

**Helsinki Commission Hearing on Ramifications of Presidential Elections in the  
Republic of Georgia**

GEORGIA IN 2008 : "Elections or street politics?"

Testimony by Salomé Zourabichvili

Chairwoman: The Way of Georgia Party

Candidate for prime minister of the Unified opposition

Mr. Chairman, Distinguished Members of the Committee, Ladies and Gentlemen,

On behalf of the citizens of Georgia I would like to thank you for continued support and attention to our country, to its territorial integrity and to its international aspirations. I would like to thank you also for this opportunity to speak before the United States Helsinki Commission. This invitation is indicative of the importance you attach to the development of democracy in Georgia.

I would like to emphasize the timeliness of this hearing. In the last several months, as you are well aware, Georgia has experienced serious turmoil. It is clear that major challenges lie ahead before Georgia establishes itself as a viable and stable democracy.

I would also like to stress that I am here to represent Georgia's United Opposition Movement, for which nine major opposition parties have joined forces in support of a common vision and strategy. Such unification of opposition forces is unprecedented in the history of Georgia. We have united to address serious problems we and our country as a whole face.

Georgian political life has been dominated by both street protests and by elections for the past six months. Large street protests may have come as a surprise to the

international community, as they revealed a serious discontent and fissure in civil society that was building for a long time.

Today I would like to bring forward specific policy suggestions which, in our opinion, will remedy the political crisis in Georgia. As you know, last week the United Opposition outlined major preconditions, which will restore political balance in the country and democratize important public institutions. Without fulfilling these preconditions, we deem that holding fair Parliamentary elections in the spring of 2008 is impossible.

If these precondition are not met, the upcoming Parliamentary elections, rather than responding to the crisis, might produce an even more polarized and radicalized situation..

If major changes are not brought to the political environment, the risk is that neither peaceful protests nor elections will be able to bring a viable solution to the crisis that continues deepening. Georgian stability does not just rest in stable government and the continuation in power of the ruling group. But Georgian stability requires faith in the political systems and democratic principles underlying governance. The United Opposition of Georgia has come up with specific policy changes to repair the alienation between Georgia's government and its civil society.

Before I elaborate on Opposition policy suggestions and the justifications behind them, I would like to provide a brief overview of major events that led to the current tense political situation in Georgia.

### **I. Background to the Current Political Crisis**

The crisis in Georgia revealed to the outside world through mass rallies in the fall of 2007 is one that was ripening for the past two to three years.

This crisis has many elements, but at its root it is a crisis of democracy and justice. It should be recalled that the constant plight of the Georgian people for freedom, justice and democracy has never ceased. In 1918, 1922, 1923, 1924, 1926, 1956, 1978, 1989,

1990 and 2003 Georgians came out for democracy and justice and exhibited fierce determination.

It was not just an economic crisis and dire social conditions that caused Georgians to unite in the Rose Revolution. It was the sense of injustice and the loss of fundamental rights that moved the Georgian people in 2003 and culminated in the Rose Revolution. Again, it is the struggle for equality, justice and dignity that is moves them now.

The Saakashvili government came to power with long awaited promises of full-fledged democratic reforms, justice and consolidation of the Georgian state and independence. It has failed to deliver on most of these promises.

The central explanation as to why a group of young, energetic reformers led by Mr. Saakashvili departed from their vision and failed to institute full-fledged democratic reform is to be found in the absence of checks and balances, without which democracy cannot exist.

A government elected with more than 90 per cent of the vote turned out to be unable or unwilling to allow the emergence of the balance of power, which guarantees oversight and restraint of the executive branch and is the *sine quo non* of democracy. None of our public institutions—the Parliament, the judiciary, the Opposition, local government, the media and civil society with its own structures (NGO's, trade unions, political parties and movements)—were allowed to develop and emerge as strong and independent.

- ✓ **Parliament.** As early as February 2004, the authorities sponsored amendments to the constitution that violated the balance of power, expanding the President's authority at the Parliament's expense. The Parliament was stripped of important powers that served as a check on the executive branch and ensured the government's accountability to its legislature. The amendments granted the President the right to disband the Parliament and disregard a parliamentary no-confidence vote on the cabinet of ministers. Moreover, the Parliament lost its

power to amend the budget or question the government's annual report on budgetary obligations. Among other things, these measures strengthened law enforcement agencies, which actually have become accountable only to the president.

- ✓ **Media.** Next, Saakashvili concentrated government power by stifling political expression, pressuring influential media and targeting vocal critics and opposition leaders. Despite constitutional guarantees of freedom of expression, governmental intimidation of opposition groups and media figures critical of the government continues on a daily basis.

Several media outlets were closed down in the first half of 2004: TV companies (*Channel IX, Iberia*), newspapers (*Mtavari Gatzeti, Dilis Gazeti, Akhali Epoka, Tribune, Omega magazine*) and Media-News Information Agency. In February 2004, the largest TV companies ended their evening political talk shows. After its main anchor and owner Shalva Ramishvili was arrested, independent TV company 202 was transformed into a military channel by the Ministry of Defence. Largest and the most popular TV company IMEDI was forcefully taken off the air on November 7<sup>th</sup>. After it resumed its broadcasts through international pressure, it was again closed through intimidation of its journalists and criminal indictment of its owner. All that is left on air are government controlled public channels (Channel 1, Channel 2 and Channel of the Ministry of Defence) and an equally pro-governmental private channels (Mze, Rustavi 2, TV Alania). Unfortunately, the only independent TV Channel Kavkasia cannot fully cover even the capital. Print press is relatively free, yet its circulation and influence is extremely limited.

- ✓ **Judiciary.** The lack of independence of the judicial system became evident early on.

The mysterious death of the Prime Minister Zura Jvania in February 2005 and the failure of the justice system to respond to both pressing questions concerning his death and deliver justice can be considered the turning point.

In January 2006, the murder of Sandro Girgviliani, in which the family of the Interior Minister Merabishvili and other prominent figures of the Ministry of Internal Affairs were involved but never put on trial, was the second major blow to public confidence in the judiciary. As Freedom House's 2007 Nations in Transit report on Georgia notes, "there are widespread allegations that political leadership exerts hidden pressure on judges who, at least in politically sensitive cases, hardly dare to disappoint the demands of the prosecution."

Carrots and sticks have been used to subordinate the judiciary to political pressure. For example, the parliamentary majority dismissed five "rebel judges" of the Supreme Court who were outspoken about the threats they have received from the executive branch. Encouraging loyalty in newly appointed judges, on June 5, 2007, the President ordered the sale of land to appellate and Supreme Court judges at prices a hundred times cheaper than their market value.

A more recent clampdown has been the closure of trials to broadcast media. The trends within the judiciary and media have been alarming: according to Freedom House of all criminal cases in 2006, there were 16,911 convictions and only 37 acquittals recorded – placing the odds of proving innocence at 0.2 per cent.

Georgia recently released several prominent political prisoners, David Mirtskhulava, Sul Khan Molashvili and Irakli Batiashvili. However, as the Human Rights Watch *World Report 2008* states and as Batiashvili, himself, has pointed out, there are still dozens of political prisoners in Georgia, such as persons detained after November 7<sup>th</sup> demonstrations, Shalva Ramishvili, and others who are imprisoned because of views that differ from the government.

- ✓ **Opposition.** A weak and divided Opposition has been kept in that situation through pressure, intimidation of supporters, lack of financial and legal support and use of well-known Soviet tactics such as using security forces to unlawfully obtain, manipulate and disseminate discrediting materials. An extremely limited

role in the Parliament kept the Opposition in a marginal role, until the September 2007 events.

- ✓ **Local Government.** Shortly after the Rose Revolution, the ruling National Movement Party adopted a series of legislative changes that facilitated the establishment of a dominant party system. In November 2004, rules on the composition of the Central Election Commission (CEC) were changed, giving only the ruling majority the power to appoint CEC members. In July 2005, despite protest from election monitoring groups and the Opposition, the majority in the Parliament adopted a new "winner-takes-all" voting system, thus eliminating the possibility of representation for diverse political views in local governments. Contrary to the judgment of the Constitutional Court, newly adopted local government legislation also established indirect elections by local councils and deprived municipalities of profit tax -- their most important source of income.
  
- ✓ **Civil Society.** Civil society was also weakened as independent watchdog groups were harmed by the sudden withdrawal of financial support by the international community and almost complete diversion of programs to government capacity building. Meanwhile, almost no attention was paid to supporting programs for monitoring government performance and advocating for accountability.
  
- ✓ **International Community.** Impressed by President Saakashvili's declarations and sympathetic to his challenging international environment (Russian pressures and conflicts), the international community did not provide clear constructive feedback that would normally be expected.

Gradually, the Saakashvili regime has isolated itself from its citizens, became more arrogant and intolerant of criticism and closed to any real dialogue or debate. In addition to concentrating power in the President's office, the ruling political elite has gradually

ignored the public sentiment. The government failed to involve interest groups in discussion of major political decisions. As stressed correctly by the Council of Europe Monitoring Group in 2005, the circle of people engaged in decision-making narrowed to only a few. Outside voices such as independent experts and opinion-makers have been ignored and government critics have been scorned and marginalized. Ongoing institutional reform has failed to establish viable channels of communication between public agencies and their beneficiaries.

## **II. Precipitating Event**

On September 25, 2007, the former influential member of Saakashvili's cabinet Irakli Okruashvili accused Saakashvili of plotting the murder of out-of-favor Georgian tycoon Badri Patarkatsishvili, and of dictatorship and of corruption. Two days later, on September 27, Okruashvili was arrested under the pretext of mismanaging state funds during his tenure as the Defense Minister more than a year ago.

Since September 28, 2007, Georgia has witnessed almost a dozen mass rallies, all of them peaceful, *none of them giving any credence to the authorities assertions that some were planning to overthrow the state.* Of these mass rallies, 6 reached the 200,000 figure, i.e. more than 10 percent of the population of the capital city of Tbilisi.

This arrest of Okruashvili opposition parties to unite with several major demands:

- a) A call for parliamentary elections in a constitutional timeframe, i.e. no later than April 2008
- b) Reorganization of the election administration with the view to including opposition representatives
- c) Changing the election system from winner-take-all to proportional representation
- d) Releasing *all* political prisoners

On the fifth day of demonstrations, November 7, riot police violently dispelled demonstrators with tear gas, water cannons and rubber truncheons. In an over-reaction to peaceful demonstrations, Saakashvili had begun a violent crackdown, causing injury

to hundreds of protestors, sending over 550 of them to hospital, seriously violating human rights, declaring a state of emergency, closing down all media and precipitously throwing his country into political crisis.

### III. Elections

On January 5, Georgians went to the polls to vote in an extra-ordinary presidential election called by Saakashvili to respond to the political crisis. The total number of eligible voters was 3,527, 964. Of that number, 1,982,318 voters took part in the elections. 33,129 ballots were disqualified. According to the official count:

1. Opposition candidate Levan Gachechiladze – 509, 234 votes, 25.69 %
2. Arkadi Batarkatsishvili – 140, 826 votes, 7.10%
3. David Gamkrelidze – 79,747 votes, 4.02%
4. Shalva Natelashvili of Labour Party – 128, 589 votes, 6.49%
5. Mikhail Saakashvili –1,060, 042 votes, 53.47%
6. Giorgi Maiashvili – 15, 249 votes, .77%
7. Irina Sarishvili – 3, 242 votes, .16%

Article 86 of the Georgian Election Code provides that the candidate that receives more than half of the vote wins. Saakashvili started to celebrate victory as soon as exit poll results were announced, without waiting for the official numbers. The Central Election Commission recognized Mikhail Saakashvili as a winner with a narrow margin. The declaration of free and fair elections and victory for the democratic process, within 12 hours after the election in a country where exit polling and vote tabulation are not reliable, created a *fait accompli* before proper analysis could be completed.

Due to the massive procedural violations and electoral fraud, United Opposition does not recognize the results of the elections and calls for a recount of votes in the contested areas.

International and local observer organizations, independent non profit organizations, and political parties have publicized numerous instances of election fraud, ranging from

rigging of precinct protocols to distribution of wheat flour at election precincts in exchange for votes for the incumbent candidate. Violations have been detailed in preliminary and final monitoring reports of the International Election Observation Mission, Georgian Young Lawyers' Association, Transparency International, ISFED, ENEMO, etc. They were not followed by an inquiry by the Election Commission or objective investigation by courts of Georgia. There are detailed accounts of pre-election and polling day violations in reports of all above-mentioned organizations.

To summarize: first, the candidates did not have equal access to the media prior to elections. The only opposition channel, IMEDI TV, closed due to pressure from the authorities, leaving the five remaining stations to devote their airtime mainly to the ruling party candidate. As the International Elections Observation Mission report points out, "the campaign coverage in news programs lacked balance in most monitored TV channels, with Mr. Saakashvili generally receiving the most coverage."

Second, the campaign period was marred by intimidation and smear campaigns. Many opposition parties reported that their supporters were persecuted, intimidated and their offices raided. In none of the cases were the offenders punished. As the elections were appointed, opposition leaders were called for questioning on alleged coup plot. Shalva Natelashvili, opposition candidate from the Labour Party was even officially charged in the beginning. Although legislation provides for immunities to presidential candidates, Election Commission refused to issue any guarantees to presidential candidate Badri Patarkatsishvili, who was not allowed to return to the country and campaign due to his possible arrest by the authorities. In addition, the campaign period was marked by a bitter confrontation between presidential candidate Patarkatsishvili and the political leadership of the country, which was accompanied by public disclosure of covertly recorded materials, discrediting information and accusations. The exchange further diverted the attention of voters from pressing issues and the various solutions proposed by the candidates.

Third, Saakashvili's campaign was accompanied by wide implementation of social welfare programs. They ranged from a new "cheap credit" initiative, to annulment of

electricity and gas arrears, to giving out laptop computers to poor children. It is noteworthy that the practice has been continuing since the Municipal Elections of 2006, when large-scale welfare programs had a defining impact on election outcomes. Unfortunately, such activities did not influence the final assessment of the elections by international organizations. And as it is being tolerated, the trend is likely to continue in the future.

Fourth, the election was affected by frequent use of administrative resources by the ruling party candidate. Independent watchdog Transparency International noted public officials' active participation in the ruling party's campaign. Other organizations filed lawsuits requesting official reaction to numerous instances of public officials' illegal participation in election campaigns in support of the incumbent candidate. All lawsuits against public officials and Mr. Saakashvili were rejected without serious consideration.

Furthermore, the background against which the elections are being held should be remembered. Election legislation also permits individuals to appeal Commission decisions in common courts. However, the objectivity and independence of judges in deciding election-related matters is in doubt. This is due to the overall lack of independence in the Georgian judiciary. The judiciary system is under almost complete control of the Saakashvili government. Broadcast media is barred from courtrooms. Consequently, appeals concerning the legitimacy of elections were not properly investigated and unfairly decided. Therefore, manipulated results of elections were legitimized through the courts.

Moreover, there is the question of election violations and the Election Commission's response to them. Although the International Election Observation Mission noted that elections were "in essence consistent with international standards for democratic elections", its report also noted "procedural and organizational shortcomings" both on election day and during campaigning. Many violations noted in the report have become the subject of appeals and complaints by monitoring organizations. Election watchdog Georgian Young Lawyers' Association (GYLA) filed 230 complaints just during the polling hours, calling for the invalidation of results from thirty polling stations. There

have been a number of cases of illegal campaigning on voting day, widespread police presence in precincts, and procedural and technical violations during voting. Similarly, the International Society for Fair Elections and Democracy (ISFED) noted serious violations such as voter intimidation, raiding of polling stations, ballot stuffing and lack of application of voter identification procedures.

As was pointed out in the ISFED statement, it is very important "that Election Administration scrupulously adds up election results and makes an adequate reaction to each complaint." Indeed, the annulment of several precinct results on the basis of complaints could have a decisive impact on the election outcome and lead to a run-off. Unfortunately, however, the Election Commission has been less than nonpartisan in its reaction to complaints. For example, several district commissions went ahead and declared GYLA's appeals void without even informing the complainants about the hearing. Similarly, although opposition parties presented significant evidence on election rigging in several districts where incumbents have won with 80 percent margins, it is less likely that the Administration will give those grievances serious consideration.

#### **IV. Implications of the January 5th Elections**

It should be noted that the elections, unlike what democracy teaches us, have not resolved any of the major issues that fomented the crisis. The reasons are because:

- 1) These were not the right elections: that is, presidential elections were proposed where the population wanted parliamentary elections, when the clear wish of the population was to move to a more balanced system in which the powers of the president would be rebalanced by a stronger parliament. The proposal that was part of the opposition demand in November 2007 to hold parliamentary elections in line with the original calendar would have entailed -- (and that was stressed during the discussions between opposition and majority on November 2)-- that the President would have remained in power for the length of his original mandate, i.e. April 2009. That would have offered Georgia a smooth transition and the opportunity for sharing of power

most probably between an opposition dominated parliament and a still empowered president.

2) The elections were not held in a fair and democratic manner. It does not serve any purpose here to repeat all the arguments that prove an unfair pre-electoral campaign (elections held in the immediate aftermath of a state of emergency with massive political intimidation, lack of free media during campaigning, excessive unbalance in financial and administrative resources between the main candidate and others), as well as the massive frauds that made those elections illegitimate for a vast majority of the population (frauds documented after the closure of the precincts that amount to more than 300,000 disputed votes). These elections are not only disputed, but are not recognized as legitimate by at least half, if not more, of the population. The second round that was asked by the population and the opposition could at least have secured that, if not a victory of the opposition, at least a certain amount of legitimacy for the elected president, and in turn more stability.

3) These elections have not dealt with the real roots of the crisis: lack of democracy and lack of justice. Saakashvili campaigned on the social issue of poverty, which while being a serious issue, remains secondary to the more existential ones. Since none of the serious problems that were at the roots of these protests have been removed, it is most probable that the coming months will again be dominated by street protests and by the electoral issue: the credibility of the next elections and the electoral process. The authorities do not seem to have taken the measure of seriousness of the crisis and still think they can deal with the situation with half measures: appearance rather than substance when talking about dialogue and not accepting the real changes that are key to restoring the lost confidence in the electoral process. (The major requests are: parity of the electoral administration and Central Electoral Commission (CEC) and removal of its chairman; parity and equal access to the public Channel and control of objectivity of the media; bringing an end to political intimidation by the removal of key figures who were central to the frauds (the president of the CEC and the minister of justice who was promoted to prosecutor general) or the political repressions (the minister of internal affairs).

Reacting to the lack of serious concessions, as well as to the pro forma changes (cabinet members have been redistributed but "force structures" remain unchanged), the opposition is calling for a mass rally on February 15 in order to sustain the demands formulated in the January 28 memorandum.

As it was the case in November, December and January (none of the rallies turned illegal or gave way to any disorder, provocation or incident despite the numbers involved), the opposition remains constrained by the legal, constitutional framework. That means it could, in the end prove unable to get the results that the population expects and hence unable to restore its confidence in the electoral process. But this is not to say that things will remain the same. While these major defining lines of the Georgian political scene are unchanged, many factors are already different:

1) The society after the January 5 presidential elections **is much more polarized** than it has ever been in the recent period. The authorities have been playing up the threat of a possible return to the 1990-1991 situation of civil war and by overplaying this theme, they have been in fact provoking some of the same behaviors. The early celebration of a disputed presidential election and the provocative ceremonies for his inauguration in a divided country could in fact have fuelled some serious unrest, if it had not been for the self restraint of the opposition parties that did not allow their followers to take to the streets.

2) For the population and the opposition, up until now, the street has only be an instrument to bring pressure on the authorities or a means of self expression when all other ways were inaccessible (media, parliament, foreign media attention). However, it might well happen that for the vast majority of the population - distancing itself from the mainstream of the opposition- **the street could become "the only way out" of the crisis**, if everything thing else proves unsuccessful to bring results .

3) Similarly, the opposition, up until now which is weak and divided, has managed to find strength and coherence in unifying itself around electoral demands and a democratic agenda. **It might, if unable to show results through dialogue with the authorities, divide itself or risk simply losing its audience.** As a result, a weakened and divided opposition (which is also the aim of an irresponsible strategy of the

