.1 specifically provides that the **“State shall declare absolute freedom of belief and religion.** At the same time, the State shall recognise the outstanding role of the Apostolic Autocephalous Orthodox Church of Georgia in the history of Georgia and its independence from the State.” The first portion of Article 9.1 emphasizes the “absoluteness” of the freedom of belief and religion. The second sentence, which refers to the Georgian Orthodox Church, **notably does not confer any rights, authority, status, rewards, privileges, or benefits on the Church**, other than the simple verbal acknowledgement of its historical role. Article 9.2, which was added in 2001, will be discussed below. (See Part I.A.4 below)

Equal and non-discriminatory treatment guaranteed to all religious institutions. The rights of equality and the prohibition of discrimination on the basis of religion, as stated above, are typically described as rights of citizens and individuals. However, the Constitution expressly highlights that the right of equality and non-discrimination applies to legal persons as well. “The fundamental human rights and freedoms referred to in the Constitution, in terms of the context thereof, shall apply to legal persons as well.” (Const. Art. 45). **Therefore, to the extent that any church, religion, religious community, mosque, or synagogue is itself a legal person or is operated by a legal person, the state is prohibited, under the express language of Article 45, from discriminating in favor of some religions or against others.**

3. International Law in the 1995 Constitution (as amended)

The Georgian Constitution agrees to adhere to the “universally recognized principles and rules of international law.” Article 6.2. (For a discussion of the second sentences of articles 6.2 and 9.2, both adopted in 2001, see Part I.A.4 immediately below). Other articles of the Georgian Constitution also acknowledge the responsibility of complying with international law. See, for example, articles 30.3, 35.2, 38.1, 38.2, 47.2, 65.2.e, 74, 98.

The Constitution also specifically acknowledges Georgia's commitment to observe international human rights norms. The Preamble to the Georgian Constitution of 1995 (reaffirmed in subsequent Constitutions) declared that the people of Georgia wish to "establish a democratic social order, economic independence, a social and legal state, to guarantee universally recognised human rights and freedoms" and that these constitutional values were "based upon many centuries of state tradition . . ." In addition to the Preamble, Article 7 of the Constitution entrusts the State to "recognise and protect universally recognised human rights and freedoms as eternal and supreme human values. While exercising authority, the people and the State shall be bound by these rights and freedoms as directly applicable law." Article 9.2, as amended, even goes so far as to state that the Constitutional Agreement itself "shall be in full compliance with the universally recognised principles and norms of international law, specifically in terms of human rights and fundamental freedoms," **thereby explicitly acknowledging that the Constitutional Agreement of 2002 must not be in conflict with preexisting and controlling international human rights law.** (See Part I.A.4 immediately below)

In summary, Georgian constitutions, the Georgian state, the Georgian Orthodox Church, and the father of Georgian nationalism have all accepted the core value of the equality of all citizens regardless of their ethnicity or religion. **Equality is both a fundamental Georgian value and an international human rights norm that Georgia has repeatedly and voluntarily accepted.**

C. Georgia and International Standards on Religious Equality

1. Georgian Adoption of International Human Rights Commitments

When Georgia presented itself to the United Nations as a champion of human rights in 2006 (see Introduction), the Georgian delegation to the UN identified several of the international human rights treaties that the country was proud to have ratified, including the:

- UN Covenant on Civil and Political Rights (and optional protocols)
- UN Convention on the Elimination of All Forms of Racial Discrimination
- UN Convention on the Elimination of all Forms of Discrimination Against Women
- UN Covenant on Economic, Social and Cultural Rights
- UN Convention on the Rights of the Child
- European Convention on Human Rights
- European Framework Convention on the Protection of National Minorities
- European Social Charter (revised)

Georgia further pledged to the United Nations that it had chosen "to build a state based on democratic values and the rule of law, to integrate into international community, [and] European structures."

Since obtaining its independence in 1991, Georgia has indeed been an active supporter of the international human rights regime. Georgia became a participating state in the Organization for Security and Cooperation in Europe (receiving an OSCE Mission in 1992), thereby accepting the political obligations of OSCE participating states. In its 1994 ratification of the International Covenant on Civil and Political Rights (ICCPR), it issued no

reservations.⁵⁰ In its 1999 ratification of the [European] Convention of Human Rights and Fundamental Freedoms, Georgia also did so without issuing any reservations.⁵¹ In ratifying the European Convention, Georgia agreed to be bound by the standards identified by the European Court of Human Rights.

In a highly symbolic move, Georgia in 2001 led the way for the entire European community by becoming the first state to ratify Protocol 12 of the European Convention on Human Rights, on the “fundamental principle according to which all persons are equal before the law and are entitled to the equal protection of the law.”⁵² Prior to the adoption of new Protocol 12, the European Court had held that the equality provisions of Article 14 of the European Convention must be read in conjunction with other identified human rights (e.g., expression) and thus provided no stand-alone guarantee of equality. With the adoption of Protocol 12, Georgia led the way for the entire European community in holding that there is a general right for people and groups to be treated equally by the state.

Thus Georgia has not reluctantly or half-heartedly accepted international human rights norms imposed from the outside, or asserted that they are somehow alien to Georgia, but has indeed declared that “human rights [have] always represented one of the highest priorities” of the country and that it has actively promoted itself as adhering to these standards and has declared that human rights have “and that it has an “unequivocal . . . commitment to improve [the] human rights situation in the country.”⁵³

2. Human Rights Standard on Religious Equality and Preferred Religions

International human rights conventions in general, and the ICCPR and the European Convention in particular, stress the importance of the state treating all religious and belief organizations equally. The texts of the ICCPR and the ECHR contain no language allowing states to discriminate between preferred and less-preferred religions. The text immediately below describes the international standards adopted by Georgia. The text at Part III.B below describes the Constitutional Agreement of 2002, which fails to comply with these international standards.

(a) International Covenant on Civil and Political Rights (ICCPR)

The ICCPR is the world’s single most important international human rights text.⁵⁴ Article 18 of the ICCPR states the foundational principal of the absolute freedom of conscience and the freedom to manifest religion. (None of the limitations to Article 18 identified in Article 18.2 justify disparate treatment on the basis of particular beliefs.) In addition to the general statement regarding freedom of thought, conscience, and religion, the ICCPR also expressly prohibits discrimination on the basis of religion. “Each State Party to the present Covenant

50 https://treaties.un.org/pages/viewdetails.aspx?chapter=4&src=treaty&mtdsg_no=iv-4&lang=en

51 Georgia ratified the European Convention on May 5, 1999, without reservations. <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=005&CM=&DF=&CL=ENG>. The treaty’s “List of Declarations” contains no reservations or declarations by Georgia. <http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=005&CM=&DF=&CL=ENG&VL=1>

52 Protocol 12 became effective in 2005. <http://conventions.coe.int/treaty/en/Treaties/Html/177.htm> For the Explanatory Report on Protocol 12, see <http://conventions.coe.int/Treaty/en/Reports/Html/177.htm>.

53 Aid Memoire (2006) op cit.

54 Georgia ratified the ICCPR in 1994 without issuing any reservations. <http://indicators.ohchr.org>

undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, **without distinction of any kind, such as race, colour, sex, language, religion . . .**” (ICCPR, Art. 2) Other articles of the ICCPR also condemn discrimination on the basis of religion. (ICCPR, arts. 4, 24, 26, 27) Similarly, “equality,” as in the Georgian constitutions of 1921 and 1995, is a recurring core principle. (See ICCPR, preamble and arts. 3, 14, 23, 25, 26)

The ICCPR states nothing explicit about the issue of established religions, though there is nothing in the text of the ICCPR that would appear to allow it. Nevertheless, it is very clear that several states that have ratified the ICCPR maintain established (or preferred) religions. In order to provide guidance on the practices of states that implicitly do not follow the non-discriminatory guidelines of the ICCPR, the UN Human Rights Committee – the authorized body responsible for interpreting the ICCPR – provided guidance in its famous General Comment 22 (1993).

9. The fact that a religion is recognized as a state religion or that it is established as official or traditional or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including articles 18 and 27, nor in any discrimination against adherents to other religions or non-believers. In particular, certain measures discriminating against the latter, such as measures restricting eligibility for government service to members of the predominant religion or giving economic privileges to them or imposing special restrictions on the practice of other faiths, are not in accordance with the prohibition of discrimination based on religion or belief and the guarantee of equal protection under article 26.⁵⁵

Thus the UN Human Rights Committee, although acknowledging that some states have established or traditional religions, attempted to make clear that such an official status in no way justifies a disparate treatment of religious groups, particularly with regard to their receiving from the state economic privileges. While an established religion, under this doctrine, is not *per se* impermissible, this in no way justifies providing economic or other benefits for that religion to the exclusion of others. (See also General Comment 22 ¶ 10.)

This analysis of the UN Human Rights Committee was very recently underscored and reaffirmed by the current United Nations Special Rapporteur for Freedom of Religion or Belief, Professor Heiner Bielefeldt. According to the Special Rapporteur:

In order to be able to guarantee freedom of religion or belief for everyone equally, the state should not identify itself with one particular religion or belief . . . at the expense of equal treatment of the followers of other faiths. . . . This certainly presents a challenge to countries in which religions and state institutions are closely interwoven, in particular countries with a tradition of an official religion or state religion.⁵⁶

55 CCPR/C/21/Rev.1/Add.4, General Comment No. 22. http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.4&Lang=en or <https://www1.umn.edu/humanrts/gencomm/hrcom22.htm>.

56 Heiner Bielefeldt, “Privileging the *Homo Religiosus*? Towards a Clear Conceptualization of Freedom of Religion or Belief,” in *The Changing Nature of Religious Rights under International Law*, ed. Malcolm D. Evans, et al. (Oxford: Oxford University Press, 2015), 19.

While recognizing that state religions are not *per se* incompatible with human rights, Special Rapporteur Bielefeldt notes that state laws and constitutions referring “to the predominant historical role of one particular religion can easily become a pretext for a discriminatory treatment of adherents of other religions or beliefs. This danger increases if the invocation of a religious legacy is part of national identity politics.”⁵⁷ Non-discrimination, in international law, “requires a policy of deliberate *non-identification* of the state with a any particular religion or belief system in order to be equally fair, open, and inclusive to people of different faith orientations living under its jurisdiction.”⁵⁸ Thus, whenever “national identity politics” is associated with a traditional religion, enhanced vigilance is necessary to ensure that the state does not discriminate against minority or “non-traditional” religions. “The burden of proof in this regard,” according to the Special Rapporteur, “always falls on the state.”⁵⁹

Applying the analysis of the Human Rights Committee and that of the Special Rapporteur, we may conclude that even though the Georgian Orthodox Church has indeed played an important historical, cultural, and demographic role in Georgia, this does not mean that it is entitled to state privileges and advantages – particularly economic benefits – that are not available to other religious groups.

(b) United Nations Declaration on Religious Intolerance

In 1981, the United Nations adopted Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.⁶⁰ While the Declaration is not binding treaty law, it may have attained the status of binding customary international law. Although the 1981 Declaration focuses on the right to manifest religious belief as provided in the ICCPR, it also reaffirms that states should not discriminate among religions. Articles 2 and 3 provide that:

Article 2

1. **No one shall be subject to discrimination by any State, institution, group of persons, or person on grounds of religion or other beliefs.**
2. For the purposes of the present Declaration, the expression “**intolerance and discrimination** based on religion or belief” **means any distinction, exclusion, restriction or preference based on religion or belief** and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.

57 Ibid., 20.

58 Ibid., 21.

59 Ibid., 20.

60 A/RES/36/55, 25 November 1981. The UN 1981 Declaration on Religious Intolerance was adopted when Georgia was a constituent republic of the Soviet Union.

Article 3

Discrimination between human beings on grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations, and shall be condemned as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration enunciated in detail in the International Covenants on Human Rights
(emphasis added)

Thus, the state not only is prohibited from instituting any “restriction” against religious communities, it is also prohibited from providing any “preference based on religion or belief” to preferred religious communities.

(c) European Convention on Human Rights and Fundamental Freedoms (ECHR)

The ECHR, issued under the rubric of the Council of Europe, is the world’s most important and influential regional human rights convention.⁶¹ Several articles of the ECHR will be quoted, followed by an examination of how these provisions have been interpreted by the European Court of Human Rights with regard to states that provide treatment that discriminatorily benefits favored religions and that harms other religions.

Article 9

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Article 14

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

⁶¹ Georgia ratified the ECHR in 1999 without issuing any reservations. <http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=005&CM=8&DF=06/10/2015&CL=ENG&VL=1>

Protocol 12 of the ECHR, which Georgia was the first state to ratify, provides in Article 1

1. The **enjoyment of any right set forth by law shall be secured without discrimination on any ground such as** sex, race, colour, language, **religion**, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

2. **No one shall be discriminated against by any public authority on any ground** such as those mentioned in paragraph 1. (emphasis added)

By the plain language of Article 1, any state law or policy privileging one religious group over another would violate Protocol 12. The decisions of the European Court, interpreting Protocol 12 as well as ECHR Article 14, affirm this straightforward interpretation.⁶²

The European Court recognized that in certain circumstances and for reasons of tradition it might be possible for a state to have a traditional or established religion. However, the Court **specifically noted that the establishment of a state religion must have preceded the state's ratification of the European Convention on Human Rights**. According to the Court, it is possible to have a "historical-constitutional" tradition involving a religion "**if it is part of a situation pre-dating the Contracting State's ratification of the Convention.**" *Case of Magyar Keresztény Mennonita Egyház and Others v. Hungary*, nos. 70945/11, 23611/12, 26998/12, 41150/12, 41155/12, 41463/12, 41553/12, 54977/12 and 56581/12), § 109, 8 April 2014. *The fact that Georgia ratified the European Convention in 1999, three years before the Constitutional Agreement of 2002, signifies that Georgia is not able to assert that the 2002 benefits granted to the Church were in existence prior to its ratifying the ECHR*. Moreover, at the time Georgia ratified the European Convention, the Constitution of 1995, which did acknowledge the historical role of the Georgian Orthodox Church, nevertheless conveyed no benefits on the Church and explicitly stated that the state was independent of the Church. The values of the Constitution of 1921 (adopted 78 years **before** Georgia ratified the ECHR) were even more explicit.⁶³

The Court has been very clear that under the European Convention that the state "may not discriminate between religious communities" Magyar § 109 and that it may not "take discriminatory measures in granting . . . benefits." Magyar § 107. This is indeed consistent with the Court's repeated declarations that with regard to religious communities the state must be "neutral" and "impartial." *Metropolitan Church of Bessarabia and Others v. Moldova*, no. 45701/99, § 116, 13 December 2001; *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, no. 40825/98, § 92, 31 July 2008. The governing requirement of neutrality and impartiality was recently reiterated specifically with regard to Georgia's practices. *Members of the Gldani Congregation of Jehovah's Witnesses and 4 Others v. Georgia*, § 131.

⁶² ECHR article 14, unlike Protocol 12, does not stand alone and must be interpreted in conjunction with another article of the ECHR, such as article 9.

⁶³ Georgia Constitution (1921)

Article 142 - The state and the church are separate and independent one from the other.

Article 143 - No confession or creed enjoys special privileges.

Article 144 - It is forbidden to make any levies on the resources of the state or the bodies of self-government for the needs of any religious order.

In the unanimous 2010 *Savez Crkava* case, the Court denounced a Croatian law that, like Georgia's Constitutional Agreement of 2002, **impermissibly allowed some religions to have their marriages legally recognized by the state** and also to provide religious education in public schools. *Savez Crkava "Riječ Života" and Others v. Croatia*, no. 7798/08, § 58, 9 December 2010. The European Court held that although it was permissible to allow religions to receive such benefits, not allowing others the same right is impermissibly discriminatory. *Savez Crkava* § 58. The same conclusion was reached with regard **to allowing clergy from some religious communities access to prisons and hospitals that was disallowed to clergy from other religions**. *Savez Crkava* § 66.⁶⁴ The Court held that any difference in benefits allotted to one religious community must be granted to others unless there was an "objective and reasonable justification for the difference in treatment." *Savez Crkava* § 86, and the Court decisively held that **the state's justification for such privileges arising from their being "traditional" was not an objective or reasonable justification**. *Savez Crkava* § 87. Rather, the "State had a duty to remain neutral and impartial." *Savez Crkava* § 88. The Court found there to be a violation of Article 14 in conjunction with Article 9. *Savez Crkava* § 93. Moreover, the Court found the fact that Croatian law granted certain privileges to some religious communities on the basis of their religion that were denied to other religious communities also to violate Article 1 of Protocol 12 of the ECHR.⁶⁵ The fact that the judgment was unanimous, and joined by the Croatian judge on the European Court, is a strong statement against states making discriminatory decisions to allow some religions to receive benefits that are denied to others.

The European Court has identified several other state laws to be discriminatory when granted to some religious institutions but not others. In one case, the Court found that an **employment law exemption** for only some religions to be impermissible as well as a law that granted some **tax exemptions** to some religions but not others. *Jehovas Zeugen In Österreich v. Austria*, no. 27540/05, §§ 37 and 49, 25 September 2012.

In separate cases, the European Court found that a **law granting exemptions from military service to the clergy** in some religions but not other religions was discriminatory and in violation of the ECHR. *Lang v. Austria*, no. 28648/03, §§ 31-32, 12 March 2009; *Gütl v. Austria*, no. 49686/99, §§ 39-40, 12 March 2009; *Löffelman v. Austria*, no. 42967/98, §§ 54-55, 12 March 2009.

The European Court of Human Rights has consistently held that the state has an overarching duty of neutrality and non-discrimination toward different religious institutions. As with the UN Human Rights Committee, however, the European Court has recognized that in some instances states recognize traditional religions and that states may enter into particular agreements with some religious institutions and not others. Nevertheless, **the European Court of Human Rights has consistently held that when a particular benefit is allotted to one religious institution it must also be made available to other religious institutions and that any benefit may be granted only if there are objectively demonstrable reasons for granting those benefits**. The "demonstrable reasons" cannot be based on simple preference or on the basis that a religion is traditional. These, and then are the two criteria

64 Each of the discriminatory benefits provided by Croatia to some but not all religions are included in the Constitutional Agreement of 2002. Georgia's case is even more extreme than the impermissible law in Croatia in that Georgia extends such benefits to only one religion.

65 Georgia was the first state to ratify Article 1 Protocol 12. As such, the force of the ruling applies in Georgia.

whenever the state provides a benefit to a particular religion: *first*, it must also be made available to other religions on a non-discriminatory basis, and *second*, the benefit must be based on objective grounds.

As will be shown below, *virtually every provision of Georgia's Constitutional Agreement of 2002 violates the standards articulated in the ECHR and by the European Court*, and several of the specific provisions have been found to be discriminatory and in violation of the ECHR.

(d) Framework Convention for the Protection of National Minorities (FCNM)

The Framework Convention for the Protection of National Minorities, adopted under the rubric of the Council of Europe, is the world's first convention protecting national minorities.⁶⁶ As the FCNM recognizes, in many states, including Georgia, national minorities often are intertwined with religious minorities and discrimination on the basis of minority status may track discrimination based on religion. FCNM, Preamble, arts. 5-8. Accordingly, state legal discrimination against an ethnic-religious minority would run afoul not only of other human rights conventions, but the FCNM as well. Article 4 provides:

1. The Parties undertake to guarantee to persons belonging to national minorities the ***right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited.***

2. The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities. (emphasis added)

(e) The Vienna Concluding Document (VCD) of the Organization for Security and Cooperation in Europe

The 1989 Vienna Concluding Document (VCD) of the Organization for Security and Cooperation in Europe (formerly the Conference on Security and Cooperation in Europe), was adopted unanimously (including by the Soviet Union).⁶⁷ Article 16 of the VCD declares that participating states will:

⁶⁶ The FCNM came into effect in 1998. Georgia ratified the FCNM in 2005 without issuing any reservations. The Advisory Committee on the FCNM made official visits to Georgia in 2009 and 2015. The 2009 Report is available at http://www.coe.int/t/dghl/monitoring/minorities/3_fcnmdocs/pdf_1st_op_georgia_en.pdf. The Advisory Committee Second Cycle Opinion on Georgia was prepared as of June 17, 2015, but has not been released as of August 17, 2015. <http://www.coe.int/en/web/minorities/-/advisory-committee-adoption-of-the-2nd-cycle-opinion-on-georgia?inheritRedirect=true&redirect=%2Fen%2Fweb%2Fminorities%2Fhome>

⁶⁷ The Vienna Concluding Document of the OSCE was adopted unanimously by the participating states of the Conference on Security and Cooperation in Europe (now the Organization for Security and Cooperation in Europe). It was signed by the Soviet Union, a predecessor state of Georgia (which was then one of the 15 Soviet republics. Georgia has since joined the OSCE and has accepted its commitments, including those of the 1989 Vienna Concluding Document.

(16.1) - **take effective measures to prevent and eliminate discrimination against individuals or communities on the grounds of religion or belief in the recognition**, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, political, economic, social and cultural life, and to ensure the effective equality between believers and non-believers;

(16.2) - **foster a climate of mutual tolerance and respect between believers of different communities** as well as between believers and non-believers . . . (emphasis added)

Thus the Vienna Concluding document does not simply make a passive statement regarding equal treatment of religious institutions. It affirmatively requires states to **“take effective measures to prevent discrimination against [religious] communities.”** (VCD, Art. 16.1, emphasis added) The document contains numerous other provisions that prohibit discrimination on the basis of religion or belief. (VCD, arts. 11, 13.7, 20, 63) It similarly requires the state to treat ethnic, religious, and linguistic minorities equally. (VCD, Art. 19) There is nothing within the text of the VCD permitting states to give preferential treatment to some religions over others. While it is certainly true that some OSCE participating states do give preferential treatment to some religions, **they do so in violation of their express commitments to do the contrary.** It also should be noted that several OSCE participating states that have in the past maintained established religions have taken active measures to reduce discrimination and to treat religious and belief groups on equal terms, including in the United Kingdom, Sweden, Spain, and Norway.

In summary, international human rights law does not support the state’s adoption of discriminatory measures designed to promote one or more religions and the expense of others. Although established state religions do exist, and although they are not *per se* illegal, they are, at best, a limited exception to the general rule favoring equality. Whenever a state has an official preferred religion, such as the United Kingdom and Spain, it is the responsibility of the state to take efforts to *minimize* any possible discriminatory effects on non-official religions.

III. The Constitutional Amendment of 2001 and the Constitutional Agreement of 2002

For the historical and political background of the Constitutional Agreement of 2002, see Part I.C above. For a description of the Georgian and international human rights norms with particular regard to religious equality, see Part II immediately above.

A. The Constitutional Amendment of 2001: Deviation from Georgian and International Law including the Vienna Convention on the Law of Treaties

1. The Constitutional Amendment of 2001 is Inconsistent with Longstanding Georgian Constitutional Values

Several provisions of the Constitutional Agreement of 2002 establish privileges for the Georgian Orthodox Church that conflict with the standards articulated by Georgian representatives to the United Nations in its 2006 declaration, the Georgian constitutions of 1921 and 1995, international standards ratified by the Georgian parliament, the beliefs of Ilia Chavchavadze, and even the values of the Orthodox Church itself as declared in 2011.

In 2001, as Georgian legislators considered drafts of what ultimately would become the Constitutional Agreement of 2002, it became increasingly clear that granting a privileged status to the Georgian Orthodox Church would be flatly inconsistent with the express provisions of the Constitution of 1995. Accordingly, rather than ensuring that the proposed constitutional agreement would conform to longstanding Georgian constitutional values, the decision was made to amend the Constitution instead. Thus, in 2001, the 1995 Constitution was pre-emptively amended by adding new articles 6.2 and 9.2 to immunize the draft agreement from constitutional challenge.⁶⁸ The differences between the 1995 Constitution and the amendments of 2001 are striking. The core of the relevant amendments of 2001 are highlighted:

Article 6 (2001 amendment additions highlighted in bold italics)

1. The Constitution of Georgia shall be the supreme law of the State. All other legal acts shall comply with the Constitution.
2. The ***legislation of Georgia shall comply with the universally recognised principles and rules of international law.*** A treaty or international agreement of Georgia, ***unless it comes into conflict with the Constitution or the Constitutional Agreement of Georgia,*** shall take precedence over domestic normative acts.

⁶⁸ A new article 73.1.b was also added, which required the President to negotiate a constitutional agreement with the Georgian Orthodox Church.

Article 9 (2001 amendment additions highlighted in bold italics)

1. The State shall declare absolute freedom of belief and religion. At the same time, the State shall recognise the outstanding role of the Apostolic Autocephalous Orthodox Church of Georgia in the history of Georgia and its independence from the State.
2. ***Relations between the State of Georgia and the Apostolic Autocephalous Orthodox Church of Georgia shall be governed by Constitutional Agreement. Constitutional Agreement shall be in full compliance with the universally recognised principles and norms of international law, specifically in terms of human rights and fundamental freedoms.***

It appears reasonably clear that the amendments of 2001, on their face, carve out one specific exception to Georgia's erstwhile commitment to comply with human rights law: the Constitutional Agreement of 2002.

Although Georgian politicians might imagine that Art. 6.2 provides an escape clause to its human rights obligations, the new amendment in fact does quite the opposite. ***The new Article 6.2, added to the Constitution after Georgia ratified important human rights conventions, is a tacit admission that the Constitutional Agreement of 2002 violated Georgia's preexisting obligations regarding the freedom of religion and belief and its obligations to treat all religions equally.*** This amendment, far from providing an escape from Georgia's longstanding obligations, is perhaps the single most conclusive piece of evidence undermining the legitimacy of the Constitutional Agreement of 2002. Those who consciously promoted the amendment understood that the projected Constitutional Agreement did not comply with the existing "traditions" identified in the preamble to the existing Georgian Constitution and its articulated standards favoring human rights, equality, and freedom. ***Knowing in advance that the proposed Constitutional Agreement would clearly violate the longstanding Georgian constitutional values of equality, human rights and non-discrimination, Georgian officials chose to ignore the underlying values in favor of the articulated "joint interests" of church and state that were later embodied in articles II and V of the Constitutional Agreement.***

2. The Constitutional Amendment of 2001 Violates International Law

The fundamental norm of all modern treaty law is found in Article 26 of the 1969 Vienna Convention on the Law of Treaties (VCLT): "[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith." This requirement "that treaties must be kept has been applied since time immemorial . . . and is seen today as the cornerstone of international relations. . . . No case is known in which a tribunal has repudiated the rule or questioned its validity."⁶⁹ Attempts to do so undermine the foundation of modern treaty law as articulated in VCLT Article 26. Georgia ratified the VCLT in 1995, without reservations.⁷⁰

69 Mark Eugen Villiger, *Commentary on the 1969 Vienna Convention on the Law of Treaties* (Leiden: Martinus Nijhoff Publishers, 2009), 363.

70 Georgia ratified the Vienna Convention on the Law of Treaties in 1995 without reservations: https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXIII-1&chapter=23&Temp=mtdsg3&lang=en.

The Constitutional Amendment of 2001 violated this “cornerstone” of international law in two ways. First, the VCLT expressly prohibits the raising of domestic law as a ground for non-compliance with international law: a state “may not invoke the provisions of its internal law as justification for its failure to perform a treaty.” VCLT, Article 27. The amendment to Constitution Article 6.2 is a transparent attempt to use domestic law to interfere with Georgia’s treaty obligations.

Secondly, VCLT Article 18 prohibits states from taking any actions after they have signed a treaty that would “defeat the object and purpose” of the treaty. Unilaterally and retroactively amending domestic laws expressly to avoid the effect of a preexisting international treaty obligation is an obvious attempt to defeat the object and purpose of the treaty.⁷¹

Thus Georgia not only improperly took actions to undermine the “purpose and effect” of the treaty *after* it had ratified it, but it also is wrongly using its domestic law as a basis for non-compliance with a treaty obligation. The amendment to Article 6.2 of the Georgian Constitution is insufficient, as a matter of international law, to provide the escape hatch that Georgian politicians were seeking. We are highly confident that Georgia would repudiate another state’s attempt to escape its treaty obligations to Georgia by the simple act of amending its domestic laws after ratifying a treaty with Georgia. And yet, by amending its Constitution in 2001, this is exactly what Georgia did in disregard to the “cornerstone” of international law. Rather than ensuring that the 2002 Constitutional Act complied with international human rights standards, Georgia took exactly the opposite step and amended its Constitution in a transparent attempt to circumvent its human rights obligations under both the ICCPR and the ECHR. Such actions violate textbook principles of international law: “[W]hen a binding international obligation exists for a state, it must fulfill that obligation irrespective of whether its national law permits it to do so or forbids it from doing so. *Indeed, this logic is at the heart of human rights obligations . . .*”⁷²

Moreover, the VCLT provides a proper route for making reservations to treaties in Articles 19-23, and this Georgia did not follow. Article 23 paragraphs 1 and 2 establish the procedures that a state should follow if it wishes to make reservations to a multilateral treaty.

1. A reservation, an express acceptance of a reservation and an objection to a reservation must be formulated in writing and communicated to the contracting States and other States entitled to become parties to the treaty.

71 Article 18 of the VCLT technically applies to actions of a state between the time a treaty is signed and ratified by the state. It nevertheless makes clear that states should not engage in actions after they have signed treaties that undermine the treaty obligations:

A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when:

- (a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or
- (b) it has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed. An act to “defeat the object and purpose of a treaty” *after* ratification would be *a fortiori* worse than a comparable act between the time of signing and ratification.

72 Martin Dixon, *Textbook on International Law*, 7th ed. (Oxford: Oxford University Press, 2013), 95 (emphasis added).

2. If formulated when signing the treaty subject to ratification, acceptance or approval, a reservation must be formally confirmed by the reserving State when expressing its consent to be bound by the treaty. ***In such a case the reservation shall be considered as having been made on the date of its confirmation.***

Georgia simply did not follow the obligatory procedures of the VCLT. It has never communicated a reservation regarding the Constitutional Agreement of 2002 in writing to the ratifying states, let alone at the time it ratified the ICCPR and the ECHR. Rather than providing a legal escape from its obligations, Georgia's actions reveal a conscious awareness that the Constitutional Agreement of 2002 ran afoul of Georgia's pre-existing international human rights obligations and suggest a deliberate effort to avoid its legal and moral responsibilities.

Thus, the amended articles 6.2 and 9.2 deviate from the Georgian Constitution of 1921 (which had been incorporated into the Constitution of 1995), from the principles of the Georgian Constitution of 1995 (as otherwise amended), and from international law (both human rights and the Vienna Convention on the Law of Treaties). They were adopted with the express purpose of establishing special interests and privileges for one specific institution in Georgia. In making its solemn declaration to the United Nations in 2006 that it was a country that respected human rights, Georgia did not disclose its transparent attempt to circumvent international law.

B. Text of the Constitutional Agreement

The text of the Constitutional Agreement demonstrates pronounced favoritism toward the Orthodox Church to the exclusion of all other religious institutions in Georgia.

1. "Special interests" of the Orthodox Church

As mentioned above, the Constitutional Agreement of 2002 (CA), unlike the Constitution itself, does not employ the language of "human rights," "equality," or "non-discrimination." Indeed such terms appear nowhere in the document. Rather, the CA, referring solely to the state and the Georgian Orthodox Church, explicitly uses the language of "joint interests," "state support," "joint programs," "joint agreements," and "joint property" in support of what is already the largest, richest, and most powerful of Georgia's religious groups. (CA arts. I.1, I.2, II, IV.3, V.2, V.3, VI.6, VIII.2, IX.2, IX.2, XII.2)

2. Acts and immunities of the Orthodox Church

The Constitutional Agreement provides several legal benefits to the Georgian Orthodox Church that are not extraordinary in themselves, if only they had been provided to all religious and belief groups equally. (In many countries, the following benefits are broadly and legitimately granted to all religious groups that are properly registered.) The first, of course, is the recognition of the Georgian Orthodox Church as a legal entity under public law (CA Art. I.3) and grants legal recognition to several subsidiary institutions as well (CA Art. I.4).⁷³ Other benefits that would be perfectly acceptable if they were offered to all religious groups, including legal recognition of its religious marriages (CA Art. III); exemption of the clergy from the military draft (CA, Art. IV.1); and authorization of the clergy to be chaplains in the military and in prisons. (CA, Art. IV.2)⁷⁴

Georgian Orthodox Church holy days are declared to be state holidays (CA, Art. I.6). This benefit is unlikely ever to be granted to all religions. It also effectively ratifies in advance any future holiday that the church wishes to declare, giving it a certain residual power over the state. It also symbolically and prejudicially links the church to the state.

Finally, the Constitutional agreement identifies one person, the Patriarch, as being outside and above the law by making him “inviolable,” a status granted to no other person in Georgia (CA Art. I.5).⁷⁵

3. Financial and property benefits

a. Constitutional Agreement provisions on financial and property benefits

Several provisions of the Constitutional Agreement contemplate financial and property benefits for the Orthodox Church: Article VI.1 (protection by law of Orthodox Church property); Article VI.2 (protection of ownership and possession of property); Article VI.4 (authorizes financial contributions to the Orthodox Church through state legislation); Article VII (additional state protections for Orthodox properties); Article VIII (protection for moveable property such as “ecclesiastic treasures”); Article IX (joint protection by Church and State for ecclesiastical properties – not specifically limited to those owned or formerly owned by the Georgian Orthodox Church); Article X (state will attempt to obtain return of property to the Georgian Orthodox Church of its former property outside of Georgia). And, perhaps most importantly, Article XI provides that “the State shall take responsibility to partly compensate material damage” for properties seized, destroyed, or transferred during Soviet times.

73 The 2011 amendments to article 1509 of the Civil Code largely recognized the same status for other religious groups, although such status could be revoked for other groups by a simple change of law where the Constitutional Agreement would require a supermajority to be amended.

74 In 2011, the Georgian Constitutional Court granted conscientious objector status to the military draft. While protecting rights for pacifists, it did not extend the right to clergy of religions other religions as the Constitutional Agreement provided for the Orthodox Church.

75 Even Jesus Christ did not make such a claim for himself.

Once again, *most of the provisions cited in the preceding paragraph would be unobjectionable if they were applied uniformly to all religious and belief groups in Georgia and implemented by objective and transparent guidelines.* Regrettably, however, the Constitutional Agreement improperly singles out only one institution for these state privileges. The fundamental problem is not that the state is precluded from helping organizations that were wrongly deprived of property during Soviet times, but that one single institution is selected for special treatment and that no standards are provided for just compensation, equal compensation, or accountability. Having protected the interests of the Orthodox Church, the Constitutional Agreement and the Georgian Orthodox Church ignore the rights, interests, and just compensation of all other Georgians who may have equivalent or better claims.

b. Compensation for assets seized during Soviet times

In order to understand the significance of some of the benefits on property it is important to understand that during Soviet times both real and moveable property were seized by the state from religious institutions, other institutions, and individuals.⁷⁶ During the Soviet period some properties were transferred by the state to new owners. For example, a church (or other property) might have been taken from one religion and given to another. Thus some institutions lost properties but may have obtained others. While most religious institutions were net losers in these property transfers, some institutions nevertheless obtained properties that originally belonged to others.

It would, of course, be appropriate and indeed commendable for a state to take actions to restore properties to those from whom it had been seized inappropriately or to provide fair compensation for properties that had been seized by force. While the Constitutional Agreement appears in some ways to be attempting to address this important problem, the measures it proposes are designed to aid principally one victim, the Georgian Orthodox Church, and to discriminate against other religious institutions.

For example, let us take first the case where the Georgian Orthodox Church came into possession of property that had been unfairly seized from private individuals or other religions during Soviet times. The Constitutional Agreement shields properties obtained by the Georgian Orthodox Church from others. “The State shall recognize orthodox churches, monasteries (acting and non-acting), their remains and land premises they are built on all over Georgia to be in possession of Church.” (Article VII.2) Even if it can be demonstrably shown that a monastery that once belonged to the Armenian Orthodox Church came into the possession of the Georgian Orthodox Church, the latter is entitled to state protection to keep it whereas the Armenian Church is deprived of its property without compensation. Indeed, the state has a positive obligation to defend the Georgian Orthodox property against anyone who might otherwise pursue legal (or illegal) methods to recover their lands. “Security, care and utilization of all above-mentioned buildings and premises shall be determined by state authorities concerned according to the acting legislation and in compliance with Church.” (Article VII.2)

⁷⁶ See Part I.A above.

A second case is where the property of the Georgian Orthodox Church was located in an adjoining Soviet state (such as Armenia) and where the Georgian Orthodox property had been seized by the Soviet Union. In this case, the Constitutional Agreement provides that the state of Georgia becomes responsible for taking steps to return the property to the Georgian Orthodox Church (Article X), even though the state has no similar obligation to any other religion in Georgia, and indeed may take no steps to restore a building to the Armenian Orthodox Church that had been acquired by the Georgian Orthodox Church.

Georgia has developed a national policy of seeking to *return some properties* seized during Soviet times or to *provide financial compensation for other properties* that were seized. Such goals are fully justified – even praiseworthy – to the extent that they are implanted on an equal and non-discriminatory basis. However, as was shown above, state efforts to remedy Soviet-era seizures are advanced on a non-equal basis. Without establishing any criteria, guidelines, standards, or objective procedures, the Constitutional Agreement authorizes the state to compensate the Orthodox Church for material damages suffered during Soviet times. (CA Art. IX.1) The fact that no criteria or procedures are provided opens the possibility for unrestricted and unregulated donations. It allows favored institutions to receive disproportionate benefits. It is exactly this problem that was identified by Transparency International in its reports on Georgia in 2013 and 2014. The Georgian Orthodox Church has received state payments without any explanation for the method by which the compensation was allocated. Because there is no method and no accountability, it cannot be determined to what extent state contributions were simply financial grants to the Georgian Orthodox Church or to what extent payments were legitimate and measurable compensation for past losses.

c. Other financial grants to the Georgian Orthodox Church

Even the vague wording of the Constitutional Agreement Article VI.5 pales in comparison with the more open-ended Article VI.4, which provides that the Church may receive donations not only from parishioners, but other grants provided by legislation, which seems to imply that there can be direct state financial contributions to the Georgian Orthodox Church.

The respected international organization, Transparency International, has issued a study that reports exactly how much the Georgian Orthodox Church has been granted in direct state funding.⁷⁷ In 2013 and 2014, Transparency International issued two reports that examined in part the wealth, financing, and elevated status of the Georgian Orthodox Church, which it identified as the richest religious institution in Georgia.⁷⁸ In the ten years following the adoption of the Constitutional Agreement in 2002, state subsidies to the church have risen dramatically. According to available (but imperfect) information, between 2009 and 2013 the direct financial subsidy to the church ranged between a high of GEL 26,394,900 (€10,500,000) in 2009 and low GEL 22,800,000 (€ 9,000,000) in 2012. In the 10 years following the Constitutional Agreement, the church apparently has received at least GEL 200,000,000 (€ 80,000,000).

⁷⁷ In 2014, the Georgian Parliament gave a one-time financial grant to four religious institutions. See discussion at Part III.D below.

⁷⁸ Transparency International, *The companies and other organizations related to the Georgian Orthodox Church* (5 September 2014); Transparency International, *An overview of public financing provided to the Georgian Patriarchate* (4 July 2013).

Although it is true that many states subsidize religious organizations, the peculiarity in the case of Georgia is the vast sums that are disproportionately granted to the largest religion, and the fact that there appears to be no accountability for the funds. “Unlike other state budget funded institutions that face certain degree of accountability for their spendings, the Georgian Orthodox Church has never been obliged to report back.” (TI 2014) Transparency International also raises concerns about other financial discriminatory treatment favorable to the Orthodox Church at the expense of other religions. The Church apparently has ownership interests in 27 limited liability companies. The serious problem is the lack of transparency in financial disbursements to the Church and the privileges granted to its commercial enterprises.

As one example among others, the Transparency International report of 2014 discusses the favorable treatment given to a church-owned television company:

The Patriarchate owns its own television company called Ertsulovneba that holds a private specialized broadcasting license, covers Tbilisi and its adjacent territories and produces mainly religious and cultural-educational programs. Registered in December 2008, Ertsulovneba was fully owned by [Patriarch] Ilia II until September 2010, when ownership was transferred to the Patriarchate. The company is headed by the Bishop of Chkondidi Eparchy Petre (Paata Tsaava) and since 2010 it occupies two buildings and 4,151 square meters of *land on Sandro Euli street in Tbilisi, which were transferred free of charge by the government to the Patriarchate a year earlier*. Ertsulovneba is largely unable to support itself and is funded by the state and the Patriarchate. *In February 2009 the government decided to fund Ertsulovneba for GEL 300,000*. Ertsulovneba used to broadcast by renting a frequency from the television and radio company Evrika. In June 2010 Evrika briefly suspended Ertsulovneba’s broadcasting due to a debt of about GEL 112,000. The contract with Evrika was not extended after it ended on May 1, 2013, leaving Ertsulovneba without a frequency. As a result, *the Patriarch went as far as to ask the Chairman of the Parliament Davit Usupashvili to use the Parliament authority to somehow make possible for the GNCC (Georgian National Communications Commission) to allocate a new frequency for Ertsulovneba, even though no frequencies were available at the time*. In January 2014, Stereo + handed over its own license to use radio spectrum to Ertsulovneba for a symbolic price and Ertsulovneba’s signal can be received through antenna. The Patriarchate also has its own radio channel -- Iveria. *According to the GNCC, Iveria broadcasts in Tbilisi and several Georgian cities, however, it is not listed in the registry of broadcasting license holders. Article 75, paragraph 4 of the Law on Broadcasting forbids using radio frequency spectrum without a license. The GNCC is currently working to solve this legal problem.* (TI, 2014, *emphasis added*)

At the same time that the state has shown a strong willingness to disburse funds to the Orthodox Church, it has shown either a reluctance or simple unwillingness to provide comparable funding for other religious organizations. “According to the submitted documents, several administrative bodies have openly stated that they are not financing religious denominations other than the Georgian Church, while others left our question unanswered.” (TI, 2013).

As noted above, the Constitutional Agreement does not refer to the constitutional values of “equality” and “fairness,” but to the financial “interests” of the Church. The reports of Transparency International underscore the important political value of those interests and the disproportionately generous and legally questionable treatment of the Church that is already the richest and most powerful religion in Georgia.

4. Tax and customs advantages

The Constitutional Agreement, in addition to recognizing rights to financial and property benefits (see Part III.B.3 above), also grants financial advantages to the Orthodox Church that are not conveyed to any other religious institution. Although other laws in Georgia provide some of these rights to other religious institutions (including the Civil Code and Tax Code), the other laws do not have constitutional status and do not have the same breadth of benefits as are provided to the Georgian Orthodox Church.

With regard to tax and customs advantages, Constitutional Agreement Article VI.5 broadly states that “All ecclesiastic goods produced, imported, and delivered by Church, also donations, non-economic property and land premises shall be duty free.” Although the text is not precise, and may be subject to some limiting interpretations, it does suggest that there are no taxes or duties to be imposed on any “ecclesiastical” (undefined) goods produced by the Church or its affiliated institutions. While this presumably precludes taxes on Bibles and icons, it could be interpreted more broadly to prevent taxation on any products associated with the ecclesiastical mission of the Church, whether carpets and windows for churches or wine sales from the Alaverdi Monastery vineyards. A broad interpretation of “ecclesiastical” would seem to give the Orthodox Church the right to manage its *non-ecclesiastic* properties (presumably businesses) according to “ecclesiastic norms.” (CA Art. VI.2)

On other tax issues the Georgian Orthodox Church is not required to pay the VAT (Value Added Tax) that is imposed on other religious institutions. Article 168 of the Tax Code, apparently pursuant to the Constitutional Agreement, exempts the Orthodox Church. In addition, the Orthodox Church is promised assistance in procuring import and export licenses for their ecclesiastical goods, helping to ensure that the church’s purchases and sales are not unduly delayed in customs – a privilege granted to no other religious body. The Georgian Orthodox Church also is apparently granted privileges related to importing and exporting that are not available to other religious organizations.⁷⁹

⁷⁹ Tolerance & Diversity Institute, *Study of Religious Discrimination and Constitutional Secularism in Georgia*, (Tbilisi, Georgia: Tolerance and Diversity Institute, 2014), 24 (hereafter TDI, *Study of Religious Discrimination*).

5. Education privileges

In addition to the other benefits identified above, the Constitutional Agreement also provides explicit and unilateral benefits in the field of education to the Georgian Orthodox Church. State educational institutions are authorized to teach orthodoxy within their schools. (CA, Art. V.1) Although there have been some limited laws designed to provide exemptions to parents who do not want their children to receive Orthodox religious education, the limitations have been somewhat sporadic. It is, of course, the Orthodox Church alone that is given this privilege to teach its religion in state schools. The Constitutional Agreement also provides that state and Georgian Orthodox schools alone may accept the diplomas from the other institutions (CA, Art. V.2). And, in another open-ended benefit, the state is authorized to pay for Georgian Orthodox Church religious schools. (CA, Art. V.3)

...

Again it should be stressed that some of these benefits would likely be permissible under international human rights law, or the Georgian Constitution prior to 2001, if they were equally granted to all religious and belief institutions. Their exclusivity, however, renders them all suspect. (See Part I.C.2 above) While the amendments to the Constitution in 2001 (arts. 6.2 and 9.2) might appear to preclude a human rights or constitutional challenge to the Constitutional Agreement, there is a strong argument that it violates other Georgian international obligations. (See Part I.A.4 above)

C. State Institutional Support for the Constitutional Agreement

Since the adoption of the Constitutional Agreement in 2002, the state of Georgia has created agencies and commissions to handle issues relating to religion. The evidence points overwhelmingly to the conclusion that the various state agencies, with some modest exceptions, have used their governmental powers and influence not to promote freedom of religion for all Georgians – as required by the Georgian Constitution and international human rights norms – but to promote the political, financial, and material interests of the Georgian Orthodox Church.

This section will discuss *first*, the commissions expressly established for the implementation of the Constitutional Agreement of 2002, *second*, the Interagency Study Commission on Religious Organizations (2013-2014), and *third*, the State Agency for Religious Issues. Of the entities created after 2002, only two remain in existence, and both were established in 2014: the Constitutional Agreement Implementation Commission (III.C.1) and the State Agency for Religious Issues (III.C.2). This section will conclude with a discussion of what appear to be serious concerns regarding how all of these commissions and agencies have operated in Georgia, particularly with regard to transparency, unclear and conflicting mandates, the absence of rules of procedure, and discriminatory hiring practices for their employees.

1. Commission Implementing the Constitutional Agreement (2003-present)

The government of Georgia adopted a series of decrees regarding commissions designed to implement the Constitutional Agreement of 2002:

Presidential Ordinance N1 (7 January 2003)

On Establishment of the Commissions for Enforcement of Measures Stated in the Constitutional Agreement

(subsequently cancelled in 2012 by PO N125; replaced by N63)

Government Resolution N63 (21 February 2012)

Governmental commission to discuss issues of the Constitutional Agreement (amended 2013 by a new GR N63)

Government Resolution N63 (21 May 2013) (effective 5 July 2014)

Governmental Commission on Issues Provided by the Constitutional Agreement between the State of Georgia and the Georgian Apostolic Autocephalous Church

Government Resolution N63 (21 May 2013), created a Governmental Commission to implement the Constitutional Agreement. The resolution established eight working groups to investigate and make recommendations in support of the Constitutional Agreement regarding the following topics: *first*, property issues and the legislative framework for economic activities of the Church; *second*, investigation of damages inflicted on the Orthodox Church in the nineteenth and twentieth centuries; *third*, establishment of a regime for the protection of the church treasures held in state museums; *fourth*, recognition of marriages performed by the Orthodox Church; *fifth*, establishment of chaplaincies in the military, prisons, and hospitals, *sixth*, public education; *seventh*, maintenance of the Georgian churches and monasteries, and the determination of ownership and the legal status of the Georgian Patriarchate abroad; and *eighth*, identification of the historical origins of the religious buildings.⁸⁰

The fact that the state would provide financial support for such commissions further compounds the problem of the Constitutional Agreement of 2002. Government Resolution N63 was adopted not to promote the rights of all religious institutions in Georgia, but expressly to support the richest and most influential religious institution in the state and ignore the comparable needs of all other religious institutions in the country.

An additional problem with N63, beyond the fact that on its face it discriminates in favor of one religion to the detriment of all others, is that it apparently acts without regard to the basic good governance rules of transparency. It appears that:

⁸⁰ See TDI, *Study of Religious Discrimination*, 19.

- all those who work under the governance of N63 are members of the Georgian Orthodox Church;
- meetings are not held publicly and there is no full accounting of procedures;
- there is no opportunity for full public comment; and
- decisions are made in secret.

It would be perfectly obvious that there would be a substantial violation of basic standards of justice if a governmental commission were established in Great Britain, for example, that was designed to promote the interests of the dominant racial group and that all members of the commission were members of that group and that it acted in secrecy. And yet this appears to be exactly what is happening in Georgia, albeit with the substitution of religion for race.

2. The State Agency for Religious Issues (SARI) (2014-present)

On February 7, 2014, Paata Zakareishvili, the State Minister for Reconciliation and Equality announced that a decision had been made to create a new agency – the State Agency for Religious Issues (SARI) – to deal with religious issues that would operate under the Prime Minister’s Office so that it would have a “high status.” The objectives of SARI, according to Minister Zakareishvili, would include implementing the “country’s policy on religious issues,” to compensate religious groups for property that had been lost during Soviet times, and deal with education and property issues.⁸¹ Pursuant to the decision, the Georgia officially created SARI through Government Resolution N177 (February 19, 2014), “On the Establishment of the Legal Entity of Public Law – State Agency of Religious Issues and on Approval of its Statute.” Its official mandate is established in Government Resolution N177. SARI issued its first report on February 23, 2015, covering the period July-December of 2014.

The authors of this Report met with officials of SARI on January 16, 2015, and subsequently sent, with SARI’s consent, a series of questions to its Chairman on April 14, 2015 (see Appendix I). SARI in turn supplied answers on May 28, 2015 (see Appendix II). We very much appreciate the courtesy that was shown to us during the meeting and SARI’s taking the time to respond to our written questions. While our meeting with SARI was very cordial, we were troubled by the responses (both oral and written) to our questions. Indeed, SARI’s responses exemplified the most serious concerns that we had before attending the meeting: its mandate is not clear; its responsibilities and authority are not clear; it does not have procedural guidelines for some of its important actions; and it lacks transparency and accountability. ***Ultimately, it appears that SARI, an agency of the Georgian government, sees its principal mission not as promoting freedom of religion and belief on behalf of all Georgians, but as promoting particularly the financial and material interests of the Georgian Orthodox Church.***

SARI officially is a consultative body of the government and Prime Minister with regard to religious issues. According to SARI, it “conducts research based, scientific and recommendatory activities in the field of religion as well as preparing relevant recommendations for Government of Georgia and for the Prime Minister of Georgia.” (SARI answers, N1) After reviewing SARI’s implementing documents and explanations for its activities, however, we have three interrelated concerns.

⁸¹ <http://agenda.ge/news/8170/eng> . <http://en.trend.az/scaucasus/georgia/2239411.html>

Three interrelated concerns regarding SARI's mission:

First, SARI's mandate and authority

After our review of: (a) Government Resolution N177 creating SARI, (b) SARI's first report in 2015, and (c) its answers to our written and oral questions, it remains to us unclear *exactly* what SARI's mandate is and what its *actual* powers are. In some cases, SARI presents itself as merely an advisory and consultative body, while on other occasions it appears to make important decisions on property distribution and financial distributions to religions – albeit under the ultimate authority of the Prime Minister. Thus while its role might technically be described as advisory, it in fact appears to be in effect a decision-maker. In order to better understand which actual powers SARI possesses, we asked (Question N3) whether **any** of SARI's "recommendations" had actually been rejected by the government. Rather than answering the actual question that was asked – whether any recommendations had been rejected – SARI merely repeated the statement that its power is only to make recommendations. This evasive answer leads to the reasonable suspicion that SARI is, in effect, a decision-maker – but will not acknowledge it.

One specific area that remains confusing is the exact role that SARI plays in making decisions (or recommendations) with regard to return of religious properties to religious groups. From our perspective we were given quite different answers in our January 16, 2015 meeting, and in the response to our written Question N4. It was our understanding from the meeting that SARI was indeed actively involved in recommending (or deciding) issues involved regarding the return of property. Moreover, in its February 23, 2015 Report, SARI specially acknowledges that it does play a role in making decisions about the allocation of property. And yet in SARI's answers to Questions N4, 5, and 11, SARI answered as if it played no role at all in taking such decisions!

When millions of lari are at stake and the properties of many religious organizations are at issue, ***SARI and Georgia should be open, honest, consistent, and clear about which agencies have actual decision-making authority and by what standards decisions are being made.***

We note that the concern we express here appears to be shared by the Georgia Public Defender's Office.⁸²

Second, the standard of equality versus hierarchy and favoritism

SARI is, of course, an agency of the state and it should represent all of the citizens of Georgia, regardless of their religion and ethnicity. According to the Georgian Constitution and Georgia's commitments to comply with human rights standards, the agency should act in an unbiased way and treat individuals and groups equally and justly. SARI should avoid both the perception and reality of being a state agency that promotes the special interests of the Georgian Orthodox Church. In our January 16, 2015 meeting with SARI officials, Chairman Vashakmadze declared that "all religions have the same status as the Georgian Orthodox Church" and that the state does not want to create different categories of religion, and that there should be no difference in rights. These fine standards, articulated by the Chairman, seem to be exactly right. Unfortunately, there appears to be evidence that these articulated standards differ substantially from actual practice.

⁸² <http://www.tabula.ge/en/story/82726-council-of-religions-mandate-of-agency-of-religious-issues-problematic>

Let us give one very troubling example from SARI's February 23, 2015 report. In it, SARI stated that it had examined domestic legislation from several states in the European Union and the Council of Europe, and that it had concluded that their "law establishes a hierarchy among religious organizations" and concluded that such hierarchies and different standards are acceptable as a matter of law. This statement from the SARI Report, of course, is quite the opposite of Chairman Vashakmadze's oral statements on January 16 (quoted above) about SARI's position that all religions should be treated equally. The SARI report does not cite Georgian laws on fairness (including Civil Code 1509), nor European standards as identified by the ECHR, but approves of non-Georgian examples of discrimination. ***Rather than looking to the governing law in Georgia and international standards that require the state to treat all religions equally, SARI instead specifically attempted to identify practices by other states that are inconsistent with Georgia's legal obligations.*** When seeking guidance on Georgia's legal obligations, SARI should be looking to the European Court of Human Rights, the UN Special Rapporteur on Freedom of Religion or Belief, the UN Human Rights Committee, and the European Commission Against Racism and Intolerance – and not to practices of states whose actions may be inconsistent with the best practices. By analogy, a state concerned about women's issues should be looking to best practices of states complying with human rights law rather than justifying poor practices by looking to states that discriminate against women. SARI notably does not reference the decisions of the European Court of Human Rights.

As we were undertaking our research, we heard comments both by public officials and by NGO representatives that suggested the possibility that SARI in fact acts as if it has the special purpose of promoting the special interests of the Georgian Orthodox Church. For example, we were advised that the Chairman of SARI, Zaza Vashakmadze, has publicly stated that he was proposed for the post by the Patriarch Ilia II. Accordingly, one of the questions we asked SARI (Appendix I Question N2) was whether he was, in fact, "***proposed*** as Chairman of the State by the Georgian Orthodox Church (and perhaps even by the Patriarch personally.)" The response from SARI avoided answering our actual question by responding to a question that was not asked. SARI's answer to Question N2 was that Chairman Vashakmadze was "appointed" in accordance with GR N177. We fully understood that the actual appointment was made by appropriate officials, but this was not responsive to our actual question about whether the Patriarch had publicly called for his appointment. Rather than answering the thrust of the question, it was avoided by making an irrelevant comment. It appears that the support of the Patriarch is proudly claimed when convenient and hidden when inconvenient. This lack of transparency underscores the root of the problem.

We similarly were advised that apparently all of the SARI staff are members of the Georgian Orthodox Church, which certainly would be troubling sign of bias at an agency whose role should be one of treating all religions in Georgia fairly, equally, and in accordance with law.⁸³ We are confident that SARI officials fully understand that it would be inappropriate for an agency responsible for allocating funds to religions in Georgia to have all of its staff be members of one single religion. Our Question N2 was posed for the purpose of testing the accuracy of the unofficial reports we had heard that all employees of SARI are members

83 According to TDI, all of the commissions, working groups, and agencies that have worked on religion since 2002 are "composed exclusively of the representatives of the government of Georgia and the Georgian Orthodox Church . . ." TDI, *Study of Religious Discrimination*, 19.

of the Georgian Orthodox Church. There is a legitimate reason to be concerned that a state agency responsible for making decisions related to the distribution of property and the award of funds should be strictly neutral and unbiased in its own hiring and employment practices. Given that SARI's decisions thus far have been highly favorable to the Georgian Orthodox Church, and given that the Chairman of SARI has publicly aligned himself with the Church and the Patriarch, it is important to see how deep the potential bias actually goes. But rather than answer the question posed, SARI responded that it was precluded from answering by Article 9 of the European Convention on Human Rights, which ensures the right of the *forum internum* and that the religious beliefs of the individual staff members who work for SARI are a private matter. Of course SARI is absolutely correct that its employees are protected by the *forum internum* and that none should be forced to disclose their private religious beliefs. We note, however, that if there were anyone on the staff who was *not* Georgian Orthodox and if that fact were known, there is nothing that would have prevented SARI from providing the answer. We also can well suspect that SARI would proudly note the fact that non-Orthodox had been hired if it were in fact the case.

Finally, we note with regard to Question N2, the **only** time SARI made any reference to human rights standards or its obligations to follow them is when it was attempting to **avoid** answering a question. SARI certainly never said that it was legally or morally obligated to follow any other provision of the European Convention on Human Rights or that it had an obligation to treat all religions equally. Thus it appears that promoting "human rights" seems not to be a goal of the agency, but a way of shielding itself from scrutiny. We would have preferred that SARI consistently and fully attempted to comply with international human rights standards, and did not invoke them only when in its interest in preventing disclosure of its practices.

Third, SARI's lack of procedures for allocating funds and property

In our meeting with SARI on January 16, 2015, the authors of this report raised a series of question about procedures for making decisions about state allocation of property and funds to religious institutions. It had been our impression before the meeting that decisions were based not on objective and public criteria, but on political decisions influenced by religious preferences. Accordingly we asked whether SARI had any written guidelines or standards for:

- (a) identifying all of the religious properties in dispute in Georgia;
- (b) obtaining an objective appraisal of their value;
- (c) publicly requesting all interested parties to provide evidence of their ownership claims;
- (d) explaining the standards on how decisions would be made; and
- (e) publicly disclosing in writing all of the criteria, decisions, and basis for the decisions.

At the time of the January 16 meeting these questions were all answered in the negative; no such standards had been prepared, though it was agreed that these were good ideas. We similarly posed questions N4-N8 (see Appendix I) to learn whether SARI has in fact established publicly available written and objective procedures. Rather than answering our questions directly, SARI evaded the questions and it certainly did not identify any written or objective procedures that it follows. (See Appendix II). Thus, despite our specific questions and despite our having provided SARI with ample opportunity to explain the procedures by which it makes its recommendations, it failed to do so. As far as we are aware, there are no objective, written, announced, and public standards in Georgia for making decisions that

involve the transfer of significant amounts of property worth tens of millions of euros. It of course is obvious that if property decisions are being made without criteria and by officials who are members of the Georgian Orthodox Church, religious minorities and international observers may be very suspicious about whether these decisions conform to the rule of law, fairness, and human rights standards. The fact that these decisions are being made apparently by people whose own religious interests apparently favor the Georgian Orthodox Church is deeply troubling.

This problem is compounded even further by the fact that SARI's report nowhere acknowledges that it has the obligation to treat all religious groups equally – and indeed it highlights that it actively sought out examples of states that do not treat religions equally. Even the allocation of funds of November 10, 2014, to four religious groups appears to be based not on any objective and published criteria, but on undisclosed criteria. (See Part III.C.3 immediately below)

Georgia should be applauded for taking the unusual and praiseworthy step of providing compensation for property that was wrongly seized during Soviet times. However, the way in which Georgia and SARI are going about the restitution underscores that *rather than repudiating the Soviet system's arbitrary seizures of property, SARI has simply replaced the unfair and arbitrary Soviet procedures by their own new unfair and arbitrary procedures*. If SARI wishes to operate on the rule of law, and in accordance with the Georgian Constitution and international human rights standards, it should amend its practices immediately.

3. One-time Financial Grant to Four Religious Institutions in 2014

Although there are core inequalities in how Georgia has sought to compensate the Georgian Orthodox Church, it is important to note that there have been some modest and halting efforts to provide some compensation to other religious groups. In two measures taken in 2014, twelve years after steps were first taken to aid the Georgian Orthodox Church, some limited compensation was provided to selected religious organizations.

Government Resolution N117 (27 Jan 2014)

On Approval of the Procedure for Implementation of Certain Measures related to the Partial Compensation of Damages Inflicted during the Soviet Totalitarian Regime to the Religious Organizations Present in Georgia

Government Resolution N437 (13 March 2014)

Grant of 1,750,000 Georgian lari to be divided among four religious groups

These two measures demonstrate a slightly improved, albeit limited and deeply problematic, effort to provide some compensation for religious groups other than the Georgian Orthodox Church. While the two measures appropriately seek to include other religious groups into the equation, the two laws nevertheless suffer from the same core problem as the Constitutional Agreement. As explained in the immediately preceding section, rather than establishing a neutral standard equally applicable to all religious groups and establishing a transparent and just method of accounting for past losses, Georgian officials have arbitrarily selected some religious groups for inclusion and excluded others while providing benefits without any criteria or explanation for the amounts provided. While having the modestly positive effect of broadening the range of groups to be included, the procedures continue with the same fundamental flaw of selectivity and arbitrariness. Compensation for properties unjustly seized during Soviet times should be governed by objective standards and transparent methods, not one-time payments without standards or explanations.

The UN Human Rights Committee states that:

while noting the adoption on 27 January 2014 of decree No. 117 of the Georgian Government on implementing measures related to the partial compensation for damage inflicted on religious groups in Georgia during Soviet totalitarian rule, remains concerned that insufficient measures are taken to address the restitution to religious minorities of places of worship and related properties confiscated during the Soviet era. It is also concerned about cases of religious intolerance, including harassment and verbal and physical assault against persons belonging to religious minorities, in particular Jehovah's Witnesses, Muslims and members of other non-traditional religious minorities, and instances of interference in their worship activities and of vandalism (arts. 2, 7, 18 and 26).⁸⁴

The solution to the serious problem is not to make a one-time (or two-time or three-time) grant to groups of favored religions, but establishing fair, uniform, objective, and public criteria.

4. Conclusion: Concerns Regarding State Commissions Involving Religion

It should be hoped that government entities dealing with complicated and sensitive issues pertaining to religion and governmental support of religion would hold to the highest standards of transparency, integrity, non-discrimination, and fairness in all of their actions. Unfortunately, this appears not to be the case in Georgia. While those working for agencies and committees may fully believe in the importance of their mission, they should understand that they are employees of the Georgian state who should fairly be promoting the interests of *all* Georgian citizens, and not simply the political and materials interests of the richest and most powerful private institution in the country.

⁸⁴ UN Human Rights Committee, Concluding observations on the fourth periodic report of Georgia, CCPR /C/GEO/CO/4, 19 August 2014, ¶ 18.

It is difficult for outside observers to fully comprehend these three core “rule of law” and “lack of transparency” allegations. Although we recognize that we are not fully able to support our concerns, ***we challenge the agencies described below to openly and candidly respond to these concerns by: (a) providing specific and verifiable evidence that they do follow proper standards of transparency and openness; (b) publicly produce their written standards and guidelines; and (c) demonstrate that their employees come from the entire range of religious beliefs that exist in Georgia, and not solely that of the Georgian Orthodox Church.*** Under standards of good governance, it should be the responsibility of state agencies to demonstrate their good faith. We are also confident that if the relevant state agencies have solid evidence to demonstrate that they are operating under rules of good governance, that they would have no difficulty providing concrete proof of their practices rather hiding behind vague words and standards.

IV. Conclusion

A. The Golden Rule and the Golden Calf

The most universally recognized moral precept is the “Golden Rule.” Although versions of the Golden Rule are found in scriptures recognized by Christians (Matthew 7:12; Luke 6:31; Leviticus 19:18, 34), variations of it are widely recognized in Judaism, Islam, Hinduism, Buddhism, and other major religions.⁸⁵ While philosophers and jurists typically have been unwilling to recognize the Golden Rule as a definitive or comprehensive ethical principle, they have often acknowledged it as a valuable moral precept that may underlie more rigorously articulated standards.⁸⁶ Even jurists who debate whether the Golden Rule is a foundational principle of modern human rights standards, nevertheless acknowledge that many of the core values of human rights – including treating people (as well as similarly situated groups) equally before the law – are fully consonant with the Golden Rule if not derivative from it.⁸⁷ Some scientists have even argued that the precepts of the Golden Rule underlie human behavior generally.⁸⁸

85 As a universal ethic that broadly is accepted by most world religions, see Olivier Du Roy, *La Règle d'or, Histoire d'une Maxime Morale Universelle* (2 vols.) (Paris: les Éditions du Cerf, 2012); Jeffrey Wattles, *The Golden Rule* (New York: Oxford University Press, 1996); Jacob Neusner and Bruce Chilton, eds., *The Golden Rule: The Ethics of Reciprocity in World Religions*, (London: Continuum, 2008); Hans Reiner, *Die "Goldene Regel": Die Bedeutung Einer Sittlichen Grundformel Der Menschheit* (Wurzacht: Birnbach, 1948); H. T. D. Rost, *The Golden Rule: A Universal Ethic* (Oxford: G. Ronald, 1986); Keith D. Stanglin, “The Historical Connection between the Golden Rule and the Second Greatest Love Command,” *The Journal of Religious Ethics* 33, no. 2 (2005): 357-371.

Arguing that the Golden Rule is a universal ethic that applies in Islam and other religions, see Abdullahi Ahmed an-Na'im, *Muslims and Global Justice* (Philadelphia: University of Pennsylvania Press, 2011), esp. 94, 95, 168, 169, 328 n. 4; as well as his *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law* (Syracuse, NY: Syracuse University Press, 1990), esp. 1, 113, 138, 159, 162-65; *Islam and the Secular State: Negotiating the Future of Shari'a* (Cambridge: Harvard University Press, 2008), 24, 34; “Problems of Universal Cultural Legitimacy,” in *Human Rights in Africa: Cross-Cultural Perspectives*, edited by Abdullahi Ahmed An-Na'im and Francis Mading Deng, (Washington, DC: The Brookings Institution, 1990), 331-367.

The most famous advocate for the Golden Rule in Judaism was the Rabbi Hillel. See Yitzhak Buxbaum, *The Life and Teachings of Hillel* (Lanham, MD: Roman & Littlefield Publishers, Inc., 1994), esp. 95-102. For Islam, in addition to Na'im cited above, see Th. Emil Homerin, “The Golden Rule in Islam,” in *The Golden Rule: The Ethics of Reciprocity in World Religions*, edited by Jacob Neusner and Bruce Chilton (London: Continuum, 2008), 99-115.

86 See, for example, the notable French philosopher of religion, Paul Ricoeur, in his “Entre Philosophie et Théologie: la Règle d'or en Question,” *Revue d'Histoire et de Philosophie Religieuses* (1989); Paul Ricoeur, “The Golden Rule: Exegetical and Theological Perplexities,” *New Testament Studies* 36 (1990); Paul Ricoeur, “Ethical and Theological Considerations on the Golden Rule,” in *Figuring the Sacred: Religion, Narrative, and Imagination*, edited by Mark I. Wallace (Minneapolis: Fortress Press, 1995), 293-302.

See also Harry J. Gensler, *Ethics and the Golden Rule*, (New York: Routledge, 2013); Alan Gewirth, “The Golden Rule Rationalized,” *Midwest Studies in Philosophy* (1978): 133-147; Marcus G. Singer, “The Golden Rule,” *Philosophy* (1963): 293-314; Neil Duxbury, “Golden Rule Reasoning, Moral Judgment, and Law,” *Notre Dame Law Review* 84, no. 4: 1529-1605; Andrew Fiala, “How Would You Like to Be Him?” The Golden Rule, Third Person Descriptions, and Virtue Ethics,” *The Pluralist* 4, no. 2 (2009): 24-37.

Perhaps the most widely regarded philosopher of ethics and metaphysics, Immanuel Kant, did not adopt the Golden Rule as the foundation of his ethics, but his “categorical imperative” can be understood as more sophisticated and revised version of it. See Immanuel Kant, *Groundwork for the Metaphysics of Morals*, translated by Allen W. Wood (New Haven: Yale University Press, 2002). “The categorical imperative is thus only a single one, and specifically this: *Act only in accordance with that maxim through which you can at the same time will that it become a universal law.*” *Ibid*, 37 (emphasis in original). See also 48. For works arguing for the compatibility between the ethics of Kant and John Stewart Mill as well as Kant and Jesus, see Fiala, *op. cit.*, 25-26 and S.B. Thomas, “Jesus and Kant: A Problem in Reconciling Two Different Points of View,” *Mind* 79, no. 314 (1970): 188-199.

87 Abdullahi an-Na'im is one of the most stalwart supporters of the Golden Rule as a foundational principle for human rights. See his works cited above. See also Tore Lindholm, “Prospects for Research on the Cultural Legitimacy of Human Rights: The Cases of Marxism and Liberalism,” in *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus*, edited by Abdullahi Ahmed an-Na'im (Philadelphia: University of Pennsylvania Press, 1992), 387-426. For a reconceptualization, see Johannes Morsink, “The Shortcomings of the Golden Rule,” in *Inherent Human Rights: Philosophical Roots of the Universal Declaration* (Philadelphia: University of Pennsylvania Press, 2009), 112-143.

88 Donald W. Pfaff, *The Neuroscience of Fair Play: Why We (Usually) Follow the Golden Rule* (New York: Dana Press, 2007), Michael Shermer, *The Science of Good and Evil: Why People Cheat, Gossip, Care, Share, and Follow the Golden Rule* (New York: Times Books, 2004), Gretchen Vogel, “The Evolution of the Golden Rule,” *Science* 303, no. 5661 (2004): 1128-1131.

The foundational principle of “equality before the law” is, as has been noted above, similarly a core Georgian value that was incorporated into the constitutions of 1921 and 1995. Because Georgia is predominantly a Christian country, it may be worth noting the primacy of the Golden Rule in Orthodoxy. The Holy Scriptures of Christianity, including both the New Testament and Old Testament (the Hebrew Bible), underscore the Golden Rule. The Holy Bible quotes Jesus as saying, according to the English-language *Orthodox Study Bible* (St. Athanasius Academy of Orthodox Theology, 2008):

Therefore, whatever you want men to do to you, do also to them, for this is the Law and the Prophets. (Matthew 7:12)⁸⁹

Therefore, whatever you want men to do to you, do also to them, for this is the Law and the Prophets. (Luke 6:31)

This teachings of Jesus, which he attributes to the prophets of old, can be traced back to the Old Testament (Hebrew Bible):

You shall love your neighbor as yourself. (Leviticus 19:18)

The resident alien who dwells among you shall be to you as one born among you, and you shall love him as yourself. (Leviticus 19:34)

The revered Holy Hierarchs of the Orthodox Church have underscored the importance of the Golden Rule. St. John Chrysostom, in the Hexaemeron, Homily IX, warned that:

We shall not be able to say in self-justification, that we have learnt useful knowledge in books, since the untaught law of nature makes us choose that which is advantageous to us. Do you know what good you ought to do your neighbour? The good that you expect from him yourself. Do you know what is evil? That which you would not wish another to do to you.⁹⁰

89 The Koine Greek version has been explained as follows: Matthew 7:12 reads: *panta oun hosa ean thelete hina poiouein humin hoi anthropoi, houtos kai humeis poiετε αυτοις; houtos gar estin ho nomos kai oi prophetai.*

All things [panta hosa]

therefore [oun] which you want/wish/will [ean thelete]

that [hina] people [hoi anthropoi]

do [poiouein] to you [humin],

do [poiετε] thus [houtos kai] to them [autois]

for [gar] this [houtos] is [estin]

the law [ho nomos] and [kai] the prophets [hoi prophetai].

According to Wattles, op. cit. p. 54, the “plural ‘you’ in the third line suggests that the golden rule is given not only to the individual but also to the community.”

90 <http://www.elpenor.org/basil/hexaemeron.asp?pg=74>

St. Basil, in his famous “Sermon to the Rich,” chastised his fellow Christians for seeking to acquire material goods for themselves that they denied to others:

Now, you are obviously very far from having observed one commandment at least, and you falsely swore that you had kept it, namely, that you’ve loved your neighbor as yourself. For see: the Lord’s commandment proves you to be utterly lacking in real love. . . . Thus, the man who loves his neighbor as himself will have acquired no more than what his neighbor has⁹¹

According to St. Basil, the acquisition of money and property for the benefit of oneself and one’s own community, while denying it to one’s neighbor, is to disregard the teachings of the Christian religion. One of the leading Orthodox scholars of ethics, Father Stanley S. Harakas, cites both Chrysostom and Basil as believing that the Golden Rule is a fundamental component of the natural law. The Golden Rule

seeks to particularize and place more clearly in a social context the mutual claims of persons for equal and fair treatment. Thus, St. Basil asks, ‘Do you know what good you should do to your neighbor? That which you would will to be done to you by another. Do you know what it is that would be evil? That which you would not want to suffer from another.’⁹²

To the extent that the Golden Rule is inserted into the social context, as Father Harakas interprets saints Chrysostom and Basil as suggesting, it would be a violation of the Golden Rule of Christian scripture as well as the natural law, for individuals or groups to seek privileged benefits for themselves that they seek to deny to others. It is difficult to see, under the teachings of St. Basil and St. John Chrysostom, how it could be proper to use political power and influence to acquire, land, property, and money for oneself and for one’s preferred community, while denying it to others who may have even a greater need. The scriptures do not teach that the Orthodox Church is justified in claiming a privileged status for itself, but that it should seek for others what it wishes for itself. ***For a Christian church to take for itself that which it denies to others, and doing so in the name of religious privilege, turns the teachings of Christianity on their head.***

Rather than following the Golden Rule, whether the version enunciated by the Orthodox Hierarchs, by other religions, or by ethical norms, the pattern has been in Georgia for the powerful to aid each other, whether it is by the financial grants by the state (ultimately taken from all Georgians), to the Church or the Patriarch’s extravagant gifts of a watch and a horse to the prime ministers who in turn promote additional financial grants of aid to the Church. The Golden Calf – money, property, power, and prestige – seem to have become the governing symbol rather than that of the Golden Rule.

⁹¹ <https://bekkos.wordpress.com/st-basils-sermon-to-the-rich/>

⁹² Stanley S. Harakas, “Eastern Orthodox Perspectives on Natural Law,” Selected Papers from the Annual Meeting (American Society of Christian Ethics), (1977): 44 (emphasis added).

B. Religious Nationalism, Exclusion, and Violence

In the sixteenth century, many Protestants in Geneva believed that God was Calvinist, just as did many Dutch in the seventeenth century. In the nineteenth and twentieth centuries, many Spaniards, Poles, Italians, Irish, and Croatians believed that God was Catholic. Seventeenth century Massachusetts Puritans saw God as a Puritan. Many in the BJP in India today see the God Ram as being Hindu, while the Sri Lankan Sinhala believe that Buddha is God. Many of those who accept the doctrine of *Nihonjiron* in Japan imagine that God is Shinto, while many in the American religious right believe that he is best understood as a Protestant fundamentalist. Unsurprisingly, the Shi'a in Lebanon and in Iran think God favors Shi'ism as much as the Wahhabis in Saudi Arabia and Muslim Brothers in Egypt see him as a Sunni Muslim.

One may well imagine that it is not God who is confused about His own identity, but that the confusion today comes from fallible human beings who are certain that God uniquely favors them because He so closely resembles the image that they have of Him approving of them.

The phenomenon of “religious nationalism,” which links religion, ethnicity, and the state, can be seen in several places in the world. Religious nationalism typically brings harmful effects to those people who do not fit conveniently into the religious nationalism promoted by the majority. Religious nationalism is bad for Jews in Poland and bad for Orthodox Christians in Israel, Egypt, and Estonia. It is bad for Protestants in Spain and Croatia, and bad for Catholics in Russia. It is bad for Muslims in the United States and bad for Christians in Pakistan.

Georgian “Orthodox-nationalism” has many of the same features as the religious nationalism of the Jewish nationalist Gush Emunim in Israel, the Hindu nationalist Bharatya Janata Party (BJP) in India, the Muslim nationalist Jama'at-i-Islami movement in Pakistan, and the nationalist Protestant Orange Order in Northern Ireland. In each case, politicians and religious leaders link a particular interpretation of the dominant religion to a national identity with the fervor of those who believe that God is on their side. Those who oppose the self-interested religious nationalism in all of these countries are condemned by religious nationalists as being corrupt, immoral, evil, or atheist. These Jewish, Christian, Muslim, and Hindu forms of religious nationalism approach politics with the certainty that they speak for God and that their opponents are to be dismissed. They rally to the link of “God-Religion-Country” not for the limited purpose of uniting themselves with their all of their fellow citizens, but for driving a wedge between their dominant group and others. Those who suffer the consequences of this self-assured self-righteousness are religious minorities. Orthodox Christians are victims of this religious nationalism when they are in minorities.

With the utter *human* certainty that they are God's chosen people, they believe that *their* understanding of religious truth authorizes them to use the power of the state to support their religion at the expense of religious minorities. Religious nationalism – whether in Russia, India, or Spain – in reality has nothing to do with the Golden Rule and much to do with human pride. The worst form of religious nationalism comes from those whose self-certainty leads them to believe that God has authorized them to use violence against those who do not accept their religious nationalism. This unholy violence can be seen in its worst excesses in Syria and Pakistan, but it can also be seen in attacks on religious minorities in Georgia. To use the name of religion, whether Islam or Georgian Orthodoxy, to persecute others is a fundamental repudiation of the religion that they purport to be defending.

C. Concluding observations

In a clear contrast to the fundamental Georgian values of equality, tolerance, and fairness, the Constitutional Agreement of 2002 overtly discriminates in favor of the largest, richest, most influential, and most politically powerful religious institution in the country. The privileged treatment provided by the Constitutional Agreement is inconsistent with these Georgian values, as well as human rights standards and the basic precepts of the Golden Rule.

The Georgian Orthodox Church can correctly claim that the Union of Soviet Socialist Republics and the Georgian Soviet Socialist Republic unconscionably and wrongly abused the church, illegitimately seized its property, deprived it of its religious freedom, and used its state power in attempts to manipulate societal attitudes against the church and religious believers. But the attempt to seek justice for its own favored cause does not justify denying to others their own claims to property and religious freedom. Unfortunately, with only a few exceptions, the Georgian state is consciously aiding the most powerful religious institution in this country and discriminating against all others. This, of course, turns on its head Georgia's human rights commitments, but also the teachings of the founder of Christianity. Thus there is no focus on the *teachings* of Jesus, but on using religious nationalism to strengthen its position against others.

The fact that the Georgian Orthodox Church used its political influence to prevent the adoption of the Concordat between the state and the Roman Catholic Church and that it (unsuccessfully) sought to prevent the adoption of the amendment to article 1509 of the Civil Code suggests that the Georgian Orthodox Church did not feel itself to be bound by Jesus's Golden Rule and instead followed the same path of religious nationalism that can be seen in many places of the world, where religious nationalists seek to limit the political and civil rights of those who have different religious beliefs.

Unfortunately, the official legal discrimination by the state that is reflected in the Constitutional Agreement of 2002 is repeated and reinforced in less transparent but equally troubling instances of official bias and troubling indifference to suppressing discrimination or promoting tolerance. The Constitutional Agreement thus stands out not as an unfortunate exception to a general pattern, but rather exemplifies a concerted if unstated policy of active discrimination against religious and ethnic minorities in Georgia.

Appendix I:

Questions Presented to the State Agency for Religious Issues

1. It was our understanding that one of the principal tasks of the State Agency is to make recommendations with regard to the distribution of religious property seized by the state during the Soviet period. Is that correct?

2. It is our understanding that you were first proposed as the Chairman of the State Agency by the Georgian Orthodox Church (and perhaps even by the Patriarch personally). Is that correct? It also is our understanding that all officials and senior staff working for the State Agency are all members of the Georgian Orthodox Church. Is that correct? If not, could you please identify (by name or position) the staff members who do not belong to the Georgian Orthodox Church?

3. It is our understanding that thus far no recommendation made by the State Agency to the government regarding restitution of religious property has been rejected. (Of course we understand that the government may not have acted on all recommendations.) Is this correct that all of your recommendations have been accepted? If not, could you let us know which were rejected?

4. It is our understanding that the State Agency has not compiled a comprehensive list of all properties in Georgia that are being considered for restitution. Is that correct?

5. Is the State Agency attempting to compile a list of all properties that are subject to restitution? If so, does the State Agency plan to make the list public?

6. Before making recommendations to the government, does the State Agency publish in advance its tentative recommendations and give all potential interested parties an opportunity to present evidence regarding its interest in the property? If so, could you advise how this procedure works?

7. According to my notes of the meeting, you said that explanations (rationales) of your recommendations on property restitution and compensation would be made available publicly. Is this correct? Do you have some examples of such explanations that have been made available?

8. What steps does the State Agency take to ensure that all interested parties in a particular property have the opportunity to present evidence to the State Agency? Does the State Agency publicly explain the basis for its recommendations? If so, could you kindly send to us copies of those reports?

9. We understand that you did hold a meeting on February 23 to release your report from the second half of 2014. Could you kindly send us a copy of the report? If it is being translated into English, that also would be welcomed. We understood from our meeting with you that NGOs would be invited to the meeting where you released your 2014 report. Were NGOs actually invited? If so, do you have a list of those who attended?

10. Based upon our meeting, we understood that the State Agency has not developed any written criteria for making decisions regarding restitution or compensation for seized religious properties. Is this correct? In our understanding of general principles of the rule of

law, property restitution should be based on clear, fair, transparent, published, and systematically followed rules. There also should be mechanism for an appeal to an independent entity (such as a court) for redress of any unfairness. Do you agree that there should be clearly articulated rules before property restitution decisions are made? Do you have any plans to prepare such guidelines? Do you plan to continue to make recommendations on property restitution before adopting such guidelines?

11. In addition to the restitution of physical property (churches, monasteries, mosques, houses, etc.), could you please identify any role played by the State Agency with regard to financial payments made to religious groups for losses suffered during Soviet times? Thus, for example, does the State Agency make recommendation for direct financial payments to religious groups by the Georgian state?

12. Similarly, does the State Agency play any role (advisory or administrative) with regard to payments to religious organizations by local entities (such as municipalities)? What actual powers and authority does the State Agency have with regard to municipal/local offices?

13. Similarly, does the State Agency play any role with regard to issuing construction permits by municipal entities to religious organizations, or is that handled exclusively by other political offices?

14. It was my understanding that regulations are being prepared to guide such payments. (My notes are not clear on whether the State Agency is involved in drafting such regulations.) Have such regulations been published? Is the State Agency involved?

15. Does the State Agency have access to records about past payments to religious entities or with regard to potential future payments?

Appendix II: Answers to Questions Provided by the State Agency for Religious Issues

To start with the question 1.

It is not true. The State Agency for Religious Issues conducts research based, scientific and recommendatory activities in the field of religion as well as preparing relevant recommendations for Government of Georgia and for the Prime Minister of Georgia. (Please, find attached document: 19th February 2014, N177 ordinance of the Government of Georgia on “Establishment of LEPL State Agency for Religious Issues and approval of its regulations”).

As for the issue of damages incurred by religious organizations during Soviet totalitarian regime the latter is one of the functions of the state agency. (See attachment: 27th January 2014, N117 ordinance of the Government of Georgia on “approval of implementation of certain measures for partially recovering damages incurred by Religious Organizations existing in Georgia during Soviet totalitarian regime”).

Answer question N2.

It is a bit awkward to answer this question. That is not correct. The matter of appointment of the head of the State Agency is regulated by N177 ordinance of the Government of Georgia that we have already attached. Even if patriarch had proposed, he would not have managed that due to lack of legal power.

As to the issue of religious affiliation of staff members the latter is protected under Constitution of Georgia Article 19 as well as according to European Convention of Human Rights Article 9 namely as a part of concept forum internum. Thus, collecting and then disclosing information about employees’ religious affiliation will constitute violation of Art. 9 of Constitution of Georgia and Art. 9 of ECHR.

What is your opinion would it be correct in case we asked question our staff concerning their religious belonging? Would not it constitute abuse of religious freedom?!

Joint Answers to questions N3, N6, N7, N8, N10

According to 19th February, N177 ordinance of Government of Georgia, one of the functions of the State Agency is to issue recommendations on construction of Cult-Religious Buildings, determination of location and transformation of different buildings into cult-religious buildings. For the purposes of fulfillment of these functions the head of State Agency by his order (normative act) created Recommendatory Commission on the study of Property and Financial issues of Religious Organizations. The Commission is engaged in studying and issuing relevant recommendations. Recommendations as such have no obligatory character thus, it is up to each competent body whether or not to comply with recommendations issued by the commission.

The recommendations issued by the Commission are available on the official web of the State Agency: religion.geo.gov.ge/geo/document

Joint Answers to questions N4, N5, N11

As for the issue of restitution, the action area of the State Agency from the very beginning was misled in terms of reparation for damages incurred during Soviet totalitarian regime.

There is no legal basis for restitution of ceased property in Georgian Legislation, however the Georgian state after the dissolution of the Soviet Union as an owner of Cult buildings transfers such property.

Counting of amount of damages is prescribed in details according to the ordinance N117 and does not fall under competency of the State Agency.

Answer to question N9.

Yes, we hold a meeting on February 23 to present our activities' report of the second half of 2014. On the meeting we invited representatives of national authority, confessions, diplomatic corpus and international organizations. Moreover the meeting was open for journalists as well as to other interesting parties. That is why national NGO representative such as Human Rights Education and Monitoring Center attended. List of International Organizations that were invited are as follows: UNDP, European Union Monitoring Mission in Georgia, UNHCR, UNICEF, NPO, USAID, IOM and Conrad Adenauer Stiftung.

As for the copy of report, please find attached document in original language.

Besides the State Agency cooperates with national non-governmental organizations. We met Human Rights Education and Monitoring Center (EMC), Tolerance and Diversity Institute (TDI) and Human Rights Center. The organizations represented their reports concerning religious topics.

Joint answers to questions N12 and N13

Concerning the issues that fall under the competency of the local authorities the state agency is limited in terms of recommendatory activities.

Question N14 is not clear.

Answer to question N15

The State Agency requested information from relevant state entities about the money they had paid for last 5 years. Due to such a long period we are in a process of working on a data.

**Sincerely Yours,
Zaza Vashakmadze**

