



Cultural, Educational and Youth Centre “Hayartun”

Report on Georgia’s Compliance with the
International Covenant on Civil and Political Rights

Rights of religious minorities in Georgia
Articles 18 and 27

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About the Organization

1. The “Hayartun” Cultural, Educational, and Youth Centre is a secular community-based organization affiliated with the Diocese of the Armenian Apostolic Orthodox Holy Church in Georgia. Since its foundation on 30 April 2010, the Centre has served the Georgian Armenian community and those interested in the Armenian culture in Georgia, regardless of ethnic origin or religious affiliation. The main objectives of the organization include - promotion of cultural, educational and charitable activities, development and preservation of the Armenian cultural heritage in Georgia, promotion of the Armenian-Georgian dialogue, and protection of human rights in the country.

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2. Levon Isakhanyan holds European Master’s Degree in Human Rights and Democratization from the European Interuniversity Centre for Human Rights and Democratization, Venice, Italy and Strasbourg, France, Master’s Degree in International Institutions and Policies of Human Rights and Peace from the University of Padua, Italy, Master’s Degree in Law from Sukhumi State University, Tbilisi, Georgia, and Certificate of Political Studies from the Institute of Political Studies of Grenoble, France. His overall professional experience comprises various positions in a number of organizations, including the position of the President of the Human Rights and Humanitarian Law Centre “Themis”, Tbilisi, Georgia. Currently he works as the Head of the Department of Legal Affairs, Relations with the State Institutions and Interreligious Cooperation at the Diocese of the Armenian Apostolic Orthodox Holy Church in Georgia, teaches rights of ethnic, linguistic and religious minorities at the Iliia State University, Tbilisi, Georgia, and coordinates Political Participation through Dialogue project aimed to raising awareness about wide range of political processes and their interpretations among Georgian citizens of Armenian heritage - www.ardzagank.ge

Executive Summary

3. This report is produced to provide the members of the Human Rights Committee (UN HRC) with specific information regarding implementation of articles 18 and 27 of the International Covenant on Civil and Political Rights (ICCPR) in Georgia. It concerns persons belonging to religious minorities.

4. In 2007, the UN HRC adopted number of recommendations for Georgian authorities concerning specific measures that should have been implemented in order to eradicate discrimination based on affiliation with certain groups. Majority of these recommendations have not been taken into consideration.

5. The State has made some formal steps, which could be characterized as those aimed to promotion of equality, however the de-facto implemented policies show that discrimination on the basis of

religious affiliation and ethnic identity, including its linguistic dimension, remains a pressing issue in the current day Georgia's political agenda.

6. Notwithstanding specific recommendations of numerous international organizations, as well as demands of minorities to tackle challenges of their concern, Georgian authorities, during more than two decades prove to be unable or unwilling to accommodate legitimate concerns of certain segments of the multicultural Georgian society.

7. The situation of persons belonging to religious minorities continues to deteriorate. The main preconditions for this are the groundless claims of the dominant Georgian Orthodox Church, as well as the State's passive behavior with regards to the need for resolution of the issues related to the religious minorities. It is the State's responsibility to respect and to protect human rights of all the stakeholders within its jurisdiction, and the international community should contribute by all possible means to fulfill the obligations undertaken by the Georgian authorities.

Legal framework

8. Article 9 of Georgia's Constitution recognizes complete freedom of belief and religion. Furthermore, it highlights the special role of the Orthodox Church in the history of Georgia and its separation from the State. By virtue of this article Constitutional Agreement (Agreement) should determine the relations between the State and the Orthodox Church. **The Agreement was signed on 14 October 2002, and since its adoption it became the main source of discrimination against religious minorities in Georgia.** Although, the Agreement itself does not concern religious minorities as such, it serves as a source of unequal treatment towards equally important subjects of the law.

9. According to article 1:3 of the Agreement, the Orthodox Church has been granted the status of a public law legal entity. On 5 July 2011, Georgia's Parliament adopted amendments to the Civil Code, which allow religious minorities¹ among other statuses, to have the same status. However, if in case of the Orthodox Church the State "loaded" formal status with specific rights, **in case of the religious minorities the status-holders are subjected to unequal treatment.**

10. In the fourth periodic report on implementation of ICCPR (State report on ICCPR implementation), the State mentions that religious organizations would be eligible for all benefits provided by the Georgian legislation.² In spite of this, the State employs **discriminatory policies towards religious minorities in the fields of restitution of confiscated properties, taxation, and allocation of public funds.** Similar examples of discriminatory policies may be brought as examples.

Restitution of property

11. **Restitution of churches and other properties, confiscated from religious minorities during the Soviet era is a crucial issue.** Religious minorities, unlike the majority Orthodox Church, have been unable to secure restitution of their properties. The Orthodox Church claims ownership not only over Orthodox churches, but also over majority of those churches, which before the confiscation by

¹ Religious minorities, in order to get the status of legal entity of public law, should either have historical ties with Georgia or be recognized as religions in any Member-State of the Council of Europe.

² Fourth periodic report of Georgia on implementation of ICCPR, UN Document CCPR/C/GEO/4, 2012, para. 37.

Soviet authorities belonged to religious minorities. **The State facilitates the Orthodox Church's intention to expropriate minorities' properties**, including issuing property documentation.

12. The Orthodox Church has taken control over **40 Armenian Apostolic churches, including 7 in Tbilisi, 5 Catholic churches in various parts of Georgia, and 1 Lutheran church in Asureti village. Representatives of the Orthodox Church, with tacit permission from the State, have made them orthodox - "orthodoxized" them**, by changing their appearance and conducting orthodox rites inside the expropriated churches. In the case of Armenian churches, representatives of the Orthodox Church erased Armenian inscriptions from frescoes and tombstones, as well as destroyed elements of the Armenian ecclesiastical architecture, such as altar and font. In this regard, the Council of Europe (COE) Commissioner for Human Rights Nils Muiznieks, in his May 2014 report notes that "the Armenian Apostolic Church reported attempts by the Georgian Orthodox Church to expropriate Armenian religious properties, including through altering their appearance in order to erase Armenian elements, as well as acts of provocation and use of defamatory language against Armenians. There have also been complaints about the difficulty to repair and maintain some of the old Armenian churches as well as disputed ones, which are on the verge of collapse".³

13. Due to unsubstantiated claims of the Orthodox Church many other of minorities' churches have been closed since reinstatement of State independence and their legitimate owners are deprived of possibility to use them for the spiritual needs of the respective communities. **Some of them collapsed.** On 18 November 2009 the **14th century Mughnetsots Surb Gevorg Armenian Church collapsed.** On 14 May 2012, the **bell-tower of the 18th century Surb Nshan Armenian Church collapsed.** Both of these churches are situated in downtown Tbilisi and on 1 October 2007 they have been declared as Cultural monuments by the State.⁴

14. The Georgian government officially recognized a number of the Armenian churches claimed by the Orthodox Church as Armenian churches. **However, the restitution did not follow the recognition.** In the Second periodic report on implementation of the COE Framework Convention for the Protection of National Minorities the Government mentioned that "[p]roject documentation for restoration of the Armenian Moghnisi, Surbnishani and Norasheni Churches in Tbilisi were finalized in 2011".⁵ In the State report on ICCPR implementation the Government mentioned that "[p]roject documentation is currently underway for those places of worship, which are in need of urgent rehabilitation, for instance Armenian Moghnisi and Surbnishani Churches".⁶ In the latter report reference to the prominent Armenian church Norashen, which before the confiscation in 1930s, was used by the Georgian Armenian community since the 15th century has disappeared, which is incomprehensible.

15. On 21 May 2014, during her visit to Georgia the **UN High Commissioner for Human Rights, Navi Pillay was informed about the discrimination in the field of restitution. In her response the High Commissioner mentioned that she is unhappy to hear about the selective approach**

³ Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe following his visit to Georgia from 20 to 25 January 2014, May 2014, CommDH(2014)9, para 112.

⁴ See Order №3/181 of the Minister of Culture, Monuments Protection and Sport of Georgia, 1 October 2007

⁵ Second Report Submitted by Georgia Pursuant to Article 25, Paragraph 2 of the Framework Convention for the Protection of National Minorities, ACFC/SR/II(2012)001, 30 May 2012, para. 109.

⁶ Fourth periodic report of Georgia on implementation of ICCPR, UN Document CCPR/C/GEO/4, 2012, para. 39.

towards religious minorities in Georgia.⁷ She urged the Government of Georgia to implement the anti-discriminatory provisions of the Georgian Constitution.

16. In its concluding observations adopted on 15 November 2007 the Human Rights Committee expressed its regret as problems related to the restitution of places of worship and related properties of religious minorities, confiscated during the Communist era, have not been solved, and it **recommended to the Georgian authorities to address the problems related to the confiscation of places of worship and related properties of religious minorities.**⁸

17. Restitution of property, confiscated from religious minorities was in the focus of a number of delegations within the framework of the first cycle of Georgia's **Universal Periodic Review** (UPR). The delegation of Italy asked for an update on the measures addressing the ownership and maintenance of places of worship and related properties claimed by religious minorities,⁹ Slovakia noted the concerns expressed by the HRC on discrimination of religious groups,¹⁰ Bulgaria¹¹ and Denmark¹² recommended to take steps to ensure equal enjoyment of the freedom of religion and belief, the Holy See recommended to address the problem regarding the confiscation of places of worship and related properties of religious minorities,¹³ and Ecuador recommended to promote tolerance with regard to religious minorities and agreed with the views of the HRC about the need to take steps to ensure equal enjoyment of the freedom of religion and belief and to address the problems related to confiscation of places of worship and related properties of religious minorities.¹⁴

18. In response to the recommendation formulated by the Holy See¹⁵ during the UPR, Georgian authorities mentioned that **Georgia recognizes the importance of addressing the problem regarding the confiscation of places of worship.** According to the Georgian authorities, since confiscations took place during Soviet rule and the issue remains highly contested among the various religious confessions, restitution can only result from careful study and investigation.¹⁶ **Although, religious minorities have never been against careful study and investigation of the legitimate ownership of churches, such an attitude of the State proves to be discriminatory, as the State has not employed the same approach towards the Orthodox Church.** Actually, this is due to the lack of careful examination of legitimate ownership of churches that the Orthodox Church took over ownership of not only the Orthodox churches, but also numerous other churches, which belong to the minorities.

19. In the mid-term progress report of Georgia on implementation of recommendations elaborated within the framework of UPR, Georgian authorities mentioned that a careful study and investigation is

⁷ For more information concerning the UN Human Rights High Commissioner's position, including the video recording of the meeting see 'UN Human Rights High Commissioner Unhappy About Selective Approach towards Religious Minorities in Georgia', available at: <http://ardzagank.ge/en/5/191-04>

⁸ See Concluding Observations of the Human Rights Committee on Georgia, UN Document CCPR/C/GEO/CO/3, 15 November 2007

⁹ Report of the Working Group on the Universal Periodic Review: Georgia, A/HRC/17/11, 2011, para. 35.

¹⁰ Report of the Working Group on the Universal Periodic Review: Georgia, A/HRC/17/11, 2011, para. 51.

¹¹ Report of the Working Group on the Universal Periodic Review: Georgia, A/HRC/17/11, 2011, para. 105.60.

¹² Report of the Working Group on the Universal Periodic Review: Georgia, A/HRC/17/11, 2011, para. 105.62.

¹³ Report of the Working Group on the Universal Periodic Review: Georgia, A/HRC/17/11, 2011, para. 106.48.

¹⁴ Report of the Working Group on the Universal Periodic Review: Georgia, A/HRC/17/11, 2011, para. 106.49.

¹⁵ Report of the Working Group on the Universal Periodic Review: Georgia, A/HRC/17/11, 2011, para. 106.48.

¹⁶ Report of the Working Group on the Universal Periodic Review: Georgia, Addendum, A/HRC/17/11/Add.1, 2011, page 2.

currently underway.¹⁷ **However, representatives of respective religious communities have not been invited to participate in such activities.**¹⁸

20. The problem of restitution has been highlighted by regional human rights mechanisms as well. The Advisory Committee of the COE Framework Convention for the Protection of National Minorities mentioned that “[g]enerally speaking, while the properties of the Georgian Orthodox Church have been, or are being, returned, the return process has been delayed for the other churches. Strong tensions were reported in relation to inter alia, the return of Armenian churches and attempts of the Georgian Orthodox Church to take over some of these buildings (as in case of several churches in Tbilisi, including the Surb Norashen church used by the Armenian community since 15th century).”¹⁹

21. On January 25, 2014 during his visit to Georgia the COE Human Rights Commissioner noted, “**it is clear the process of property restitution as it has taken place up until now has been marked by injustices and unfairness towards minority religious communities.** I have learned that there is an ongoing process of discussion between various religious groups and the Government on the restitution of property, and some progress has been made, for example, recently a Synagogue and a Lutheran church were restored to their congregations. **Clearly much more needs to be done and it is clear that there are many churches that belonged to the Armenian Church that have not yet been restituted**”.²⁰ In his follow-up report, the Commissioner recommended to the Georgian authorities to pursue a process of returning of the confiscated religious properties to their owners and resolves the problem of disputed properties.²¹

22. In his September 2013 report European Union (EU) Special Adviser on Constitutional and Legal Reform and Human Rights in Georgia Thomas Hammarberg highlights, “a pending issue is the restitution of churches confiscated in the Soviet period and handed to the Georgian Orthodox Church in the 1990s. **To date, both the Armenian Diocese and the Catholics have failed to regain them**”.²²

23. The issue has been raised by the Public Defender (Ombudsman) of Georgia as well. In his most recent annual Parliamentary report on human rights situation in Georgia **the Ombudsman**

¹⁷ See Mid-term progress report of Georgia on implementation of recommendations elaborated within the framework of the UPR, page 138, available at: http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/GE/mid-term_reportGeorgia.pdf

¹⁸ Representatives of the Armenian Diocese have been invited to participate only in the monitoring commission whose mission is to oversee the conservation of Armenian churches, claimed by the Orthodox Church in downtown Tbilisi, rather than their restoration to the Armenian Diocese in Georgia.

¹⁹ Opinion on Georgia, ACFC/OP/I(2009)001, 10 October 2009, para. 96.

²⁰ For more information concerning the COE Human Rights Commissioner’s position, including the video recording of the meeting see ‘Council of Europe Human Rights Commissioner: «it is clear the process of property restitution as it has taken place up until now has been marked by injustices and unfairness towards minority religious communities»’, available at: <http://ardzagank.ge/en/5/196-06>

²¹ Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe following his visit to Georgia from 20 to 25 January 2014, May 2014, CommDH(2014)9, para. 119.

²² Georgia in transition. Report on the human rights dimension: background, steps taken and remaining challenges. Assessment and recommendations by Thomas Hammarberg in his capacity as EU Special Adviser on Constitutional and Legal Reform and Human Rights in Georgia, September 2013, page 26, available at: http://ceas.europa.eu/delegations/georgia/documents/virtual_library/cooperation_sectors/georgia_in_transition-hammarberg.pdf

recommended to the Government to create a commission mandated with studying restitution related issues, with participation of the Ombudsman and civil society.²³

24. The State, while talking about implementation of ICCPR article 18 mentions that there is Council of Religions at the Office of the Ombudsman.²⁴ It is commendable that the State recognizes the importance of existence of such body. However it seems that the **State recalls of the Council mainly when it reports to an international body about its human rights profile**, while at the national level it does not take into consideration some important recommendations elaborated within the Council. These are just few of the recommendations of the Council which have not been taken into consideration: to make relevant changes to the tax legislation in order to ensure equal tax regime for all religious unions; to develop special guidelines for school principles to enable them to turn school environment into religiously neutral; to present in the shortest time possible a detailed action plan for solving the question of so-called disputable churches and ownership problem of those cult buildings, which were taken away from their historical owners by Communist officials in Soviet times; to pay equal attention to preservation and restoration of cult buildings belonging to all religious unions; to prevent arbitrary changes of interior and exterior of the disputable cult buildings.²⁵

Allocation of public funds

25. Since 2002 the State has directly transferred more than 120 million US dollars from the State budget to the Orthodox Church. According to both the State officials and Orthodox clergy, these funds are being allocated as a form of partial reparation for repressions against the Orthodox Church during XIX and XX centuries, when Georgia lost its statehood. This is another instance of discrimination against religious minorities as the Orthodox Church was not the only religious organization subjected to repressions during the mentioned period of time. **Reparations provided exclusively to the dominant church is discriminatory vis-à-vis those subjects of the law who are in a comparable situation.** On 27 January 2014 the Government adopted a decision²⁶, which gives the right to receive reparations additionally to four other religious organizations, such as the Armenian Apostolic Church, the Roman Catholic Church, the Jewish Community and the Muslim Community. This is a discriminatory decision of the Georgian authorities, as it does not recognize equal right to reparations for all the eligible religious organizations.

26. **The State discriminates religious minorities in the field of allocation of public funds for maintenance of their places of worship.** While on the one hand it recognizes that the minorities' belonging places of worship make part of the country's cultural heritage, on the other hand it takes care exclusively of the Orthodox churches.

27. Because of such an attitude two cultural monuments of the Armenian origin collapsed in the center of Tbilisi. Before the collapse they were recognized as cultural monuments by the State. These are the churches, which were recognized as Armenian by the Government (see para. 14) however as the Orthodox Church claims them, the Armenian Diocese was unable to regain ownership over these

²³ Annual Report of the Public Defender of Georgia on the Situation of human rights and freedoms in Georgia: 2013, page 316, available at: <http://www.ombudsman.ge/uploads/other/1/1563.pdf>

²⁴ Fourth periodic report of Georgia on implementation of ICCPR, UN Document CCPR/C/GEO/4, 2012, para. 141.

²⁵ Complete list of recommendations is available at: http://tolerantoba.ge/index.php?id=1281619892&sub_id=1359539573

²⁶ See Decree of the Government of Georgia №117, 27 January 2014.

churches. Moreover, the State refused the Armenian Diocese's suggestion to restore the churches with its own resources. **These and similar other processes make us think that there is an orchestrated action between the State and the Patriarchate of the Georgian Orthodox Church aimed at destruction of religious minorities' cultural heritage.**

28. **Taxation legislation of Georgia is equally discriminatory against country's religious minorities.** While the Orthodox Church is exempted from a large number of taxes, none of the religious minorities benefit from the same regime.

Recommendations

29. We would like to kindly ask the Human Rights Committee to consider a possibility of recommending to the Georgian authorities:

- To consider annulment of the Constitutional Agreement between the State and the Georgian Orthodox Church in order to eradicate legal preconditions for discrimination of religious minorities in the country;
- To adopt appropriate legislation for restitution of churches and other properties of religious minorities that belonged to them before confiscation by Soviet authorities;
- To investigate all cases of transmission of minorities' belonging churches and other properties to the Orthodox Church, as well as to adopt specific measures, including but not limited to legal and raising public awareness, to secure restitution of the properties to their legitimate owners;
- To adopt policies which reflect equal attitude towards religious organizations in Georgia, including in the taxation, public education, allocation of public funds, and other spheres of public life;
- To implement specific measures aimed at denouncing hate speech from representatives of the Orthodox Church of Georgia in order, thus creating conditions where defamatory and discriminatory expressions concerning minority religious groups are eliminated.