

Minorities and the State in the South Caucasus: Assessing the Protection of National Minorities in Georgia and Azerbaijan

Johanna Popjanevski

SILK ROAD PAPER
September 2006



Central Asia- Caucasus Institute
Silk Road Studies Program

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Minorities in Georgia and Azerbaijan

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A Joint Transatlantic Research and Policy Center

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“Minorities and the State in the South Caucasus” is a *Silk Road Paper* produced by the Central Asia-Caucasus Institute & Silk Road Studies Program. The *Silk Road Papers* series is the Occasional Papers series of the Joint Center, published jointly on topical and timely subjects. It is edited by Svante E. Cornell, Research and Publications Director of the Joint Center.

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© Central Asia-Caucasus Institute and Silk Road Studies Program, 2006

ISBN: 91-85473-22-7

Printed in Sweden

Distributed in North America by:

The Central Asia-Caucasus Institute
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1619 Massachusetts Ave. NW, Washington, D.C. 20036
Tel. +1-202-663-7723; Fax. +1-202-663-7785
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Distributed in Europe by:

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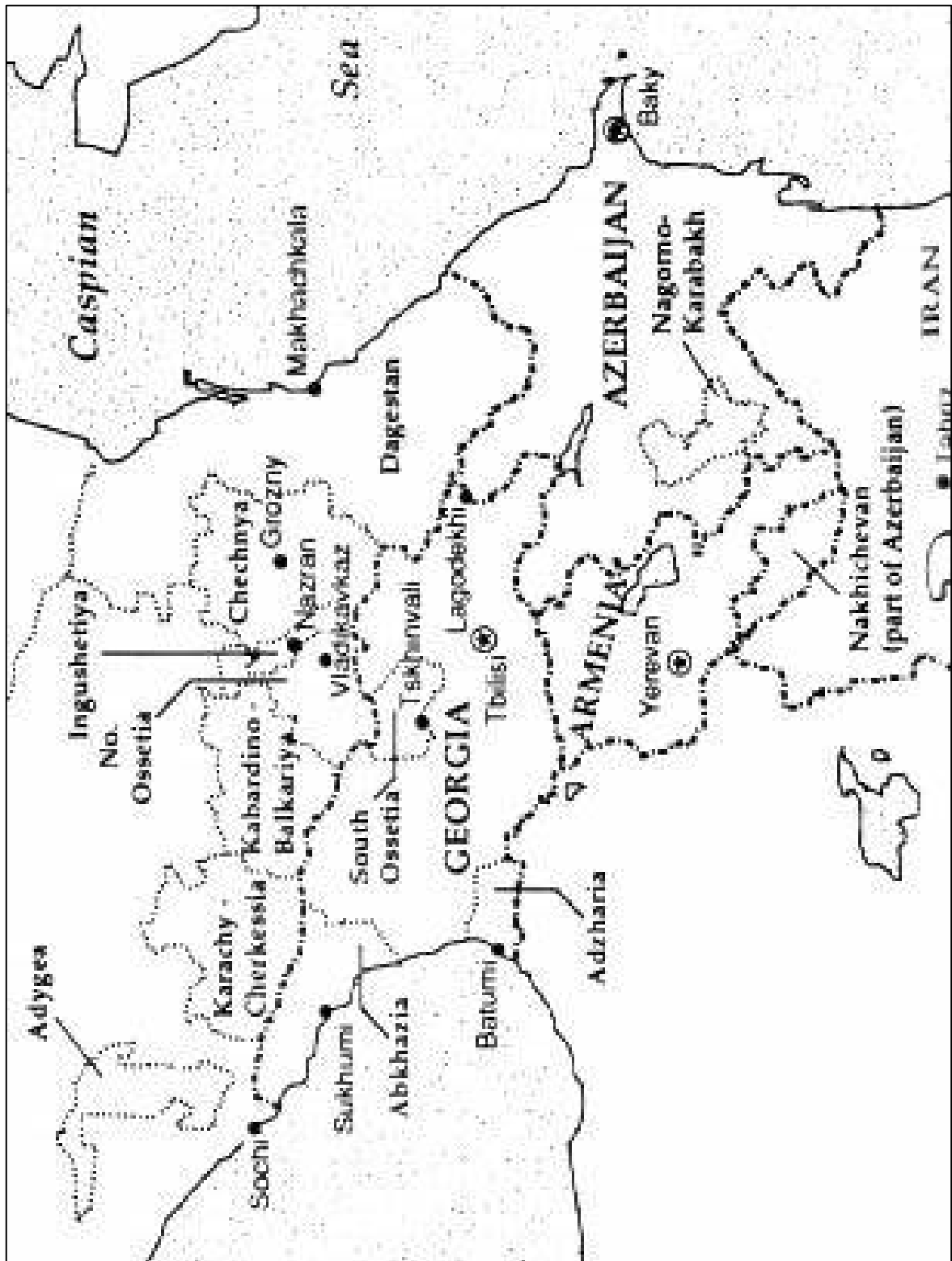
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Preface

This report was drafted during a research stay in Tbilisi, Georgia between October 2005 and May 2006, as part of a research project on “Conflict Management and Ethnic Relations in the South Caucasus”, funded by the Folke Bernadotte Academy.

Throughout the research period the author had assistance from several key actors in the minority field. A particular acknowledgment is due to the Georgian Foundation for Strategic and International Studies in Tbilisi, whose leadership and staff offered invaluable assistance and greatest hospitality. The author is also grateful to the Folke Bernadotte Academy for its support for this project, and to Dr. Jonathan Wheatley, Dr. Anna Jonsson and Dr. Svante E. Cornell for reviewing this report and providing valuable comments on its outline and content.

Johanna Popjanevski
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Summary and Recommendations

The South Caucasus has experienced a complex contemporary history as regards minority issues. Starting in the communist era and over the period following independence, strong ethnic nationalism was prevailing in the region and consequently, boundaries between different ethnic groups are notable until this day. Throughout the 1990s, ethnic minorities, particularly in rural areas, were to a certain extent neglected by the central powers, as the lack of contact between the central and local structures was believed to guarantee stability and ensure that the political elite could remain in power. Nonetheless, three ethnically diverse regions, Abkhazia and South Ossetia in Georgia and Nagorno-Karabakh in Azerbaijan were in the early 1990s separated from the control sphere of the respective states and controversies over their future status remain unresolved. Attempting to break down old patterns, and prevent further secessionist claims, the South Caucasian governments have since rhetorically promoted the concept of civic national identity and unified statehood, denying the presence of ethnically based tensions or divisions on their territories.

Witnessing the emergence of ethnic tensions in the post-Soviet space, the world community began to emphasize the importance of establishing a framework for the protection of minorities in the region. The implementation of internationally recognized minority rights standards was increasingly viewed as a tool for stability, as exclusion of national minorities and suppression of ethnic identity were considered contributing factors to ethnic conflicts. Thus, throughout the 1990s, a large number of international conventions addressing the protection of national minorities were elaborated and monitoring bodies were established to ensure their effective implementation into domestic laws.

While the South Caucasian governments at first, through acceding to a number of relevant instruments, displayed their will of enforcing

international minority rights standards, they were at the same time faced with the challenging task of promoting minority rights without equipping national minority groups with tools for secession. The *de facto* implementation of international minority rights law therefore remained anemic. Whereas constitutional provisions and subsequent legislation have been drafted in a way as to express certain principles as regards equality and promotion of ethnic diversity, little has been done in terms of establishing concrete provisions ensuring the enjoyment of such rights. In some cases the Governments have remained reluctant to ratifying instruments at all, as they are believed to be counter-productive to integration of national minority groups.

Today, there is in both countries a troubling lack of awareness of legislative provisions reflecting minority rights and available anti-discrimination provisions in both the civil and criminal sphere remain unapplied. A common argument among state representatives is that national minorities are not particularly subjected to discrimination or maltreatment and that the absence of claims on ethnic grounds is evidential to that fact. Instead, the general perception is that segregation of national minorities is caused by language barriers, infrastructural weaknesses and economic deficits. Attempting to address such issues, both governments have chosen to forcefully implement legal reforms, aimed at ensuring the participation of national minorities in social and public life, for instance through requiring a certain level of knowledge of the state language in the public sphere. At the same time, the Governments have been unable to provide for sufficient language education, leaving minority groups with limited access to employment and education. This is particularly apparent in Georgia, where integration policies have become discriminatory as there are no technical resources to balance the requirements against the demand for language training. Thus, whereas the policies may originally have been legitimate in light of international minority rights law, they have become contrary to universally recognized standards as regards minority protection.

State institutions in both countries are weak. Although reforms aimed at establishing an institutional framework in which coherent strategies for integration will be developed are underway, there is at present a lack of

cooperation and dialogue between state bodies addressing minority issues. With other problems to address, such as bringing a solution to the frozen conflicts in the region, end widespread corruption and reduce poverty, international organizations and foreign donors have so far paid little attention to the weak policy framework in relation to national minorities. Civil society actors in both countries are to a large extent dependent on foreign grants, and projects initiated by local organizations tend therefore to adopt priorities set by their grant-givers, and thus, follow the same pattern.

Overall, there is an imbalance between the promotion of civic identity and the protection of national minorities in both states, resulting in tensions between the central governments and minority communities. This report therefore concludes that the first step in improving the relationship between the South Caucasian governments and their national minorities is to build capacity on minority issues through awareness-raising among all actors involved, so that comprehensive, and unilaterally developed strategies can be elaborated, which take into account the particularities of both societies.

More specifically, this report concludes with the following recommendations:

- In order to avoid escalation of tensions between minority communities and the central administrations, the Azerbaijani and Georgian governments need to identify and establish an appropriate balance between anchoring the idea of civic national identity and ensuring that minorities have access to the enjoyment of their inherent rights. Thus, both governments should complement integration efforts with enhanced legislative measures enabling minorities to develop and protect their cultures and languages. Taking into account the *de facto* situation in rural areas, both governments should review current integration policies, aiming at strengthening the role of the state languages, which at present border on being discriminatory and are perceived among minorities as aggressive assimilation attempts.
- It is essential that the benefits of national belonging are communicated properly throughout the territories of the respective states. Thus, in promoting a civic national identity, the South Caucasian governments

should raise awareness on the positive implications of civic integration and on available means of preserving a certain level of cultural autonomy. The Governments should pay particular attention to reaching out to its remote areas where awareness on legal provisions in general, and minority rights in particular, is low.

- It is necessary that the Georgian government enhance its efforts to include minorities in local and central decision-making structures. As minorities at present are not sufficiently represented in the political life in Georgia, special measures are required to ensure that minorities have equal opportunities to participate in public life. This appears particularly relevant in light of current local governance reforms, in which centralization of power may hamper the dialogue between the decision-makers and minority representatives inhabiting remote regions. In Azerbaijan, the Government should continue its constructive practice of proportionally including minority members in the decision-making structures. However, particular attention should be paid to the weak local governance system's impact on the ability for minorities from remote regions to participate in the Azerbaijani political life.
- In order to live up to their international obligations in general, and strengthen the legal framework for the protection of national minorities in particular, both governments should continue to adopt international conventions concerned with minority protection. In accordance with Council of Europe obligations, the Georgian government should decide on a model for the implementation of the ratified *Framework Convention for the Protection of National Minorities*, and create concrete strategies for its enforcement. Awareness on the implications of ratifying the *European Charter for Regional and Minority Languages* should be raised among state institutions and in both countries the legislators should initiate the ratification of selected provisions.
- Both governments should equip state institutions dealing with minority issues. It is desirable that bodies are formed, which act as supervisors of efforts in relation to integration and minority

protection. In Georgia, allocating funds to, and thus strengthening the role of the current *State Ministry of National Integration* could constitute an important step in this regard. In Azerbaijan, where no governmental body exists, it may be advisable that the *Council for National Minorities* is re-established.

- The Governments should pay attention to the weak implementation of existing legislative provisions in general and of those concerning anti-discrimination in particular. It is desirable that both governments elaborate comprehensive anti-discrimination laws, which reflect international standards. Meanwhile, it is essential that the absence of claims on ethnic grounds is not interpreted as an indicator of that violations of current anti-discrimination provisions do not occur, but instead that awareness-raising on legal provisions addressing the rights of national minorities is required. In Azerbaijan, particular attention should be paid to the weak rule of law and the limited ability for judiciary representatives to undertake claims that are considered politically sensitive, as this practice tends to have a particularly negative effect on minority-related cases.

1. Introductory Remarks

“We must do more to prevent conflicts happening at all. Most conflicts happen in poor countries, especially those which are badly governed or where power and wealth are very unfairly distributed between ethnic or religious groups. So the best way to prevent conflict is promote political arrangements in which all groups are fairly represented, combined with human rights, minority rights and broad-based economic development.”

Kofi Annan, Statement in presenting his Millennium Report, New York, 3 April 2000.¹

In light of ethnic tensions, present in the region since the late 1980s, the governments of Georgia and Azerbaijan have faced a difficult task in balancing the pressure from the international community to protect the rights of national minorities against fears of separatism, xenophobic sentiments among the public and other more acute issues to deal with as regards stability and state building. Attempting to eradicate old patterns of ethnic nationalism and instead promote unification of the population, the two governments continue to perceive increased protection of ethnic identity as contrary to the concept of civic statehood. A consequential skepticism towards enforcing a framework for the protection of national minorities is particularly obvious in the legislative sphere, where there is a tendency to rhetorically guarantee equal opportunities, but exclude practical measures to ensure effective implementation of minority rights.

The aim of this assessment is to bring attention to how internationally recognized norms in the field of minority protection are reflected in the national legislations of Georgia and Azerbaijan. Thus, the report includes a presentation of recognized principles of international minority rights law followed by an assessment of the countries' legal frameworks. Furthermore, the study brings to attention the *de facto* implementation of national laws and

¹ Quoted from <http://www.un.org/millennium/sg/report/state.htm>, last visited 6 February 2006.

obstacles in the process of enforcing national provisions, particularly in regions where minorities live densely. The provisions quoted herein are not to be considered exhaustive, as the intention is to highlight general legislative trends in the field of minority protection. In order to create a comprehensive picture of the legislations and their impacts, the study also includes an assessment to national policies and attitudes as regards minority issues.

The study focuses on the protection of ethnic minorities. Nonetheless, the term *national minorities* is prevalingly used throughout this paper, as it not only is the internationally most applied definition of minorities, but it will also include ethnic minorities. This study will not to a large extent address the protection of IDPs, Refugees and Stateless persons, as the rights of such groups are not only covered by different international legal frameworks than national minorities, but also because the complexity of the situations of such minorities demands that they should be addressed separately.

This report treats Azerbaijan and Georgia, the two countries of the South Caucasus where national minorities issue live in substantial numbers and compactly settled. The report therefore does not discuss Armenia, where no substantial compactly settled minority population exist since the expulsion of the Azerbaijanis in the late 1980s. Moreover, the report discusses the situation in Georgia at greater length than it does Azerbaijan. This is related partly to the fact that the issue of national minorities has become a much more prominent political issue in Georgia as compares to Azerbaijan. Moreover, the author of this report had the privilege of spending considerably more time in Georgia, affecting the focus of the report.

2. Minority Rights in International Law

Minority Protection and Conflict Prevention

In the post-Soviet era, an increasing emphasis has emerged on the correlation between the enforcement of international minority rights and peace and stability. The world community consented that when minority rights are systematically disregarded, numerically small groups become particularly vulnerable to suppression and exclusion and that establishing a framework for minority protection ultimately reduces the risk of consequential clashes between majority and minority communities.² Thus, during the 1990s a new international framework for the protection of minority rights was elaborated and a number of international instruments were adopted, among the most relevant ones: the *Framework Convention for the Protection of National Minorities*³ (hereinafter: the *FCNM*) and the *European Charter for Regional or Minority Languages*⁴ (hereinafter: the *European Language Charter*).

² The link between peace and stability and respecting minority rights has been established in a number of international documents, such as the “OSCE 1975 Helsinki Final Act” (principle VII), “1983 Concluding Document of Madrid” (principle 15), “1989 Concluding Document of Vienna” (principles 18-19) and the “1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities”. See “The Lund Recommendations on the Effective Participation of National Minorities in Public Life – Explanatory note”, *Foundation on Inter-Ethnic Relations*, September 1999.

³ *The Framework Convention on the Protection of National Minorities*, which constitutes the first legally binding document directly addressing the rights of national minorities, entered into force on 1 February 1998. The overall aim of the convention is to provide for objectives as regards minority protection, leaving states with a certain level of discretion when implementing its provisions into national legislation. Thus, the convention has no direct effect for its parties, but needs instead to be interpreted and implemented into municipal law and policies, and this process is monitored by an Advisory Committee established by the convention. State parties are obliged to submit reports to the monitoring body on the implementation of the convention within one year of ratification. See: “Implementing the Framework Convention for the Protection of National Minorities”, ECMI Report #3, August 1999.

⁴ *The European Charter for Regional or Minority Languages* was adopted by the Council of Europe in 1992. The convention does not apply neither to languages spoken by recently immigrated minority groups, nor to mere dialects. Thus, its scope of application is limited to traditional minority languages of a state, based either in a certain region or used by linguistic minority groups, and to those differing significantly from the official

Simultaneously, international monitoring bodies increasingly emphasized the importance of implementing these new standards as a means for conflict prevention.

However, in spite of the increasing emphasis on minority rights law, some governments have remained reluctant to implementing international standards, often due to conceptual misinterpretations of the role of minority rights legislation. Seemingly, in many cases there is a fear that measures aimed at strengthening the position of certain minority groups may breed secessionist claims or violate the principle of non-discrimination as it would entail providing certain groups with privileges, and not others.⁵ In other cases, governments do not have the technical or financial resources to ensure the enforcement either of international minority rights legislation, or of national provisions as regards education, housing or legal aid to minority communities.⁶

Although some questions are still left to be resolved within the framework of minority rights law, consensus has been reached on certain standards that states need to comply with in order to reduce the risk of minority-related conflicts, including the promotion of effective participation by national minorities in public life, equal access to public services, anti-discrimination and a certain level of protection of minority languages and cultures.

The Nature of Minority Rights

In order to obtain a clear understanding of the implications of enforcing a framework for minority protection, it is important to note that international minority rights generally protect the rights of individuals, as opposed to the

state language. In ratifying the Charter, a state has to choose to implement at least 35 of its provisions. The document is available at [www](http://conventions.coe.int/treaty/en/Treaties/Html/148.htm).

<http://conventions.coe.int/treaty/en/Treaties/Html/148.htm>.

⁵ As Chapman argues, the nature of minority rights is to protect vulnerable groups from marginalization and not to interfere with the rights of people who are not exposed to assimilation or discrimination. See Chris Chapman, "Conflict Prevention and the rights of Minorities and Indigenous People", Minority Rights Group International, available at

http://www.minorityrights.org/features/features_prevention.htm.

⁶ *Ibid.*

members of the minority group collectively.⁷ Group rights, attributed to a group of individuals or ‘peoples’, includes, provided that certain criteria are fulfilled, the right to self-determination. The common misassumption that minority rights are collective by nature contributes thus to a skepticism against minority protection, which is particularly obvious in Georgia and Azerbaijan where separatism has been one of the main concerns since independence.

Minorities According to International Law

At present, there is no universally recognized definition of minorities. Thus, there is no obvious answer to the question of whether a state, through its national legislation, should determine the status of ethnical, cultural or linguistic groups, or if human groups should be entitled to a certain degree of self-identification. It appears however that according to international practice, the determination of national minorities should be a question of fact rather than law.⁸ Evidential to this is the absence of a definition of minorities in the main international instruments addressing the protection of minorities. For instance, according to the *FCNM*, every person belonging to a national minority should have the right to freely choose whether to be treated as such.⁹ Support for an individual’s right to self-identification may also be found in the *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE*, which stipulates that: “To belong to a national minority is a matter of a person’s individual choice and no disadvantage may arise from the exercise of such choice”¹⁰. Similarly, the *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* states that: “...No disadvantage shall result for any person belonging to a minority as the consequence of the exercise or non-exercise of

⁷ See e.g. “Minorities and Roma – Rights of Minorities”, *International Committee for Human Rights*, at http://www.ichr-law.org/english/expertise/areas/min_rights.htm.

⁸ See e.g. “Implementation of the Framework Convention”, *ECMI Report #3*, August 1999, pp 18- 20.

⁹ Article 3 of the “Framework Convention on the Protection of National Minorities”.

¹⁰ Paragraph 32. The document is available at http://www.osce.org/documents/odihr/1990/06/13992_en.pdf.

the rights set forth in the present Declaration”.¹¹ Thus, whereas one may conclude that the absence of a universally established definition of minorities leaves states with a certain margin of appreciation to define national minorities in their national legislations, such definitions must be justified in light of international law and may neither be arbitrary, nor coercive. States should also refrain from limiting the application of minority protection to its formal citizens.¹²

Anti-discrimination

The principle of non-discrimination is present in almost all human rights documents and flows from the very basic concept of equal dignity and rights.¹³ The prohibition of discrimination on the basis of ethnicity is explicitly laid down for instance in the *International Convention on the Elimination of All Forms of Racial Discrimination*¹⁴ and the *European Convention for the Protection of Human Rights and Fundamental Freedoms*¹⁵.

In order to prevent discrimination, a state is required to encourage tolerance and equality, both through legislative measures and through promoting such standards in state policies as regards education, culture and media. State integration policies need to, as far as possible avoid being discriminatory. The *FCNM* provides that a state should ensure: “full and effective equality between persons belonging to a national minority and those belonging to the majority” and to “take due account of the specific conditions of the persons belonging to national minorities”.¹⁶

¹¹ Article 3.

¹² See e.g. 5.1 and 5.2, “Human Rights Committee General Comment No 18”, 1994.

¹³ See e.g. article 2 of the “Universal Declaration on Human Rights”, adopted by the UN General Assembly through resolution 217 A (III), 10 December 1948; articles 2 and 26 of the “International Covenant on Civil and Political Rights” and article 2 of the “International Covenant on Economic, Social and Cultural rights”.

¹⁴ Article 1. The document is available at <http://www.hri.org/docs/ICERD66.html>.

¹⁵ Article 14.

¹⁶ Article 4.

The Language Rights of National Minorities

According to recognized principles of international minority rights law, members of national minorities have the right to use their native language in community with other members of their group, in private as well as public life, without discrimination.¹⁷ The right for minorities to use their native language in public life, like many other human rights provisions, may however be restricted if more important interests are threatened. The *Oslo Recommendations Regarding the Linguistic Rights of National Minorities*¹⁸ emphasize the necessity of maintaining a balance between the protection of minority languages and the objective of full participation of national minorities in the wider society. This may only be possible if minorities have sufficient knowledge of the state language. Thus, promoting the use of the official language of a state, for instance through teaching in the state language, is not incompatible with international standards.¹⁹

The linguistic rights of national minorities further include the right for a minority member to use his or her first name, patronym and surname, and to adopt names of associations and businesses in his or her native language.²⁰

¹⁷ See e.g. article 27 of the “International Covenant on Civil and Political Rights”, adopted through General Assembly resolution 2200A, March 23, 1976; article 20 of the “Convention on the Rights of the Child”, adopted through General Assembly resolution 44/25, 20 November 1989; article 2 of the “Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities” and article 10 of the “Framework Convention for the Protection of National Minorities”. Source: “The Hague Recommendations regarding the Education rights of National Minorities – Explanatory Note”, *Foundation for Inter-Ethnic Relations*, 1 October 1996.

¹⁸ The *Oslo Recommendations Regarding the Linguistic Rights of National Minorities* were elaborated by the working group comprising international experts on international minority rights law, appointed by the OSCE *High Commissioner for National Minorities* and *Foundation on Inter-Ethnic Relations* in 1995. The document is available at http://osce.org/documents/hcnm/1998/02/2699_en.pdf

¹⁹ See e.g. article 14(3) of the “Framework Convention for the Protection of National Minorities”; article 13 and 14 of the “International Covenant on Economic, Social and Culture Rights”, adopted through General Assembly resolution 2200A, 16 December 1966; and articles 28 and 29 of the “Convention on the Rights of the Child”. Source: “The Oslo Recommendations regarding the Linguistic Rights of National Minorities – Explanatory Note”, *Foundation on Inter-Ethnic Relations*, February 1998.

²⁰ See e.g. article 11 of the “Framework Convention for the Protection of National Minorities” and “The Oslo Recommendations regarding the Linguistic Rights of National Minorities – Explanatory Note”.

Furthermore, members of national minorities have the right to freedom of association, including forming non-governmental bodies, and to use their own language within the framework of such organizations. The state is prohibited to discriminate against minority NGOs on the basis of language and may only require the use of the state language when such organizations interact with public institutions.²¹

In the sphere of linguistic rights of national minorities, media plays a central role. In accordance with international law, all persons have the right to freedom of expression, including the right to express and receive information in any language and through any media of choice.²² Specifically addressing this right for national minorities, the *FCNM* stipulates that the state shall ensure that minorities do not experience discrimination in their access to information, and that contracting parties should adopt measures to enable minorities to establish and use their own media.²³ The right for national minorities to maintain private media may be restricted only by national regulations which are objectively determined and generally applied. As regards publicly funded media, it is recommended that minorities be provided access to a share of public broadcasting time, in proportion to their numerical size.²⁴

As a general principle of international law, namely that of *due process of law*, states have to ensure that all persons who face arrest or trial are informed about the charges in a language they understand, if necessary, through an interpreter provided for them free of charge.²⁵ The same principle applies to court proceedings, in which an interpreter should be made available to a person who does not have command of the official court language.²⁶ As

²¹ See “The Oslo Recommendations regarding the Linguistic Rights of National Minorities – Explanatory Note”.

²² See e.g. article 19 of the “International Covenant on Civil and Political Rights”.

²³ Article 9.

²⁴ See “The Oslo Recommendations regarding the Linguistic Rights of National Minorities – Explanatory Note”.

²⁵ See e.g. article 14(3) of the “International Covenant on Civil and Political Rights” and article 6(3) of the “European Convention for the Protection of Human Rights and Fundamental Freedoms”, 213 U.N.T.S. 222, 1950.

²⁶ See e.g. *ibid* and “The Oslo Recommendations regarding the Linguistic Rights of National Minorities – Explanatory Note”.

regards the specific right of national minorities to use their own language in court proceedings, the *FCNM* states that: "...States should, so far as possible, ensure the right of persons belonging to national minorities to express themselves in their language in all stages of judicial proceedings (whether criminal, civil or administrative) while respecting the rights of others and maintaining the integrity of the processes, including those instances of appeal".²⁷ Taking this principle a step further, the *European Language Charter* states that upon request by the parties involved, and when appropriate, legal proceedings may be carried out in a minority language.²⁸ According to the Parliamentary Assembly of the Council of Europe, in regions where minorities live densely, they should have the right to use their native language in their contact with the administrative or judicial authorities, also in legal proceedings.²⁹

The Education Rights of National Minorities

The right for every person to receive education is a fundamental principle of international human rights law.³⁰ Accordingly, minorities should have the right to establish their own educational institutions and although a state is not obligated to fund such institutions, minorities may seek state funding for education facilities in accordance with domestic law.³¹ The *Convention against Discrimination in Education* reads: "It is essential to recognize the right of members of national minorities to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each state, the use of teaching of their own language, provided however [...] that this right is not exercised in a manner which prevents the

²⁷ Article 15 of the "Framework Convention for the Protection of National Minorities", as quoted in "The Oslo Recommendations regarding the Linguistic Rights of National Minorities – Explanatory Note".

²⁸ Article 9.

²⁹ Article 7 of "Parliamentary Assembly of the Council of Europe's Recommendations 1201", quoted in "The Oslo Recommendations regarding the Linguistic Rights of National Minorities – Explanatory Note".

³⁰ See article 26 of the "European Convention for the Protection of Human Rights and Fundamental Freedoms".

³¹ Article 13 of the "Framework Convention for the Protection of National Minorities" and "The Hague Recommendations regarding the Education rights of National Minorities – Explanatory Note".

members of these minorities from understanding the culture and language of the community as a whole and from participating in its activities, or which prejudices national sovereignty [...] That the standard of education is not lower than the general standard laid down or approved by the competent authorities...”.³²

The question of whether states have the obligation to provide minorities with education in their native language is however more controversial. While a number of international instruments address the right for minorities to receive education in their native language, they at the same time emphasize the responsibility of national minorities to integrate and participate in the society as a whole.³³ For instance, the *Hague Recommendations Regarding the Education Rights of National Minorities*³⁴ (hereinafter: *The Hague Recommendations*) state that: “...persons belonging to national minorities have a responsibility to integrate into the wider national society through the acquisition of a proper knowledge of the State language.”³⁵ Thus, receiving education in the state language should equally be considered a right. According to the same recommendations, an appropriate model for states may be to offer primary education in the minority language

³² Article 5.1(c) of the “Convention against Discrimination in Education”, adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization, 14 December 1960.

³³ Including article 5 of the “Convention Against Discrimination in Education”, Paragraph 34 of the “Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE”, article 4 of the “United Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities” and article 4 of the “Framework Convention for the Protection of National Minorities.”

³⁴ In 1995 the OSCE High Commissioner for National Minorities and the NGO Foundation on Inter-Ethnic Relations, established a working group comprising international minority rights experts, to develop guidelines for states as regards education of national minorities in the OSCE region. The work resulted in the 1996 *Hague Recommendations Regarding the Education Rights of National Minorities*, which aims at encouraging states to implement measures in the education sphere to reduce ethnic tensions and ultimately prevent ethnic conflicts. Information about the *Hague Recommendation regarding the Education Rights of National Minorities* is available at <http://www.unesco.org/most/lnzpol6.htm>.

³⁵ Paragraph 1 of the “The Hague Recommendations regarding the Education rights of National Minorities”.

while including the state language as a compulsory separate subject.³⁶ At the secondary level, minority languages may still be the language of instruction, with obligatory state language training and the number of subjects taught in the state language gradually increasing. As regards higher education, the recommendations state that minorities should have access to education in their own language “when they have demonstrated a need for it and when their numerical strength justifies it.” Nonetheless, the recommendations also bring to attention some negative aspects of establishing parallel infrastructures in a society and, although their wording is vague on this particular issue, seemingly favor bilingual tertiary institutions rather than separate minority language Universities.

As regards the national curriculum, minority rights instruments encourage states to promote the knowledge of minority languages and cultures.³⁷ According to the *Hague Recommendations*, this may be interpreted as an obligation for states, in consultation with the minority in question, to include education about national minorities’ history and traditions in school curriculums.

Participation

As a fundamental fact of international minority rights law, minorities should be included in decision-making processes, in particular when issues addressed affect them directly.³⁸ Naturally, a democratic system should *per se* guarantee equal participation in decision-making, but in many cases special measures

³⁶ Paragraph 11 of the “The Hague Recommendations regarding the Education rights of National Minorities”.

³⁷ See e.g. Paragraph 34 of the “Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE”. See also Article 12 of the “Framework Convention for the Protection of National Minorities” and Article 4 of the “Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities”.

³⁸ This principle is laid down in for instance the Article 15 of the “Framework Convention for the Protection of National Minorities”, paragraph 30 of the “Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE” and article 3 of the “Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities”. Source: “The Hague Recommendations regarding the Education rights of National Minorities – Explanatory Note”.

are required to ensure representation of national minorities.³⁹ The *Lund Recommendations on the Effective Participation of National Minorities in Public Life*⁴⁰ (hereinafter; the *Lund Recommendations*) emphasize that participation of national minorities need however to be voluntary, thus; special measures that are coercive by nature are incompatible with international standards. Moreover, the right of national minorities to equal opportunities as regards participation should not interfere with internationally recognized principles, such as territorial sovereignty or the political independence of a state.⁴¹

The *Lund Recommendations*, along with other key instruments,⁴² express that a democratic state should not interfere with the principle of free political association, “as long as their means are peaceful and respectful of the rights of others”. Whereas the ultimate aim is that equal representation in decision-making will remove the incentive for creating ethnic political parties, such parties may be necessary in the meantime of ensuring equal representation and ethnic minorities’ political influence over local issues.⁴³ Nevertheless, political parties should ideally not be formed on ethnic basis and to prevent

³⁹ Obligations for state to create such measures in required situations are laid down for instance in paragraph 35 of the “Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE” and article 15 of the “Framework Convention for the Protection of National Minorities”. Source: “The Lund Recommendation on the Effective Participation of National Minorities in Public Life – Explanatory Note”.

⁴⁰ In 1998, the OSCE *High Commissioner for National Minorities* in collaboration with the *Foundation on Inter-Ethnic Relations* and the *Raoul Wallenberg Institute of Human Rights and Humanitarian Law* in Sweden established a working group of international experts, appointed to produce recommendations on how to ensure effective participation of national minorities. The result, *The Lund Recommendation on the Effective Participation of National Minorities in Public Life* lay down guidelines on how to ensure the participation of national minorities in public life, and promotes on the one hand participation in the affairs of a state as a whole, and on the other hand, self-governance over local issues. The recommendations are available at <http://www.osce.org/item/2929.html>.

⁴¹ See e.g. the preamble to the “Framework Convention for the Protection on National Minorities and article 2 of the “Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities”.

⁴² E.g. paragraph 32 of the “Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE” and article 7 of the “Framework Convention for the Protection of National Minorities”.

⁴³ See “The Lund Recommendation on the Effective Participation of National Minorities in Public Life – Explanatory Note”.

that, existing political associations should aim at including ethnic minorities and thereby, reduce the demand for ethnically based political parties.⁴⁴

Local Governance

Representation in public life is naturally a right for every individual, and a vital part of integrating minorities into the society as a whole. However, when one argues that the best way of ensuring participation of national minorities is to provide ethnically defined minority communities with a certain level of self-governance one finds that there is a tendency to make references to autonomy and ultimately, self-determination and secession. The *Hague Recommendations* acknowledge the fact that democratic decision-making is not always sufficient in order to ensure the effective participation of national minorities and emphasizes that, in some cases, a certain level of de-centralization may be required. However, when addressing the issue of increased self-governance as a tool for equal participation, the recommendations emphasize that self-governance is only a measure of control over certain local issues and does not necessarily entail exclusive jurisdiction, albeit a level of legislative and judicial governance. They also stress that self-governance should not entail territorial arrangements on ethnic basis.

As far as international law is concerned, minority rights may not be dismissed due to policies aiming at assuring territorial integrity, but they should instead be interpreted in a way that best suits the particularity of a state. Thus, one will find that international instruments addressing minority rights are designed in a way as to leave states with a certain level of discretion as regards implementing provisions into national legislation and to choose measures which best applies to national conditions. In light of this, there are ways of designing self-governance to protect the cultural, educational, linguistic and religious rights of minorities, without threatening the integrity of the state.⁴⁵

⁴⁴ *Ibid.*

⁴⁵ See Max van der Stoel, "Human Rights, the Prevention of Conflict and the International Protection of Minorities: A Contemporary Paradigm for Contemporary Challenges, Centre for the Study of Human Rights, London School of Economics, 19 October 1999.

3. Minority Protection in Georgia

Minorities in Georgia

Georgia has long been the most multiethnic country in the South Caucasus but, due to large scale emigrations, the country's ethnic composition has changed significantly over the past decade. While ethnic minorities in 1989 made up 29.9% of the population their number dropped to 16.2% over a period of 13 years.⁴⁶ According to the latest census, the two largest minority groups, Azeris and Armenians, make up 6.5% and 5.7% of the population respectively. Other minority groups include Russians (1.5%), Ossetians (0.9%), Yezids (0.4%), Greeks (0.3%) and Jews (0.1%).⁴⁷

International monitoring bodies, as well as the Georgian civil society, continuously express concerns about isolation and discrimination of ethnic minorities and about xenophobic sentiments among the Georgian public, fuelled by media stereotyping.⁴⁸ Members of the public and state officials on the other hand generally deny that members of minority communities are or have ever been exposed to discrimination or intolerance.⁴⁹ Nonetheless, many ethnic Georgians regard ethnic groups residing on Georgian territory as guests and if they do not wish to integrate themselves into the Georgian society, they may return to their 'country of origin'. There is a particular skepticism towards national minorities residing along the borders of

⁴⁶ Data available at www.statistics.ge, 2002 census. It should be noted that the official population data applies only to the parts of Georgia where the state exercises effective control. Thus, there are no official data about the ethnic composition in Abkhazia or South Ossetia.

⁴⁷ www.statistics.ge.

⁴⁸ Interview with Ana Dolidze, Chairwoman of the Georgian Young Lawyer's Association, Tbilisi, 15 November 2005.

⁴⁹ Conclusion drawn from interviews with representatives of state authorities, local organizations and members of the public, Tbilisi 2005-2006.

Armenia and Azerbaijan, as they are often regarded as easily manipulated by their native countries and grievances from those communities tend to be interpreted as separatist claims. In response, ethnic minorities in those regions remain suspicious against the central power and integration efforts are often perceived as aggressive assimilation attempts.⁵⁰

Ethnic Armenians mainly reside in the districts of Akhalkalaki and Ninotsminda in the region of Javakheti, incorporated in the more ethnically mixed Southwestern province of Samtskhe-Javakheti.⁵¹ The fusion of the two regions Samtskhe and Javakheti, through which the ethnically mixed town of Akhaltsikhe was established as the administrative capital, has been met with grievances among the Armenians who perceived it as an attempt to ensure Georgian influence in the region. At present, the local political movement *Virk*, often described by the central authorities as a separatist party, lobbies the idea of separating Javakheti from Samtskhe and promotes an autonomous status for Javakheti. The socio-economic conditions in the region are poor and local economics have long depended on the presence of a Russian military base in Akhalkalaki, which is scheduled to close in 2007. Some argue that Russia's withdrawal from the region will lead to increased frustrations, tensions and intensified claims for secession.⁵²

Ethnic Azeris mainly inhabit rural areas in the Southeastern region of Kvemo Kartli, more particularly the Marneuli, Dmanisi, Gardabani and Bolnisi districts, but Azeri communities can also be found in the Kakheti and Shida-Kartli⁵³ regions. In the early 1990s some Azeris in Kvemo Kartli voiced demands for autonomy but since then there has been few indicators of a desire for secession in the region. Whereas ethnic Armenians dominate the ethnic composition in Javakheti, Kvemo Kartli is a more intermixed region whose political life is dominated by ethnic Georgians. While this gives lesser room for secessionist claims, Azeris to a larger extent than Armenians feel

⁵⁰ See e.g. Anna Matveeva "Minorities in the South Caucasus", UNHCR Sub-Regional Seminar, Minority Rights: Cultural Diversity and Development in Central Asia, October 2004.

⁵¹ According to the 2002 census, ethnic Armenians make up 94.3% and 95.8% of the population in the districts of Akhalkalaki and Ninotsminda respectively.

⁵² See e.g. Anna Matveeva "Minorities in the South Caucasus", 2004.

⁵³ Also referred to as South Ossetia.

subjected to discrimination by the local authorities who are prevalingly ethnic Georgians.

In 1944, more than 100,000 Meskhetian Turks residing in the Southern region of Javakheti were deported from Georgia by the Stalin regime, of whom 600-700 were repatriated during the 1990s. Further repatriation of the deportees is an issue currently under consideration and may take place over the coming years. Reportedly, many of the returnees have not been able to obtain Georgian citizenship and thus, have not had access to privileges guaranteed to Georgian citizens. Many also suffer from isolation, due to insufficient knowledge of the Georgian language. In connection with Georgia's accession to the Council of Europe, the state undertook a commitment to create a legal framework for integration of the Meskhetian Turks within two years of accession and to within three years begin the repatriation and integration processes. In the meantime, international monitors are concerned with the status of this minority in Georgia.⁵⁴

State policies - Past and Present

The approach to minority issues has over the past fifteen years varied depending on political regime. Starting in the late 1980s, and during the presidency of Zviad Gamsakhurdia in the early 1990s, the concept of ethnic nationalism dominated the political discourse and consequently, ethnic minority groups were almost entirely neglected or treated as guests on the Georgian territory. Shortly after President Eduard Shevardnadze's accession to power in 1992, internal conflicts resulted in the loss of *de facto* control over the two ethnically diverse regions of Abkhazia and South Ossetia.

Throughout the 1990s, President Shevardnadze attempted to favor a more unified approach to nationhood, rhetorically proclaiming himself as the protector of national minority groups. At the same time, Shevardnadze did little to break down the political structure of the Georgian regions, dominated by influential clans, and to integrate minorities into the Georgian society. Instead, through maintaining a good relationship with local leaders,

⁵⁴ See "European Commission against Racism and Intolerance – Report on Georgia", adopted on 22 June 2001, Strasbourg 23 April 2002.

and taking advantage of the lack of knowledge of Georgian among minority representatives, Shevardnadze prevented independent political initiatives and ensured votes for his ruling party.⁵⁵ Nonetheless, following Georgia's accession to the *International Convention on the Elimination of All Forms of Racial Discrimination* in 1999, the Government approved of an action plan for the protection of minorities in Georgia, entitled *Plan of Action for Strengthening Protection of Human Rights and Freedoms of Minorities Living in Georgia (2003-2005)*⁵⁶, aiming at harmonizing the Georgian legislation with the United Nations and Council of Europe frameworks.

The political climate in Georgia changed significantly after the Rose Revolution in November 2003. One of the main ambitions of the new administration, under the leadership of President Mikheil Saakashvili, has been regaining control over its territory. In May 2004 Ajarian leader Aslan Abashidze was overthrown and the Government increased its influence over local governance in the region.⁵⁷ Consequently, when the Government in its integration campaign turned its focus to South Ossetia in June 2004, Ajaria was perceived as an example of where autonomy had been decreased following centralization of power. In July to August 2004, the tensions between Tbilisi and Tskhinvali escalated into exchange of fire and the occasional use of armed force takes place until this day.

Moreover, the Saakashvili administration has faced additional challenges in integrating the regions of Samtskhe-Javakheti and Kvemo Kartli with the rest of Georgia. In the region of Javakheti, situated in the South of Georgia and predominantly inhabited by ethnic Armenians, the main effort by the Government in the post-revolution era has consisted of negotiating the closure of the Russian Military base in Akhalkalaki. The debate over Russia's

⁵⁵ Jonathan Wheatley, "Obstacles Impending the Regional Integration of Kvemo Kartli", European Centre for Minority Issues (ECMI) Working Paper #23, February 2005.

⁵⁶ Adopted through *Presidential decree (No. 68)*, of March 2003.

⁵⁷ Through legal amendments the Georgian President was given the authority to appoint the Ajarian Prime Minister, to disband the legislative branch of the local government (the Supreme Council), and to suspend legal acts passed by the branch. Source: Molly Corso "Ajaria searches for a fresh start" in "Georgia – Revolution in the Regions", *Eurasianet*, <http://www.eurasianet.org/georgia/ajaria/story.html>.

withdrawal from Javakheti has put the region in the spotlight of international attention and during 2005 several international organizations introduced development projects in the area. Frustration among the population has however long been building up over poor infrastructure, weak local government and language barriers, and protests initiated by local separatist movements continue to take place in certain districts.

As regards Kvemo Kartli, Southeast of Tbilisi and predominantly populated by ethnic Azeris, integration efforts by both the state and international organizations have been anemic in the post-revolution era. Instead, the government has focused on breaking down clan-dominated structures in the region and thus, ensuring political influence.⁵⁸ In 2005 the national emphasis turned to the improvement of infrastructure in the region and the central government revealed its plans to improve city and village roads and to construct a motorway between the Black Sea coast and the Azerbaijani border.⁵⁹

As regards establishing a legal framework for minority protection, the Saakashvili administration has failed to realize the strategy-plan adopted by the former government.⁶⁰ At present, opinions regarding the necessity of minority rights legislation differ significantly among law-makers. Some argue that there are in fact no actual problems in connection with the legislative gaps and that minority rights legislation in Georgia would be superfluous. Granting rights to minorities could even become counter-productive, as it would contribute to the segregation of minority groups that did not originally consider themselves minorities. Others, many of whom are particularly familiar with the situation in the regions, recognize the relevance of legislative reforms in many fields, but emphasize prioritizing specific community development projects in order to improve the weak

⁵⁸ Throughout Shevardnadze's presidency, the political structure in Kvemo Kartli was controlled by local leaders who, through incorporating influential Azeri community members into the local political structures, ensured stability and pro-presidential attitudes among the population. See Jonathan Wheatley, Working Paper #23, 2005.

⁵⁹ See Molly Corso, "Kvemo Kartli: Roads to Riches" in "Georgia – Revolution in the Regions", *Eurasianet*, <http://www.eurasianet.org/georgia/kvemo/story.html>.

⁶⁰ This conclusion is drawn from interviews with state officials and civil society organizations carried out in Tbilisi, October-December 2005.

infrastructure and energy sector.⁶¹ There is seemingly a willingness to admit to that the state has so far been unable to provide minorities with tools for integration, but this is described as a weakness as regards state policies rather than legislation.⁶² Among those who are in favor of reforms, many emphasize the necessity of a coherent strategy in order to ensure the implementation of new laws and the accessibility to the legal system for members of the minority communities in order to prevent the legislation from being overlooked or arbitrarily applied.

Implementation of International Minority Rights Instruments

After declaring its independence in 1991, Georgia acceded to the major international organizations such as the United Nations and the Organization for Security and Cooperation in Europe and began the process of ratifying a number of international human right instruments. As a result, chapter 2 of the 1995 Georgian constitution provides for a comprehensive list of fundamental rights and freedoms of Georgian citizens, including equal opportunities, stating that: “Everyone is free by birth and is equal before law regardless of race, colour, language, sex, religion, political and other opinions, national, ethnic and social belonging, origin, property and title, place of residence.”⁶³ Addressing minority protection more specifically, the Constitution provides that: “Citizens of Georgia shall be equal in social, economic, cultural and political life irrespective of their national, ethnic, religious or linguistic belonging. In accordance with universally recognized principles and rules of international law, they shall have the right to develop freely, without any discrimination and interference, their culture, to use their mother tongue in private and in public.”⁶⁴

Georgia’s accession to the Council of Europe in 1999 imposed an explicit obligation upon the state to establish a legal framework in line with international human and minority rights standards, particularly through

⁶¹ E.g. interview with David Bakradze, Chairman of the Committee of European Integration of the Georgian Parliament, 8 November 2005.

⁶² Interview with Bela Tsipuria, Deputy Minister of Education and Science, Tbilisi, 14 November 2005.

⁶³ Article 14.

⁶⁴ Article 38.

acceding to the *FCNM* and the *European Language Charter*. Paradoxically however, Georgia's accession to the Council had a somewhat negative effect on its compliance with international human rights law.⁶⁵ Whereas the government prior to its admission had been attentive to external pressure, certain passivity regarding human rights protection allegedly emerged once it had acquired membership. Nevertheless, the *FCNM* was signed by Georgia on January 21st 2000. In November 2004, 68 Georgian NGOs sent an open letter to the Parliament urging it to address the issue of ratification of the Convention, and thus enforcing its provisions. The pressure from the Council of Europe on President Saakashvili to begin the ratification process was intensified in January 2005 when the Parliamentary Assembly of the Council of Europe urged the Georgian Parliament to honor its obligations in connection with its membership of the Council, and set the deadline for ratification of the *FCNM* to September 2005. However, the ratification process in relation to the *FCNM* proved to constitute a source of controversy among Georgian decision-makers. In October 2005, Georgian parliamentarians expressed serious criticism towards the Foreign Ministry's delay in submitting the convention to the Parliament for ratification, contributing to the dismissal of Georgian Foreign Minister Salome Zourabichvili. Although the Convention was ultimately submitted and ratified by the Georgian Parliament, its implementation remains at the time of writing to be initiated.

In connection with the ratification of the *FCNM*, the Georgian Parliament adopted a resolution⁶⁶ where it made certain comments on the application of its provisions. The Parliament stressed that it could not ensure full implementation of the Convention before the territorial integrity of Georgia is restored, and pleaded for aid from the Council of Europe in resolving the conflicts in Abkhazia and South Ossetia.⁶⁷ As regards the support for use of minority languages, as expressed in the *FCNM*, the Parliament noted that the

⁶⁵ See e.g. Anna Matveeva, "The South Caucasus: Nationalism, Conflict and Minorities", *Minority Rights Group International*, May 2002.

⁶⁶ Resolution of the Parliament of Georgia (#1938-I). Unofficial translation of the declaration. A Russian version was provided by the Human Rights Committee of the Parliament of Georgia, November 2005.

⁶⁷ Article 2 (g).

state is obliged to provide for translators in administrative and legal proceedings and that it should provide minorities with the opportunity to learn the State language, but expressed no recognition of its obligation to promote or support minority languages.⁶⁸ It should be noted however that the conditions laid down in the parliamentary resolution were ultimately not included in the ratification document submitted to the Council of Europe, wherefore they should not be regarded as reservations to the *FCNM*.

Shortly after the adoption of the resolution, the *Human Rights and Civic Integration Committee* of the Georgian Parliament developed a *Concept on the Protection and Integration of Persons Belonging to National Minorities*⁶⁹, further elaborating some of the comments included in the resolution. While the Concept reflects the principles of the *FCNM*, it gives little guidance on a strategy for implementation and preconditions the implementation of the *FCNM* on the assistance of foreign donors.⁷⁰ The question of how the Council of Europe principles will be incorporated in domestic legislation therefore remains unsolved. Seemingly, the most favored idea among decision-makers and local organizations is to adopt a separate law that directly reflects the provisions of the *FCNM*, as opposed to amending existing Georgian legal acts to reflect its provisions. However, although a 22 article bill on minority protection has been elaborated by Georgian civil society organizations, and presented to the Parliament for consideration, there are no indicators that the law will be adopted in the nearest future.⁷¹

Whereas the *FCNM* was finally ratified in 2005, the *European Language Charter* is yet to be adopted by the Georgian Parliament. Generally, the scope of the Charter has proven to be more controversial than the *FCNM* and thus, its ratification has played a modest role on the political agenda. According to

⁶⁸ Article 2 (b).

⁶⁹ "Concept On the Protection and Integration of Persons Belonging to National Minorities", the Parliament of Georgia Committee for Human Rights and Civic Integration, Tbilisi 2005.

⁷⁰ Article 11.2 reads: "one of the preconditions for the implementation of the convention is the assistance of international donor organizations." See "Comments and Recommendations on the Parliament of Georgia "Concept On the Policy Regarding the Protection and integration of National Minorities"", European Centre for Minority Issues, Tbilisi 7 November 2005.

⁷¹ The coalition Public Movement of Multinational Georgia has been the initiator of drafting this legal act. Interview with Arnold Stepanian, Chairman of the *PMMG*, Tbilisi, 4 November 2005.

organizations currently involved in promoting the ratification of the Charter, apprehensiveness towards the ratification of the Charter flows partly from misinterpretations of its aims and objectives among parliamentarians and government officials. Some fear that Georgian dialects, such as Mingrelian and Svan, will be recognized as regional languages, which ultimately will become counter-productive to the integration of linguistic minorities.⁷² The promotion of minority languages is also seen as a threat to integration of the regions of Javakheti and Kvemo Kartli, largely inhabited by ethnic minorities speaking other languages than Georgian. Another common notion among state representatives is that the FCNM provides for a sufficient protection of minority languages and that any additional instruments are either superfluous or damaging to the national integrity of Georgia. Others point out that there is no discrimination of linguistic minorities in the country and argue that the Charter is designed for states where such cases are present, particularly Western countries.⁷³ Another reason for the delay of the ratification of the Charter presented by state officials is the fact that Georgia is still in the process of state building and thus, has so far been unable to undertake commitments as a state. Along with this notion comes the reassurance that, due to positive political developments in recent years, the Charter will soon be ratified.⁷⁴

Internal and External Actors

The current administration has had little success in improving the legacy of weak state institutions dealing with minority issues. The establishment of a State Ministry of National Integration in 2004 was believed to ensure the elaboration of a new strategy for integration of national minorities, but so far the work by the Ministry has brought little result. Instead, a recently appointed Advisor to the President on Integration has been given the responsibility of coordinating the Government's efforts in the minority field, and a National Council on Tolerance and Civic Integration has been

⁷² Interviewee wishes to be anonymous.

⁷³ Interview with David Bakradze, MP.

⁷⁴ *Ibid.*

established, assigned to produce an action plan on integration.⁷⁵ In the parliamentary sphere, there is still no separate committee for minority issues; instead the Committee for Human Rights and Civil Integration is appointed to draft legislative acts in the minority field.⁷⁶ The Committee has played an important role in elaborating the recently adopted Concept paper, which addresses the protection and integration of national minorities, and developed a strategy plan for accomplishing its aims.⁷⁷

In December 2005, the Public Defender's Office, along with the European Centre for Minority Issues and various NGOs working in the field of national minorities launched the establishment of a Council of National Minorities. The new institution, which will operate under the wings of the Public Defender's Office, aims at functioning as a forum for dialogue between the authorities and members of the minority communities as well as coordinating the activities of organizations working in the field of national minorities.⁷⁸

As regards human rights claims mechanisms, the Public Defender of Georgia⁷⁹ (also referred to as the 'Ombudsman') is mandated to monitor the human rights situation in Georgia in general and to handle claims of human right violations by individuals. In the field of minority protection, a recent initiative resulted in the creation of a separate sub-division for *Human Equality*, which has not yet received any claims of human rights violations on the basis of ethnicity.⁸⁰ Similarly, the Organization for Security and Cooperation in Europe - Mission to Georgia handles individual human rights complaints and offers consultation to members of the community, including

⁷⁵ Interview with Levan Ramishvili, Chairman of Liberty Institute, Tbilisi 19 October 2005.

⁷⁶ "Third Periodic Report of Georgia to the Committee on Elimination of all Racial Discrimination", CERD/C/461/Add.1, 8 October 2004.

⁷⁷ "Resolution of the Parliament of Georgia On the Approval of the Concept on "Protection of Rights and Integration of the Person Belonging to National Minorities".

⁷⁸ Information provided by European Centre for Minority Issues at the presentation of the Council of National Minorities, Tbilisi Marriott Courtyard Hotel, December 2005.

⁷⁹ The institution of the Public Defender was established through the "Organic Law on the Public Defender of Georgia" as early as in 1996 but developed into the Public Defender's Office in 1998.

⁸⁰ Interview with Beka Mindiashvili, Head of the Division for Human Equality of the Public Defender's Office, Tbilisi, 22 November 2005.

ethnic minorities, and the Georgian Young Lawyers' Association offers through its field offices free legal aid to representatives of ethnic minorities. Such services are however unknown in Georgia in general and in the regions in particular and neither of the two organizations have so far addressed any claims on human rights violations on ethnic grounds.⁸¹

As regards foreign aid, Georgia is one of the main per capita recipients of US assistance in the world. A strong emphasis on the frozen conflicts in Abkhazia and South Ossetia has however left other issues, such as minority protection, in their shadow. Overall, relatively few projects, specifically addressing minority protection *de jure* and *de facto*, have been carried out in Georgia. To some extent, international organizations have however cooperated with the Georgian civil society in providing ethnic minorities with free legal aid⁸², integrating national minorities into the Georgian information sphere and increasing the dialogue between the local and central authorities. Overall, there are various opinions regarding the effectiveness of the work by international organizations in Georgia in the minority field. Whereas several major organizations, such as the Organization for Security and Cooperation in Europe, United Nations Development Program and USAID all carry out activities in the regions of Javakheti and Kvemo Kartli only few have, through field offices, regional representation. Due to infrastructural weaknesses, many organizations are reportedly unwilling to undertake projects in remote and inaccessible regions.⁸³

Civil society organizations in Georgia are heavily dependent on foreign grants and tend to undertake projects designed by their donor organizations, rather than initiate own projects. This is largely due to the lack of allocation of funds from the Georgian state to the civil society sector and causes a competitive atmosphere between local NGOs. Many civil society

⁸¹ Materials provided by the Organization for Security and Cooperation in Europe – Mission to Georgia office in Tbilisi, October 2005 and Interview with Ana Dolidze, GYLA.

⁸² For instance, in collaboration with the Organization for Security and Cooperation in Europe – High Commissioner on National Minorities, the local organization Union Mech offers legal advice in minority languages in the Javakheti region. Information provided by the OSCE – High Commissioner on National Minorities at a meeting in Tbilisi, November 2005.

⁸³ Interviewee wishes to be anonymous.

organizations are also accused of being either the voice of the ruling party or the opposition, and this polarization does little for a constructive, and necessary, cooperation between local NGOs on minority issues.

Minorities According to Georgian Law

At present, there is no official definition of minorities incorporated in the Georgian legislation. However, the resolution adopted by the Georgian Parliament in connection with the ratification of the *FCNM* provides that “The interpretation of the term "national minorities" Georgia is guided by the following criteria and considers that a group may only be given the status of national minority in the case that its members are: Georgian citizens; stand out from the prevailing population in terms of their own language, culture and ethnic identity; have inhabited the territory of Georgia for an extended period of time and; densely populate a region of Georgia...”⁸⁴ Notably, this definition defines neither the extent to which a group has to densely populate a region of Georgia, nor the length of time a group would have had to inhabit the Georgian territory in order to be considered a national minority. The fact that the definition also limits the applicability of minority protection to Georgian citizens makes it inconsistent with the objectives of the *FCNM*, which favors a more inclusive approach when defining national minorities. Reviewers of the resolution have encouraged Georgia to amend its definition to comply with Council of Europe recommendations, and to clarify what it means to compactly inhabit a region in Georgia and what length of time a group would have to have resided on its territory to be protected by the Convention.⁸⁵ Nonetheless, the same definition appeared again in the *Concept on the Protection and Integration of Persons Belonging to National Minorities*, which added that: “Groups of persons can not be considered national minorities in case they represent:

⁸⁴ Article 2a of Resolution of the Parliament of Georgia (#1938-I).

⁸⁵ See “Note on the Resolution of the Parliament of Georgia on the Ratification of the Framework Convention for the Protection of National Minorities”, European Centre for Minority Issues, Tbilisi, 16 December 2005.

autochthonous populations; the titular nation of the autonomies; or do not wish to preserve and develop their identity; are small in number.”⁸⁶

Local Governance

As long as the future status of Abkhazia and South Ossetia remains uncertain, there is no obvious answer to how the Georgian territory ultimately will be arranged. The Georgian constitution does not rule out the possibility of regional autonomy or federalization of the country, but the idea of dividing the Georgian territory is an unpopular one among decision-makers as well as the general public.⁸⁷

According to the traditional structure of self-governance in the Georgian regions, the local government has representation on two levels. For each town or group of villages in Georgia locally elected Councils, *Sakrebulos*, acts as supervisors of the local budget and development planning while its executive branch on the regional level, the *Gamgeoba*, has more power over local issues. A third layer of power is found at the province, *Mkhare* level, where the *Rtsmunebuli*, appointed by the President, has an informal but representative role as head of the province.⁸⁸

In late 2005, a draft law, elaborated by a commission comprising government officials, parliamentarians and civil society organizations, was presented to the Parliament for consideration, introducing a reformed and more centralized system for self-governance in the Georgian regions. According to the new provisions, the current 1100 *Sakrebulos* will be abolished and the Georgian territory will instead be divided into 65 municipalities and 7 cities⁸⁹. Each of the municipalities and cities will elect a self-governance body, a *Sakrebulo*, with an executive board, the *Gamgeoba*. The local government will get increased influence over the local budget, development

⁸⁶ Article 1.5.

⁸⁷ Interview with Zurab Davitashvili, Professor of International Relations and Member of Foreign Committee of the Parliament, 4 November 2005.

⁸⁸ See Jonathan Wheatley, Working Paper #23, 2005.

⁸⁹ Tbilisi, Rustavi, Batumi, Poti, Kutaisi, Tskhinvali (South Ossetia) and Sukhumi (Abkhazia).

issues, environmental protection, infrastructure, health care, culture, law enforcement and rule of law.⁹⁰

The elaboration of the new law has caused controversies between the current administration and civil society representatives, who are critical to the centralization of power the new system entails. The removal of lower self-governance bodies may, according to critics, be damaging to the link between the local population and the local government and the establishment of larger municipal administrations may lead to undesired politicization of the self-governance system. Concerns have also been expressed about the lack of funds that the local governments will have at their disposals, in spite of their increased influence over the local budget. Whereas the authors of the draft view the increased control over budgetary matters as one of the most positive aspects of the new self-governance system, oppositionist are pointing out that the 2005 *Tax Code* restricts the local income sources to property taxes, gambling taxes and local charges and that the local government therefore will have little *de facto* influence over local finances.⁹¹ No official adoption of the law has so far been announced, and the drafters have implied that the system of self-governance may be subject to further reforms in the near future.

Language

Starting in the communist era and throughout the 1990s, ethnicity in Georgia was more or less defined by linguistic identity.⁹² This legacy has contributed to linguistic isolation of national minority groups and consequently, language barriers are presently described as the biggest obstacles to integration in the country. In 1995, the Georgian constitution established Georgian as the state language⁹³ but Russian, Armenian and Azerbaijani are still widely used in

⁹⁰ N. Khusidze, "Draft Law on Local Self-Governance Proposed", Civil Georgia (www.civil.ge), 7 November 2005.

⁹¹ N. Khusidze, "Draft Law on Local Self-Governance Proposed", Civil Georgia (www.civil.ge), 7 November 2005.

⁹² Jonathan Wheatley, "The Status of Minority Languages in Georgia and the Relevance of Models from Other European States", European Centre for Minority Issues, Working Paper #26, March 2006.

⁹³ Article 8 of the Constitution of Georgia stipulates that: "The state language of Georgia shall be Georgian, and in Abkhazia - also Abkhazian", available at http://www.parliament.ge/files/68_1944_216422_konst.pdf.

minority communities and the knowledge of the Georgian language in the regions is generally poor. In recent years, the notion has grown that the widespread use of minority languages and the limited knowledge of the state language among minority representatives hampers the dialogue between central and local authorities and minorities' ability to effectively compete with ethnic Georgians in the employment field. Moreover, the lack of knowledge of the Georgian language has limited the ability for minority representatives to participate actively in the central decision-making structures, where all senior posts are held by Georgians. Language barriers have also contributed to ethnic minorities having limited access to information about state policies and laws, and thus, ability to claim their *de jure* rights.⁹⁴

Attempting to promote the use of the state language, and ultimately strengthening its position in the public sphere, the Georgian state has recently enhanced the implementation of legal provisions requiring that the Georgian language is known, and used by the central and local administrations in all official contexts.⁹⁵ The legal basis for such requirements may be found in the 1999 *Administrative Code* of Georgia, which states that all administrative proceedings should be in Georgian and in Abkhazian in Abkhazia.⁹⁶ Any party that submits a document to a Georgian administrative body is obliged to provide a translation in Georgian, should the original be in a language other than the state language. Similar principles are laid down in the 1997 law *On Public Service*, which states that public services in Georgia are offered in the state language.⁹⁷ In order to be eligible for a job in public services, or in local governments, applicants are legally required to have a good command of Georgian.⁹⁸

⁹⁴ "Georgia: Ethnic Minorities", Stop Violence Against Women, http://www.stopvaw.org/Ethnic_Minorities21.html.

⁹⁵ Interview with Arnold Stepanian, PMMG.

⁹⁶ Articles 14 and 73.

⁹⁷ Article 12.

⁹⁸ Articles 15 and 16 of the "Law on Public Services", see also article 10 of the law "On Local Self-Government", which states that the working knowledge in local government structures in Georgia is Georgian. See Jonathan Wheatley, ECMI Working Paper no. 26, 2006.

In practice, in the two Javakheti districts of Akhalkalaki and Ninotsminda, where the overwhelming majority is ethnic Armenian, Armenian remains the dominant language, followed by Russian. Reportedly, in spite of the legal requirements of using Georgian in the public administration sphere, communications between local and central structures are to a certain extent still carried out in Russian. The majority of the local administration staff in the Javakheti region is Armenian, using Armenian and Russian as working languages. Even most ethnic Georgians who inhabit the region and work in the local administration have command of, and use, Russian and Armenian as well as Georgian.⁹⁹

As regards the judiciary, the Georgian constitution states that legal proceedings in Georgia should be carried out in the state language and parties that do not have knowledge of the state language may be provided with an interpreter cost-free.¹⁰⁰ The same principles are laid down in the 1997 law *On Common Courts*, which regulates the use of languages in both criminal and civil procedures in Georgia.¹⁰¹ In reality, in the local courts of the Javakheti region where the knowledge of Georgian both among the population and judicial representatives is generally low, most trials are carried out in Armenian. Written documentation, such as pre-trial protocols, witness statements and sentences are mainly produced in Russian. As this custom breaches Georgian law, it results in province level authorities refusing documentation presented by local courts, causing substantial procedural delays. As a consequence, the judiciary allegedly accepts bribes to drop cases that will lead to an unnecessarily prolonged process for the parties involved.¹⁰² Reportedly, there is a lack of trained translators who could play an important role in preventing such delays.

Those critical to the new policies of strengthening the role of the Georgian language are concerned with the rapid decrease of support for minority languages.¹⁰³ Whereas few argue against the fact that language barriers

⁹⁹ Jonathan Wheatley, ECMI Working Paper #26, 2006.

¹⁰⁰ Article 85.

¹⁰¹ Jonathan Wheatley, ECMI Working Paper #26, 2006.

¹⁰² *Ibid.*

¹⁰³ Interview with Arnold Stepanian, PMMG.

constitute one of the main obstacles to integration, many emphasize that restricting the use of minority language must be combined with adequate Georgian language training. At present, due to lack of resources, there are limited possibilities of receiving education in Georgian, or translation into Georgian, in the regions. Thus, the enhanced language requirements may result in minority representatives being provided with limited access to legal proceedings, work and participation in political life. In March 2006, ethnic Armenians in the town of Akhalkalaki in Samtskhe-Javakheti carried out demonstrations against the reforms, demanding the right to use Armenian within the state structures.¹⁰⁴ Shortly thereafter, representatives from two local organizations in Akhalkalaki announced that they had filed an appeal to the Georgian Parliament requesting legislators to recognize Armenian as the second official language in the region.¹⁰⁵

Media

As regards the media, the Georgian law *On Mass Media* promotes access to information for national minorities in their own languages. Furthermore, it expresses that the state does not oppose the direct reception of broadcasting from the country to which the minorities are ethnically affiliated.

In practice, there is little support for media outlets in minority languages in Georgia. At present, the Georgian Ministry of Culture provides some financial support to several newspapers published in minority languages but due to financial cut-backs in recent years, these publications do not to a satisfactory extent reach out to the public. For years no TV-programs were available in minority languages in Georgia.¹⁰⁶ However, Georgian state television has recently established the news program *Mtavari*, which broadcasts in Russian, Armenian, Azerbaijani, Abkhazian and Ossetian on a daily basis. In the Javakheti region, regular programs are offered in

¹⁰⁴ "Protesters Raid Court, University in Akhalkalaki", *Civil Georgia*, Tbilisi, 11 March 2006, <http://www.civil.ge/eng/print.php?id=12044>.

¹⁰⁵ "Groups in Akhalkalaki Want Armenian as Official Language", *Civil Georgia*, Tbilisi, 16 March 2006, <http://www.civil.ge/eng/print.php?id=12088>.

¹⁰⁶ Interviewee wishes to be anonymous.

Armenian and Georgian programs are re-broadcasted and translated into Armenian.¹⁰⁷

Education

In the field of education, Georgian legislation originally laid down the positive right for minorities to receive education in their own language.¹⁰⁸ Thus, at the time of writing, more than 100 non-Georgian schools in the country offer education in other languages of instruction than Georgian.¹⁰⁹ In recent years, the educational system has however undergone some noteworthy legislative reforms, aiming at strengthening the position of the Georgian language.¹¹⁰ According to the current law *On General Education*¹¹¹ the language of instruction in Georgia should be Georgian. Georgian citizens whose native language is not Georgian have the right to receive education in a language other than the state language, but schools offering education in minority language must comply with the state curriculum, according to which Georgian language education is compulsory and history, geography and social sciences must be taught in Georgian.¹¹² Following the legal amendments, regional schools, particularly in the regions of Javakheti and Kvemo Kartli, have been provided with new methodologies and textbooks, adapted to the reformed curriculum.¹¹³ Many of the schools continue however to receive support from neighboring countries, which provide 'their'

¹⁰⁷ Jonathan Wheatley, ECMI Working Paper #26, 2006.

¹⁰⁸ Article 4 (para. 2) of the 1997 law *On Education* stipulated that: "The State, in accordance with recommendations from local administrative authorities shall take, for citizens whose mother tongue is not Georgian, measures to enable them to receive primary or secondary education in their own language". Source: Arnold Stepanian, unpublished research paper on Georgia.

¹⁰⁹ As minority schools in the regions receive little financial support from the state, their number may however be significantly reduced in the near future.

¹¹⁰ Unpublished concept paper, provided by the Human Rights Committee of the Georgian Parliament in November 2005.

¹¹¹ Available at

http://www.reform.edu.ge/files/200_73_162407_General%20Education%20Law.doc.

¹¹² Articles 4, 5 and 58.

¹¹³ Interview with Bela Tsipuria, DME.

minorities with education materials, often contrary to the Georgian textbooks in their descriptions of history and geography.¹¹⁴

As regards higher education, the language of instruction is prevailingly Georgian. In the spring of 2005 a law *On Higher Education* was adopted,¹¹⁵ stating that “Instruction in other languages, except for individual study courses, is permitted provided that this is envisaged by international agreements or is agreed with the Ministry of Education and Sciences of Georgia.”¹¹⁶ The new law also introduced a fully reformed system of admission to higher education, providing that only students who have passed unified national examinations may enroll at higher education institutions.¹¹⁷ In accordance with the new law, examination centers were set up in 11 Georgian cities, three in Tbilisi, two in Kutaisi and one respectively in Batumi, Ozurgeti, Poti, Zugdidi, Gori, Akhaltsikhe, Rustavi, Telavi and Signagi. Compulsory examination subjects included Georgian language and literature, general aptitude tests (GAT) and modern foreign languages.¹¹⁸ Out of approximately 32,000 university applicants, 16,507 students were enrolled at Georgian Universities, some 43 percent from Tbilisi and 57 percent from the regions. The number of students from minority groups admitted to Universities however dropped significantly as a result of the exams. Whereas Armenians and Georgians attending university in the Javakheti region used to be more or less equally numbered, out of 64 ethnic Armenian applicants only two were admitted to the local university branch after the national examinations in the summer of 2005.¹¹⁹

¹¹⁴ Interviewee wishes to be anonymous.

¹¹⁵ The adoption of the law was part of the *Education System Realignment & Strengthening Program*, a reform project launched by the Georgian Ministry of Education and Science with the support of the *World Bank*, aiming at putting an end to an era of arbitrary and corrupt admissions to Georgian Universities.

¹¹⁶ Quoted from Denis Dafflon, “Managing Ethnic Diversity in Javakheti: Two European Models Of Multilingual Tertiary Education”, European Centre for Minority Issues, Working Paper #25, February 2006, note 9.

¹¹⁷ “Law on Higher Education”, articles 52 and 89.

¹¹⁸ “Report on Unified National University Examinations”, National Assessment and Examination Centre, 2005.

¹¹⁹ See Jonathan Wheatley, ECMI Working Paper #26, 2006.

In order to finance their education, 4,198 of the admitted students received a state scholarship based on their results in the examination. Acknowledging the difficulties of minority representatives to achieve high results on the Georgian language part, an alternative grant was introduced that benefited minorities from certain regions of Georgia. This fact raised concern among minority representatives residing in other areas of Georgia, who were not given the same privileges.¹²⁰

In practice, in spite of compulsory Georgian language studies, the knowledge of Georgian remains low. This may be explained by the poor educational system in Georgia in general, but has to a large extent to do with the lack of Georgian teachers in the remote regions. Moreover, due to the prevailing use of minority languages in the region, students are unable to practice Georgian outside of the school environment. Many students are also of the opinion that learning Georgian will not provide them with increased work opportunities, as they will eventually migrate to work in other countries.¹²¹ Attempting to improve conditions for language training in the regions, the *Georgian Ministry of Education* recently offered 40 language teachers a high salary for Georgian language teaching in Kvemo Kartli and Javakheti regions. However, due to the hardships connected with living in the regions, few teachers were willing to work in those remote areas.¹²²

The new requirements of teaching certain subjects in Georgian have been met with skepticism, especially among the Armenian population in the Javakheti region. The general perception is that if Georgian language education can not be provided to a sufficient extent, Armenian school children risk falling behind, and ultimately have lesser chances than ethnic Georgians of receiving university education.¹²³ Reportedly, there is also a fear among ethnic Armenians in the Javakheti region that through introducing new language requirements, the state is attempting to force children to speak Georgian instead of Armenian and to study certain subjects out of a

¹²⁰ Interview with Ana Dolidze, GYLA.

¹²¹ See e.g. Denis Dafflon, ECMI Working Paper #25, 2006.

¹²² See *ibid.*

¹²³ See Jonathan Wheatley, ECMI Working Paper #26, 2006.

Georgian viewpoint. Ultimately, this is perceived as a threat to their ethnic identity.¹²⁴

Participation

According to the Georgian constitution¹²⁵ every citizen of Georgia, upon attaining the age of 18, has the right to participate in referendums and the elections of national and local authorities. Furthermore, any Georgian citizen aged 25 and above who has the right to vote may be elected to Parliament.¹²⁶ This principle is further emphasized by the *Georgian Parliament Elections Act*, which states that “any citizen of the country who meets the age criterion, and has been continuously resident in Georgia for not less than 10 years, may be elected to Parliament, irrespective of language, race, sex, religion, education, political views, national, ethnic or social affiliation or origin, or status based on property or class.”¹²⁷ Nonetheless, in 2003 amendments were made to the *Unified Election Code of Georgia*, requiring that those who are elected to the Georgian Parliament have knowledge of the state language and that candidates to the central as well as district Election Commissions have to be fluent in Georgian.¹²⁸ The amendments did however not come into force until 2005, and are therefore not relevant until the next parliamentary elections in 2008. It should also be noted that in spite of legal guarantees of political participation, ethnic and religious minorities are prohibited by law to form political parties based on ethnic and religious considerations.¹²⁹

In reality, minority representatives remain heavily underrepresented in central and local decision-making and the Georgian state offers no special measures to ensure equal representation in the political structures. At the central level, only 10 out of 235 Members of Parliament are representatives of ethnic minority groups, and among them, only Armenians, Azeris and Ossetians are represented. Moreover, few of these MPs have sufficient

¹²⁴ *Ibid.*

¹²⁵ Article 28.

¹²⁶ Article 49.

¹²⁷ Article 2.

¹²⁸ Articles 92, 27 and 33. See Jonathan Wheatley, ECMI Working Paper #26, 2006.

¹²⁹ Arnold Stepanian, unpublished research paper on Georgia.

command of the Georgian language, which limits their ability to effectively participate in parliamentary work.

Up until 2004, no minorities were represented in the central government. Attempting to correct this imbalance, President Saakashvili took a symbolically important step in December 2004 through appointing an ethnic Ossetian, Zinaida Bestaeva, Secretary of State for Civil Integration. In connection with Bestaeva's accession to office the President announced that this appointment is evidential to that all citizens may reach high-level official positions.¹³⁰

On the local level, the Georgian President continues to appoint both the *Rtsmunebulebi* and the heads of the local administrations and few ethnic minority representatives hold senior positions. However, in the Javakheti region, where ethnic Armenians have occupied all posts within the local administrative structures, participation of minority groups in political life has been significantly more developed than in Kvemo Kartli.¹³¹

Aiming at providing minorities with opportunities to increase their representation in the public sphere, the Government opened in 2005 the Zurab Zhvania School of Public Administration (ZSSPA) in the city of Kutaisi. The school offers training of minority representatives in public administration, including self-governance, community development, information technology, electronic governance, budget and financial administration and organizational management. 75 participants, 50 from the Azeri and Armenian communities and 25 from mountainous regions, were selected for the first training. Participants who do not have a sufficient knowledge of the state languages are offered, and required to undertake, a three month course in the Georgian language.¹³²

Despite the *de jure* requirements of knowing Georgian in order to work in the public service sector, for instance as laid down in the law *On Public Services*, the reality looks different. In the region of Javakheti, leading administration,

¹³⁰ "Saakashvili Encourages Appointment of Ethnic Minorities on High Positions", Civil Georgia, <http://www.civil.ge/eng/article.php?id=8610>, 18 December 2004.

¹³¹ Interview with Arnold Stepanian, PMMG.

¹³² "Georgia since the Rose Revolution, A story of democratic transformation", Georgian Presidential Administration, Tbilisi, November 2005.

judiciary and police representatives are ethnic Armenians, having little or no command of the Georgian language. In the Kvemo Kartli region the situation is however different. Even in the Marneuli districts, where ethnic Azeris make up 83%, most members of the local administration representatives are ethnic Georgians.¹³³ Whereas the appointment of administrative staff having limited command of the Georgian language in the Javakheti region constitutes a breach of Georgian law, it is doubtful that the alternative is feasible. Considering the large amount of ethnic Armenians inhabiting the region, employing Georgian-speakers for administrative posts would likely require importing staff from Tbilisi or other regions in Georgia, which ultimately could create tensions between the local administration and the population. In fact, during 2005 many Armenian middle-ranked officials in the local government sphere were replaced by ethnic Georgians, a process that was met with skepticism among locals.¹³⁴ On the other hand, the current system enables arbitrary selections of candidates for high positions within the local structures, based on their influence or wealth.

The public opinion towards the participation of ethnic minorities in public life is an area of concern. According to a survey conducted by ABA-CEELI, half of the Georgian population is of the opinion that only ethnic Georgians should have the opportunity to be appointed as judges and prosecutors in Georgia; the other half feels that all citizens should have equal opportunities to participation in the judiciary.¹³⁵

Anti-discrimination

The Georgian *Criminal Code*, as adopted in 1999, contained several provisions criminalizing violent actions with racial motives but lacked provisions enabling prosecutions on the basis of racial discrimination.¹³⁶ In accordance with the *Convention on the Elimination of All Forms of Ethnic Discrimination*, the Georgian parliament passed in July 2003 amendments to the Code, including

¹³³ Jonathan Wheatley, ECMI Working Paper #26, 2006.

¹³⁴ See *ibid.*

¹³⁵ "Judicial Knowledge and Perception Survey", ABA-CEELI Georgia, June 2005.

¹³⁶ Article 109 concerning murder motivated by ethnic or religious intolerance, Article 177 concerning violence motivated by ethnic or religious intolerance and article 126 concerning torture motivated by ethnic or religious intolerance. Source: ECRI report on Georgia, 2002.

a provision stating that: “Racial discrimination, that is, an act committed with the intention of inciting ethnic or racial hatred or conflict, injuring national dignity, or directly or indirectly restricting human rights or granting advantages on the grounds of race, skin colour, social status or national or ethnic affiliation, shall be punishable by deprivation of liberty for up to three years; ...The same act, committed with the use of violence that endangers life or health, or with the threat of such violence, or through abuse of one’s official position, shall be punishable by deprivation of liberty for up to five years; ... The acts referred to in paragraphs 1 and 2 of this article, if committed by an organized group, or if they resulted in the death of the victim or other serious consequences, shall be punishable by deprivation of liberty for a period of between three and eight years.”¹³⁷

In the civil sphere, some legal provisions reflect the constitutional principles of equality but the legislation contains no concrete prohibition of discrimination for instance as regards education, housing or access to social services.¹³⁸ Nor does Georgian law provide for any explicit guarantee of equality before legal proceedings, as required, for instance, by the *International Convention for the Elimination of all Racial Discrimination*.¹³⁹ Nonetheless, as regards employment, the *Code of Labor* prohibits the reduction of remuneration for ethnic minorities.¹⁴⁰

In the field of anti-discrimination, the lack of implementation of legal provisions is particularly obvious. Neither the original provisions criminalizing racial violence, nor the newer racial discrimination provisions have reportedly ever been applied.¹⁴¹ Moreover, there is no available information about any civil lawsuits on the basis of reduced remuneration for ethnic minorities in the civil sphere.¹⁴² When addressing the question why there is such a significant absence of lawsuits initiated by ethnic minorities in general, and on ethnic grounds in particular, one is presented with various

¹³⁷ Article 142.

¹³⁸ See e.g. ECRI report on Georgia, 2002.

¹³⁹ Article 5.

¹⁴⁰ Article 75.

¹⁴¹ See ECRI report on Georgia, 2002, see also CERD third periodic report of Georgia, 2004 and interview with Ana Dolidze, GYLA.

¹⁴² See e.g. ECRI report on Georgia, 2002.

explanations. Due to costly court and lawyer fees, economically vulnerable groups in Georgia generally have limited access to legal proceedings. Minorities are particularly exposed to this problem, as economic hardships are prevailing in regions of Georgia where ethnic groups live densely. Moreover, awareness of legal remedies in relation to human rights abuses is generally low in the country and due to weak communication between the local and central structures; violations on ethnic grounds which take place in rural areas are not brought to the attention of Tbilisi-based institutions. Some also point out the fact that, as a legacy from Soviet times and as a consequence of the conflicts in South Ossetia and Abkhazia, minority right violations, particularly on ethnic grounds, remain a sensitive subject which courts are reluctant to deal with.¹⁴³

Conclusion

It may be concluded that, although there have been notable efforts to improve the legacy of weak minority protection in Georgia, this framework has remained weak in the post-revolution era. Among decision-makers, one still notices a certain level of skepticism towards the adoption of international minority rights instruments and it appears that the importance of establishing a framework for the promotion of minority rights is an issue that is often addressed for reasons of perceived obligation, rather than true will. The absence of legislative efforts in the minority field in Georgia is undoubtedly connected to deep-rooted attitudes among decision-makers and the public. There is generally an unwillingness to admit to negative sentiments against ethnic minorities, and while acknowledging the fact that representatives of minority groups are underrepresented at all levels of society, the Government persistently denies that they are subjected to discrimination or that they face obstacles in exercising their cultures or using their languages. In light of the overall promotion of a civic statehood, there is seemingly also a fear that strengthening the legal framework for minority protection will lead to divisions among the population and ultimately, claims for secession. There are however other contributing factors to the legislative gaps. One must bear in mind that state building in Georgia is still in process.

¹⁴³ Interview with Beka Mindiashvili, PDO-DHE.

Thus, the Government has not only had other more acute issues to deal with over the past fifteen years, as regards for instance regaining control over the two break-away republics of Abkhazia and South Ossetia, but has also yet to establish a functional institutional framework necessary to implement international obligations and standards.

The fact that the Georgian constitution explicitly guarantees equality has paradoxically also had a hampering effect on legislative efforts in the field of minority protection. A common perception among law-makers is that the Georgian constitution and laws provide adequate protection of minority rights and thus, further legislation would be superfluous or counter-productive, as it would address problems that are not present in Georgia. As has been highlighted in this study, it is true that Georgian constitutional provisions, and to some extent laws in the criminal and civil sphere, lay down the rights for every Georgian citizen to equal opportunities. In light of the overall policy of the Georgian government of promoting a civic national identity, such provisions are neither unnecessary, nor unexpected. However, according to international minority rights law, legislative 'guarantees' of equality can never be considered sufficient, as they do not impose any positive obligations upon the state to ensure that protection of national minorities is provided for.

From the viewpoint of minority representatives, the increasing emphasis on integration in Georgia, and the lack of measures enabling minorities to exercise their cultural and linguistic rights, has resulted in a general skepticism towards the true intentions of the state. Integration efforts are often perceived as assimilation attempts and ways of suppressing ethnic identity in favor of unification of the Georgian population. If nothing is done to correct this imbalance, there is little prospect for improving the relationship between minorities and the central structures.

There have however been some notable improvements as regards enhancing international obligations in recent years, such as the state's accession to the *FCNM*. Although the convention is yet to be implemented, the Georgian Parliament has in a recently adopted concept paper on minorities recognized its aims and objectives. As a next step, the Government should agree on

concrete strategies for its implementation and allocates state funds for this process.

The adoption of the *European Language Charter* is an upcoming challenge in Georgia. The reluctance among state representatives towards the support of minority languages must however be viewed in light of the current position of the Government on the status of the Georgian language. Language barriers are often described as the main obstacle to integration of national minorities in Georgia and the Government has in recent years presented the strengthening of the Georgian language as one of its main priorities, and a necessity for the unification of the Georgian state. In light of the legal requirements of using of Georgian in the public sphere, it is uncertain how the Charter will ultimately interact with the Georgian legislation. Nonetheless, in order to live up to its obligations as a Council of Europe member it is necessary that the Georgian state eradicates these question marks and decides which of the Charter's provisions should be incorporated into Georgian law.

Although there is an apparent absence of coherence as regards integration efforts, mainly due to lack of cooperation between state institutions in Georgia, relatively little has been done to equip state institutions dealing with minority issues. There continues to be a rivalry between the state and civil society, and in many cases between local organizations competing for grants offered by foreign donors. This clouds the prospects of a constructive dialogue between different bodies that could each play essential roles in the elaboration of a successful strategy-plan where integration and the protection of national minorities are balanced against each other. Existing institutions have limited resources at hand and the distribution of responsibilities between them remains undefined. The current State Ministry assigned to address integration issues has achieved little result. It appears desirable that the Georgian government develops and financially equips this institution further, or establishes a new governmental body which will be mandated to function as the supervising state institution in the minority field.

The Georgian definition of national minorities, as laid down in the 2005 Parliamentary resolution, is a concern. Should it be enforced, Georgian minority rights legislation will exclude minorities living in cities or regions

that are not to a large extent populated by minorities, or those possessing Russian, instead of Georgian, citizenship. Choosing a more inclusive definition, or excluding a legally determined definition, would prevent the principles of the FCNM from becoming arbitrarily applied by the judiciary and ensure that minorities in Georgia have the right to self-identification, in accordance with international recommendations. However, the narrow definition of national minorities in Georgia is not only a legislative issue. One may notice that there is already a tendency in practice to selectively give certain minority groups privileges, such as educational grants, and not others. Such policies are linked to the perception that minorities are exposed to hardships, not because of their ethnic belonging, but due to language barriers and economic deficits in the areas which they inhabit. Remaining without prejudice to this notion, it is necessary that state authorities choose an inclusive approach when implementing minority protection measures, or they will be perceived as discriminatory.

Overall, instead of fully implementing international standards as regards minority protection, the Georgian government has selectively implemented minority policies that envisage the objectives of international minority rights law, but due to the situation in the Georgian regions, borders on being discriminatory or coercive in practice. In the language sphere, Georgian law requires that in order to work in the public sector, administrative staff must have a certain command of Georgian. While it is not contrary to international recommendations to promote the use of the state language in this way, the prevailing use of minority languages in certain regions in Georgia has led to a weak *de facto* implementation of the requirements. Whereas this fact is troubling from a rule of law perspective, one is faced with a somewhat undesirable alternative should they be fully enforced. In the absence of sufficient language-training mechanisms, fully giving effect to the requirements would entail discriminating ethnic minorities who do not have command of the Georgian language and who therefore are unable to compete with ethnic Georgians for posts in the public sphere. Consequently, the Georgian state would be in violation of international anti-discrimination

principles, as laid down, for instance, in the *FCNM*.¹⁴⁴ On the other hand, not giving effect to new language policies both threatens the rule of law and contributes to the status quo as regards the integration of national minorities who experience exclusion due to language barriers. Moreover, the current inconsistency as regards their applications allows local authorities to arbitrarily select issues to address. In conclusion, it appears like one would either have to favor a scenario where the legislation remains, and accept the consequences while it is gradually implemented, or to amend it in a way as to take into account the particularity of the situation in the regions, with the risk of a slower integration process. From a legal viewpoint, the latter alternative appears more favorable, as legal obligations which in practice will be either breached or discriminatory pose a serious threat to the rule of law and ultimately, state building. There is however no obvious answer to how the legislation would be amended, should this approach prove to be the most constructive one. Giving for instance the Armenian and Azerbaijani languages administrative status may complicate the relationship between the local and central authorities and ultimately, cause unnecessary delays in administrative procedures due to the lack of translators in the regions. Given this fact, it may be tempting to argue that recognizing Russian as an administrative language would be a suitable compromise, but is an unfeasible solution considering the attitude towards Russian among Georgian decision-makers. The question of whether it is compatible with the *European Language Charter* to grant Russian, and not Armenian or Azerbaijani, administrative status would ultimately also arise.

As regards the educational reforms, the Government has designed a system where the number of subjects taught in Georgian is rapidly increasing in general education, and minorities are required to have a certain command of the state language in order to receive higher education. Whereas the requirements of knowing Georgian in higher education have been given effect through the new national exams, the language-training in general education is not offered to the envisaged extent. Thus, the Georgian model of promoting the state language in education is *de jure* in line with international

¹⁴⁴ Article 4. See above, chapter 1, “Anti-discrimination”.

recommendations¹⁴⁵, but becomes discriminatory due to *de facto* lack of language-training in general education. Ultimately, it may lead to a generation of minority representatives receiving a lower level of education than ethnic Georgians and are denied access to tertiary institutions. As a possible consequence, one may witness continuing emigration of minority representatives to neighboring countries, which will do little to ensure increased participation of minorities in the Georgian public life. Emigration of young, educated people from the regions is counter-productive to the overall development of the regions and particularly to the integration of minorities into the state structures. Such a consequence may also result in a perception among minorities that the Government is consciously attempting to force migration of ethnic minorities.

In conclusion, it appears that strengthening the position of the Georgian language is a reasonable policy goal, but the state must not underestimate the time it will take to bring the population up to a certain level of knowledge of the state language. Georgian legislators should consider a longer timeframe for the implementation of language requirements, *de jure* and *de facto*, so that the policies go hand in hand with increased language-training and the overall promotion of a civic statehood. The answer may lie in a milder legal terminology, where objectives, as opposed to forceful legal obligations, are established. In order to prevent tension between the local population and the central authorities, the establishment of such objectives should be combined with awareness-raising regarding the underlying reasons for the new requirements, and perhaps more importantly, the benefits of learning the Georgian language.

The weak implementation of national provisions is also visible in the field of anti-discrimination. At present, there are no known cases where anti-discrimination provisions have been applied by Georgian courts and no claims of rights violations on ethnic grounds have been filed to human rights monitors. While there is in Georgia a tendency to interpret this as a positive

¹⁴⁵ OSCE *Hague Recommendations*, recognize that minority languages ideally should be languages of instruction in primary, and to a certain degree in secondary schools, they at the same time emphasize that the state language should be taught on a regular, and increasing, basis. See above, Chapter 1 “Education Rights of National Minorities”.

sign, one must recognize that it has more likely to do with a lack of awareness among minority representatives about their rights. The Georgian state has yet to reach out to its regions, where knowledge of legislative initiatives is very low and where there are few possibilities for the population to receive consultation on legal matters. Additionally, legal procedures are costly and where the state is unable to provide for legal aid, minorities who are particularly exposed to economic hardships have limited access to the legal system. It should be noted that the rule of law in Georgia is still developing, and that weak implementation of legislative acts, especially in the regions, is a problem in general. It appears likely that overall development and integration of the regions will bring an improvement to this deficit but particular attention should meanwhile be paid to awareness-raising about legislative provision and claims procedures in minority communities, especially those using a language other than Georgian.

The self-governance reform has proven to be another sensitive issue, causing controversies between the Government and the civil society sector. Whereas international documents generally recommend that minority communities are given a certain level of self-governance, they remain without prejudice to the amount of power which should be awarded to local bodies. The Georgian government, should the new law on self-governance be enforced, has on the one hand established a more centralized system where it is assuring increased insight into local issues, but on the other hand increased the level of responsibility of the local government. Notably, the new municipalities are likely to comprise larger regions than before, and thus, the administrative power could move away from ethnically defined territories. Whereas this may be an attempt by the administration to reduce the risk of separatist claims, one must acknowledge that minority representatives may perceive it as a strategy aimed at decreasing the influence of national minorities over local issues. It is also uncertain what consequences a more centralized system will have for the dialogue between the central administration and the already isolated mountainous regions of Georgia. If the Government does not ensure that minorities are integrated into the new local structures, it may face controversies in its relationship with rural minority communities.

There are however, less controversial parts of the Georgian integration policies that should be highlighted. In the field of participation, the Zurab Zhvania School of Public Administration is an important step towards the inclusion of national minorities in public life. At the same time, one must bear in mind that training of national minorities in the field of public administration does not automatically mean that they will have equal opportunities in the access to employment in the public sector. It is also doubtful whether three months is a sufficient time to bring students with lacking command of Georgian up to a level of knowledge of the state language that enables them to effectively compete with ethnic Georgians in the employment field. Thus, special measures that ensure that national minority representatives receive employment after the completion of the training may be necessary, lest this initiative only constitute a temporary solution.

In conclusion, the Georgian government needs to find an appropriate balance between the enforcement of civic integration policies and the protection of the inherent rights of national minorities. This will not only generally improve the relationship between the Government and national minority groups, but will provide an incentive for minorities to integrate into the Georgian state and reduce the risk for ethnic tensions. Thus, it is essential that particular attention is paid to awareness-raising and capacity building on the importance of implementing minority protective measures among state representatives and relevant institutions.

4. Minority Protection in Azerbaijan

Minorities in Azerbaijan

Due to continuing emigration from Azerbaijan, the number of national minorities in the country is reportedly decreasing. As a result of the conflict in Nagorno-Karabakh up to 300,000 Armenians have left the country, and they now make up merely 1.5% of the total population. According to the 1999 census ethnic Azeris make up 90.6% of the total population. The largest minority group, Lezgins, make up 178,000 or 2.2% of the population, although some claim that as many as 250 000 Lezgin representatives reside in the country. Lezgins mainly live in the Northern parts of Azerbaijan and in big cities such as Baku and Sumgait, are mainly Sunni-Muslims and their language is related to the Dagestani language group.¹⁴⁶ The second largest group, Talysh, make up 1.8%, or 76,800 of the population, are Shia-Muslims and inhabit the Southeastern parts of Azerbaijan along the border to Iran. Other minorities include Russians (1.0%), Avars (0.6%), Meskhetian Turks (0.5%), Tatars (0.4%), Ukrainians (0.4%), Tsakhurs (0.2%), Georgians (0.2%), Tats (0.13%), Jews (0.1%) and Udi (0.05%).

International human rights monitoring bodies agree that the conditions for ethnic Armenians, Jews and Russians are problematic in the country. In spite of tensions between Armenia and Azerbaijan in connection with the conflict in Nagorno-Karabakh, the Azerbaijani state continues to deny discrimination of Armenian or any other minority groups in the country. This notion is reflected in several state reports submitted by Azerbaijan to international monitoring bodies. For instance, in a report to the Council of Europe on the implementation of the *FCNM* the state expressed that “no time in the history of Azerbaijan have there been recorded cases of intolerance or discrimination

¹⁴⁶ “ECRI Report on Azerbaijan”, The European Commission against Racism and Intolerance, CRI (2003) 3, 15 April 2003.

on ethnic, religious, language and cultural grounds”.¹⁴⁷ The Advisory Committee on the FCNM noted in its response that credible sources contradict this statement and that there is reason to believe that there are incidents of discrimination and general hostility towards minorities in the country. It noted that persons from mixed Azeri-Armenian families are subject to registration by the authorities and face general difficulties in their relationship with the state. The Committee however expressed no prejudice to whether discrimination on ethnic grounds is widespread, but encouraged increased monitoring and evaluation in this field.¹⁴⁸ Similarly, in 2005 the *Committee for the Elimination of Racial Discrimination* expressed its concern about reports about discrimination of Armenian minorities and noted that many Armenians residing in the country hide their ethnic identity in order to avoid maltreatment by ethnic Azeris.¹⁴⁹ Similarly, many ethnic Azeris accuse Russia of having supported Armenia in the conflict, contributing to hostile sentiments towards Russian minorities in Azerbaijan who reportedly are particularly exposed to discrimination in the labor field.¹⁵⁰

As far as Jews are concerned, it appears that Jews who have inhabited Azerbaijan for a long time and are fluent in the state language are not subjected to discrimination to the same extent as Russian-speaking Jews. Thus, the problem is more likely to be connected to language rather than religious affiliation. Overall, the Azerbaijani government has made particular efforts to combat anti-Semitism in the country.

¹⁴⁷ Report submitted by Azerbaijan, pursuant to article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities, ACFC/SR(2002)001, Received on 4 June 2002.

¹⁴⁸ COE Advisory Committee on the Framework Convention for the Protection of National Minorities, “Opinion on Azerbaijan”, ACFC/INF/OP/I(2004)001, Strasbourg, 22 May 2003.

¹⁴⁹ Committee on the Elimination of Racial Discrimination, “Concluding observations – Azerbaijan”, CERD/C/AZE/CO/4, 11 March 2005.

¹⁵⁰ “Official Language Research - Azerbaijan”, *U.S. English Foundation*, <http://www.us-english.org/foundation/research/olp/viewCountry.asp?CID=7.>, with reference to V. Mishkin, *Moscow News*, April 18 2001.

State Policies – Past and Present

As early as in 1992, the Azerbaijani President issued a decree on the *Protection of the Rights and Freedoms and on State support for the Promotion of the Languages and Cultures of National Minorities, Numerically small Peoples and Ethnic groups living in the Republic of Azerbaijan*, mandating state institutions to implement state policies as regards minority protection, including legislative efforts to ensure certain cultural and religious rights of national minorities.¹⁵¹ However, the conflict over Nagorno-Karabakh¹⁵² has had a hampering effect on state efforts as regards minority protection and has complicated the relationship between the state and national minority groups. As a consequence of Lezgin minority representatives refusing to join the Azerbaijani army in Karabakh, tensions between ethnic Azeris and Lezgins escalated in 1992-1994. In 1993, the regime also faced controversies with the Talysh minority, as a separatist movement unsuccessfully attempted to proclaim a Talysh Republic within the territory of Azerbaijan.¹⁵³ This nevertheless failed as the renegade military commander behind the attempt lacked popular support even among the ethnic Talysh population.

Recalling the events in the 1990s and fearing future separatism, former President Heydar Aliyev after his accession to power in 1993 took a unitary approach to nationhood. While rhetorically emphasizing the importance of maintaining minority languages and cultures, President Aliyev, through prosecuting and sentencing individuals involved in separatist activities to lengthy imprisonments, sent a clear signal of non-tolerance to separatist movements throughout his presidency.¹⁵⁴

Pursuing this policy line, the current administration continues to promote a civic, rather than ethnic, national identity. However, the increasing tendency to moderate the relevance of ethnic identity and instead promote

¹⁵¹ ACFC/SR(2002)001, 2002.

¹⁵² Perceived maltreatment of ethnic Armenians in the region gave birth to a desire to separate from Azerbaijan and ultimately a war between Azerbaijan and Armenia in the early 1990s. Ever since, the Armenian state has maintained effective control over Nagorno-Karabakh and the region's future status remains an unsolved issue.

¹⁵³ Anna Matveeva, "Minorities in the South Caucasus", 2004.

¹⁵⁴ *Ibid.*

“Azerbaijanism” makes it difficult to obtain an accurate picture of the ethnic composition of the country. Possibly as a consequence, state support for cultural associations of national minorities is decreasing.¹⁵⁵

Implementation of International Minority Rights Instruments

In accordance with its obligation as a Council of Europe member¹⁵⁶ Azerbaijan is a party to a large number of international human rights instruments, including, since 2000, the *FCNM*. Aiming at fully implementing the convention through creating a legal framework for minority rights, and in response to pressure from the international community to do so, a working group has been assigned to elaborate a separate law addressing the rights of national minorities. However, six years after adopting the *FCNM*, such a law is still to be presented to the Parliament. Seemingly, Azerbaijani legislators are of the opinion that a separate law on minorities is neither necessary, nor urgent, since Azerbaijani law already provides for a thorough legal framework for the protection of national minorities and that other contemporary issues are of higher relevance.¹⁵⁷ Following the accession to the *FCNM*, Azerbaijan, in accordance with the procedural rules of the convention, submitted a report to the Council of Europe on how the national legislation reflects the principles laid down therein. In its response to the report, the Advisory Committee on the *FCNM* made several important remarks, which have been taken into account in this report.¹⁵⁸

Azerbaijan has signed but not yet ratified the *European Language Charter*. State representatives see no particular relevance in adopting the Charter and are generally of the opinion that doing so constitutes an international obligation rather than a necessity, or a policy goal.¹⁵⁹

¹⁵⁵ *Ibid.*

¹⁵⁶ Azerbaijan acceded to the Council of Europe in 2001.

¹⁵⁷ Interview with Latif Huseynov, Department of Legislation on State Building of the Azerbaijani Parliament, Baku, 9 December 2005.

¹⁵⁸ ACFC/SR(2002)001, 2002.

¹⁵⁹ Interview with Latif Huseynov, Azerbaijani Parliament.

Internal and External Actors

As early as in 1993, a national *Council for National Minorities* was established to function as a consultative body for minority groups and state authorities. Although the Council is no longer active, its chair, the *State Counselor on National Policy of the Republic of Azerbaijan*, still acts as the main advisor to the Azerbaijani presidential administration on issues relating to integration and protection of national minorities. While there is no separate ministry for integration or minorities, the *Ministry for State Security* is the main political body dealing with national minority issues and a separate department for *Legislation and Legal Propaganda* under the Ministry of Justice works towards increased public awareness of legal initiatives in the country in general.¹⁶⁰

In 2002 the Office of the Human Rights Commissioner of the Republic of Azerbaijan (also referred to as the ‘Ombudsman’) was established through the *Constitutional Act on the Ombudsman*. Apart from monitoring the human rights situation in Azerbaijan in general, the office handles claims of human rights abuses from the general public and has a separate representative for claims on ethnic grounds.¹⁶¹ However, the current Commissioner, in spite of acting on a non-political mandate, is criticized for not handling claims that are politically sensitive and has at the time of writing not addressed any claims on ethnic basis.¹⁶²

Through adopting the 1995 Constitution, Azerbaijan established the preconditions for an independent judiciary. Although similar provisions appeared in the Soviet constitution, throughout the Soviet era the judiciary was to a great extent controlled by the prosecutor’s office, which dictated the outcome of legal cases. Despite reformation attempts, the Azerbaijani judiciary is still marked by its Soviet legacy and little progress has been made in addressing widespread corruption in this sphere. Courtroom bribes are common occurrences and reportedly take place openly. In order to handle

¹⁶⁰ ACFC/SR(2002)001, 2002.

¹⁶¹ Interview with the Elmira Suleymanova, *Human Rights Commissioner of the Republic of Azerbaijan*, Baku, 7 December 2005.

¹⁶² Interview with Kristine Womack, Rule of Law Liaison and Lynn Sferrazza, Country Director, ABA-CEELI, 7 December 2005.

criminal defense cases, advocates have to be members of an association of advocates, a so called *Collegium*. According to the American Bar Association's Central and Eastern European Law Initiative (ABA-CEELI), advocates are admitted to the *Collegium* based on their ability to negotiate bribes rather than their advocacy skills.¹⁶³ Until this day, private law-firms do not exist in Azerbaijan and due to the absence of independent advocates, the prosecutor's office still to a large extent controls outcomes of criminal cases. In February 2005 it was noted that no advocates have been admitted to the *Collegium* since 1999, leaving the association with only 350 members. The understaffing of the criminal bar along with the fact that independent lawyers are unable to appear before the bar, threatens minority protection in Azerbaijan as human rights violation claims are considered politically controversial and thus, are generally of low priority.¹⁶⁴

Much of the monitoring conducted by international organizations in Azerbaijan, namely the United Nations, the Organization for Security and Cooperation in Europe and the Council of Europe, has focused on elections and the Nagorno-Karabakh issue. The failure of third parties to bring forward a solution to the conflict between Azerbaijan and Armenia has seemingly resulted in a general skepticism towards the input of international organizations.¹⁶⁵

Up until 2002, U.S. financial support to Azerbaijan was limited by Section 907a of the Freedom Support Act, which restricted assistance to states which blockades other states. As a reward for Azerbaijan's cooperation in anti-terrorism activities, the US ultimately removed this restriction and increased their aid to the Azerbaijani civil society.¹⁶⁶ Up until now however, the role of civil society organizations in the minority field issues has been modest. Most Azerbaijani NGOs are based in the capital and few have regional branches. Relatively little state support has been allocated to the Azerbaijani civil

¹⁶³ "Legal Reform Index for Azerbaijan", ABA-CEELI Azerbaijan, February 2005 and interview with Kristine Womack and Lynn Sferrazza, ABA-CEELI.

¹⁶⁴ *Ibid.*

¹⁶⁵ Interviewee wishes to be anonymous.

¹⁶⁶ Anna Matveeva, "Minorities in the South Caucasus", 2004.

society sector, resulting in heavy competition between local organization for foreign grants. Moreover, in 2002, the Azerbaijani state adopted additional stipulations to the law *On Grants*, requiring that grants received by civil society organizations be subject to state registration and taxation. The regulations have had a hampering effect on local organizations' abilities to act independently, and to carry out activities in relation to politically sensitive issues. Whereas local NGOs are generally skeptical to national policies in relation to minorities, there is seemingly a notion that addressing issues that the Government is not concerned with complicate their relationship with the Azerbaijani Ministry of Justice.¹⁶⁷

Minorities According to Azerbaijani Law

The Azerbaijani legislation does not provide for a legal definition of minorities. According to the official state policy, every person has the right to self-identification and may determine whether they belong to an ethnic minority or not. Accordingly, the Azerbaijani constitution states: "Every Person shall have the right to preserve national/ethnic identity" and "No one can be deprived of the right to change national/ethnic identity."¹⁶⁸ In its response to the Azerbaijani state report on the implementation of the FCNM, the Advisory Committee noted that the Azerbaijani authorities tend to choose a rather inclusive approach to the determination of which groups may be considered national minorities. Whereas passport regulations during Soviet times stipulated a compulsory "ethnicity" entry, contemporary identity card regulations contain no such requirements. However, Soviet passports are still widely used in Azerbaijan and the Council therefore encouraged the Azerbaijani government to ensure the replacement of old travel documents. It also noted that when the Azerbaijani state collects ethnicity data in its population census, each citizen is obliged to state his or her ethnic origin, which contradicts the right of freely choosing ethnic affiliation or not being treated as belonging to an ethnic minority.

¹⁶⁷ Interview with Ramil Isgandarov, Deputy Chair of Azerbaijan Young Lawyers Union, 7 December 2005.

¹⁶⁸ Article 44.

Local Governance

Neither the Azerbaijani constitution, nor other normative acts, allows autonomous territorial entities within the territory of Azerbaijan and the legislation generally favors a centralized system of governance. At present, the local governance system comprises municipalities, regulated by a large number of legislative acts.¹⁶⁹ There is no internal hierarchy within the system, the municipalities act as independent bodies and are free to handle issues assigned to them through the legislation without interference from the central structures. Thus, the municipalities, in spite of a certain level of cooperation with state institutions, do not officially report to any other bodies.¹⁷⁰

Due to the limited interaction between the local municipalities and central bodies, local authorities have little involvement in the central decision-making and consequently, the state tends to regard the municipalities as parts of the non-governmental sector. Maintaining this system of local governance, Azerbaijan has been criticized by the Council of Europe for not establishing a more decentralized strategy for ensuring the active involvement by minority communities in central policies.¹⁷¹

Language

Azerbaijan hosts a variety of linguistic minorities. In total, it is estimated that more than 2 million people in Azerbaijan use a language other than Azerbaijani, including ethnic Azeris who bilingually use Russian and Azerbaijani. The dominating foreign language in the country is Russian, and

¹⁶⁹ "Constitution of the Republic of Azerbaijan"; The Law of the Republic of Azerbaijan "On Status of Municipalities"; The Law of the Republic of Azerbaijan "On Status of Municipal Member"; The Law of the Republic of Azerbaijan "On Cooperating, Merging, Separating and Dissolution of Municipalities"; The Law of the Republic of Azerbaijan "On Basis of Municipal Finance"; The Law of the Azerbaijan Republic "On Transferring Assets to Municipal Property"; The Law of the Republic of Azerbaijan "On Territories and Lands of Municipalities"; Rules for Municipal Requests; The Law of the Republic of Azerbaijan "On Rules of Municipal Elections"; The Law of the Republic of Azerbaijan "On Local referendum"; The Law of the Republic of Azerbaijan "On approving the sample charter of municipality". Available at <http://www.communityempowerment.net/index.php?laws=1&lng=1>.

¹⁷⁰ <http://www.communityempowerment.net/index.php?laws=1&lng=1>.

¹⁷¹ See ACFC/INF/OP/I(2004)001.

the amount of schools using Russian as the language of instruction have in recent years multiplied, giving upraise to controversies between those in favor of protecting the use of the Azerbaijani language and those in favor of recognizing Russian as a second state language.¹⁷² As minority representatives in Azerbaijan generally have a satisfying command of the state language, the linguistic situation for national minorities in Azerbaijan is however different from that in Georgia. Instead of considering the linguistic situation an obstacle for integration, international monitoring bodies are concerned with the diminishing importance of minority languages and the lack of state support for their use.¹⁷³

As regards legislative provisions, according to the Azerbaijani constitution, Azerbaijani is the state language of the country but everyone has the right to use their mother tongue, to work and to receive education in any language.¹⁷⁴ In recent years, possibly as a response to the increasing use of Russian in the country, the Azerbaijani state has undertaken reforms aimed at strengthening the role of the Azerbaijani language. Attempting to increase the use of the state language in the administrative sphere, the Azerbaijani parliament adopted in September 2002 a new law *On State Language*, stipulating that all services, procedures in state agencies, NGOs and trade unions must be in Azerbaijani or in a foreign language with translation into Azerbaijani.¹⁷⁵ Apart from the right for minority representatives to use other languages than Azerbaijani in parliamentary work¹⁷⁶, no provisions in the new law ensure the right for national minorities to use their native languages.

In practice, administrative communications are still to a large extent carried out in Russian and in certain regions, other minority languages. This lack of

¹⁷² "Official Language Research - Azerbaijan", U.S. English Foundation.

¹⁷³ In 2003, the Council of Europe Advisory Committee expressed concern that smaller minority languages in Azerbaijan, such as Tat, are being replaced by more dominant languages in the country and encouraged the state to adopt mechanisms to protect national minority languages. See ACFC/INF/OP/I(2004)001.

¹⁷⁴ Articles 21 and 45.

¹⁷⁵ <http://www.us-english.org/foundation/research/olp/viewResearch.asp?CID=7&TID=1>.

¹⁷⁶ Article 8 of the law "On State Language".

consistency has allegedly led to state authorities taking different stands on the issue of whether to accept written documentation in minority languages or to require the use of Azerbaijani. The Council of Europe has noted that Azerbaijani law and practice is thus incompatible with the FCNM, which states that minorities, when appropriate, should have the right to use their languages in dealing with the authorities.¹⁷⁷

A number of provisions in relation to the judiciary provide for the right for minorities to use their language in court procedures and prohibit the restriction of such use. In both criminal and civil cases Azerbaijani law lays down the right for parties to court proceedings to select the procedural language, depending on the majority language of the locality.¹⁷⁸ According to the *Criminal Procedural Code*, any person suspected of or charged with a crime has the right to make statements, address the court and file complaints in his or her own language, and to receive translation free of charge.¹⁷⁹ According to the law *On Courts and Judges*, cases in which the rights of a person who does not speak the language of the court proceedings are violated are inadmissible.¹⁸⁰

Media

Both the 1992 presidential decree and the 1999 law *On Mass Media* envisaged the establishment of minority broadcasting.¹⁸¹ However, the law *On State Language*, as adopted in September 2002, expressed that: “TV and radio broadcasting founded and operating on the territory of the Azerbaijan Republic regardless of the ownership is carried out in the state language”.¹⁸² Whereas it is not against international standards to promote the use of the state language in the media sphere, legislative limitations to the possibility of

¹⁷⁷ See ACFC/INF/OP/I(2004)001.

¹⁷⁸ Article 11 of the “Civil Procedural Code” and article 26 of the “Criminal Code”.

¹⁷⁹ See articles 90.7.11, 90.7.12, 91.5.11 and 91.5.13.

¹⁸⁰ Article 14.

¹⁸¹ Article 6 of the law “On Mass Media” reads: “...Citizens of Azerbaijan enjoy the right to use other languages spoken in the Republic as well as foreign languages in producing and broadcasting mass information.” Source: <http://www.us-english.org/foundation/research/olp/viewResearch.asp?CID=7&TID=1>.

¹⁸² Article 6.

broadcasting in minority languages was considered by the Advisory Committee incompatible with the FCNM.¹⁸³ As a consequence, in June 2003, the requirement to use the state language in public broadcasting was removed, but broadcasters were still urged to use fluent and ‘well-articulated’ Azerbaijani.¹⁸⁴ Shortly thereafter, the Azerbaijani National Council for Television and Radio adopted new regulations on the use of the state language in television and radio broadcasts, requiring that a minimum of 75% of all programs and announcements by state-owned as well as private TV- and radio stations were broadcasted in the Azerbaijani language.¹⁸⁵ Furthermore, a new broadcasting law was adopted in 2005, admitting to the inclusion of programs in languages of national minorities in public broadcasting.¹⁸⁶

At present, radio stations, for instance in the Belokan and Khachmaz regions, broadcast in the Avar, Lezgin and Tat languages.¹⁸⁷ Written media is mainly offered in Azerbaijani and Russian. Some newspapers are also available in Kurdish, Lezgin and Talysh but such publications reportedly lack funds.¹⁸⁸ Television broadcasting in minority languages has halted behind and few to no programs are available in regional languages. The Council of Europe has expressed concern about this fact, associating it with the general weaknesses as regards freedom of expression in the country.¹⁸⁹

Education

The Azerbaijani educational system is currently subject to reforms aimed at strengthening the role of the Azerbaijani language, particularly in higher

¹⁸³ Article 9. Source: ACFC/INF/OP/I(2004)001.

¹⁸⁴ <http://www.us-english.org/foundation/research/olp/viewResearch.asp?CID=7&TID=1>.

¹⁸⁵ “New Language Requirements for TV, Radio Broadcasting”, *Minelres, Azerbaijan*, July 16, 2003, RFE/RL Media Matters Vol. 3, No. 24, 30 June 2003, <http://lists.delfi.lv/pipermail/minelres/2003-July/002834.html>.

¹⁸⁶ “Minority-Language Related Broadcasting and Legislation in the OSCE”, 2003.

¹⁸⁷ *Ibid.*

¹⁸⁸ <http://www.us-english.org/foundation/research/olp/viewResearch.asp?CID=7&TID=1>.

¹⁸⁹ ACFC/INF/OP/I(2004)001.

education. In practice, the language of instruction in Azerbaijani schools is already to 93.3%, and thus, prevailingly Azerbaijani. 6.6% of the Azerbaijani population undertakes secondary and higher education in Russian and to a more limited extent, ethnic Georgians receive education in Georgian. In areas largely populated by minorities, primary schools generally offer education in minority languages two hours per week. This practice is reportedly well established in Lezgin communities but covers also numerically small minority groups. In close to 400 Azerbaijani schools, members of national minorities are provided the opportunity to study their mother tongue as a separate topic.¹⁹⁰ The educational system in general is however suffering from lack of resources and the state allocates little financial support for minority education. Textbooks, particularly in Lezgin, Talysh and Tat languages, are often old and outdated and no efforts are made to re-print educational materials.¹⁹¹

Whereas prior legislation addressing the educational rights of national minorities expressed positive rights for national minorities to receive education in their own language, the recent educational reforms will entail that such rights will be restricted. The main regulator of the Azerbaijani educational system, the *Law on Education*, has undergone changes as to increase the number of subjects taught in Azerbaijani as well as the use of the Latin alphabet.¹⁹²

Whereas promoting the use of the state language is not, in light of international standards, an illegitimate objective, Azerbaijan has been criticized for not considering the negative effects that an aggressive enforcement of Azerbaijani language requirements may have for members of national minority groups.¹⁹³ Azerbaijan, like Georgia, is favoring a rapid transition from one curriculum to another, as opposed to gradually implementing the new language requirements taking into account the time it will take to bring up non-Azerbaijani speakers to a required level of

¹⁹⁰ Anna Matveeva, "Minorities in the South Caucasus", 2004.

¹⁹¹ ACFC/INF/OP/I(2004)001.

¹⁹² ACFC/INF/OP/I(2004)001.

¹⁹³ *Ibid.*

command of the state language. Meanwhile, certain ethnic minority groups may be unable to compete with ethnic Azeris or other minority groups who use Azerbaijani, in the education and labor fields.

Participation

According to the Azerbaijani constitution, every citizen has the right to participate in political life irrespective of national identity and every citizen should have the right to be elected to the government bodies and to vote.¹⁹⁴

Aiming at maintaining stability and avoiding re-birth of separatism in the country, the former as well as the current administration has ensured that minorities are proportionally represented in the political sphere.¹⁹⁵ Thus, in practice, the representation of national minorities in the state structure of Azerbaijan is significantly higher than in Georgia. Ukrainian, Russian, Talysh, Lezgin and Avar minorities have representation in the Parliament and minorities are also represented in the President's office, Government, Constitutional court, Municipality and different ministries. In the regional structures, minority representatives occupy many of the leading posts.¹⁹⁶

Nonetheless, Azerbaijani legislation offers no special measures to ensure participation of minorities in central or local decision-making. In the local administrative structures, the Azerbaijani President reportedly has a significant influence over the appointment of staff¹⁹⁷ and although there are no apparent reasons to argue that minorities are exposed to discrimination in the decision-making structures, international monitoring bodies have expressed concern over the lack of mechanisms ensuring equal opportunities in this field.¹⁹⁸

¹⁹⁴ Articles 55 and 56.

¹⁹⁵ Anna Matveeva, "Minorities in the South Caucasus", 2004.

¹⁹⁶ ACFC/INF/OP/I(2004)001.

¹⁹⁷ Anna Matveeva, "Minorities in the South Caucasus", 2004.

¹⁹⁸ See e.g. ACFC/INF/OP/I(2004)001.

Anti-discrimination

Generally, the Azerbaijani legislation provides for a number of explicit guarantees of equality, reflecting the principle of anti-discrimination. The Azerbaijani constitution stipulates that: “the State guarantees the equality of everyone’s rights and freedoms irrespective of race, nationality, religion, language, sex, origin, property, official status, beliefs, membership of political parties, trade unions and other voluntary organizations. Limitation of human and citizen’s rights and freedoms on grounds of race, nationality, religion, language, sex, origin, beliefs, political and social affiliation is prohibited.”¹⁹⁹

In the criminal sphere, the Constitution prohibits “agitation and propaganda aimed at arousing racial, national, religious or social difference and hostility.”²⁰⁰ This principle is further elaborated in the Azerbaijani *Criminal Code*, which provides for a number of provisions prohibiting racial discrimination and violence.²⁰¹

In the civil sphere, a person who has been subjected to discrimination has, according to the *Labor Code*, the right to appeal to the court and demand restoration.²⁰² Similar provisions can be found in various other laws concerning trade unions and public associations. As regards the access for minorities to the legal profession, the Azerbaijani law *On Advocates* does not address the matter of equal opportunities but there have reportedly been no signs of discrimination of minorities in their admission to the bar. However, according to new rules for admission to the *Collegium*, added to the law *On Advocates* in 2004, applicants are required to pass an oral exam in order to

¹⁹⁹ Article 25.

²⁰⁰ Article 47.

²⁰¹ Article III defines racial discrimination as: “...crimes committed with the purpose of organizing and providing superiority of one racial group for oppression of another racial group...”. Article 154 provides that violations of equality rights are crimes against constitutional rights and freedoms. Article 283 of the Code prohibits “Actions intended to arouse national, racial or religious hostility, to lower national dignity, as well as to restrict the rights of citizens, or to establish superiority for citizens on the ground of their national or racial identity, attitude to religion...” and article 61: “Committing an offence inspired by motives of national, racial or religious hostility, religious fanaticism, by revenge for lawful actions of other persons, for mercenary ends or with other vile motives, and also with the purpose of concealing another crime or to facilitate committing of it...”

²⁰² Article 16.

become licensed advocates. This may become discriminatory against minorities who do not have sufficient command of the state language.²⁰³

Law enforcement authorities are obligated to protect all citizens regardless of race or origin²⁰⁴ but apart from that stipulation, no anti-discrimination provisions protect minorities from discrimination by authorities or private actors.²⁰⁵

According to the law *On Courts and Judges* everyone is equal before the judiciary “...irrespective of race, nationality, religion, language, sex, origin, property, official status, beliefs, membership of political parties, trade unions and other public associations.”²⁰⁶ Similar equality provisions are incorporated in the Azerbaijani *Criminal Code*, which states that law-offenders are subject to criminal proceedings “...irrespective of race, nationality, religion, language, sex, origin, property, official status, beliefs, membership of political parties, trade unions and other public associations, and other circumstances as well.”²⁰⁷ Both the Azerbaijani *Code on Criminal Procedure* and the *Civil Procedural Code* similarly guarantee everyone’s equality before the law.²⁰⁸

In practice, occurrences of ethnic discrimination are controversial issues to address. According to the *Human Rights Commissioner of the Republic of Azerbaijan*, no cases of human rights violations on ethnic rights have ever been filed, neither to the Ombudsman’s office, nor to the Azerbaijani courts, proving that there is little need for concern regarding equal opportunities for minorities in the country.²⁰⁹

²⁰³ Interview with Kristine Womack and Lynn Sferrazza, ABA-CEELI.

²⁰⁴ This obligation is laid down in article 5 of the law “On Police”.

²⁰⁵ This was noted by the Advisory Committee on the FCNM, which drew attention to the fact that while Azerbaijani legislation provides for several general provisions expressing the principle of non-discrimination, there is an absence of detailed legal prohibitions in this field. See ACFC/INF/OP/I(2004)001.

²⁰⁶ Article 7.

²⁰⁷ Article 6.

²⁰⁸ Article 11 of the “Code on Criminal Procedure” and article 8 of the “Civil Procedural Code”.

²⁰⁹ Interview with Elmira Suleymanova, HRC.

Conclusion

Since the outbreak of the conflict in Nagorno-Karabakh, the Azerbaijani state has attempted to ensure future stability through integrating ethnic minorities as much as possible in public life and has had notable success in ensuring representation of national minorities in the state structures. Simultaneously, the state is persistently denying alleged ethnic tensions as a consequence of the Armenian-Azerbaijani conflict and emphasizes that national minorities are met with great tolerance.

Thus, there is no obvious answer to the question whether Azerbaijani minorities are exposed to maltreatment. Although international monitoring bodies express concern about discrimination of certain minority groups in the country, it appears that Azerbaijani minorities voice complaints about their situation to a lesser extent than in Georgia. According to some, this is the result of an intentional strategy by the state of not reaching out to its regions. A similar neglect could be noticed during the Shevardnadze era in Georgia, when the stability of the country was somewhat ensured by the passivity of the regional population. Whereas this strategy may have been temporarily effective, one can now see what negative implications it has had on the relationship between the local and central structures in Georgia. Whereas one may also, to some extent, accept the validity of the notion that intolerance against national minorities in Azerbaijan is not an acute issue, one should simultaneously recall that tolerance only forms the very basis of minority protection. Successful provision for protection of national minorities requires active promotion and guarantee of the status of national minority groups and thus, a state's compliance with international minority protection standards should be evaluated on a more analytical level.

The fact that Azerbaijan is attempting to promote a civic national identity is visible in many areas of the legal framework as regards minorities. In spite of numerous provisions promoting equal opportunities, the Azerbaijani legislative and policy frameworks for minorities suffer from a lack of active mechanisms ensuring the maintenance of minority cultures and languages. For instance, offering few opportunities for members of minority communities to receive education in their mother tongue, Azerbaijan does

not comply with international standards as regards education rights of national minorities. Furthermore, the system of local governance is highly centralized and although minority representatives are proportionally represented in the central structures, the Azerbaijani state offers no mechanisms to provide minorities from remote regions with opportunities to participate in public life.

Nonetheless, when evaluated by international monitoring bodies, Azerbaijani legislators have received rather positive assessments for their compliance with international minority rights standards. There remains, however, a significant lack of implementation of national provisions. This is not a problem exclusively in relation to minority rights provisions. Overall, legislation in Azerbaijan is dynamic. Reportedly, a large number of laws are adopted by the Parliament every week but there is generally little public awareness about legislative initiatives in the country. Moreover, the structure of the judiciary allows arbitrary selection of cases, and there is a tendency among its representatives to avoid addressing politically sensitive cases. Thus, human rights violations in general, and minority rights violations in particular, are especially exposed to these trends. As a consequence, despite the large number of stipulations promoting equal opportunities and prohibiting racial discrimination, such provisions have never been applied, providing the argument that violations of minority rights do not take place in Azerbaijan. In order for Azerbaijani law to comply with international minority rights standards, particular attention needs to be paid to the weak rule of law in Azerbaijan in general and *de facto* application of minority rights provisions in particular. It is essential that national institutions mandated to handle claims from individuals do not interpret the absence of claims as an indicator of violations of minority rights not occurring, but view it as an incentive for awareness-raising among national minorities about their rights.

The fact that Azerbaijani legislation reflects international minority rights law is often pointed out by state representatives and clouds the prospect of an effective dialogue about the lack of *de facto* enforcement of national provisions. Instead, there is a clear tendency, among state as well as civil society representatives, to direct any discussions about minority issues in Azerbaijan to the issue of Nagorno-Karabakh. Many express the notion that

internal issues, such as that of minorities, are for the Azerbaijani state to deal with solely and that international efforts should instead focus on aiding in the restoration of the Azerbaijani territorial integrity.

State institutions dealing with minority issues in Azerbaijan are weak. Whereas in Georgia, one notices a positive development in this regard, state institutions dealing with minority issues in Azerbaijan remain limited in number, if not decreasing. This may be a consequence of Azerbaijan, due to the emigration of national minorities, becoming increasingly ethnically homogenous, but may also be a product of the continuing denial of minority issues being of concern in the country. The increasing emphasis on “Azerbaijanism” is another contributing factor, as it seemingly removes the incentive for establishing institutions concerned with minority issues. One must recognize that the country still hosts a variety of minority groups who do not to a satisfactory extent participate in the dialogue regarding their situation. As this may ultimately lead to feelings of neglect or maltreatment, strengthening state institutions dealing with minorities, for instance through re-activating the Council for National Minorities as established in the early 1990s, appears highly desirable.

Azerbaijan, as in Georgia, is undertaking reforms aimed at increasing the use of the Azerbaijani language. Whereas the linguistic situation in Azerbaijan is not as complex as in Georgia, requirements for using the Azerbaijani language have similarly been enforced. In the educational sphere, this may lead to minority students falling behind and being unable to compete with ethnic Azeris in higher education. In the public sphere, minority representatives that do not have command of the state language may be discriminated in their access to work. Considering that language barriers do not pose an acute threat to integration in Azerbaijan, one may assume that the language reforms simply constitute a response to the rapid increase of the use of Russian and ultimately is a part of the overall unification policy in Azerbaijan. While introducing requirements of using the state language is not *per se* contrary to international standards, such requirements may never be coercive or discriminatory and should serve a public purpose. The Azerbaijani state should therefore with care review the necessity of

undertaking rapid language reforms, or their compliance with the aims and objectives of international minority rights law will be in question.

5. Concluding Remarks

In the promotion of a civic national identity, a notable imbalance has emerged between integration efforts and the protection of minority rights in both Georgia and Azerbaijan. As the effective participation of minorities in social and public life is a fundamental right of all persons, the concept of integration is closely linked to that of minority protection. However, the two are not interchangeable as minority protection simultaneously aims at ensuring a certain level of cultural autonomy. Aggressive integration policies in both countries, leaving out the promotion of minority language and cultures, are often perceived as assimilation attempts, which threaten the ethnic identity of minority groups. Thus, there is a need to correct this imbalance in the region, which is already marked by ethnic controversies.

Implementing a complete framework for minority protection has however proved to be difficult. Over the course of this study it has been noted that state representatives often tend to refer to a history of tolerance and co-existing and therefore neglect the importance of legislating in the field of minorities. Stressing the importance of national unity, many believe that legislation in this field will have a negative impact on integration. This notion is partly connected with the misassumption that minority rights are collective by nature and that enforcing a framework for minority protection would breed claims for self-determination and secession. Others consider existing constitutional provisions guaranteeing equal opportunities sufficient, and that there are other more acute issues to deal with as regards the regaining of territorial integrity, poverty reduction and infrastructural development. Thus, whereas one must bear in mind the limited resources at hand to undertake legislative reforms aiming at establishing a minority rights framework, it appears reasonable to argue that the first step to overcome is the negative attitude towards international minority rights standards in both states.

Minority representatives in both Georgia and Azerbaijan show limited awareness of rights granted to them through international and domestic law, and of the Governments' obligations to provide for such rights. As a result, minorities do not file complaints over rights violations, serving the central powers with the argument that they are not exposed to maltreatment. This is an alarming misinterpretation of the situation, as human rights monitors continuously express concern over occurrences of discrimination and exclusion. It therefore appears clear that the dialogue between minority communities and the central structures must be encouraged. Awareness-raising among national minorities as regards human rights and claims procedures is highly necessary in order to bring attention to the necessity of legislating further in the field of minority rights, and to ensure its *de facto* implementation.

In both states, recent language reforms, introducing requirements of using the state language in public administration and education, have constituted some of the most notable integration efforts. However, the new provisions have proven to have discriminatory effects, as they are not balanced properly against the need for language training, which is insufficiently provided for. Although this largely has to do with budgetary constraints, especially in Georgia, it is clear that the policy-makers have failed to foresee such implications in trying to rapidly promote the use of the state language. Consequently, one may witness the emergence of tensions between the regions and the central structures, as minority groups feel exposed to assimilation that ultimately prevents them from competing with the majority in the education and employment field. Such sentiments are already visible in Georgia where demonstrations against the reforms have taken place in certain districts. In order to avoid the escalation of such tensions, the Governments may need to consider making legal amendments that loosen the requirements, and implement the objective of using the state languages over a longer period of time.

State institutions are weak in both Georgia and Azerbaijan and the administrations have failed to allocate sufficient funds to state bodies and civil society actors concerned with minority issues. There is a clear tendency, of both the states and foreign donors, to instead prioritize issues in relation to

the frozen conflicts in the regions, leaving key actors in the field of minorities with limited ability to initiate and implement minority rights projects. In order to improve the legislative framework for the protection of national minorities in the region, and ensure its effective implementation, it is necessary to equip state and civil institutions with tools to create comprehensive strategy-plans, where integration efforts are balanced against the promotion of cultural and linguistic diversity.

The enforcement of minority rights as an essential complement to integration policies should also be highly desirable as a conflict resolution tool for the two governments in relation to the frozen conflicts in Abkhazia, South Ossetia and Nagorno-Karabakh. Through improving the framework for minority protection the Governments will establish an attractive incentive for integration of the separatist regions, which ultimately may increase their possibilities of restoring their territorial integrity.

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