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URGENT OPINION ON PROPOSED AMENDMENTS TO THE LAW OF GEORGIA ON ASSEMBLIES AND DEMONSTRATIONS AND TO THE ADMINISTRATIVE OFFENCES CODE

GEORGIA

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The Urgent Opinion was also prepared in consultation with Mr. Clément Voule, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, as part of the [Framework for Joint Action for the protection and promotion of civic space](#).

Based on an unofficial English translation of the Draft Amendments provided by the Public Defender of Georgia.



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EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

The right to freedom of peaceful assembly has been recognized as one of the foundations of a democratic, tolerant and pluralist society in which individuals and groups with different backgrounds and beliefs should be able to gather and interact peacefully with one another. States have a positive obligation to respect, protect and facilitate the exercise of the right to freedom of peaceful assembly, without discrimination.

The proposed amendments introduced in September 2023 aim to prohibit assembly organizers and participants from erecting temporary constructions when these would pose a threat to assembly participants or other persons, interfere with the protection of public order and security by the police, disrupt the normal functioning of an enterprise, institution or organization or be deemed unnecessary or unrelated to the organization of the assembly.

The right to freedom of peaceful assembly protects a broad range of gatherings and assemblies, including long-term demonstrations, extended sit-ins and “occupy”-style manifestations and also encompasses the freedom to choose the modalities and manner of an assembly. Participants should be free to determine how they want to convey their message, including by the temporary erection of structures during assemblies, to reach their audience or otherwise achieve their purpose. In some cases, the particular manner and form of a protest, for instance a temporary campsite, may acquire symbolic significance inseparable from its message. Restrictions on the modalities and manner of an assembly may be regulated where necessary to safeguard legitimate interests of the state, the public or the rights of other individuals, provided that the regulation is unrelated to the content of the assembly’s message, and only if it complies with the requirements of legality, legitimacy, necessity, proportionality and non-discrimination provided by international human rights law. In particular, any restriction in the manner of assembly should not render the effective communication of the message of the assembly difficult or even impossible and should not cause a chilling effect on the exercise of the right.

This is on the basis of the above requirements that the Urgent Opinion assesses the proposed amendments prohibiting the erection of temporary constructions during assemblies or demonstrations in certain circumstances or under certain conditions.

First, regarding the legality of the measure, the range of grounds included to justify the proposed new prohibition, such as the broad reference to threats to any persons – without specifying the nature or imminence of the threats – or the fact that the temporary construction is unnecessary or unrelated to the assembly or demonstration, are wide and not clearly defined. This may potentially lead to

arbitrary or discriminatory application of the Law by the public authorities in charge of its interpretation and implementation. The broad mention of disruption to the normal functioning of an enterprise, institution or organization fails to recognize that a certain level of disruption to ordinary life caused by assemblies, including temporary disruption of traffic, annoyance and even harm to commercial activities, should be accommodated and tolerated, unless they impose unnecessary and disproportionate burdens on others. Where demonstrators do not engage in acts of violence, public authorities must show a certain degree of tolerance towards peaceful gatherings if the right to freedom of peaceful assembly is not to be deprived of all substance.

Second, regarding the legitimacy of the proposed amendments, the Explanatory Note accompanying the Draft Amendments refers to a statement by the State Security Service of Georgia citing risks of destabilization of the country in October-December 2023, plans to organize “*the so-called tent city, erect barricades on central avenues and near strategic facilities of Georgia, occupy and block the buildings of state bodies*” and refers to plans to “*activate an explosive device*”, thereby inferring some risks to the national security and public order, as well as possibility of the commission of crime. ODIHR is not in a position to assess the reality of the security threat allegations emanating from the state security service. The prohibition against the erection of temporary constructions when they are deemed unnecessary or unrelated to the assembly or demonstration do not seem to pursue any of the legitimate aims exhaustively listed in the ICCPR or the ECHR, and hence appears unjustified on this basis alone. In any case, the restriction must still satisfy the requirements of necessity, proportionality and non-discrimination.

Third, the proposed amendments do not appear to be necessary and proportionate to the aims pursued. They seek to address an alleged security risk that is temporary in nature – October-December 2023 as indicated in the Explanatory Note – by introducing restrictions that will continue to apply even after the potential security risks will cease, thereby questioning the proportionality of the contemplated measures. More generally, by introducing in the law broad and vaguely framed grounds for prohibition to erect temporary constructions during assemblies, thereby failing to differentiate between different ways of exercising the right to freedom of peaceful assembly and precluding any consideration of the specific circumstances of each assembly, the proposed restrictions would *prima facie* be disproportionate. Also, requiring, during a given assembly, the dismantling of a specific temporary construction that presents an imminent threat to the health or life of assembly participants or other persons, or prevent the police to protect public order, would be least restrictive than an outright prohibition and potential confiscation. It is also unclear why the existing legal framework which already contains some provisions regarding the “artificial” blocking of the roadway by assemblies and police powers to deal with suspected explosive devices are deemed insufficient. The possibility to impose the most serious administrative

sanction provided in the Administrative Offences Code of Georgia – 15 days of administrative detention combined with a fine and confiscation, for simply erecting temporary constructions that are prohibited, also appears disproportionate and may have a chilling effect on the exercise of the right to freedom of peaceful assembly.

Fourth, the proposed amendments would indirectly discriminate against those expressing political dissent or opposition, who may be more inclined to use “occupy”-style manifestations, which would generally involve erecting temporary constructions, to convey their message.

In light of the foregoing, the Draft Amendments would not fulfil the strict requirements under international law when restricting the right to freedom of peaceful assembly. Consequently, their adoption should not be pursued.

As part of its mandate to assist OSCE participating States in implementing their OSCE human dimension commitments, ODIHR reviews, upon request, draft and existing laws to assess their compliance with international human rights standards and OSCE commitments and provides concrete recommendations for improvement.

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I. INTRODUCTION

1. On 17 October 2023, the Public Defender of Georgia requested the OSCE Office for Democratic Institutions and Human Rights (hereinafter “ODIHR”) to review the proposed amendments to the Law of Georgia on Assemblies and Demonstrations¹ and to the Administrative Offences Code of Georgia² (hereinafter “Draft Amendments”) as adopted in third reading on 5 October 2023.³ On 17 October 2023, the President vetoed the proposed amendments.⁴ In accordance with the Constitution of Georgia and the Rules of Procedure of the Parliament of Georgia, the Parliament can override the presidential veto.⁵
2. On 23 October 2023, ODIHR responded to this request, confirming the Office’s readiness to prepare a legal analysis on the compliance of the Draft Amendments with international human rights standards and OSCE human dimension commitments.
3. Given the evolving situation and the resulting urgency, ODIHR decided to prepare an Urgent Opinion on the Draft Amendments, which is highlighting the most concerning issues relating to the exercise of the right to freedom of peaceful assembly.
4. This Urgent Opinion was prepared in response to the above request. ODIHR conducted this assessment within its mandate to assist the OSCE participating States in the implementation of their OSCE human dimension commitments.⁶

II. SCOPE OF THE OPINION

5. The scope of this Urgent Opinion covers only the Draft Amendments submitted for review. Thus limited, the Urgent Opinion does not constitute a full and comprehensive review of the Law of Georgia on Assemblies and Demonstrations (1997, as amended) nor of the entire legal and institutional framework regulating the exercise of the right to freedom of peaceful assembly in Georgia.
6. The Urgent Opinion raises key issues and provides indications of areas of concern and is based on international and regional human rights and rule of law standards, norms and recommendations as well as relevant OSCE human dimension commitments.
7. Moreover, in accordance with the *Convention on the Elimination of All Forms of Discrimination against Women*⁷ (hereinafter “CEDAW”) and the *2004 OSCE Action*

1 [Law of Georgia on Assemblies and Demonstrations](#), Gazette of the Parliament of Georgia, No. 33, 31 July 1997, as last amended on 30 November 2022.

2 [Administrative Offences Code of Georgia](#), Gazette of the Supreme Soviet of the Georgian SSR, No. 12, 1984, as last amended in October 2023.

3 Available at <[Legislation - Parliament of Georgia](#)>. The Draft Amendments were submitted by a group of Members of Parliament (MPs) on 27 September 2023 and were adopted pursuant to an accelerated procedure, in first reading on 4 October, and in second and third reading on 5 October 2023.

4 See <[Official website of the President of Georgia - press releases](#)>.

5 See Article 46 of the [Constitution of Georgia](#) and Article 122 of the [Rules of Procedure of the Parliament of Georgia](#).

6 In particular, [CSCE/OSCE. Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE](#), 29 June 1990, para. 9.2; and Charter of Paris for a New Europe (1990).

7 *UN Convention on the Elimination of All Forms of Discrimination against Women* (hereinafter “CEDAW”), adopted by General Assembly resolution 34/180 on 18 December 1979. Georgia acceded to the Convention on 26 October 1994.

*Plan for the Promotion of Gender Equality*⁸ and commitments to mainstream gender into OSCE activities, programmes and projects, the Urgent Opinion integrates, as appropriate, gender and diversity perspectives.

8. This Urgent Opinion is based on an unofficial English translation of the Draft Amendments, which is attached to this document as an Annex. Errors from translation may result. Should the Urgent Opinion be translated in another language, the English version shall prevail.
9. In view of the above, ODIHR would like to stress that this Urgent Opinion does not prevent ODIHR from formulating additional written or oral recommendations or comments on respective subject matters in Georgia in the future.

III. LEGAL ANALYSIS AND RECOMMENDATIONS

1. RELEVANT INTERNATIONAL HUMAN RIGHTS STANDARDS AND OSCE HUMAN DIMENSION COMMITMENTS

10. The right to freedom of peaceful assembly has been recognized as one of the foundations of a democratic, tolerant and pluralist society in which individuals and groups with different backgrounds and beliefs should be able to gather and interact peacefully with one another. The right to freedom of peaceful assembly can also help give voice to minority opinion and bring visibility to marginalized and under-represented groups. States have a positive obligation to respect, protect and facilitate the exercise of the right to freedom of peaceful assembly, without discrimination. Effective protection of the right to freedom of peaceful assembly can help foster a culture of open democracy, enable non-violent participation in public affairs, and invigorate dialogue on issues of public interest. Public assemblies can also help ensure the accountability of corporate entities, public bodies and government officials and thus promote good governance in accordance with the rule of law.
11. The right to freedom of peaceful assembly as elaborated by international human rights law is considered a fundamental democratic right in several core human rights documents, including Article 20 (1) of the Universal Declaration on Human Rights (UDHR),⁹ Article 21 of the International Covenant on Civil and Political Rights (ICCPR),¹⁰ Article 11 of the European Convention on Human Rights (ECHR),¹¹ Article 15 of the Convention on the Rights of the Child (CRC)¹² and Articles 1 and 21 of the UN Convention on the Rights of Persons with Disabilities.¹³

8 See *OSCE Action Plan for the Promotion of Gender Equality*, adopted by Decision No. 14/04, MC.DEC/14/04 (2004), par 32.

9 *Universal Declaration on Human Rights* (UDHR), adopted by General Assembly resolution 217 A on 10 December 1948.

10 *International Covenant on Civil and Political Rights* (ICCPR), adopted by UN General Assembly Resolution 2200A (XXI) on 16 December 1966. Georgia acceded to the ICCPR on 3 May 1994.

11 *Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms*, Article 11, signed on 4 November 1950, entered into force on 3 September 1953. Georgia ratified the ECHR on 20 May 1999.

12 *UN Convention on the Rights of the Child* (CRC), adopted by General Assembly resolution 44/25 of 20 November 1989. Georgia acceded to the CRC on 2 June 1994.

13 *Convention on the Rights of Persons with Disabilities* (CRPD), adopted by General Assembly resolution 61/106 of 13 December 2006. Georgia ratified the CRPD on 13 March 2014.

12. The jurisprudence of the UN Human Rights Committee (UN HRC) as well as its General Comment no. 37 on Article 21 of the ICCPR¹⁴ also offer authoritative interpretation of the nature and scope of the right to freedom of peaceful assembly. The various reports of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association provide also useful recommendations.¹⁵ The case law of the European Court of Human Rights (ECtHR) provides additional guidance for Council of Europe Member States on how to ensure that their laws and policies comply with key aspects of Article 11 of the ECHR.¹⁶ Any restriction on the right to freedom of peaceful assembly must be compatible with the strict test set out in Article 21 of the ICCPR and Article 11(2) of the ECHR, requiring any restriction to have a formal basis in law, to be in pursuit of one or more of the legitimate aims listed exhaustively in the treaty/convention,¹⁷ to be necessary in a democratic society (which presupposes the existence of a “pressing social need”) and to respect the principle of proportionality. In addition, the restriction must be non-discriminatory (Articles 2 and 26 of the ICCPR and Article 14 of the ECHR and Protocol 12 to the ECHR).
13. OSCE participating States committed to respect the right to freedom of peaceful assembly as stated in the 1990 Copenhagen Document.¹⁸ Further OSCE commitments regarding the right to peaceful assembly also include the 1990 Charter of Paris for a New Europe¹⁹ and the Helsinki 2008 Statement from the Ministerial Council.²⁰ ODIHR and its Panel of Experts²¹ in consultation with the Council of Europe’s European Commission for Democracy through Law (Venice Commission) have also developed joint *Guidelines on Freedom of Peaceful Assembly* (hereinafter “FoPA Guidelines”),²² which are based on international and regional treaties, case-law and other documents related to the protection of human rights as well as the practice in other democratic countries adhering to the rule of law. These Guidelines provide useful guidance for developing and implementing national legislation on the right to freedom of peaceful assembly in accordance with international standards and OSCE human dimension commitments.
14. A wide range of different public gatherings fall within the scope of freedom of peaceful assembly, including planned and organized assemblies, unplanned and spontaneous assemblies, static assemblies (such as public meetings, ‘flash mobs’, sit-ins and pickets), and moving assemblies (including parades, processions, and convoys).²³ The presumption in favour of (peaceful) assemblies includes an obligation of tolerance and

14 UN Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (Article 21)*, CCPR/C/GC/37, 17 September 2020.

15 All the reports are available [here](#). See in particular UN Human Rights Council, *Joint Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies*, A/HRC/31/66, 4 February 2016 (Joint Report of UN Special Rapporteurs (2016)).

16 See the *ECtHR Caselaw Guide on Article 11 of the ECHR*, prepared by the Registry of the ECtHR (as of 31 August 2022).

17 i.e., national security, public safety, public order (*ordre public*) for Article 21 ICCPR or the prevention of disorder or crime for Article 11 (2) of the ECHR, the protection of public health or morals, and the protection of the rights and freedoms of others.

18 [CSCE/OSCE, Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE](#), 29 June 1990, para. 9.2, whereby OSCE participating States reaffirmed that “(9.2) everyone will have the right of peaceful assembly and demonstration. Any restrictions which may be placed on the exercise of these rights will be prescribed by law and consistent with international standard”; and Charter of Paris for a New Europe (1990), where they affirmed that “without discrimination, every individual has the right to (...) freedom of association and peaceful assembly”.

19 Adopted by the meeting of heads of state or government of the CSCE, 21 November 1990 (preamble).

20 Adopted by the sixteenth Helsinki Ministerial Meeting on 4 and 5 December 2008 (p. 5).

21 See [<ODIHR Panel of Experts on Freedom of Assembly and Association>](#).

22 See ODIHR-Venice Commission, *Guidelines on Freedom of Peaceful Assembly* (3rd edition, 2019), under update, (hereinafter “FoPA Guidelines”).

23 *Ibid.*, para. 44 (FoPA Guidelines).

restraint towards peaceful assemblies in situations where legal or administrative procedures and formalities have not been followed.²⁴

15. The right to freedom of peaceful assembly complements and intersects with other civil and political rights, including the right to freedom of expression (Article 19 of the ICCPR and Article 10 of the ECHR), the right to freedom of association (Article 22 of the ICCPR and Article 11 ECHR), the right to participate in public affairs (Article 25 (a) of the ICCPR) and the right to vote (Article 25 (b) of the ICCPR and Article 3 of Protocol No. 1 to the ECHR). Moreover, the right to freedom of peaceful assembly may overlap with the right to manifest one's religion or belief in community with others.²⁵ Recognizing the interrelation and interdependence of these different rights is vital to ensuring that the right to freedom of peaceful assembly is afforded practical and effective protection.
16. Freedom of peaceful assembly should be enjoyed, as far as possible, without (or with minimal) regulation,²⁶ unless there is a need for special protection. Moreover, states have a positive duty to respect, protect and facilitate the exercise of the right to freedom of peaceful assembly and this duty should be reflected in the legislative framework and relevant law enforcement and other regulations and practices.²⁷ States must promote an enabling environment for the exercise of the right to peaceful assembly without discrimination, and should regulation be considered necessary,²⁸ put in place a legal and institutional framework within which the right can be exercised effectively.²⁹ This also means that public authorities are required to remove all unnecessary legal and practical obstacles to the exercise of the right to freedom of peaceful assembly.³⁰

2. BACKGROUND

17. Freedom of assembly is provided for in Article 21 of the Constitution of Georgia. This provision states that “[e]veryone, except those enlisted in the Defence Forces or bodies responsible for state and public security, shall have the right to assemble publicly and unarmed, without prior permission”. Article 21 (2) further specifies that “[t]he law may establish the necessity of prior notification of authorities if an assembly is held on a public thoroughfare”. Article 21 (3) provides that “[a]uthorities may terminate an assembly only if it assumes an unlawful character”.
18. The existing Law of Georgia on Assemblies and Demonstrations was adopted in 1997 and has been amended several times since then, the last time in November 2022.³¹ The Draft Amendments were submitted by a group of Members of Parliament (MPs) on 27 September 2023 and were adopted pursuant to an accelerated procedure, in first reading

24 *Ibid.*, para. 21 (FoPA Guidelines). See also UN Human Rights Committee, [General comment No. 37 \(2020\) on the right of peaceful assembly \(Article 21\)](#), para. 44.

25 See e.g., ECtHR, [Barankevich v. Russia](#), no. 10519/03, 26 July 2007.

26 FoPA Guidelines, para. 21. However, the measures taken by the authorities and interfering with the right to freedom of assembly should always have a legal basis under domestic law and the law should be accessible to the persons concerned and formulated with sufficient precision (see ECtHR, [Vyrentsov v. Ukraine](#), no. 20372/11, 11 April 2013, para. 52).

27 See FoPA Guidelines, para. 22.

28 In line with the principle of necessity to legislate, whereby state intervention by legislation should only take place where state action is necessary and other, non-legislative interventions are not feasible or unlikely to have a successful outcome, see ODIHR, [Guiding Principles of Democratic Lawmaking and Better Laws](#) (9 October 2023), Principle 4.

29 UN Human Rights Committee, [General comment No. 37 \(2020\) on the right of peaceful assembly \(Article 21\)](#), para. 24.

30 FoPA Guidelines, para.76.

31 [Law of Georgia on Assemblies and Demonstrations](#), Gazette of the Parliament of Georgia, No. 33, 31 July 1997, as last amended on 30 November 2022.

on 4 October, and in second and third reading on 5 October 2023 (see comments on the lawmaking procedure in Sub-Section 7 *infra*).³²

19. The Draft Amendments aim to supplement Article 11 (2) of the existing Law, which provides for a number of prohibited objects or actions for participants to assemblies, relating to weapons and similar objects and substances (paras. (a), (b), (c)), alcoholic beverages (para. (d)) and the intentional creation of obstacles to the movement of transport, including the partial or complete blocking of roadway (para. (e)). The amendment to Article 11 (2) of the Law on Assemblies and Demonstrations proposes to insert an additional sub-paragraph (f). This new provision would prohibit assembly participants from erecting temporary constructions when any of the following grounds are met:
 - it poses a threat to the participants in the assembly or demonstration or other persons;
 - it hampers the “protection of public order and security” by the police;
 - it hinders the “normal functioning of an enterprise, institution or organization”;
 - if the assembly or demonstration would not be significantly hindered without such a construction;
 - if the temporary construction is “not related to the organisation of the assembly or demonstration”.
20. The Draft Amendments would also impose new obligations on organizers and/or participants to assemblies during which temporary construction would be erected. Article 13 (3) of the Law would be supplemented to provide that “*the organizer shall be obliged to call on the participants in the assembly or demonstration within 15 minutes after the warning and take all reasonable steps to open the roadway, restore traffic and/or dismantle the temporary construction, while the owner, legal owner of the temporary construction, or the relevant participant in the assembly or demonstration shall be obliged to dismantle the temporary construction after receiving the warning.*” The proposed changes to Article 13 (6) of the Law also specify the consequences in case such a temporary construction is not dismantled within a reasonable time, i.e., “*the law enforcement authorities shall use the measures provided for by international law and legislation of Georgia in order to eliminate the violation, [...] and/or dismantle the temporary construction*”.
21. The Draft Amendments also supplement Article 174¹ (4) of the Administrative Offences Code of Georgia³³ regarding the violation of the rules for organizing or holding assemblies or demonstrations by adding the confiscation of the item that was an instrument or material object of the administrative offence to the range of existing sanctions.
22. The Explanatory Note accompanying the draft amendments to the Law on Assemblies and Demonstrations explains that the amendments have been proposed in response to information obtained by the State Security Service of Georgia that a certain group of persons in Georgia and outside its borders is planning to “*destabilize Georgia in October-*

32 Available at <[Legislation - Parliament of Georgia](#)>. The Draft Amendments were submitted by a group of Members of Parliament (MPs) on 27 September 2023 and were adopted pursuant to an accelerated procedure, in first reading on 4 October, and in second and third reading on 5 October 2023.

33 [Administrative Offences Code of Georgia](#), Gazette of the Supreme Soviet of the Georgian SSR, No. 12, 1984, as last amended in October 2023.

December 2023”. According to a State Security Service statement, the mentioned persons “plan, inter alia, to organize the so-called tent city, erect barricades on central avenues and near strategic facilities of Georgia, occupy and block the buildings of state bodies” and to “activate an explosive device in the so-called tent city.”³⁴ The Explanatory Note further elaborates that to prevent the aforementioned danger, the draft amendments are necessary to provide “a better opportunity to ensure the safe conduct of assembly and more effective realization of freedom of expression”.

3. Freedom to Choose the Modalities and Manner of an Assembly and Freedom of Expression

23. The proposed amendments to Articles 11 and 13 of the Law on Assemblies and Demonstrations seek to introduce five grounds for prohibiting assembly participants from erecting temporary constructions that would apply for the conduct of *all* participants of peaceful assemblies and/or the manner of holding *all* peaceful assemblies. Despite the mention, in the Explanatory Note, that the stated objective of the Draft Amendments is to respond to some risks of potential events that may occur in October-December 2023, the public authorities are choosing to adopt permanent changes to legislation whereas the alleged risk is temporary in nature (see also Sub-Section 4.3. below). They also seek to expand the powers of law enforcement authorities to be able to take forcible action in response to the prohibited conduct or activities, including by dismantling and confiscating the temporary constructions.
24. At the outset, it is important to underline that the right to freedom of peaceful assembly protects a broad range of gathering and assemblies, including long-term demonstrations, extended sit-ins and “occupy”-style manifestations,³⁵ which would generally involve temporary constructions. The presumption in favour of (peaceful) assemblies, including assemblies which might cause inconvenience to the public and/or disruption of traffic, includes an obligation of tolerance and restraint towards peaceful assemblies in situations where legal or administrative procedures and formalities have not been followed.³⁶
25. The right to freedom of peaceful assembly also encompasses the freedom to choose the modalities and manner of an assembly.³⁷ Under international law, participants should be left to determine whether they want to use equipment such as posters, megaphones, musical instruments or other technical means, such as projection equipment, to convey their message. International law recognizes that assemblies may entail the temporary erection of structures, including sound systems, to reach their audience or otherwise achieve their purpose.³⁸
26. The ECtHR has made clear that the *manner* of an assembly, in itself, may constitute a form of political expression and has held that peaceful assemblies can constitute expressions of opinion within the meaning of Article 10 of the ECHR.³⁹ The organizers

34 Explanatory Note to the Draft Law of Georgia making amendments to the Law of Georgia on Assemblies and Demonstrations, citing an Official Statement of the State Security Service of Georgia issued on 18 September 2023.

35 UN Human Rights Council, [Joint Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies](#), A/HRC/31/66, 4 February 2016 (Joint Report of UN Special Rapporteurs (2016), [A/HRC/31/66](#)), para.10.

36 FoPA Guidelines, para. 21.

37 See FoPA Guidelines, para. 58. See also ECtHR, [Sáska v. Hungary](#), no. 58050/08, 27 November 2012, para. 21

38 UN Human Rights Committee, [General comment No. 37 \(2020\) on the right of peaceful assembly \(Article 21\)](#), para. 58.

39 The ECtHR has held that: “[t]he protection of personal opinions, secured by Article 10, is one of the objectives of freedom of peaceful assembly as enshrined in Article 11 [of the ECHR]”, see ECtHR, [Ezelin v. France](#), no. 11800/85, 26 April 1991, para. 37. For example,

of an assembly should be able to decide upon, without undue state interference, the modalities that will help them maximize the reach of the event⁴⁰ and effectively communicate their message.⁴¹

27. The Explanatory Note accompanying the Draft Amendments refers to “tent city” and “occupy”-style movements, implying potentially long-term demonstrations. As emphasized in the FoPA Guidelines, the protracted duration of an assembly may itself be integral to the message that the assembly is attempting to convey or to the effective expression of that message.⁴² As such, the right to freedom of peaceful assembly is also intrinsically interlinked with the right to freedom of expression. In some cases, the particular manner and form of a protest, for instance a temporary campsite, may acquire symbolic significance inseparable from its message.⁴³ Regarding the setting of campsites specifically, the ECtHR has explicitly noted that “*although Article 11 of the Convention does not guarantee a right to set up a campsite at a location of one’s choice, such temporary installations may in certain circumstances constitute a form of political expression, the restrictions of which must comply with the requirements of Article 10 § 2 of the [ECHR]*”.⁴⁴

4. Restrictions to the Modalities and Manner of Assembly

28. By prohibiting the erection of temporary constructions, the Draft Amendments would restrict the modalities and manner of assembly that organizers and participants should be free to determine. Restrictions on the manner of an assembly may be regulated where necessary to safeguard legitimate interests of the state, the public or the rights of other individuals, provided that the regulation is unrelated to the content of the assembly’s message,⁴⁵ and only if it complies with the above-mentioned requirements of legality, legitimacy, necessity, proportionality and non-discrimination (see para. 12 above).⁴⁶ Examples of such restrictions, assessed on a case-by-case basis for each individual assembly, might relate to the use of sound, amplification equipment, or lighting and visual effects or the erection of protest camps or other non-permanent constructions because of the location or time of day for which the specific assembly is proposed.⁴⁷ In addition, restrictions must not impair the essence of the right, or be aimed at discouraging participation in assemblies or causing a chilling effect.⁴⁸ In particular, any restriction in the manner of assembly should not render the effective communication of the message of the assembly difficult or even impossible.⁴⁹

protests against hunting involving physical disruption of the hunt, or a protest against the extension of a motorway involving a forcible entry into the construction site and climbing into the trees to be felled and onto machinery in order to impede the construction works, were found to constitute expressions of opinion protected by Article 10 of the ECHR, see ECtHR, *Steel and Others v. the United Kingdom*, no. 24838/94, 23 September 1998; and *Hashman and Harrup v. the United Kingdom* [GC], no. 25594/94, 25 November 1999.

40 *Ibid.* FoPA Guidelines, para. 58. See also e.g., ECtHR, *Women on Waves v. Portugal* (2009), no. 31276/05, 3 February 2009, para. 38.

41 Which may even include civil disobedience, see e.g., FoPA Guidelines, para. 58.

42 FoPA Guidelines, para. 146.

43 See e.g., FoPA Guidelines, footnote 280, referring to the UK case, *Tabernacle v. Secretary of State for Defence* [2009].

44 See ECtHR, *Frumkin v. Russia*, no. 74568/12, 5 January 2016, para. 107.

45 FoPA Guidelines, para. 148.

46 FoPA Guidelines, paras. 23-24 and 28-29.

47 FoPA Guidelines, para. 148.

48 UN Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (Article 21)*, para. 36.

49 FoPA Guidelines, para. 148.

4.1. Prescribed by Law

29. The requirement that any restrictions on assemblies be ‘prescribed by law’ not only requires that the restriction should have an explicit basis in domestic law, but also refers to the quality of the law in question.⁵⁰ The law in question must be sufficiently clear and precise to enable an individual to assess whether or not his or her conduct would be in breach of the law and to foresee the likely consequences of any such breach.⁵¹
30. For domestic law to meet the qualitative requirements, it must afford a measure of legal protection against arbitrary interferences by public authorities with human rights and the mandate, duties and powers of the authority responsible for making decisions in relation to assemblies should be clearly stated in law.⁵² As underlined in the case law of the ECtHR, in matters affecting fundamental rights, it would be contrary to the rule of law, one of the basic principles of a democratic society enshrined in both the ECHR and the ICCPR, for legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate with sufficient clarity the scope of any such discretion and the manner of its exercise.⁵³
31. The range of grounds included to justify the proposed new prohibition under Article 11(2)(f) against erection of temporary constructions are wide and not clearly defined. This may potentially lead to arbitrary or discriminatory application of the Law by the public authorities in charge of its interpretation and implementation. Indeed, the proposed new provisions give extensive discretion to law enforcement agencies to decide what conduct “*poses a threat to the [assembly] participants [...] or other persons*”, or “*hampers the protection of public order and security by the police*”, or “*hinders the normal functioning of an enterprise, institution or organization*”. Regarding the threats to any person in particular, the proposed amendments do not specify the nature of the threat, for instance whether this refers to public safety, health or potential danger to other persons’ life, nor the imminence of the threat, whereas it should be limited to cases where in the specific circumstances of an assembly, there is a significant and imminent danger of physical injury.⁵⁴
32. The public authorities would also have to assess whether the erection of the temporary constructions is unnecessary (“*if the assembly or demonstration would not be significantly hindered without such a construction*”) or whether it is or not “*related to the organization of the assembly or demonstration*”, whereas it should be for the organizers themselves to decide the manner in which to communicate their message, only with very limited and narrowly defined exceptions provided by international law. Moreover, the requirement that the temporary construction should be necessary or related to the said assembly in order not to be prohibited appears rather vague and potentially subject to arbitrary interpretation by the public authorities. This also means some form of

50 FoPA Guidelines, para. 98.

51 See, for example, ECtHR, *Hashman and Harrup v. the United Kingdom* [GC], no. 25594/94, 25 November 1999; *Gillan and Quinton v. the United Kingdom*, no. 4158/05, 12 January 2010; *Kudrevičius and Others v Lithuania* [GC], no. 37553/05, 15 October 2015. See also FoPA Guidelines, para. 23.

52 FoPA Guidelines, para. 97.

53 See ECtHR, *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, 15 November 2018; UN Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (Article 21)*, para. 39.

54 FoPA Guidelines, para. 138. See also UN Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (Article 21)*, para. 43, which refers to “a real and significant risk to the safety of persons (to life or security of person) or a similar risk of serious damage to property”.

assessment of the content of the assembly by the public authorities will need to be made to determine whether the said construction is related to the assembly.

33. In light of the foregoing, the proposed amendments have the potential to be applied arbitrarily in a manner that would unnecessarily and unlawfully fetter the right to freedom of peaceful assembly. As such, it would not satisfy the ‘quality of law’ aspect of the criteria that any restriction must be ‘prescribed by law’.

4.2. Legitimate Aim

34. The legitimate aims listed in international instruments, which may justify restricting the right to freedom of peaceful assembly, are exhaustive and must be interpreted narrowly.⁵⁵
35. The Explanatory Note accompanying the Draft Amendments refers to a statement by the State Security Service of Georgia citing risks of destabilization of the country, plans to organize “*the so-called tent city, erect barricades on central avenues and near strategic facilities of Georgia, occupy and block the buildings of state bodies*” and refers to plans to “*activate an explosive device*”, thereby inferring some risks to the national security and public order, as well as possibility of the commission of crime.
36. Restrictions on the right to freedom of peaceful assembly based on “national security” should be imposed only to protect the existence of the nation or its territorial integrity or political independence against violence, or a credible threat or use of force.⁵⁶ The UN Human Rights Committee has underlined that this threshold will only exceptionally be met by assemblies that are peaceful.⁵⁷ As noted by the ECtHR, “*political ideas which challenge the existing order and whose realisation is advocated by peaceful means must be afforded a proper opportunity of expression through the exercise of the right of assembly as well as by other lawful means.*”⁵⁸ When a State invokes “national security” or “protection of public order” to restrict an assembly, it must prove the precise nature of the threat and the specific risks posed, to demonstrate that the objective of the measure is to avert a real, and not only hypothetical danger to the national security.⁵⁹ It is not sufficient for the State to refer generally to the security situation. National, political or government interest is not synonymous with national security or public order.⁶⁰ Moreover, a state cannot invoke national security as a justification for suppressing political dissent or opposition of any kind or for perpetrating repressive practices against its population.⁶¹ While acknowledging that the Explanatory Note mentions some rather concrete threat allegations emanating from the state security service, and ODIHR is not in a position to assess the reality of such potential risks, nevertheless, these temporary threats would not justify the introduction of a *permanent* prohibition on temporary constructions erected during assemblies (see Sub-Section 4.3 below).

55 FoPA Guidelines, paras. 28 and 130. See also ECtHR, [Navalnyy v. Russia](#) [GC], nos. 29580/12 and 4 others, 15 November 2018, para. 122.

56 FoPA Guidelines, para. 137; and UN HRC, [General comment No. 37 \(2020\) on the right of peaceful assembly \(Article 21\)](#), para. 42, which provides that the interests of national security “...may serve as a ground for restrictions if such restrictions are necessary to preserve the State’s capacity to protect the existence of the nation, its territorial integrity or political independence against a credible threat or use of force.”

57 UN HRC, [General comment No. 37 \(2020\) on the right of peaceful assembly \(Article 21\)](#), para. 42.

58 See ECtHR, [Stankov and the United Macedonian Organisation Ilinden v. Bulgaria](#), nos. 29221/95 and 29225/95 2 October 2001, para. 97.

59 See e.g., UN Human Rights Committee, *Mr. Jeong-Eun Lee v. Republic of Korea*, Communication No. [1119/2002](#), U.N. Doc. CCPR/C/84/D/1119/2002(2005), para. 7.2.

60 See e.g., *Joint Report of UN Special Rapporteurs* (2016), [A/HRC/31/66](#), para. 31.

61 FoPA Guidelines, para. 137.

37. The objective to protect ‘public order/*ordre public*’ is rather vague and has been interpreted in a variety of ways, but is generally understood to be wider than that of ‘prevention of disorder or crime’; however, there is broad consensus that a hypothetical risk of public disorder does not by itself constitute a legitimate ground for prohibiting a peaceful assembly and that the ground should be understood to involve an interest in preventing imminent violent conduct.⁶² Peaceful assemblies can in some cases be inherently or deliberately disruptive and require a significant degree of toleration.⁶³ The mere fact that the content or manner in which an assembly is conducted may annoy, offend, shock or disturb others, or that such an assembly may cause some temporary disruptions of daily life, or affect the aesthetic appearance of a public space, does not by itself amount to a disruption of public order.⁶⁴
38. The Explanatory Note accompanying the Draft Amendments also refers to the need to “prevent the aforementioned danger”, justifying the change to the legal framework, thereby inferring that it aims at the ‘prevention of crime’. While the ECtHR has noted that the ECHR “obliges State authorities to take reasonable steps within the scope of their powers to prevent criminal offences of which they had or ought to have had knowledge”, it has further emphasized that this “does not permit a state to protect individuals from criminal acts of a person by measures which are in breach of that person’s Convention rights”.⁶⁵ Preventive restrictions of individual rights are thus only possible in exceptional cases where there is a clear and present danger that a crime will be committed.⁶⁶ States should always seek to ensure that any preventive intervention that negatively impacts an individual’s right to freedom of peaceful assembly is based on objective evidence that without such intervention, the individual will commit a “concrete and specific”⁶⁷ offence of significance (constituting, for example, actual violence or serious criminal damage).⁶⁸
39. International and regional human rights standards recognize that assemblies may impact the rights and freedoms of others, including those who live, work, trade and carry on business in the same locality. However, balancing the right to assemble and the rights of others must always aim at ensuring that assemblies may proceed, unless they impose unnecessary and disproportionate burdens on others.⁶⁹ Some degree of disruption with respect to one’s rights must be tolerated if the essence of the right to peacefully assemble is not to be deprived of any meaning.⁷⁰ The UN HRC specifically underlined that “[p]rivate entities and broader society may be expected to accept some level of disruption as a result of the exercise of the right [to freedom of peaceful assembly]”.⁷¹ Neither temporary disruption of vehicular or pedestrian traffic, nor opposition to an assembly, are of themselves legitimate reasons to impose restrictions on an assembly.⁷² Where demonstrators do not engage in acts of violence, public authorities must show a

62 FoPA Guidelines, para. 139.

63 UN HRC, [General comment No. 37 \(2020\) on the right of peaceful assembly \(Article 21\)](#), para. 44.

64 FoPA Guidelines, para. 139.

65 See ECtHR, [Schwabe and M.G. v. Germany](#), nos. 8080/08 and 8577/08, 1 December 2011, para. 85.

66 See FoPA Guidelines, para. 140.

67 See ECtHR, [Shimovolos v. Russia](#), no. 30194/09, 21 June 2011, para. 55.

68 See FoPA Guidelines, para. 140.

69 FoPA Guidelines, para. 143.

70 FoPA Guidelines, para. 143.

71 UN HRC, [General comment No. 37 \(2020\) on the right of peaceful assembly \(Article 21\)](#), para. 31.

72 FoPA Guidelines, para. 143.

certain degree of tolerance towards peaceful gatherings so that the freedom of assembly guaranteed by international instruments is not to be deprived of all substance.⁷³

40. The Explanatory Note also refers to the need to “*protect the safety of participants in the assembly or demonstration*”. It is worth underlying that the state's positive obligations (including to protect the safety of assembly participants and the rights and freedoms of others) must not be relied upon to justify unnecessary interventions that serve to undermine and subvert the state's negative obligation not to intervene.
41. The prohibition against erection of temporary constructions when they are deemed unnecessary or unrelated to the assembly or demonstration do not seem to pursue any of the legitimate aims exhaustively listed in the ICCPR or the ECHR, and hence appears unjustified on this basis alone.
42. It is not the purpose of this Urgent Opinion to assess or question the reality of the potential risks invoked as a justification to introduce the new restrictions. In any case, whilst the Explanatory Note appears to justify the proposed amendments to the Law on Assemblies and Demonstrations on the grounds that they pursue the legitimate aims of public safety, the prevention of disorder or crime and the protection of the rights and freedoms of others, the restriction must still satisfy the requirements of necessity, proportionality and non-discrimination.

4.3. Necessary in a Democratic Society

43. The test of ‘necessary in a democratic society’ means that any restriction imposed on the right to peaceful assembly, whether set out in law or applied in practice, must meet a ‘pressing social need’;⁷⁴ be proportionate to the legitimate aim pursued and the reasons justifying it must be relevant and sufficient.⁷⁵ The requirement to meet a ‘pressing social need’ means that a restriction must be considered imperative, rather than merely ‘reasonable’ or ‘expedient’.⁷⁶ The means used should be proportional to the aim pursued, which also means that where a wide range of interventions may be suitable, the least restrictive or invasive means must always be used.⁷⁷
44. The existing Article 11(2) already prohibits participants of an assembly from carrying certain objects including firearms, explosive or flammable or radioactive materials;⁷⁸ tear and nerve gases and toxic substances;⁷⁹ objects and substances that “could be used to harm the life or health” of other participants or other persons;⁸⁰ and alcoholic drinks.⁸¹ It also prohibits participants from engaging in certain conduct or activities, including intentionally obstructing traffic⁸² or blocking, visually distorting, damaging or otherwise spoiling buildings, memorials or monuments of historical or archaeological or scientific significance.⁸³ Existing Articles 11 and 11.1 of the Law on Assemblies and

73 See ECtHR, *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, 15 October 2015; *Oya Ataman v. Turkey*, no. 74552/01, 5 December 2006; *Bukta and Others v. Hungary*, no. 25691/04, 17 July 2007.

74 This means that a restriction must be considered imperative, rather than merely ‘reasonable’ or ‘expedient’: ECtHR, *Chassagnou v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, 29 April 1999.

75 See, for example, ECtHR, *Taranenko v. Russia*, no. 19554/05, 15 May 2014.

76 FoPA Guidelines, para. 131.

77 FoPA Guidelines, para. 131.

78 Article 11(2)(a).

79 Article 11(2)(c).

80 Article 11(2)(b).

81 Article 11(2)(d).

82 Article 11(2)(e).

83 Article 11(3).

Demonstrations already impose broad restrictions on peaceful assemblies and demonstrations in order to prevent obstruction of roadways or disruption to vehicular traffic, the analysis of which goes beyond the scope of this Urgent Opinion. The proposed amendments to Article 11(2) would add to those restrictions and seek to prohibit the erection of ‘temporary constructions’ on a broad range of grounds.

45. International law is clear that given the importance of freedom of peaceful assembly in a democratic society, assemblies should be regarded as an equally legitimate use of public space as other, more routine uses of such space, such as pedestrian and vehicular movement or economic activity.⁸⁴ There are many legitimate ways in which individuals may use public spaces. A certain level of disruption to ordinary life caused by assemblies, including temporary disruption of traffic, annoyance and even harm to commercial activities, should be accommodated and tolerated, unless they impose unnecessary and disproportionate burdens on others.⁸⁵ Where demonstrators do not engage in acts of violence, public authorities must show a certain degree of tolerance towards peaceful gatherings if the right is not to be deprived of all substance.⁸⁶
46. As indicated above, the Draft Amendments seek to address an alleged risk that is temporary in nature (October-December 2023 as indicated in the Explanatory Note). The proposed amendments however have no sunset clause, meaning that the restrictions will thus continue to apply even after the potential security risks will cease, thereby questioning the proportionality of the contemplated measures.
47. The proposed amendments will introduce broad and vaguely framed prohibitions in law, applicable to *all* participants of peaceful assemblies and/or the manner of holding *all* peaceful assemblies. By introducing in the law broad and vaguely framed grounds for prohibition to erect temporary constructions during assemblies, thereby failing to differentiate between different ways of exercising the right to freedom of peaceful assembly and precluding any consideration of the specific circumstances of each assembly, the proposed restrictions would *prima facie* be disproportionate.⁸⁷ In this respect, requiring, during a given assembly, the dismantling of a specific temporary construction that presents an imminent threat to the health or life of assembly participants or other persons, or prevent the police to protect public order, would be least restrictive than an outright prohibition and potential confiscation (see Sub-Section 5).
48. It is also important to note in relation to the proposed amendment to Article 11 of the Law on Assemblies that paragraph 4 of Article 11.1 already contains a provision prohibiting the “artificial” blocking of the roadway by assemblies, unless this is necessary due to the number of participants. The existing provisions of the Law on Assemblies and Demonstrations provides that “*the decision [on restriction] referred to in this article [decision on opening the roadway and/or resuming traffic] shall be taken*

84 See UN Human Rights Committee, [General comment No. 37 \(2020\) on the right of peaceful assembly \(Article 21\)](#), para. 7; ECtHR, [Patyi and Others v. Hungary](#), no. 5529/05, 7 October 2008; ECtHR rejected the Hungarian government’s arguments regarding potential disruption to traffic and public transport; [Körtvélyessy v. Hungary](#), no. 7871/10, 5 April 2016, para. 29: the ECtHR concluded “*the authorities, when issuing the prohibition on the demonstration and relying on traffic considerations alone, failed to strike a fair balance between the rights of those wishing to exercise their freedom of assembly and those others whose freedom of movement may have been frustrated temporarily, if at all.*”

85 FoPA Guidelines, para. 143.

86 ECtHR, [Kuznetsov v. Russia](#), no. 10877/04, 23 October 2008; UN Human Rights Committee, [General comment No. 37 \(2020\) on the right of peaceful assembly \(Article 21\)](#), para. 47; and FoPA Guidelines, paras. 21 and 62.

87 In relation to blanket restrictions imposed on the time, location or manner of an assembly, see e.g., FoPA Guidelines, paras. 133, 145 and 151. See also Joint Report of UN Special Rapporteurs (2016), [A/HRC/31/66](#), para. 30; and UN Human Rights Committee, [General comment No. 37 \(2020\) on the right of peaceful assembly \(Article 21\)](#), para. 38, which states that “[b]lanket restrictions on peaceful assemblies are presumptively disproportionate”.

for each specific case, considering the current circumstances and public interest, according to Article 2(3) of this Law” (Article 11¹ (3)). It is thus not clear why the existing provisions are not sufficient to address the alleged risks both of disruption and to security. In addition, Article 11¹(4) specifically prohibits the blocking of the carriageway by vehicles, structures or other objects. The proposed amendments therefore appear to be overlapping with the existing provisions and/or redundant, which questions the very necessity for adopting them. Similarly, existing police powers should in principle be sufficient to deal with the suspected explosive devices that are being invoked in partial support of the proposed amendments.

49. In light of the foregoing, the Draft Amendments fail to satisfy the criteria that any restriction imposed must be necessary and proportionate.

4.4. Non-Discriminatory

50. By limiting the manner of assembly that the organizers and/or participants may choose, this would indirectly introduce a differential treatment between the more traditional forms of assemblies (such as planned and organized assemblies, parades, processions) and “occupy”-style manifestations, which would generally involve temporary constructions. As underlined above, the right to freedom of peaceful assembly also protects many different types of peaceful assemblies, including the latter. In practice, the proposed restrictions may be used to suppress political dissent or opposition of any kind, who may be more inclined to use these types of assemblies to convey their message.⁸⁸

4.5. Conclusion

51. In light of the foregoing, **the Draft Amendments would not fulfil the strict requirements under international law when restricting the right to freedom of peaceful assembly, especially in light of their broad and vague wording, and the fact that the measures they aim to introduce, do not appear necessary and proportionate. Consequently, their adoption should not be pursued.**

5. Obligations of Organizers and Participants of Assemblies

52. The proposed amendments to Article 13(3) provide that if participants violate Article 11(2)(e) [*prohibition against intentionally obstructing traffic*] or (f) [*prohibition against erecting a temporary construction*] and/or in the event that the municipal authorities decide to unblock the roadway,⁸⁹ the assembly organizer is required to call on the assembly participants within 15 minutes of the warning to take all reasonable steps to unblock the roadway, restore traffic flow and/or dismantle the temporary construction or to call on the owner of the temporary construction to dismantle it. The proposed revised Article 13(6) would provide that if the organizer does not comply with the requirement in Article 13(3) to call on participants to dismantle the temporary construction, or has complied with the requirement but has failed to ensure that the construction was dismantled, the law enforcement authorities will use their legal powers in order to open [unblock] the roadway, restore traffic flow and/or dismantle the temporary construction.

88 FoPA Guidelines, para. 137.

89 Under Article 11.1, paragraph 1.

53. Essentially, the new provision gives law enforcement authorities the power to forcibly disrupt and disperse a peaceful assembly on the ground of obstruction to a roadway or vehicular traffic by a temporary construction.
54. Under international law, an interference with an assembly involving its disruption or dispersal should be a measure of last resort, and not be permissible unless it is no longer peaceful, or if there is clear evidence of an imminent threat of serious violence that cannot be reasonably addressed by more proportionate measures, such as targeted arrests⁹⁰ or the prosecution of individual demonstrators after the assembly.⁹¹ Only in exceptional cases may an assembly be dispersed, when this is deemed necessary and proportionate in the interests of public order or health, depending on the size, location and circumstances of an assembly.⁹² The ECtHR has made clear that a decision to disperse an assembly must be justified by relevant and sufficient reasons⁹³ and the non-compliance of the assembly with the formal requirements for holding it is not sufficient for its dispersal.⁹⁴ An interference with an assembly involving its disruption, dispersal or the arrest of participants can only be justified on specific and stated substantive grounds, such as serious risks provided for by law⁹⁵ and only after the participants had been given sufficient opportunity to manifest their views.⁹⁶ In all cases, the law enforcement rules on use of force that should be compliant with international human rights standards must be strictly followed.
55. However, an assembly that remains peaceful while nevertheless causing a high level of disruption, such as the extended blocking of traffic, may be dispersed, as a rule, only if the disruption is “serious and sustained”.⁹⁷ This high cumulative threshold means that dispersal is not justified where disruption is serious (but not also sustained) or sustained (but not also serious).
56. In light of the foregoing, **if the adoption of the Draft Amendments is nevertheless pursued, Article 13(6) should be revised to ensure that only those temporary constructions causing a serious and sustained level of disruption, such as the extended blocking of roadways or vehicular traffic, will be dismantled.**

6. Sanctions in Case of Non-Compliance

57. The proposed amendments to Article 174¹ of the Georgian Administrative Offences Code proposes an additional sanction for violating the Law on Assemblies and Demonstrations. The amendment to Article 174(4) provides that “any item” used as an “instrument” or “material object” in the commission of an administrative offence under Articles 9, 11 or 11¹ of the Law on Assemblies and Demonstrations will be confiscated.⁹⁸ The possibility

90 UN HRC, *General comment No. 37 (2020) on the right of peaceful assembly (Article 21)*, para.85; FoPA Guidelines, para.179.

91 FoPA Guidelines, para. 179.

92 FoPA Guidelines, para. 179. See also UN Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (Article 21)*, para. 85.

93 European Court of Human Rights, *Ibrahimov and Others v. Azerbaijan*, 2016; *Laguna Guzman v. Spain*, 2020.

94 ECtHR Article 11 Guide, para. 83.

95 See ECtHR, *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, 15 November 2018.

96 See ECtHR, *Eva Molnar v. Hungary*, no. 10346/05, 7 October 2008.

97 UN Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (Article 21)*, para. 85 (emphasis added)

98 If the Draft Amendments are adopted, the penalties for assembly organizers and participants who violate Articles 9, 11 or 11¹ of the Law on Assemblies and Demonstrations would be as follows: for **assembly organizers**, confiscation of the item that was an instrument or material object of the administrative offence committed plus a fine in the amount of GEL 5000 (approx. € 1,750); **or** confiscation of the item that was an instrument or material object of the administrative offence committed plus administrative detention for a term of

to confiscate all instruments or objects that may be used for the commission of the said offences, without distinguishing between those items that may be dangerous or illegal and other objects, would potentially allow the confiscation of items like bullhorns and other sound equipment that could later be used lawfully at later demonstrations. This indiscriminate sanction would appear disproportionate.

58. Any sanction or punishment should be based on a law that complies with the principle of legality and foreseeability of legislation, and that is sufficiently clear.⁹⁹ As underlined above, the proposed amendments to Article 11 (2) of the Law on Assemblies and Demonstrations contain a number of vague and broad terms and hence it may not be clear for an organizer or participant when violation of the provision may occur.
59. Liability should be based on individual culpability and must be supported by evidence.¹⁰⁰ Organizers and stewards are obliged to make reasonable efforts to comply with legal requirements and to ensure that their assemblies are peaceful.¹⁰¹ Organizers and participants may only be held accountable for their own, individual unlawful conduct, including the personal and intentional incitement of others, and they should not be held liable for the failure to perform their responsibilities in cases where they are not individually responsible.¹⁰²
60. Individual liability arises if a participant intentionally, or with criminal negligence, commits an offence during an assembly or intentionally fails to follow the lawful directions of law enforcement officials.¹⁰³ Organizers may only be held liable where they have personally and intentionally incited, caused or participated in actual damage or disorder.¹⁰⁴ The criminal liability of an organizer of an assembly cannot be engaged as long as the organizer does not directly participate in the incriminated acts nor encourage them.¹⁰⁵ Where criminal or administrative sanctions are imposed on organizers or participants of a peaceful assembly for their unlawful conduct, such sanctions must be necessary, proportionate, non-discriminatory in nature and must not be based on ambiguous or overbroadly defined offences.¹⁰⁶ Further, the nature and severity of any penalties imposed for conduct involving a degree of disturbance of public order, must be proportionate.¹⁰⁷ Unnecessary or disproportionately harsh sanctions for behaviour during assemblies could, if known in advance, inhibit the holding of such events and have a chilling effect that may prevent participants from attending.¹⁰⁸ The FoPA Guidelines make clear that penalties for minor offences that do not threaten to cause or result in significant harm to public order or to the rights and freedoms of others should accordingly be low and the same as minor offences unrelated to assemblies.¹⁰⁹

up to 15 days; for **assembly participants**: confiscation of the item that was an instrument or material object of the administrative offence committed plus a fine in the amount of GEL 500 (approx. € 175); or confiscation of the item that was an instrument/ material object of the administrative offence committed plus administrative detention for a term of up to 15 days. According to the [National Statistics Office of Georgia](#), during quarter II of 2023, the average monthly salary amounted to GEL 1,804.5 (approx. € 632).

99 FoPA Guidelines, para. 221.

100 FoPA Guidelines, para. 224.

101 FoPA Guidelines, para. 224.

102 See FoPA Guidelines, para. 224; and UN Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (Article 21)*, para. 65.

103 See FoPA Guidelines, para. 224.

104 See FoPA Guidelines, para. 224.

105 UN Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (Article 21)*, paras. 17 and 67; see also e.g., ECtHR, *Mesut Yildiz and Others v. Turkey*, no 8157/10, 18 July 2017;.

106 FoPA Guidelines, para. 222; UN Human Rights Committee, *General comment No. 37 (2020) on the right of peaceful assembly (Article 21)*, para. 67.

107 See e.g., European Court of Human Rights, *Ekrem Can and Others v. Turkey*, no. 10613/10, 8 March 2022.

108 FoPA Guidelines, para. 222.

109 FoPA Guidelines, para. 222.

61. Article 174¹ of the Georgia Administrative Offences Code imposes significant sanctions on both participants and organizers of peaceful assemblies for violating a very broad range of administrative offences under Articles 9, 11 or 11¹ of the Law on Assemblies. The sanctions provided in Article 174¹ of the Code range from confiscation of property intended to be used for the commission of an administrative offence plus a fine to confiscation of property plus administrative detention for a term of up to 15 days. The administrative detention for a term of up to 15 days is the most serious penalty contemplated in the Georgian Administrative Offences Code¹¹⁰ and is currently never provided in combination with a fine.¹¹¹ It is otherwise contemplated as a stand-alone penalty for three administrative offences, or as an alternative to a fine for six other administrative offences, noting that for three of the latter, the respective provisions underline that the administrative detention should be applied only in exceptional cases, where the application of a fine seems insufficient after taking into account the circumstances of the case and the person of the offender.¹¹² The possibility to impose the most serious administrative sanction combined with a fine and confiscation for simply erecting temporary constructions appears disproportionate.
62. The issue of proportionality is particularly relevant to administrative sanctions imposed in the context of peaceful assemblies. Any penalty must not be excessive; a disproportionately large fine, especially in conjunction with the imposition of administrative detention raises particular concerns. The UN Human Rights Committee has emphasized that such detention, not in contemplation of prosecution on a criminal charge, presents severe risks of arbitrary deprivation of liberty.¹¹³ The ECtHR has also made clear that it will examine with particular scrutiny all cases where sanctions imposed by national authorities for non-violent conduct involve a prison sentence.¹¹⁴ Such types of penalties raise due-process concerns, and may have a chilling effect more broadly on the exercise of the right to freedom of peaceful assembly.¹¹⁵
63. **It is recommended that the sanctions imposed for administrative offences under Article 174¹, in particular the sanction of administrative detention, be reviewed to ensure their compliance with international and regional human rights stands.**

110 See Article 24 (1) of the [Administrative Offences Code of Georgia | სსიპ "საქართველოს საკანონმდებლო მსახური" \(matsne.gov.ge\)](http://matsne.gov.ge).

111 Blocking a courthouse entrance, holding assemblies or demonstrations at the place of residence of a judge or in common courts of Georgia, as a stand-alone penalty (Article 174¹); Failure to pay the fine for the failure to appear before the military conscription commission with the intention of evading military service or for the failure to appear when called for military reserve service with the intention of evading military reserve service, as a stand alone penalty (Article 197¹ and Article 197³); Leaving the scene of a road accident or not complying with a police officer's/traffic controller's demand to stop the vehicle, when this resulted in the creation of an accident situation or interruption of traffic (Article 123(4) as an alternative to a fine of GEL 500), Repeated operation of a vehicle without a driving license during one year (Article 121), as an alternative to a fine of GEL 1,500; for the repeated misuse of the single emergency (rescue) service call number '112' during one year (Article 17415), as an alternative to a fine of GEL 1,500. For the "Illegal manufacturing, purchase, storage, transportation, transfer and/or use of a small quantity of narcotic drugs" (Article 45), the provision specifies that administrative detention of up to 15 days should be applied only in exceptional cases, if the application of the fine of GEL 500 is considered insufficient after taking into account the circumstances of the case and the person of the offender; similarly, for the "Performing or servicing foreign exchange transactions without a licence" or "Unreasonable refusal by the employee of a foreign exchange institution to exchange foreign currency into national currency" (Article 178 (1) and (2) respectively), the provision specifies that the administrative detention of up to 15 days could be applied but only "if the application of the fine seems insufficient after taking into account the circumstances of the case and the person of the offender".

112 *Ibid.*

113 See UN Human Rights Committee, *General Comment No. 35 (2014) on liberty and security of person*, para. 15.

114 See ECtHR, *Peradze and Others v. Georgia*, no. 5631/16, 15 December 2022.

115 Joint Report of UN Special Rapporteurs (2016), [A/HRC/31/66](http://www.hrc.org/), para.48.

7. Recommendations Related to the Process of Preparing and Adopting the Proposed Amendments

64. The Draft Amendments were submitted by a group of MPs on 27 September 2023 and were adopted pursuant to an accelerated procedure, with the three readings leading to the adoption of the law happening within two days, on 4-5 October 2023.¹¹⁶
65. As underlined in *ODIHR Guiding Principles of Democratic Lawmaking and Better Laws* (2023), accelerated legislative procedure “*should be used rarely and only in exceptional cases of genuine urgency to pass a specific law, as the process entails a lack of legislative planning and less or no time for in-depth consultations on draft laws, nor for adequate parliamentary scrutiny.*”¹¹⁷ The Guiding Principles further underline that “[t]he legal framework should define precisely and narrowly the circumstances in which fast-track procedures may be applied and should require proper justification” and “[a]ccelerated lawmaking procedures should only be possible if they are based on a formal request submitted in accordance with the relevant legislation”.¹¹⁸ They should not be applied to introduce important and/or wide-ranging reforms, such as legislation significantly impacting the exercise of human rights and fundamental freedoms.¹¹⁹
66. Article 117 of the Rules of Procedure of the Parliament of Georgia provides for such an accelerated procedure.¹²⁰ Pursuant to Article 117 (3) of the Rules of Procedure, a decision on the use of the accelerated procedure shall be made by the Parliamentary Bureau, on the basis of a written substantiated request of the initiator of the draft law. The provision however does not provide for precisely and narrowly defined circumstances when the use of such a procedure may be invoked.
67. The Explanatory Note accompanying the Draft Amendments justifies the use of the accelerated procedure by a general reference to “*the necessity of effective and timely response to the threats mentioned [reference to the official statement of the State Security Service of Georgia issued on 18 September 2023]*”. However, in light of what is stated under Sub-Section 4 above, some questions may be raised as to the genuine necessity to legislate in this case. Moreover, the use of the accelerated procedure to adopt or amend legislation that may significantly impact the exercise of human rights and fundamental freedoms should be avoided.¹²¹ In any case, laws passed by accelerated procedures should be subjected to special oversight and should ideally contain a review clause.¹²²
68. More generally, OSCE participating States have committed to ensure that legislation will be “*adopted at the end of a public procedure, and [that] regulations will be published, that being the condition for their applicability*” (1990 Copenhagen Document, para. 5.8).¹²³ Moreover, key commitments specify that “[l]egislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives” (1991 Moscow Document, para. 18.1).¹²⁴ The

116 Available at <[Legislation - Parliament of Georgia](#)>. The Draft Amendments were submitted by a group of Members of Parliament (MPs) on 27 September 2023 and were adopted pursuant to an accelerated procedure, in first reading on 4 October, and in second and third reading on 5 October 2023.

117 See ODIHR, *Guiding Principles of Democratic Lawmaking and Better Laws* (9 October 2023), Principle 11.

118 *Ibid.* Principle 11.

119 *Ibid.* Principle 11.

120 See <[Rules of Procedure of the Parliament of Georgia | სსიპ "საქართველოს საკანონმდებლო მსგნე" \(matsne.gov.ge\)](#)>.

121 ODIHR, *Guiding Principles of Democratic Lawmaking and Better Laws* (9 October 2023), Principle 11.

122 *Ibid.* Principle 11.

123 Available at <<http://www.osce.org/fr/odihr/elections/14304>>.

124 Available at <<http://www.osce.org/fr/odihr/elections/14310>>.

Venice Commission's Rule of Law Checklist also emphasizes that the public should have a meaningful opportunity to provide input.¹²⁵ The FoPA Guidelines underline the importance of ensuring a consultative approach to the drafting of legislation and related regulations pertaining to the right to freedom of peaceful assembly, to ensure that the needs and perspectives of all persons or groups are taken into consideration, including those responsible for or affected by its implementation, as well as other interested individuals and groups (including local human rights organizations).¹²⁶ Such consultations should be an integral part of the legislative drafting process, and need to be open, transparent, meaningful and inclusive. In particular, sufficient and appropriate outreach activities should ensure the involvement of interested parties from various groups (particularly those facing particular challenges in the exercise of their rights to freedom of peaceful assembly) representing different and opposing views (including those that may be critical of the proposals made). The authorities responsible for organizing consultations should respond to proposals made by stakeholders, in particular where these proposals are not incorporated into the relevant draft law or policy (in this case, the authorities should explain why).¹²⁷

69. In light of the above, **the public authorities are encouraged to ensure that any amendments to the Law on Assemblies and Demonstrations are subjected to inclusive, extensive and effective consultations, including with civil society, and ensuring the involvement of interested parties from various groups representing different and opposing views, offering equal opportunities for women and men, for persons with disabilities, and persons from under-represented or marginalized groups to participate. According to the principles stated above, such consultations should take place in a timely manner, at all stages of the law-making process, including before Parliament. The accelerated legislative procedure should not be used to amend the Law on Assemblies and Demonstrations, and should it be nevertheless used, special oversight should be in place, including a review clause. More generally, as an important element of good law-making, a consistent monitoring and evaluation system of the implementation of the Law and its impact should also be put in place that would efficiently evaluate the operation and effectiveness of the revised Law, once adopted.**¹²⁸

[END OF TEXT]

125 See Venice Commission, [Rule of Law Checklist](#), CDL-AD(2016)007, Part II.A.5.

126 FoPA Guidelines, para. 99.

127 FoPA Guidelines, para. 99.

128 See e.g., OECD, [International Practices on Ex Post Evaluation](#) (2010).

Annex 1 – Draft Law of Georgia on Making Amendments to the Law of Georgia on Assembly and Demonstrations (version as of 17 October 2023)

DRAFT

**LAW OF GEORGIA
ON MAKING AMENDMENTS TO THE LAW OF GEORGIA ON ASSEMBLIES
AND DEMONSTRATIONS**

Article 1. The following amendment shall be made to the Law of Georgia on Assemblies and Demonstrations (Gazette of the Parliament of Georgia, No. 33, July 31, 1997, p. 39):

1. Subparagraph "f" shall be added to paragraph 2 of Article 11, as follows:

"f) putting up a temporary construction, if it poses a threat to the participants in the assembly or demonstration or other persons, hampers the protection of public order and security by the police, hinders the normal functioning of an enterprise, institution or organization, or if the assembly or demonstration is not significantly hindered without such a construction, and/or if such a construction is not related to the organization of the assembly or demonstration."

2. Article 13:

a) Paragraph 3 of Article 13 shall be formulated as follows:

"3. In case of violating the requirements of subparagraph "e" and/or subparagraph "f" of paragraph 2 of Article 11 of this Law and/or making a decision provided for in paragraph 1 of Article 11¹ of this Law, the organizer shall be obliged to call on the participants in the assembly or demonstration within 15 minutes after the warning and take all reasonable steps to open the roadway, restore traffic and/or dismantle the temporary construction, while the owner, legal owner of the temporary construction, or the relevant participant in the assembly or demonstration shall be obliged to dismantle the temporary construction after receiving the warning.";

b) Paragraph 6 shall be formulated as follows:

"6. If the organizer did not fulfill the obligation referred to in paragraph 2 and/or paragraph 3 of this Article, or fulfilled it but failed to eliminate the violation within a reasonable time, and if the owner, legal owner of the temporary construction, or the relevant participant in the assembly or demonstration did not dismantle the temporary construction within a reasonable time, the law enforcement authorities shall use the measures provided for by international law and legislation of Georgia in order to eliminate the violation, open the roadway, restore the traffic and/or dismantle the temporary construction."

Article 2. This Law shall take effect upon its publication.

President of Georgia

Tbilisi,

October ... 2023

Annex 2 – Draft Law of Georgia on Making Amendments to the Administrative Offences Code of Georgia (version as of 17 October 2023)

DRAFT

LAW OF GEORGIA

ON MAKING AMENDMENTS TO THE ADMINISTRATIVE OFFENCES CODE OF GEORGIA

Article 1. Part 4 of Article 174¹ of the Administrative Offences Code of Georgia (Gazette of the Supreme Soviet of the Georgian SSR, No. 12, 1984, Art. 421,) shall be formulated as follows:

"4. Violation of the norms laid down in Article 9, 11 or 11¹ of the Law of Georgia on Assemblies and Demonstrations -

shall result in the confiscation of the item that was an instrument or material object of the administrative offence committed and a fine in the amount of GEL 500 or confiscation of the item that was an instrument or material object of the administrative offence committed and administrative detention for a term of up to 15

days, and if the offender is the organizer - confiscation of the item that was an instrument or material object of the administrative offence committed and a fine in the amount of GEL 5 000 or confiscation of the item that was an instrument or material object of the administrative offence committed and administrative detention for a term of up to 15 days.”

Article 2. This Law shall take effect upon its publication.

President of Georgia

Tbilisi,

October ... 2023