Briefing on "Human Rights in Georgia"

Tom Lantos Human Rights Commission

Testimony
by
Dr. Cory Welt

Associate Director, Institute for European, Russian and Eurasian Studies,
George Washington University's Elliott School of International Affairs
and
Adjunct Fellow, Center for American Progress

September 11, 2012
Cannon House Office Building 121

Opening Statement
Briefing on "Human Rights in Georgia," Tom Lantos Human Rights Commission

Cory Welt
September 11, 2012

Thank you to the Tom Lantos Human Rights Commission for convening this briefing. I appreciate the opportunity to join my fellow panelists in this discussion of human rights in Georgia.

Before commencing, I would like to acknowledge our commemoration today of the attacks of September 11, the victims of those attacks and those who have later fallen, and their loved ones. I also want to acknowledge the steadfast support and participation of Georgia in the fight against violent extremism and post-conflict operations in Iraq and Afghanistan.

In my remarks, I will not provide a comprehensive scorecard of human rights in Georgia today. Nor will I discuss the egregious human rights abuses that have been inflicted on Georgian citizens in territories not under Georgian state control.

Instead, I will provide some context for considering the state of human rights in Georgia, including highlighting certain accomplishments. Then, given the timing of this briefing on the eve of a heavily contested parliamentary election, I will focus on issues relevant to the rights of political participation but that also relate more broadly to the state's ability to cultivate a culture of human rights protection.

Georgia has made great strides in governance reform over the last 9 years, the era of the "Rose Revolution." These have been well documented by observers including the World Bank, which earlier this year produced a report calling "Georgia's transformation since 2003…remarkable" and highlighting what it called "eight areas where anti-corruption reforms have been successful" – the patrol police, tax collection, customs, power provision, business deregulation, public and civil registries, university entrance examinations, and municipal services.[1] In 2010, the British newsweekly *The Economist* coined a phrase – the mental revolution – to account for, and to describe the outcome of, such remarkable changes.[2]

Still, Georgia's transition is very much an ongoing one. It is fashionable for observers of politics in the post-Soviet states to say that the transition from Soviet times is basically over: that what you see is what you get. This is arguably not so for Georgia. Few would insist that Georgia has already become a liberal democracy; it remains a kind of semi-democracy, at best, in which no

[1] "Fighting Corruption in Public Services: Chronicling Georgia's Reforms," The World Bank (2012).
[2] http://www.economist.com/node/16847798.

electoral transition between a ruling party and its opposition has occurred; the distinction between ruling party and civil service remains blurred and often nonexistent; and branches of government reinforce each other's power more than they provide a balance **to** power.

But this does not mean that Georgia has settled into such an equilibrium for the long-term.

Indeed, those sympathetic to the Georgian government often argue that fundamental and desirable political and social change takes time. Particularly in this electoral period, one frequently hears the argument that the enemies of reform are at the gate, that the best chance for Georgia to continue and to consolidate its governance reforms is for the ruling party to stay in power, and that facilitating this outcome is more important than – even a prerequisite for – ensuring fully democratic politics.

Let me now address some examples of the "mental revolution" as they relate to human rights before discussing certain election-related issues concerning political participation and judicial protection.

The examples I will discuss are not the only indicators of human rights accomplishments in Georgia today. I also do not mean to imply that substantial challenges in these spheres or others remain; they do. These are instead markers that help highlight how far Georgia has come, while they also point to some ongoing challenges the state itself faces in human rights protection.

First, I wish to emphasize landmark signs of state tolerance toward religious and sexual minorities. Last year, the Georgian parliament passed legislation granting religious communities, both historic communities and legally recognized religious groups throughout Europe, the right to register as legal entities of public law, something long denied them as the Georgian Orthodox Church retained pride of place. At last, religious minorities – often representing ethnic minorities – can say that their state has formally recognized and embraced them, providing a boost to freedom of religious practice and communal security.

Then, last May, the first ever public march against homophobia occurred in Tbilisi. Police officers on the scene responded to those who opposed the demonstration of a few dozen participants that their job was "to secure order and to prevent blocking of traffic" but that they "can't ban them from [marching]."[3] That day, Georgia's public defender (ombudsman) issued a statement condemning homophobia and encouraging a culture of tolerance.

Both these moves were met with opposition – mass protests against the first and physical altercations with members of an Orthodox religious group in the second – suggesting that in some spheres the government is at the leading edge of human rights protection in Georgia today.

[3] http://www.civil.ge/eng/article.php?id=24775.

Second, any discussion of human rights in Georgia must acknowledge the rise of some of the most comprehensive and professional watchdogs of human rights protection in the post-Soviet space. The U.S. State Department's 50-page plus human rights report on Georgia relies heavily on the work of Georgia's own human rights defenders: from the Public Defender's several-hundred page annual report it presents to parliament to the excellent investigative reporting of Transparency International Georgia, and the notable work of other organizations like the Georgian Young Lawyers Association and the Human Rights Center (as well as local branches of Human Rights Watch and Amnesty International). Human rights violations in Georgia are regularly monitored; well documented; and conveyed to the relevant government ministries and agencies. The latter often respond to criticism and occasionally redress violations and improve relevant laws.

Now for the other side. I'd like to address two issues of political participation that also impinge on the ability of the state to cultivate a culture of human rights protection.

The first observation concerns the pervasive role of law – its creation, interpretation, and enforcement – in serving the government for its political ends, rather than providing an objective context for a political process that impartially, justly, and equitably envelops all political actors. The stripping of the citizenship of opposition leader and – yes, extraordinarily wealthy businessman – Bidzina Ivanishvili is the most familiar example of this. But its most pervasive reflection has been the way in which the legal system and oversight agencies have gone after the leading, Ivanishvili-led opposition and their supporters in the relatively placid sphere of campaign finance with a zealousness ordinarily unseen. Multimillion dollar fines against opposition leaders and parties, the impounding of tens of thousands of DIRECTV-like satellite dishes, the freezing of bank accounts, the seizure of assets, the poring over the tax returns of lesser donors, and the summoning of rank-and-file supporters for questioning en masse: all this has already made for a highly disruptive and flawed election campaign and obscured what would otherwise be a natural scrutiny of the ruling party's own use of the powers of incumbency to tilt the playing field in its direction. But this is not all. They also amount to defining the opposition's determined pursuit of power – a normal and necessary feature of democratic politics – as an inherently criminal act.

The second – and related – observation is that the prosecution of the opposition has been characterized by the principle of "guilty until proven innocent," not the other way around. Investigations and court cases against the opposition have opened and closed at a rapid-fire pace; often in the absence of compelling evidence or through questionable interpretations of law; and have meted out punishments that far outweigh the seriousness of the alleged crimes. My point is not to say that violations have not occurred, but that the systems in place for adjudicating these

are sorely lacking, governed by political expediency, and definitely not designed to protect the interests of defendants.

In short, the prosecution of the opposition echoes common complaints regarding the state of the Georgian judiciary in general, whereby prosecutors have a great advantage over defense and practically all criminally accused who end up in court are found guilty, a phenomenon helped in large part by the fact that the vast majority of court cases end up in plea bargains. The accused presumably find it easier to plead guilty and take a reduced punishment than to brave the full wheels of justice. Setting aside the question of whether defendants who plea guilty are in fact such, this reliance on plea bargaining means a lag in the development of full judicial procedures, leaving the judicial branch to exist in stunted form.

While we look toward Georgia's parliamentary elections next month, we should be as cognizant of the processes that have already helped direct the course of the election as much as we are of the institutions that will govern election day itself – which should be more or less proper – and the platforms and agendas of contesting political parties. But in the end, rights of political participation and human rights protection more broadly will be best served in Georgia by the rise of an independent, professional, and experienced judiciary that views its role to be not only a facilitator of law and order but a protector of human rights and a balancer of power.