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Legal Aspects of Church-State Relations in Post-Revolutionary Georgia

*Khatuna Tsintsadze**

I. INTRODUCTION

Since gaining independence,¹ Georgia has passed through many radical political and economic changes. Thus, Georgian society is accustomed to various reforms, particularly reforms in the legal field, as a part of ordinary life.² However, despite this familiarity with reforming political, economic, and legal systems, the universally recognized values promoted by these reforms have not yet become deeply rooted in the mentality of Georgian citizens. Because these values have not been internalized, the actual enforcement of human rights protection remains in a very fragile state.³ A change in the current social attitude toward equality and respect for diversity is critical to the further development of democracy in the country.

Lacking maturity in civic awareness, Georgian society is showing symptoms of the so-called “snail syndrome.” When a snail comes into contact with a strange environment, it hides in its shell and tries

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1. The so-called “Rose Revolution” occurred in November 2003. See generally “ENOUGH!”: THE ROSE REVOLUTION IN THE REPUBLIC OF GEORGIA 2003 (Zurab Karumidze & James V. Wertsch eds., 2005) [hereinafter ENOUGH!] for an analysis and discussion of the Rose Revolution in Georgia.

2. See THE POLITICAL LANDSCAPE OF GEORGIA 22–26 (Ghia Nodia & Alvaro Pinto Scholtbach eds., 2006) (discussing major political and economic changes since the Rose Revolution, including reacquiring Georgian territories, dramatically raising salaries for state employees, investing in public infrastructure, introducing new legislation to facilitate the speedy and effective prosecution of corruption cases, simplifying procedures for property registration, introducing national matriculation exams for admission to Georgian universities, and signing new legislation against organized crime).

3. See Thomas Risse & Kathryn Sikkink, *The Socialization of International Human Rights Norms into Domestic Practices*, in THE POWER OF HUMAN RIGHTS: INTERNATIONAL NORMS AND DOMESTIC CHANGE 1, 11 (Thomas Risse et al. eds., 1999) (providing a theoretical model for norms socialization and internalization, whereby “external pressure is no longer needed to ensure compliance”).

to protect itself from possible danger. Any unexpected confrontation with reality is necessarily associated with danger and the instinct of self-preservation kicks in.

This “snail syndrome” is a primitive feeling that is also characteristic of human nature—a trait that manifests itself at both the individual and collective level. In a modern society, this primitive instinct presents itself in cautious, guarded behavior and constant preparation to cope with any possible danger. While this reaction is understandable, especially when taking into account a growing feeling of insecurity in Georgia, it is possible, and perhaps even likely, that a society exhibiting “snail syndrome” will realize its self-preservation instinct at the expense of universally recognized human values. In many cases, the right to freedom of expression and the right to freedom of thought, conscience, and religion are challenged within such a regime.

As part of the fight for self-preservation, a large portion of Georgian society tries to prevent the establishment of perceived potential dangers, such as Baptism, Catholicism, Lutheranism, and many other religious associations.⁴ This is an open affront to the right to freedom of religion and belief, but its deeper significance lies in the impact on the development of democracy and other reforms. Such actions of “self-preservation” also present an obstacle to raising civic awareness.

Some Georgians believe that the idea of freedom of religion and belief, together with other universally recognized values, contributes to the degeneration of national values.⁵ This supposed danger to the

4. In September 2006, Tbilisi residents were sent an anonymous letter in which they were called to assemble at a building under construction because it belonged to the Catholic Church. See Felix Corley, *GEORGIA: Will Mob Halt Assyrian Catholic Centre?*, FORUM 18 NEWS SERVICE, Oct. 19, 2006. The message dealt with expected dangers from the Catholic Church and “alleged that Catholics . . . killed [Georgian] monks in the fourteenth and fifteenth centuries” and that Catholics “marry cats and dogs and give the Eucharist to animals.” *Id.*

5. See BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEPT OF STATE, INTERNATIONAL RELIGIOUS FREEDOM REPORT 2006: GEORGIA (2006), <http://www.state.gov/g/drl/rls/irf/2006/71381.htm> [hereinafter INTERNATIONAL RELIGIOUS FREEDOM REPORT 2006].

The public’s attitude towards religion was ambivalent. Although many residents were not particularly observant, the link between the country’s Orthodoxy and ethnic and national identity was strong. . . . Despite their historical tolerance toward minority religious groups traditional to the country—including Catholics, Armenian Apostolic Christians, Jews, and Muslims—many citizens remained apprehensive

nation's values is most often spoken of by the individuals directly or indirectly opposing the right to freedom of religion or belief.⁶ These people have nothing against democracy unless it implies the recognition of, and respect for, the rights of different people united under a different sign. The classical content of democracy, however, includes a recognition and respect for the rights of others and does not allow for selective adherence to democratic values. A truly democratic society cannot accept physically or verbally aggressive treatment of its people on the basis of religion or belief—which has taken place to a great extent over the years in Georgia.⁷ From a legal standpoint, these aggressive acts represent a classic case of hate crimes motivated by religious bias,⁸ and religious extremism. A number of different conditions contribute to the spread of violence, including religious-based violence, such as the misunderstanding of

about Protestants and other nontraditional religious groups, which they often viewed as taking advantage of the populace's economic hardship by gaining membership through economic assistance to converts. Many members of the GOC and the public viewed religious minorities, especially nontraditional groups of evangelical Protestants or so-called "sects," as a threat to the national church and the country's cultural values.

Id.

Moreover, a large part of society developed a fear of and hostility towards the proselytizing activities of Western-based Protestant groups This activism was widely believed to represent a threat to the national identity This led to demands for the adoption of a law on religion to curb the activities of the "non-traditional" Western-based sects.

THE POLITICAL LANDSCAPE OF GEORGIA, *supra* note 2, at 70–71.

6. See THE POLITICAL LANDSCAPE OF GEORGIA, *supra* note 2, at 70–71.

7. See Special Rapporteur on Freedom of Religion or Belief, *Civil and Political Rights, Including the Question of Religious Intolerance: Visit to Georgia, delivered to the Economic and Social Council, Commission on Human Rights*, U.N. Doc. E/CN.4/2004/63/Add.1 (Dec. 16, 2003) (prepared by Mr. Abdelfattah Amor) [hereinafter Special Rapporteur on Freedom of Religion or Belief] ("The main source of concern as far as freedom of religion or belief in Georgia is concerned is certainly the frequency and extent of the persecution to which many of the religious minorities established in Georgia are subject."); *The EU's Relations with Georgia*, European Community Website, http://ec.europa.eu/comm/external_relations/georgia/intro/index.htm (last visited June 2, 2007) (mentioning the "persecution of religious minorities by state authorities and the Georgian orthodox church" as one of the human rights concerns in Georgia).

8. See OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, OSCE, COMBATING HATE CRIMES IN THE OSCE REGION: AN OVERVIEW OF STATISTICS, LEGISLATION, AND NATIONAL INITIATIVES 8 (2005), available at http://www.osce.org/odhr/item_11_16251.html (providing an overview of hate crime information submitted by various countries, and providing recommendations for combating hate crimes).

universally recognized principles, the application of double standards to the implements of these values in every day life, the practice of shaping democracy to fit the local context, and the groundless fear of anything different.

This Article addresses the importance of properly understood and properly implemented reforms in the legal field and stresses the importance of filling the gaps in current Georgian church-state relations.⁹ This Article discusses these legal gaps in the context of supporting democratic reforms in the country. Part II offers a brief summary of the social and political history of Georgia as it relates to the freedom of religion and belief. Part II also provides historical background, beginning with Georgia's independence. Part III discusses current church-state relations in Georgia, including the improved opportunities for religious groups to obtain legal entity status. Part III also discusses some of the provisions of the Constitutional Agreement between the State of Georgia and the Apostolic Autocephalous Orthodox Church of Georgia ("Constitutional Agreement"), which places the Apostolic Autocephalous Orthodox Church of Georgia ("Orthodox Church of Georgia") on unequal footing with other religious organizations in Georgia. Part IV offers a brief conclusion.

II. OVERVIEW OF SOCIAL AND POLITICAL HISTORY AND THE FREEDOM OF RELIGION AND BELIEF FROM 1991–2003

Since declaring independence in 1991, Georgia has passed through the horrors of a civil war, armed ethnic conflicts, and political and economic crises.¹⁰ A national identity strongly linked to the role of religion and to the elevated position of the Orthodox Church of Georgia developed alongside the unfolding of these events.¹¹ Following independence, Georgia declared itself a

9. A thorough discussion of all violations of both national and international legal acts in the field of education, registration, or any other field is beyond the scope of this Article.

10. See *Post-communist Georgia (1990-2003)*, AboutGeorgia, <http://www.aboutgeorgia.net/history/index.html?page=12>, for a brief history of the time period between Georgian independence and the Rose Revolution.

11. See DAVID BRAUND, *GEORGIA IN ANTIQUITY: A HISTORY OF COLCHIS AND TRANSCAUCASIAN IBERIA 550 BC–AD 562*, at 238–40, 246–50 (1994) (describing the history of Christianization of Transcaucasia and Iberia); THE POLITICAL LANDSCAPE OF GEORGIA, *supra* note 2, at 69 ("Georgia boasts an ancient Christian tradition which is an important part of the country's identity; Christianity has been the official religion of the Georgian state from the 4th century onwards.").

democratic republic¹² and proclaimed complete freedom of belief and religion.¹³ However, this declaration was accompanied by recognition of the special role of the Orthodox Church of Georgia in the country's history and of its independence from the state.¹⁴

According to official statistics, 83%¹⁵ of the population of Georgia were considered members of the Orthodox Church of Georgia when Georgia declared its independence.¹⁶ Other religious organizations were distributed among the Georgian population as follows: Catholics, 0.8%; Armenian Apostolic Church members, 3.9%; Jewish, 0.1%; Muslims, 9.9%; others, 0.8%; none, 0.6%.¹⁷

A number of other religious organizations have started to operate in Georgia since the restoration of independence.¹⁸ They have been called "non-traditional" religious organizations, although some of those groups (both Christians and non-Christians) were present in Georgia much earlier than the early 1990s.¹⁹ However,

12. GEOR. CONST. art. 1 (1995) ("The form of political structure of the state of Georgia shall be a democratic republic.").

13. *Id.* art. 9 ("The state shall declare complete freedom of belief and religion.").

14. *Id.* ("The state shall . . . recognise the special role of the Apostolic Autocephalous Orthodox Church of Georgia in the history of Georgia and its independence from the state.").

15. STATISTICS GEORGIA, POPULATION CENSUS 2002, POPULATION BY RELIGIOUS BELIEFS, http://www.statistics.ge/_files/english/census/2002/Religious%20beliefs.pdf [hereinafter POPULATION BY RELIGIOUS BELIEFS]; see also THE POLITICAL LANDSCAPE OF GEORGIA, *supra* note 2, at 69.

16. The total population of Georgia is 4,371,535 people. STATISTICS GEORGIA, POPULATION CENSUS 2002, NUMBER OF RESIDENT POPULATION OF GEORGIA, http://www.statistics.ge/_files/english/census/2002/Number%20of%20resident%20population.pdf. The next population census will be conducted in 2010 and data will be disseminated in 2011. STATISTICS GEORGIA, POPULATION CENSUS 2010, ACTION PLAN FOR POPULATION AND HOUSING CENSUSES OF 2010, http://www.statistics.ge/_files/english/census/2010/Action%20plan.pdf.

17. See POPULATION BY RELIGIOUS BELIEFS, *supra* note 15; see also INTERNATIONAL RELIGIOUS FREEDOM REPORT 2006, *supra* note 5.

18. See INTERNATIONAL RELIGIOUS FREEDOM REPORT 2006, *supra* note 5 ("Since the collapse of the Soviet Union, Protestant and other nontraditional denominations have become more active and prominent.").

19. The term "non-traditional" is widely used in defining those religious organizations that came to Georgia after the restoration of independence, but often it refers to religious groups that were present in Georgia for centuries. See *id.* (stating that "[t]he Catholic and Armenian Apostolic churches have been unable to secure the return of churches and other facilities closed during the Soviet period" and outlining other forms of discrimination against even long-established religious organizations).

their activities were not open during the Soviet regime and thus did not receive public attention.²⁰

From 1999 to 2003, a growing tendency developed toward religious extremism in Georgia, expressed through openhanded activities of radical religious organizations toward various non-traditional religious groups.²¹ Basil Mkalavishvili, a former Orthodox priest renounced and excommunicated by the Orthodox Church of Georgia, was one of the country's most notorious leaders of religious extremism.²² Mkalavishvili and his followers committed hundreds of criminal acts against various religious groups.²³ These acts involved physical and often brutal attacks on members of non-traditional religious organizations.²⁴

In addition to these particular acts of religious intolerance, the general societal attitude in Georgia toward these so-called non-traditional religious groups has been very intolerant.²⁵ Religious

20. *See id.* ("Since the collapse of the Soviet Union, Protestant and other nontraditional denominations have become more active and prominent. Local Jehovah's Witnesses' representatives stated that the group had approximately 16 thousand adherents locally and had been in the country since 1953. Pentecostals, both ethnic Georgian and Russian, were estimated to number nine thousand. Baptists—composed of ethnic Russian, Georgian, Armenian, Ossetian, and Kurdish groups—totaled an estimated eight thousand adherents.").

21. *See* THE POLITICAL LANDSCAPE OF GEORGIA, *supra* note 2, at 71 ("[A]nimosity towards religious minorities found a more openly aggressive outlet: Georgia went through a wave of violent attacks against the 'non-traditional' religious groups (Jehovah's Witnesses, again, were the main but not the sole target) which peaked in the period from 1999 to 2002.").

22. *See id.* ("The attacks were perpetrated by the group surrounding the defrocked Orthodox priest Basil Mkalavishvili and members of some other extreme religious organizations.").

23. *See* Felix Corley, *Will Violent Priest At Last Be Brought To Justice?*, FSU MONITOR, October 23, 2002, available at <http://www.fsmonitor.com/stories/102302Georgi.shtml> (alleging that Mkalavishvili is "responsible for many of the more than a hundred attacks on religious minorities in the past three years that have left believers with serious injuries and places of worship and homes destroyed"); *Georgia: Ex-Priest Jailed for Attacks Against Religious Minorities*, HUMAN RIGHTS WATCH, Feb. 1, 2005, available at <http://hrw.org/english/docs/2005/01/31/georgi10098.htm> (discussing the "dozens of mob attacks that Mkalavishvili led against Jehovah's Witnesses, Pentecostals, Baptists and other religious minorities in Georgia").

24. *See* Special Rapporteur on Freedom of Religion or Belief, *supra* note 7, and INTERNATIONAL RELIGIOUS FREEDOM REPORT 2006, *supra* note 5, for more information about Basil Mkalavishvili.

25. *See* INTERNATIONAL RELIGIOUS FREEDOM REPORT 2006, *supra* note 5 ("Citizens generally did not interfere with religious groups considered to be 'traditional'; however, there was widespread suspicion of 'nontraditional' ones. . . . While most citizens practiced their religion without restriction, the worship of some, particularly adherents of nontraditional

minorities have been considered a threat to the Orthodox Church of Georgia and to Georgia's traditional cultural and historical values.²⁶ Interestingly, among the active supporters of Mkalavishvili's ideas were not only ordinary citizens, but also politicians, public activists, law enforcement officials, and even clergymen.²⁷

Georgia's problem of religious-based violence and the growing rate of religious extremism have concerned the international community and have sparked democratic reforms. A number of international non-governmental organizations and inter-governmental organizations addressed Georgia for its violation of the right to freedom of religion and belief.²⁸ The international community expressed alarm, not only due to the presence and activities of extremist groups in Georgian society, but also due to the inadequate response of public authorities to violent activities and to the widespread societal tolerance apparently afforded to these extremist groups.²⁹

faiths, was restricted by threats and intimidation from some local Orthodox priests and congregations. On some occasions during the reporting period, local police were slow to prevent the harassment of non-Orthodox religious groups, including Jehovah's Witnesses and Pentecostals."); *see also* Nicolas Landru, *In Georgia, Religious Minorities Remain in the Shadow*, CAUCAZ, Feb. 8, 2007, http://www.caucaz.com/home_eng/breve_contenu.php?id=297.

26. *See* THE POLITICAL LANDSCAPE OF GEORGIA, *supra* note 2, at 71 ("A sizeable part of society sympathized with the offenders: many of those who notionally disagreed with violent means saw the main source of the problem in the failure of the Georgian State to protect their national culture from the encroachment of sects that are perceived as aggressive.").

27. *See* Amnesty Int'l, *Police Allegedly Support Attack on Jehovah's Witnesses by Radical Supporters of the Georgian Orthodox Church*, Sept. 19, 2001, <http://web.amnesty.org/library/Index/ENGEUR560132001?open&of=ENG-GEO> (stating that Georgian police aided in the attack Mkalavishvili led against Jehovah's Witnesses); George Sefashvili, *Mkalavishvili at Large, Despite Detention Warrant*, CIVIL GEORGIA, June 12, 2003, <http://www.civil.ge/eng/article.php?id=4373> (stating that Mkalavishvili is supported by some members of Parliament in Georgia).

28. *See, e.g.*, Special Rapporteur on Freedom of Religion or Belief, *supra* note 7; INTERNATIONAL RELIGIOUS FREEDOM REPORT 2006, *supra* note 5; *see also* Helsinki Commission Leaders Welcome Arrest of Caustic Georgian Cleric, Embassy of Georgia, Mar. 24, 2004, <http://www.georgiaemb.org/DisplayDoc.asp?id=324> (discussing the United States Helsinki Commission's "repeatedly call[ing] upon the Georgian Government over the past four years to take action against Mkalavishvili and other mob leaders").

29. *See, e.g.*, Douglas Davidson, Deputy Chief of U.S. Mission to the Org. for Sec. and Cooperation in Eur. (OSCE), Statement Delivered to the OSCE Permanent Council (Sept. 5, 2002), <http://www.state.gov/p/eur/rls/rm/2002/13725.htm> ("The United States is deeply concerned with the lack of accountability for the continuing attacks by Orthodox extremist groups in Georgia on Jehovah's Witnesses, Evangelical Christians, and the human

New democratic forces that came into power after the Rose Revolution in November 2003³⁰ committed to undertake swift and radical changes in favor of democracy.³¹ Many considered this change in political power to signal the end of the reign of terror against freedom of religion and belief, and a corresponding significant improvement in the legal field.³²

As a first and immediate step towards the elimination of religious violence in Georgia, the new government arrested Basil Mkalavishvili and some of his active followers in March 2004.³³ The arrest was a necessary response to the recommendations and critical remarks of the international community, but the Georgian legal field required further initiative to make a real change in existing Georgian church-state relations.

rights advocacy groups defending them.”).

30. The fall of former president Eduard Shevardnadze and the change in political power on November 23, 2003 is known as the Rose Revolution in Georgia. *See supra* note 1.

31. *See* ENOUGH!, *supra* note 1, at vii (“After more than a decade of turmoil and decline, Georgia has emerged as one of the world’s most dynamic laboratories of democracy. . . . A three week period of political intrigue and public demonstrations in November 2003 led to Eduard Shevardnadze’s resignation, and the result was that a demoralized and lethargic society suddenly seemed to turn into an energetic experiment in democracy.”).

32. *See* Ghia Nodia, *Breaking the Mold of Powerlessness: The Meaning of Georgia’s Latest Revolution*, in ENOUGH!, *supra* note 1, at 95, 99 (“The people in the streets certainly had revolutionary enthusiasm for getting rid of a rotten old regime and bringing something substantively new into their lives. Arguably, this was also a change of power elites. A new generation came to power whose mindset is at most, only weakly shaped by the Soviet past. Instead, they were strongly influenced by their extensive contacts with the West.”).

33. *See* Felix Corley, *GEORGIA: Will Violent Attackers of Religious Minorities Be Punished?*, FORUM 18 NEWS SERVICE, Aug. 16, 2004, http://www.forum18.org/Archive.php?article_id=394&printer=Y (“Mkalavishvili and eight associates were arrested on 12 March when police stormed his church in the Gldani district of Tbilisi in a blaze of publicity.”). For more on Mkalavishvili, *see* Felix Corley, *GEORGIA: Two Leaders of Religious Violence Finally Sentenced—But What About the Others?*, FORUM 18 NEWS SERVICE, Feb. 1, 2005, http://www.forum18.org/Archive.php?article_id=503&printer=Y (“On 31 January, . . . the judge at Tbilisi’s Vake-Saburtalo district court sentenced Fr Basil Mkalavishvili . . . to six years’ imprisonment”) and INTERNATIONAL RELIGIOUS FREEDOM REPORT 2006, *supra* note 5 (“On November 2, 2005, the appeals court upheld a trial court decision sentencing excommunicated Orthodox priest Basil Mkalavishvili to six years’ imprisonment for engaging in numerous attacks on nontraditional religious minorities including Baptists, Seventh-day Adventists, and Jehovah’s Witnesses.”).

III. SOME CONCERNS RELATED TO CHURCH-STATE RELATIONS IN POST-REVOLUTIONARY GEORGIA

International Religious Freedom Reports of the U.S. Department of State in 2005 and 2006 rank Georgia among the countries with significantly improved opportunities for religious freedom.³⁴ The evaluation presented in the reports is based on certain steps taken by the government following the Rose Revolution, namely, the imprisonment of Mkalavishvili.³⁵ The reports also address the opportunity for registration of religious associations and the adequacy of local law enforcement's response to the needs of religious minorities.³⁶ In general, these reports most accurately reflect the position of a definite segment of the international community and the Georgian "reality" perceived by international powers from afar.

This point of view is relevant to the recent societal improvements and to the existing national legislation that together successfully govern the right to freedom of thought, conscience, and religion. At a glance, recent improvements in the legal field are aimed at responding to the main concerns and needs of religious communities in Georgia. However, further examination of the existing legal framework for religious freedom and of the proposed amendments to the status of religious organizations in Georgia reveals serious shortcomings.

A. Legal Status of Religious Organizations

The legal status of religious organizations is an important issue in the context of Georgian church-state relations. Consistent with

34. BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEP'T OF STATE, INTERNATIONAL RELIGIOUS FREEDOM REPORT 2005: GEORGIA (2005), <http://www.state.gov/g/drl/rls/irf/2005/51553.htm> [hereinafter INTERNATIONAL RELIGIOUS FREEDOM REPORT 2005]; INTERNATIONAL RELIGIOUS FREEDOM REPORT 2006, *supra* note 5.

35. INTERNATIONAL RELIGIOUS FREEDOM REPORT 2006, *supra* note 5 (mentioning under the subheading "Improvements in Respect for Religious Freedom" that Mkalavishvili's sentence was upheld in November of 2005).

36. *Id.* (stating that "[p]ursuant to a new registration law adopted in April 2005, religious groups can obtain legal status" and that law enforcement officials "were generally more responsive to the needs of minority religious groups but failed at times to adequately protect them").

existing practices in democratic countries, a “base-level” entity status and “upper-tier” forms of organization are available for religious organizations.³⁷ In Georgia, there are two types of legal entities defined by the Civil Code of Georgia that could apply to religious organizations: “legal entity of the public law” and “legal entity of the private law,” with the first most likely an “upper-tier” entity status and the latter most likely a “base-level” entity status.³⁸

Registration and legal status are required for religious organizations to own property communally, to open communal bank accounts, or to go to court as a community.³⁹ Religious organizations have demanded definition of their status and legal relationship with the State.⁴⁰ For example, no religious community had any form of legal status since Georgia’s independence until the signing of the Constitutional Agreement between the State of Georgia and the Orthodox Church of Georgia,⁴¹ which determined the Church’s status as a “legal entity of public law.”⁴²

Religious organizations other than the Orthodox Church of Georgia could register with the state following legal reforms undertaken to improve church-state relations in the country. Registration as a “fund” or “association” became possible after the Parliament of Georgia approved amendments to the Civil Code of Georgia on April 6, 2005, and President Saakashvili signed the amendments into law on April 27 of the same year.⁴³ Also in April

37. Cole Durham, *Freedom of Religion or Belief: Laws Affecting the Structuring of Religious Communities* (Review Conference, Organization for Security and Co-operation in Europe, ODIHR Background Paper 1999/4, 1999), available at http://www.osce.org/documents/odhr/1999/09/1502_en.html.

38. CIVIL CODE [CIV. C.], art. 24 (Geor.).

39. Felix Corley, *GEORGIA: “We Want Legal Status!” Say Minority Faiths*, FORUM 18 NEWS SERVICE, Nov. 17, 2003, http://www.forum18.org/Archive.php?article_id=185&printer=Y; see also INTERNATIONAL RELIGIOUS FREEDOM REPORT 2006, *supra* note 5 (stating that the new registration law allows religious groups to “obtain legal status, which provides benefits such as the ability to enter into contracts, open bank accounts, and own property”).

40. Corley, *supra* note 39.

41. The Constitutional Agreement was signed by the President of Georgia on behalf of the State of Georgia and by the Catholicos-Patriarch of Georgia on behalf of the Apostolic Autocephalous Orthodox Church of Georgia. Constitutional Agreement between the Georgian State and the Georgian Apostolic Autocephalous Orthodox Church, 2002 (on file with author) [hereinafter Constitutional Agreement].

42. Corley, *supra* note 39.

43. Felix Corley, *GEORGIA: Religious Minorities Still Second-Class Faiths?*, FORUM 18 NEWS SERVICE, Nov. 25, 2005, http://www.forum18.org/Archive.php?article_id=696

2005, Parliament removed Article 199 of the Administrative Offence Code, which had allowed religious communities to be fined for activities such as not being registered and organizing youth meetings.⁴⁴ Under new amendments to the Civil Code introduced on December 14, 2006, the terms “fund” and “union” were removed, and it thus became possible for religious organizations to register as “non-commercial legal entities” of the private law without indicating their organizational form.⁴⁵

Religious organizations may now register as simply “non-commercial legal entities of private law” at the Tax Inspectorate of the Ministry of Finance,⁴⁶ which grants them “base-level” status.⁴⁷ A legal entity of private law is defined in the Civil Code of Georgia⁴⁸ and includes both commercial and non-commercial organizations.⁴⁹ Religious organizations represent non-commercial organizations and may be registered as such, as defined in Article 1509 of the Civil Code. Further definitions of “non-commercial legal entities” are

&printer=Y; see also INTERNATIONAL RELIGIOUS FREEDOM REPORT 2006, *supra* note 5 (“Before a registration process was established by Parliament in April 2005, religious groups were required to register as public entities, even though the law provided no mechanism to do so yet stipulated a fine for any unregistered religious group. Religious groups may now register as local associations or foundations.”).

44. THE UNION “CENTURY 21,” REGISTRATION OF RELIGIOUS ORGANISATIONS 2–3 (2005), <http://www.century21.ge/doc/report1.pdf> [hereinafter THE UNION “CENTURY 21”].

45. CIV. C. art. 1509. In accordance with the Civil Code of Georgia, the following entities are considered public legal entities: a) the state; b) self-governments; c) legal entities created by the government under legislative and administrative acts but not created in accordance with the Civil Code of Georgia or in the organizational and legal form as defined by the Georgian law on entrepreneurship; d) state institutions and state foundations that were not created in accordance with the Civil Code or the law on entrepreneurship; e) non-state organizations (political parties, etc.) created for the achievement of public goals; and f) a legal person of public law recognized as such under a constitutional agreement. The following are considered legal entities of private law: a) non-commercial legal entities; b) general partnerships; c) limited partnerships; d) limited liability companies; e) joint stock companies; and f) cooperatives. *Id.*

46. *Id.* art. 28. (“State registry of non-entrepreneur (non-commercial) legal entities, branches (representatives) is conducted by the authorized body of the Ministry of Finance of Georgia.”).

47. See INTERNATIONAL RELIGIOUS FREEDOM REPORT 2006, *supra* note 5; THE UNION “CENTURY 21,” *supra* note 44, at 1–3.

48. CIV. C. art. 24.

49. *Id.* art. 1509.

found in numerous articles of the Civil Code⁵⁰ and set certain requirements to be met by the organizations applying for registration. These requirements may include, for example, founders,⁵¹ notarized application for registration,⁵² and a list of supplementary documents of the application for registration.⁵³

Thus, based on the amendments, religious organizations gain registration only as non-commercial legal entities, a status that dissatisfies some religious communities—among them the Armenian Apostolic Church, the Catholic Church, the Evangelic-Lutheran Church, and the Muslims.⁵³ On one hand, these religious organizations express discontent over status as non-commercial legal entities, but on the other hand, religious communities that have existed in Georgia for hundreds of years and have thousands of members throughout the country might face awkwardness if they follow all of the above-mentioned procedures and requirements for functioning as “non-commercial legal entities of private law.”⁵⁴ Many difficulties related to registration as a “union” or “fund” were removed under the most recent amendments to the Civil Code, which in itself is a step forward. However, religious organizations might still face some awkwardness in the process of registration related to questions of who should be listed as the founding member of the oldest religious organizations, or what membership criteria should apply to their parish, to name a few examples. Religious organizations demand status as public legal entities, the status granted exclusively to the Orthodox Church of Georgia in the Constitutional Agreement, but in order to gain such status they need to sign a separate agreement with the State of Georgia.⁵⁵ Further, the

50. For definitions of “non-commercial legal entities,” see *id.* arts. 24–38.

51. *Id.* art. 29(1).

52. *Id.* art. 29(2)–(3).

53. *Id.* art. 29(3); see also Felix Corley, *GEORGIA: Legal Improvements, But Little Practical Improvement*, FORUM 18 NEWS SERVICE, May 24, 2005, http://www.forum18.org/Archive.php?article_id=568; INTERNATIONAL RELIGIOUS FREEDOM REPORT 2006, *supra* note 5 (“Some religious communities expressed dissatisfaction with the status that registration provided. The Catholic Church (RCC) and the AAC opposed registering themselves as civil organizations. Other churches such as the Baptists expressed concern that transfers of property to their churches would then be taxable.”).

54. Konstantin Korkelia, *Freedom of Thought, Conscience and Religion Under the European Convention on Human Rights and the Georgian Legislation*, 6 GEORGIAN L. REV. 137, 163 (2003).

55. See CIV. C. art. 1509(1)(f), (2); Corley, *supra* note 53.

Orthodox Church of Georgia has “legal entity of public law” status, while other religions can only be classified as “non-commercial legal entities of private law,” which groups them with non-commercial entities, like non-governmental organizations.

By the end of 2006, only a few religious organizations were registered with the Ministry of Justice.⁵⁶ Although in general the opportunity for registration is really a great sign of progress for the religious organizations existing as *de facto* organizations for years, these religious organizations have attempted to attain legal status without success.⁵⁷ Without improving the inconsistencies in the treatment of different religious organizations mentioned above, however, the amendments merely represent new state authorities’ efforts to do their duty in handling the registration problem. Those religious communities who are discontent with such unequal treatment demand more “upper-tier status” than the proposed amendments provide. At this point, an initiative on the part of the authorities concerning the elimination of existing shortcomings related to the legal status, or to the signing of an agreement between any religious organization and the state, is not foreseeable in the near future.

B. The Constitutional Agreement

The status of “legal entity of the public law” was granted to the Orthodox Church of Georgia in the Constitutional Agreement.⁵⁸

56. See INTERNATIONAL RELIGIOUS FREEDOM REPORT 2006, *supra* note 5 (“In July 2005 the [Ministry of Justice] approved the first applications filed under the new registration process. Both the Foundation of the Church of Jesus Christ of Latter-day Saints in Georgia (Mormons) and the Representation of the International Agency of Adventist Development and Assistance in Georgia (which is affiliated with the Seventh-day Adventist Church) received approval in less time than the fifteen days allowed by law. An additional twelve organizations subsequently registered under the law.”).

57. In September 2003, the Vatican and the State of Georgia tried to sign a concordat that would provide legal status for the Catholic Church, but street demonstrators demanded the cancellation of the signing ceremony. Felix Corley, *GEORGIA: Catholics Fail To Break Orthodox Monopoly*, FORUM 18 NEWS SERVICE, Sept. 25, 2003, http://www.forum18.org/Archive.php?article_id=144&printer=Y; see also Giorgi Sepashvili, *Orthodoxy and Catholicism Clash in Georgia*, CIVIL GEORGIA, Sept. 29, 2003, <http://www.civil.ge/eng/article.php?id=5019>.

58. Constitutional Agreement, *supra* note 41, art. 1 (“The Church is historically established subject of common law, avowed by the State and vested juridical person of common law, which carries out its functions in accordance with the Church (Canon) Law,

Under Article 1509 of the Civil Code of Georgia, a legal entity recognized by the Constitutional Agreement is considered a public law legal entity.⁵⁹ Thus, since 2002, the legal relationship between the State of Georgia and the Orthodox Church of Georgia has been defined by the Constitutional Agreement, which has no analogy in any other country and unfortunately was adopted without consideration of numerous recommendations of local and international experts who identified gaps and contradiction within the text.⁶⁰

The idea of an agreement between the State and the Orthodox Church of Georgia began in the early 1990s and was probably inspired by the Concordat—an agreement that the Holy See (the Vatican) signed with different states.⁶¹ The form of agreement used by the Vatican could not be replicated, as there was no quasi-state entity representing the Orthodox Church of Georgia.⁶² Another possibility was to adapt already existing models of church-state relations in other European countries to Georgia's situation, but this arrangement also failed to suit Georgia's needs because the initiators of the agreement wanted to sign a distinguished agreement of the same status as the Concordat. In the end, the idea of the Constitutional Agreement was proposed. On the one hand, the agreement represents a unique agreement between the state and the Church within Georgia. On the other hand, it bears the characteristics of an international treaty because it is signed by the President and in case of a conflict with national law, it takes priority.

present Agreement, Georgian Constitution and Georgian Legislation.”).

59. CIV. C. art. 1509(1)(f) (stating that a public law legal entity includes “a legal person of public law recognized as such under a constitutional agreement”).

60. Council of Europe, Venice Commission, *Comments on the Draft of the Constitutional Agreement Between the State of Georgia and the Orthodox Church of Georgia*, CDL Doc. 64 (June 28, 2001), available at [http://www.venice.coe.int/docs/2001/CDL\(2001\)064-c.asp](http://www.venice.coe.int/docs/2001/CDL(2001)064-c.asp); see also R. Lawson, *Legal Expertise of the Draft Constitutional Agreement Between the State of Georgia and the Autonomous Apostolic Orthodox Church of Georgia*, HRCAD (2001) 3.

61. Robert John Araujo, *The International Personality and Sovereignty of the Holy See*, 50 CATH. U. L. REV. 291, 337 n.229 (2001).

62. See Guido Acquaviva, *Subjects of International Law: A Power-Based Analysis*, 38 VAND. J. TRANSNAT'L L. 345, 353–57 (2005) (discussing the relatively unique international status of the Holy See); Tiyanjana Maluwa, *The Treaty-Making Capacity of the Holy See in Theory and Practice: A Study of the Jus Tractum of a Non-State Entity*, 20 COMP. & INT'L L.J. S. AFR. 155, 155, 173 (1987) (asserting that “[t]reaty-making capacity implies that an entity is endowed with international personality” and that the international personality of the Holy See is *sui generis*).

The importance of the Constitutional Agreement can be understood by looking at the constitutional amendment dated March 2001 that opened the way for the creation of the agreement.⁶³ The amendment clearly states that if any international treaty conflicts with the Constitutional Agreement, the legal status of the treaty is in question.⁶⁴ According to the current legal status granted by the Constitution of Georgia, the Constitutional Agreement represents the most important legal act in Georgia, enjoying priority over all national laws, as well as over international treaties and agreements, signed by Georgia.

A proper analysis of the provisions requires contrasting the privileges granted to the Orthodox Church of Georgia by the Constitutional Agreement against the relationship of other religious organizations with the State.⁶⁵ The discrimination revealed by the provisions of the Constitutional Agreement, discussed below, violates not only the general non-discrimination clause of the Constitution of Georgia,⁶⁶ but also abridges the requirements of international conventions and other human rights acts.⁶⁷

63. GEOR. CONST. art. 6 ("The legislation of Georgia shall correspond to universally recognised principles and rules of international law. An international treaty or agreement of Georgia unless it contradicts the Constitution of Georgia, the Constitutional Agreement, shall take precedence over domestic normative acts.")

64. *Id.* art. 9 ("The relations between the state of Georgia and the Apostle Autocephalous Orthodox Church of Georgia shall be determined by the Constitutional Agreement. The Constitutional Agreement shall correspond completely to universally recognised principles and norms of international law, in particular, in the field of human rights and fundamental freedoms.") (amended by the Constitutional Law of Georgia, Mar. 30, 2001).

65. While this Part of the Article will discuss some of the provisions of the Constitutional Agreement which place other religious organizations in Georgia on unequal footing with the Orthodox Church, a deep and comparative analysis of the Constitutional Agreement is the subject for another article. The Union "Century 21" works on such comprehensive research on Church-State relations in Georgia. Century 21 Homepage, <http://www.century21.ge/en/> (characterizing "human rights protection and civil society development support" as the focus of their mission).

66. GEOR. CONST. art. 14 ("Everyone is free by birth and is equal before the law, regardless of race, skin colour, language, sex, religion, political and other opinions. . .").

67. European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 14, Nov. 4, 1950, Europ. T.S. No. 5, 213 U.N.T.S. 222 ("The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, [and] religion . . .").

1. *Military conscription*

The Constitutional Agreement states that ecclesiastics are free from military conscription.⁶⁸ The Law on Military Service and Obligations confirms that conscription to military service will be postponed for clergymen and students of the theological seminary⁶⁹ but does not give any further direction that this provision apply only to ecclesiastics of the Orthodox Church of Georgia or to representatives of other religious organizations.⁷⁰ Because the Constitutional Agreement clearly states that exemption from military conscription applies to the Orthodox Church of Georgia and because the Agreement preempts all national laws, it can be concluded that ecclesiastics of the Orthodox Church of Georgia are free from compulsory military service. In contrast, it appears that representatives of other religious organizations may be the subject of non-military alternative labor service.⁷¹

2. *Authority to perform marriages*

Another indication of a difference in treatment between the Orthodox Church of Georgia and other religious organizations in the Constitutional Agreement is the provision regarding recognition of marriages performed by the Church.⁷² The Civil Code of Georgia says that the registration of marriages should be performed by the Civil Acts Registry Agency at the Ministry of Justice,⁷³ but the Constitutional Agreement provides for State recognition of marriages performed by the Orthodox Church. Although the Civil Code has a specific chapter on marriage, no other specific article

68. Constitutional Agreement, *supra* note 41, art. 4 (stating that "clergymen are excluded from military service").

69. LAW OF GEOR. ON MILITARY SERVICE AND OBLIGATIONS, art. 30(L) (on file with author, only available in Georgian).

70. *See id.*

71. The laws of Georgia regarding Non-Military Alternate Labour Service, as well as other sub-laws, govern the legal status of conscientious objectors. "It is important to note that [according to] Georgian legislation . . . every citizen of Georgia who refuses to perform military service for the reasons of thought, conscience or religion . . . will be exempt from military service and perform non-military (alternative) service." Korkelia, *supra* note 54, at 161.

72. Constitutional Agreement, *supra* note 41, art. 3 ("State recognises marriages performed by the Church under the rules determined by the legislation. In legal affairs, the state registration data of marriages is used.").

73. CIV. C. arts. 1110-11.

provides further explanation or interprets the Constitutional Agreement. Because the Constitutional Agreement supersedes all other laws in Georgia, including the Civil Code, the State's resulting recognition of Orthodox Church marriages presents a stark example of disparate treatment among religious organizations in Georgia. If there is the possibility that the State may recognise the marriages performed by the Orthodox Church of Georgia, as in the case described above, it should treat marriages conducted under other religions identically.

3. Ownership of property

Solving the complicated problem of property belonging to the Orthodox Church of Georgia will require time and great delicacy.⁷⁴ According to the Constitutional Agreement, which regulates property of the Orthodox Church of Georgia, the State recognizes all Orthodox churches and monasteries (functional and non-functional), their ruins, and land upon which they are situated as property of the Church. The State also confirms the fact that material and moral damage was inflicted upon the Church during Georgia's loss of independence.⁷⁵

While it is worth mentioning the extremely positive position of the State toward the Orthodox Church's property, the State should not forget about property issues with other religious organizations. Within the same historical period, other religious groups sustained damage to their church property, and these groups face additional obstacles in regaining their historical church properties and in building new structures.⁷⁶ Further, the State gave many of the

74. See INTERNATIONAL RELIGIOUS FREEDOM REPORT 2006, *supra* note 5 ("The [Orthodox Church of Georgia] remains very active in the restoration of religious facilities, and it lobbies the Government for the return of properties that were held by the Church before the country's incorporation into the Soviet Union (church authorities have claimed that 20 to 30 percent of the country's land area at one time belonged to the church). In September 2005 the Government returned three additional properties to the [Orthodox Church of Georgia].").

75. Constitutional Agreement, *supra* note 41, art. 11 ("State confirms the fact of material and moral damage inflicted upon The Church during loss of independence in XIX-XX centuries (especially in 1921-90 years). As partial owner of the confiscated property, state undertakes to partly compensate material loss decision of Council of Ministers of Georgian Soviet Socialist Republic, 183; 12.04.90.").

76. See INTERNATIONAL RELIGIOUS FREEDOM REPORT 2006, *supra* note 5 ("The Catholic and Armenian Apostolic churches have been unable to secure the return of churches

churches and other facilities belonging to other religious communities to the Orthodox Church of Georgia, which has become a technical obstacle to resolving the problem.⁷⁷ This is where agreements between the State and other religious communities are important and would greatly contribute to the settlement of existing conflicts over disputed church properties.⁷⁸

4. Tax treatment

The Tax Code of Georgia is another legal act that discriminates against religious minorities.⁷⁹ Many tax privileges have been envisaged for the Patriarchate of Georgia, yet other religious groups in Georgia do not enjoy these same tax benefits.⁸⁰ The Tax Code of

and other facilities closed during the Soviet period, many of which later were given to the [Orthodox Church of Georgia] by the state.”)

77. *Id.*

78. In some cases conflicts over disputed properties turned into physical fighting and verbal abuse. See, e.g., INTERNATIONAL RELIGIOUS FREEDOM REPORT 2006, *supra* note 5 (“On July 14, 2005, in the village of Samsara in the Samtskhe-Javakheti Region, a group of ethnic Georgian students and GOC nuns were attacked by ethnic Armenian villagers as they were cleaning up a church whose ownership is in dispute. The villagers accused the students and nuns of trying to erase crosses symbolic of the AAC from the building and of placing Orthodox icons in the church.”); see also Landru, *supra* note 25 (“Ilvita is a church in Meskheti, which was Catholic prior to the Soviet era and is situated in a Catholic majority. It was recently occupied by an Orthodox priest, who vandalized the tombs of French missionaries as well as other signs of Catholicism. The theologian Nugzar Papuashvili and the Catholic priest Gabriele Bragantini published a book For Truth and Justice on the Ivrita Church, which calls the recent events there a ‘theft of heritage.’ During presentations of the book on October 25 and November 27, 2006, members of the groups ‘The Union of Orthodox Parents’ and ‘The Society of Saint David the Reconstructor,’ led by Father David Isakadze, burst into the room. They insulted the authors and their partners and tried to physically hit them.”).

79. See TAX CODE, art. 172(d) (Geor.). The “profit from the sale by the Patriarchy of Georgia of crosses, candles, icons, books, and calendars, used exclusively for religious purposes” is exempt from a profit tax. *Id.*

The following supplies of goods (services) and/or types of imports shall be VAT exempt: . . . supply by the Georgian Patriarchate of crosses, candles, icons, books, and calendars used exclusively for religious purposes; the construction, restoration and painting by order of the Georgian Patriarchate of cathedrals, monasteries, as well as reconstruction, restoration, conservation works and archaeological excavations provided by state programs for protection and revival of the historical and cultural monuments of Georgia included in the list of the treasury of world heritage

Id. art. 230(1)(j).

80. See INTERNATIONAL RELIGIOUS FREEDOM REPORT 2006, *supra* note 5 (“The [Orthodox Church of Georgia] enjoys tax-exempt status not available to other religious groups.”).

Georgia does not mention any other religious groups. The Constitutional Agreement also clarifies the tax exempt status of the Orthodox Church of Georgia.⁸¹

5. Access to prisons

Based on the Constitutional Agreement, the Orthodox Church of Georgia has the right to staff the Chaplain institution in detention facilities.⁸² The procedures and details were later clarified in an agreement concluded between the Ministry of Justice and the Patriarchate of Georgia.⁸³ According to the later agreement, the Georgian Orthodox Church is entitled to have the law enforcement police of the Ministry of Justice as its representative at all penitentiaries to conduct holy liturgies and other religious ceremonies, whereas representatives of all other religions and confessions can realize such a right only subject to the consent and supervision of the Georgian Orthodox Church.⁸⁴ Proceeding from the formal position of the Patriarchate of Georgia, which excludes the entry of non-Orthodox ministers of religion in institutions of confinement, it can be concluded that ministers of other confessions will be deprived of any opportunity to enter the institutions.

In October 2006, the Penitentiary Department of the Ministry of Justice of Georgia and the Religions Council⁸⁵ signed a

81. Constitutional Agreement, *supra* note 41, art. 6(5) ("Production, import, distribution of items used for the Divine Service shall be tax exempt. Donation received for the same purpose also is tax exempt. No profit estate and property are tax exempt as well.").

82. *Id.* art. 4.

83. *Id.*; see also Agreement between Apostolic Autocephalous Orthodox Church of Georgia and Ministry of Justice of Georgia on Probationers and Non-prisoners Re-socialization, Mar. 1, 2006, http://www.patriarchate.ge/ne/news_21.htm [hereinafter Agreement on Probationers].

84. See Agreement on Probationers, *supra* note 83 ("The Ministry shall guarantee and protect religious rights of non-prisoners and probationers, and support conducting divine services at places of imprisonment and probation bureaus in agreement with the Patriarchate. . . . The Georgian Patriarchate in agreement with the Ministry of Justice shall organize satisfaction of non-orthodox probationers sand [sic] non-prisoners.").

85. On June 21, 2005, the Religions Council was established under the Ombudsman of Georgia and it unites the representatives of various religions and confessions. See INTERNATIONAL RELIGIOUS FREEDOM REPORT 2006, *supra* note 5 ("In July 2005 the GOC patriarch and the ombudsman established religious councils as forums to discuss ecumenical approaches to addressing social problems such as poverty and drug addiction.").

memorandum concerning the cooperation of these two bodies.⁸⁶ The memorandum aimed to fill the above mentioned gap and allow other religious organizations to enter penitentiary establishments.⁸⁷

6. *Education and public schools*

The legal gaps in the field of education should also be considered with regard to the international acts ratified by Georgia.⁸⁸ At a glance, legislation in the sphere of education has improved after adoption of the new Law of Georgia on General Education in 2005.⁸⁹ Compared with the previous law, this new legislation makes significant advancements in terms of freedom of religion and belief by recognizing the independence of public education from religious associations.⁹⁰ In comparison to the existing practice of holding prayer and performing other religious rituals according to the Orthodox confession without respecting the religious and faith traditions of non-Orthodox pupils,⁹¹ a number of clauses of the Law

86. Memorandum of Cooperation between the Penitentiary Department, Ministry of Justice, and the Religions Council, Oct. 2006 (on file with author).

87. *Id.*

88. A deeper analysis of this issue is beyond the scope of this Article.

89. LAW OF GEORGIA ON GENERAL EDUCATION, available at http://reform.edu.ge/files/200_73_162407_General%20Education%20Law.doc; see INTERNATIONAL RELIGIOUS FREEDOM REPORT 2005, *supra* note 34 (“The Government . . . passed a law on general education that partly improved regulation of religious freedom in schools. . . . In April [2005], Parliament passed a new law on general education. The law forbids the display of religious symbols on a public school’s grounds unless the purpose is academic. The law also forbids religious indoctrination, proselytizing, forced assimilation, or the teaching of theology in public schools during school hours. . . . Prayers and other rituals may no longer be conducted during school hours.”).

90. LAW OF GEORGIA ON GENERAL EDUCATION cl. 3(2)(c). “The state shall provide the following[. . .] Independence of public education from religious, political associations and independence of private school from political associations.” *Id.* “Using of the study process in a public school for the purposes of religious indoctrination, proselytism and forced assimilation shall not be allowed.” *Id.* cl. 13(2).

91. See INTERNATIONAL RELIGIOUS FREEDOM REPORT 2006, *supra* note 5 (“Despite a law on education passed in April 2005 that forbids religious indoctrination, proselytizing, forced assimilation, or the teaching of theology in public schools during school hours, in practice students routinely received instruction in Orthodox Christian theology. Teachers often began most courses, including mathematics and science, by leading the class in a recitation of Orthodox prayers. Those students who did not participate were sometimes punished. The law also forbids the display of religious symbols on a public school’s grounds unless the purpose is academic. In many classrooms, however, teachers hung orthodox icons or pictures of GOC religious figures. Some schools have Orthodox chapels where students were encouraged to pray.”).

on General Education can be considered as progressive advancement because they protect students from religious compulsion in schools.⁹² However, those clauses contradict the provisions of the Constitutional Agreement that state that the State supports the functioning of the educational establishments of the Orthodox Church of Georgia and thus are likely not valid.⁹³

The Ministry of Education and Science of Georgia signed a memorandum⁹⁴ with the Patriarchate of Georgia to underline the status of the Orthodox Church of Georgia and to respond to complaints regarding the Law on General Education's liberal leaning toward freedom of religion and belief. The memorandum is dated more than three months prior to of the adoption of the Law on General Education.⁹⁵ The memorandum violates the constitutionally recognized principle of separation of church and state, is manifestly discriminatory towards the followers of other religions, and includes other legal gaps that contradict national and international legal acts.⁹⁶

92. Clause 18 of the Law of Georgia on General Education states:

1. A pupil, parent or teacher have the right on freedom of faith, religion and conscience stipulated by the law, on the right to choose or change any faith or world outlook or not to choose any.
2. A pupil, parent or teacher can't be obliged to fulfil duties, which contradict to their faith, confession or conscience, if it doesn't substantially infringe the rights of others or doesn't hinder mastering of the level of achievements stipulated by the national curriculum.
3. Dislocation of religion symbols on the territory of a public school must not serve non-academic goals.
4. Pupils in public schools may study religion or perform religious rituals during time free from classes, if it serves religious education.

LAW OF GEORGIA ON GENERAL EDUCATION cl. 18.

93. Constitutional Agreement, *supra* note 41, art. 5 ("State supports educational institutions of the Church.").

94. The Memorandum of Joint Collaboration Commission of the Ministry of Education and Science and the Georgian Apostolic Autocephaly Orthodox Church, Jan. 22, 2005, *available at* <http://www.patriarchate.ge/ne/memorandum.htm> [hereinafter Memorandum of Joint Collaboration].

95. The Law of Georgia on General Education was adopted on April 5, 2005 and is available for download at http://reform.edu.ge/files/200_73_162407_General%20Education%20Law.doc.

96. Memorandum of Joint Collaboration, *supra* note 94; *see, e.g., id.* §§ 1–2 (providing for "mutual collaboration . . . in the field of education," including the proper training of religious teachers and the content of the curriculum).

7. *Additional rights and privileges*

In the list of those controversial issues that create preconditions for discrimination on religious background, it is worth mentioning other rights and privileges granted to the Orthodox Church of Georgia based on the Constitutional Agreement. Such controversial articles deal with the right to establishment of the chaplaincy in detention facilities and military units,⁹⁷ confidentiality of information revealed in confession,⁹⁸ declaration of religious events as national holidays,⁹⁹ and cooperation of the Church and the State in spheres of common interest.¹⁰⁰

Legal contradictions and gaps, such as those discussed above, are particularly apparent during implementation of new laws, but in most cases are nevertheless implemented based on their expressions of various religious rights and freedoms. For instance, despite those requirements of the Law on General Education discussed previously—including prohibiting religious indoctrination, proselytizing, or teaching of theology in public schools during school hours¹⁰¹—in practice, teachers very often begin most courses, including technical subjects, by leading the class in a recitation of Orthodox prayers.¹⁰² Unfortunately, despite the Law on General Education, those students who do not take part in the prayers are punished. Some religious groups are unable to import literature without seizure or delay,¹⁰³ while others are affected when the importation of religious items such as candles is delayed due to

97. Constitutional Agreement, *supra* note 41, art. 4 (“The State upon agreement with the Church provides establishment of the Chaplain institution in the detention facilities and military units. Appropriate legislations should be created to this effect.”).

98. *Id.* art. 2 (“The State recognises the Seal of Confession and protects the Church Secret.”).

99. *Id.* art. 1(6) (“The Great Church Feasts as well as Sundays, as a rule, are declared Holidays.”).

100. *Id.* art. 4 (“The State and the Church are competent to implement joint programs of social protection of population.”).

101. See discussion *supra* Part III.B.6.

102. INTERNATIONAL RELIGIOUS FREEDOM REPORT 2006, *supra* note 5 (“Teachers often began most courses, including mathematics and science, by leading the class in a recitation of Orthodox prayers. Those students who did not participate were sometimes punished.”).

103. *Id.*

ambiguities about the legal status of the religious group in the country.¹⁰⁴

IV. CONCLUSION

These legal aspects remain vulnerable in Georgia today, despite the hope that they would be solved after changing the political regime in the country. As discussed above, a number of practical initiatives need to be undertaken for eradication of these shortcomings and for harmonization of local legislation with international legal acts.

While crimes motivated by religious bias are no longer of a mass character, dozens of stories of verbal or physical violence against different religious groups are still being told in Georgia every month.¹⁰⁵ This certainly gives little ground for remaining calm and serene. The growing tendency to nationalize the Orthodox Church of Georgia still remains strongly rooted in the psyche of the society, and it is thus more important than ever that Georgia address the legal gaps in church-state relations to further religious freedoms while maintaining a safe society.

In this long and delicate process of forming church-state relations in a way that recognizes and respects all religious groups equally, members of Georgian society should remember Georgia's culture of self-preservation in the nineteenth century, the period when "language, motherhood, and religion" were key elements for Georgia's survival. The author of these famous words, so frequently quoted by activists for self-preservation, also wrote the following:

There was a time when they thought that if nations of one state praised God otherwise, the unity of this state would suffer and be disrupted. Reformation has proved that the idea is only the product of ignorance; proved that one and the same state could well accommodate various religions and that not a single stone would be taken out from its foundations.¹⁰⁶

104. *See id.* ("The [Armenian Apostolic Church] stated . . . that imports of religious items such as candles were sometimes delayed due to ambiguities about the Church's legal status in the country.").

105. *See id.*

106. Ilia Chavchavadze, *Mimosilva*, written in 1881, published in 1998 (on file with author; only available in Georgian).

It will not be difficult to thus reform church-state relations if Georgian society has the courage to lead the process, not merely to follow.