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შენიშნული პერიოდის განმავლობაში და სხვა სპორტსმენების
ორგანიზაციებთან სპორტსმენების მუდმივი წარმომადგენელი

MISSION PERMANENTE DE LA GEORGIE AUPRES
DE L'OFFICE DES NATIONS UNIES ET DES AUTRES ORGANISATIONS
INTERNATIONALES A GENEVE

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July 7, 2011

Excellencies,

In reply to your joint letter from 20 June 2011, I have the honour to transmit hereby the information note of my Government responding to the issues raised in your communication (see Annex).

I remain at your disposal for any further information that you may deem necessary to obtain with regard to the issues in question.

Please accept, Excellencies, the assurances of my highest consideration.

Sincerely,

Zurab TCHIABERASHVILI
Ambassador
Permanent Representative

OHCHR REGISTRY

- 8 JUL. 2011

Recipients :.....SPO.....

Encl.: 6 pages

Mr. Jeremy SARKIN
Chair-Rapporteur of the Working Group on Enforced or Involuntary
Disappearances

Ms. Gabriela KNAUL
Special Rapporteur on the independence of judges and lawyers

Mr. Frank LA RUE
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opinion and expression

Mr. Maina KIAI
Special Rapporteur on the rights to freedom of peaceful assembly and of
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Information in Response to Communication from Special Procedures for Urgent Appeal

The information provided below addresses the Communication for Urgent Appeal from the Working Group on Enforced or Involuntary Disappearance, Special Rapporteur on the Independence of Judges and Lawyers, Special Rapporteur on the promotion and protection of the right to Freedom of Opinion and Expression and the Special Rapporteur on the right to Freedom of Peaceful Assembly and of Association.

The present paper gives a brief description of the events of May 26 as well as of the issues raised in their communication/questions by the Special Procedures:

I. Events leading to May 26, 2011

During May 21-26, 2011 radical opposition groups organized demonstrations and rallies in Tbilisi and Batumi. Mainstream opposition parties did not support the protests.

Local municipalities both in Tbilisi and in Batumi were informed about the time and places of the demonstrations as required by the Law of Georgia on "Assemblies and Manifestations". Originally, the demonstrations in Tbilisi were held on Freedom Square and on Kostava Avenue. On May 25, the protesters moved to the Rustaveli Avenue with a declared purpose to internally disrupt the Independence Day celebrations, including the military parade on May 26.

Initially, the protests have remained largely peaceful, though the organizers repeatedly assured protestors that they would change the government in the coming days and armed them with batons and Molotov cocktails. The Government took all feasible measures to ensure full respect of the right of assembly and manifestation. Demonstrators were allowed to keep the main roads in the capital closed even when the number of demonstrators did not require it.

Despite number of provocations from the protesters, the police showed the utmost restraint to avoid clashes. However, on May 22, group of violent protesters encircled a police car trying to leave the nearby police station, attacked it with batons, stones and plastic sticks and physically injured at least one police officer.

Drunken protesters assaulted nearby residents and pedestrians on many occasions. On May 21, a violent group in Batumi attacked local TV station, broke the windows and injured number of personnel and civilians.

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By May 25, when the rally moved to the building of the Parliament, notwithstanding the fact that organizers were aware of the planned celebration of 20 years of independence on May 26, it became evident that they had a clear plan to disrupt the national day celebration and provoke the violence.

On May 25, Tbilisi City Municipality asked the organizers to leave the Rustaveli Avenue by midnight and offered alternative places for the demonstration. The legitimate request of the Tbilisi City Municipality was rejected.

Later, Ministry of Internal Affairs released secret audio and video recordings obtained in line with Georgian and international legal standards that further revealed that at least some of the organizers had a very clear plan for violence including storming of public buildings, in particular, Georgian Public Broadcaster, attacking police cars and offices, and provoking chaos in the capital.

II. The Legal Basis for the use of force against Illegal Rally on May 26, 2011

Article 25 of the Constitution of Georgia guarantees the right to peaceful public assembly either indoors or outdoors, stating that -

"1. Everyone, except members of the armed forces and Ministry of Internal Affairs, has the right to public assembly without arms either indoors or outdoors without prior permission.

2. The necessity of prior notification of the authorities may be established by law in the case where a public assembly or manifestation is held on a public thoroughfare.

3. Only the authorities shall have the right to discontinue a public assembly or manifestation in case it assumes an illegal character."

The Law of Georgia on Assembly and Manifestations further guarantees freedom of assembly and manifestation, though, it requires the following conditions to be met:

- If an assembly or manifestation impedes transport, the organizers shall inform local municipalities about the time and place of the assembly/manifestation as well as about the route of the protest if applicable; (Article 1(2))
- any incitement to the violent change or overthrow of the constitutional structure of the state, infringement the independence of the country or violation of its territorial integrity, as well as incitement to war and violence or national, regional, religious or social hatred is prohibited (Article 4);

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- Carrying weapons, explosives, flammable, tear, radioactive or poisonous substances, alcoholic drinks by protesters are prohibited (Article 11).

None of the above-mentioned requirements of the legislation were observed during the protests in Tbilisi on May 21-26: The notification sent to the Tbilisi Municipality mentioned Kostava Avenue i.e. vicinities of the Georgian Public Broadcast as a place for the demonstration; on May 25, 2011 the demonstrators deliberately moved to Rustavell Avenue with the intent to disrupt the Independence Day celebrations; The leaders and organizers often called for violence and made discriminatory statements; protesters were armed with so called "Molotov Cocktails", sling shots, long sticks and shields that have been caught by the TV cameras.

III. Dispersal of the demonstration on May 26

In its official statement released at 8:00 pm. on 25 May, the Tbilisi City Municipality, offered the organizers several alternative venues, so that they would exercise their rights without disrupting the Independence Day celebrations (including the military parade). But the leaders refused. Later, at 11:30 pm, a City Hall representative approached the protest organizers and personally asked them to obey the legitimate requests of the local municipality. The organizers disregarded the request and became particularly provocative through attacking peaceful pedestrians, police officers and police vehicles.

On 26 May 2011 at about 00:19, after number of futile warnings, police dispersed the demonstration¹. The operation was planned so as to avoid casualties and was carried out by specially trained units of the Ministry of Internal Affairs. The police forces made a corridor to give the protesters possibility to leave the place. Many protesters used the corridor and left the territory. Some of the organizers fled by cars, run over police cordon and killed 1 civilian and 1 police officer.

Many protesters, armed with sling shots, "Molotov Cocktails", long sticks and shields engaged in physical confrontation with the police. In the given circumstances, the police forces were authorized under the Law on Police to use force that was absolutely necessary and proportionate². Fully in line with the international standard and only after repetitive warnings via loud speakers, riot police moved forward using water cannons and tear gas, effectiveness of which was minimal due to the heavy rain and wind, thus police was compelled to use rubber bullets and truncheons to response to the

¹ In compliance with Article 11 (4) and Article 13 (1) of the Law on Assembly and manifestations;

² Article 2 (e), Article 9 (e), Article 10 (1) and (2) and Article 12 (1) of the Law on Police;

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violence from some of the demonstrators³.

IV. Information regarding Human Casualties, the Whereabouts of the Protestors as well as information regarding criminal and administrative proceedings

Following the circumstances of May 26, two people died, including a policeman and a total of 37 people were injured, including 8 police officers, 1 journalist, and 27 civilians. The two casualties were caused by the car escort carrying the protest organizer and the opposition leader Nino Burjanadze⁴ and her family members who left the protest area driving at high speed through the corridor created by the police for the protesters to leave the Rustaveli avenue.⁵ This incident is recorded by the CCTV and cameras in the street.

On May 26, around 150 protestors were arrested and brought to court. 75 arrested protestors were fined and 99 were detained up to 2 months for hooliganism and resistance to the police in line with the Code on Administrative Offences of Georgia⁶.

It shall be stressed, that all of the detainees had been promptly brought before a judge within 12 hours as required by the code of Administrative Violations of Georgia. The judge examined each and every case and decided on the measure of constraint accordingly. All detainees were granted full legal protection under Georgian law, in line with international human rights standards, including access to a defense counsel and to doctors⁷. As indicated in registration journal run by every Temporary Detention Centers,

³ Article 12 (1) of the Law on Police lists all those non-lethal special means which can be used by the police;

⁴ Nino Burjanadze, former Parliamentary speaker and a leader of a radical opposition party.

⁵ Relevant video footage is available on the website of the Ministry of Internal Affairs of Georgia at <http://police.ge/index.php?m=8&newsid=2505&lng=eng>.

⁶ Alongside with criminal responsibility, Georgian legislation envisages administrative liability as well. Administrative liability is imposed upon person when he/she violates the law and when such violation does not reach the gravity of crime.

- Article 173 of Georgian Code of Administrative Offences - *Disobedience to the Legal Orders or Instructions of Law Enforcement or Military Officers* and
- Article 166 of the Georgian Code of Administrative Offences - *Petty Hooligan action*;

⁷ The administrative legislation of Georgia determines procedural safeguards. Pursuant to Article 252 of Code on Administrative Offences, the person held liable for an administrative offence is entitled to procedural guarantees, such as:

- right to review the case materials -- in particular, the person is entitled to be aware of the charges brought against him/her;
- to submit evidences, to bring motions;
- to have a defense lawyer - the lawyer is entitled to inspect all the materials of the case; to declare motions on behalf of the person and to appeal the decisions of the authority issuing the decision;

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most of detainees (around 97%) have been visited by legal attorneys speedily, representatives of Public Defender of Georgia almost immediately. International Committee of the Red Cross was given full opportunity to visit the detainees freely.

No criminal case has been initiated against the participants of May 26 protest. Criminal cases have been launched only against the drivers of the two cars that hit the police cordon and caused two human casualties on May 26 as well as against those who organized a group for a violent police resistance⁸; Everyone charged with criminal offence has been provided with full protection under Georgian and international law, including the access to lawyer, fair trial, dissent detention conditions etc.

The Ministry of Internal Affairs has addressed allegations regarding citizens who purportedly went missing after the May 26 demonstration. It is to be noted, not a single family approached police to register missing individual and/or start search investigation. On May 27, the MIA released a list of detainees and asked for the detailed information on alleged missing individuals; since then, no formal notification of missing demonstrators was submitted to the Ministry. Moreover, MoIA has scrupulously checked all the information on missing persons made by the Public Defender of Georgia as well as available in media. The allegations proved untrue, which was also confirmed by the statement of Public Defender:

"On missing protesters, he said they had been found in detention and that, to date, he did not have any information about any additional missing persons"— statement made by Public Defender in the Parliament of Georgia While delivering the Annual Report to the Parliament, on June 14 2011.

V. Concerns raised in Relation to Journalists

It should be noted from the outset that media outlets were able to fully cover events of May 26, 2011; all major TV channels either broadcast live from the area of the protests or had special news coverage from the site. None of the journalists have been detained/brought in to custody by police (except only one, who was released immediately after identification).

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- The court may hear the case of an administrative offence in absence of the defendant only if he/she was informed of date and place of the court hearing 3 days prior to the court hearing and he/she did not submit motion on postponement of the referred hearing.
 - The court's decision regarding imposition of administrative detention as a sanction can be appealed.

⁸ Namely, On May 30, the Office of the Chief Prosecutor of Georgia initiated a criminal case and charged Badri Bitsadze, one of the organizers of the protests and the husband of Nino Burjanadze for the alleged crime of organizing attacks against police by a group, under Article 353(2) of Georgia's Criminal Code. He is, at the moment, absconding from the investigation.

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Individuals who could be identified as journalists were in no way hindered in doing their work. The police established safe corridors in which journalists could continue their work and avoid any potential danger. Extensive video footage of the scene shows clearly that broadcast and electronic media—including outlets editorially critical of the government—were operating freely at the time of the clashes between police and protesters⁹.

Some journalists who were in the midst of the violent protesters, and who could not be identified as members of the media, might have got injured in scuffles. However, there was not a single instance of the police intentionally abusing journalists or deliberately impeding their work; this is documented by ample video footage produced by various media outlets.

Nonetheless, the Government—including the Prosecutor's Office and the General Inspectorate of the Ministry of Internal Affairs—will use all means to investigate allegations of potential police misconduct against journalists. The Government is fully committed to doing everything possible to enable freedom of the media and to secure the ability of journalists to cover all events of public interest.

VI. Measures taken in Relation to Allegation regarding Excessive Use of Force

Notwithstanding the fact that, in general, police acted in pursuance of the requirements of Georgian legislation, the isolated, stand-alone cases of possible excessive use of force by some police officers cannot be overruled. Government is closely inspecting all possible allegations. In particular,

- The Office of Chief Prosecutor of Georgia initiated criminal investigation in relation to individual allegations regarding the possible excessive use of force. The Office has examined available information and complaints and questioned several witnesses. The investigation is currently ongoing;
- In addition, the General Inspection of the Ministry of Internal Affairs is also undertaking inquiry into the alleged excessive use of force on behalf of police officers. The General Inspection is authorized to impose disciplinary sanctions against police offices.

⁹ <http://www.youtho.com/georgia/2011/07/07/0041227339033> (VIACSUO 1 V) and <http://civil.ge/gso/article.php?id=24090> (Civil.ge)

