TRANSPARENCY INTERNATIONAL GEORGIA

Misuse of Administrative Resources for Electoral Purposes

2013 Presidential Elections

Final Report

December 2013

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Misuse of Administrative Resources for Electoral Purposes: 2013 Presidential Elections

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I. Main Findings and Trends

The monitoring of the period from 1 July to 12 November 2013 revealed that, compared with the Parliamentary Elections in 2012, there was a considerably lower number of instances of the use of administrative resources for electoral purposes during this period. This made the pre-election period seem more calm and competitive.

1. Coercive Resources

First of all, there were no reported cases of the widespread use of coercive resources for electoral purposes during the reporting period. Undoubtedly, important progress has been made since the elections of the previous year. The coercive use of administrative resources is defined as the illegal use of state powers against political opponents, their supporters and voters, including the politically motivated detention of individuals, or the use of threats, intimidation, assault, discharge or other forms of coercion.

In this regard, a notable event took place in Kharagauli at 6.00 AM on 20 October. Davit Kapanadze, head of Regional Police Division of Kharagauli, together with ten policemen, entered the house of Nino Pkhaladze. Pkhaladze is a member of the Kharagauli election office of the United National Movement's candidate – Davit Bakradze, the head of the UNM's election office in the village of Partskhnali in the Kharagauli region and a member of local council of Kharagauli representing the UNM. According to reports, the police had been informed that there were weapons and explosives in the house of Nino Pkhaladze. However, the police could not find them upon further inspection of the premises.

In the reporting period, several facts of possible duress were reported which might not be directly related to the Presidential elections, but their prevention is important for holding fair and free elections. High-ranking officials from several local councils and municipalities have reported force used against them. Here, we mainly refer to the incidents that occurred in the Bolnisi and Akhmeta local councils that eventually resulted in the discharge of their chairmen.

2. Legal Resources

During the 2013 Presidential elections, several possible incidents of the use of state resources were also reported. Specifically, these included the groundless refusal by the CEC to register Salome Zourabichvili as a presidential candidate, and the decision made by Georgia's President to pardon many individuals who were incarcerated. The Ministry of Education's decision in September to allow secondary admissions to the universities can also be considered the possible use of such resources.

3. Institutional Resources

During the Presidential elections, state institutional resources have been used for electoral purposes more often than other resources. Particularly, this included several cases of civil servants illegally participating in campaigning. Such incidents have been reported in Zugdidi, Poti and Chokhatauri.

Compared to last year's parliamentary elections, fewer incidents occurred that involved the forced mobilization of staff from state-sponsored agencies and their forced participation in campaigning. We observed that when such incidents did occur in several of the municipalities, these activities were more voluntary than forced.

Due to the fact that we believe the Election Code was violated, we appealed several times to the CEC, providing evidence of incidents of the use of institutional resources for electoral purposes. However, the CEC denied most of our appeals, in our opinion, for groundless reasons.

The Election Code of Georgia does not allow civil servants to campaign in the pre-election period during work hours or while performing their professional duties. However, a civil servant may be involved in the election campaign during his/her vacation time.

Despite this, the fact remained problematic in previous years. For example, during the period preceding the 2010 local elections, in many local public agencies a large number of employees had taken vacations simultaneously. In some public institutions, more than 50 per cent of all employees took vacations during the same days. This raised serious doubts about whether many public employees, upon or against their wishes, were actively involved in the pre-election campaign. This, of course, also puts the effectiveness of these public agencies under question.

We tried to study this issue during the 2013 presidential elections as well; we requested information regarding vacation periods of the employees during September and October from all city/town councils – *sakrebulos* and municipal government administrations – *gamgeobas*.

We were unable to obtain information from some institutions, especially worth noting are the local self-government bodies of Tbilisi. In the capital, only the Tbilisi Sakrebulo (Assembly) and Saburtalo district gamgeoba provided full response to the request, while Tbilisi City Hall and gamgeobas of nine other districts submitted incomplete data. This created an impression that these agencies were acting in a coordinated manner and had received instructions, not to provide us with complete information. Because of this shortcoming organs of the local self government of Tbilisi could not be included in our analysis.

Based on the information received from the other agencies, following tendencies have been noticed:

In most regions of the county, it was clear, that civil servants of local self-governments were more actively taking vacations in October than in September, that is, with the coming of the elections more employees wished to take leaves simultaneously. If this event is not primarily connected with the elections, it is hard to logically explain why more people took vacations in October than, for example, in September. This trend of vacations was more evident in the self-government bodies of Racha-Lechkhumi, Shida Kartli, Imereti, Mtskheta-Mtianeti and Kakheti.

As a rule, more employees (in percents) of sakrebulo personnel were on vacation at the same time. For example, 50% of Senaki Sakrebulo employees were on vacation during entire period of October. In the same month, on average 35% of Tsageri Sakrebulo employees were on vacation simultaneously; in Gurjaani Sakrebulo – more than 33%; in Lentekhi Sakrebulo – more than 28%; in Tsalka Sakrebulo – 25%; in Khoni and Rustavi sakrebulos - 24%; in Zugdidi Sakrebulo – 23%.

In regards with gamgeobas, Gori Gamgeoba deserves special mention, where 223 people are employed, from which during the entire period of October 23% were on vacation. Besides, we were able to find that seven members of the administration were members of precinct election commissions (PECs) of Gori district for the Presidential elections and this was the reason why they took long vacations. The orders regarding granting the vacation confirm this trend, which allow these individuals vacations until the day of final act regarding the election results is issued. It must be noted that this does not constitute a violation of the law, because the election code permits civil servants to act so. What is more interesting here is, how can being of more than 50 employees out of 223 of the Gori Gamgeoba on vacation simultaneously not harm the performance of the Gamgeoba.

One more detail, that further strengthens our doubt that employees of self-government took vacation in September and especially in October because of elections, is the average length of the vacation periods. The vacation periods of the public employees in September-October, studied by us, mostly exceeded 12 working days, that is, more than half of the paid vacation days as defined by the law. It is strange that one would use more than half of his/her vacation time in October, rather than for example in July or August.

As has been mentioned above, civil servants have right to be involved in pre-election campaign during non-working hours or during the vacation period, therefore, we do not suggest that the law has been violated. We believe that because of the involvement of civil servants in the election campaign process, proper functioning of the public institutions should not be undermined. This is possible, when for a long period of time many employees of the administration are simultaneously absent from the public institution. It seems that, where this happens, either the head of the agency is not performing his/her managerial functions properly, or the number of employees is artificially increased and, in fact, there is no need for such number of employees.

4. Financial Resources

During the pre-election period, no incident of the use of this type of administrative resource was noted. One case was reported in Ajara when the funding of certain programs funded by the local budget was increased after 1 July. This was a violation of the law because increasing funds for any budgetary program is forbidden during the pre-election period. Later, an amendment was made to the law so that the increase of funding for budgetary programs was restricted only during the 2-month period prior to the elections, instead of the whole pre-election period. Consequently, the court did not find the mentioned incidents to be violations of the law, because said budgetary changes were made more than two months prior to the elections.

Questions emerged regarding increase of pension in September and financing of a small group of individuals' education from the reserve fund of the President. These actions can be taken as electorally motivated expenditures.

5. Central Election Commission

The Central Election Commission (CEC) played an important role in formation of 2013 election environment: decision taken on 16 October, according to which amendments were made to procedures of video and photo taking on the election day, must be positively assessed.

The role of the CEC during the review of the complaints regarding possible violations of election code is of most importance. In this case, not only the concrete decisions are worthy of noting, but also, how the CEC interprets various norms. It must be noted, that compared to the parliamentary elections, number of our complaints has significantly decreased. The CEC has reacted to these complains mostly in an adequate way. However it must be noted that, regarding definition of participation of civil servants in pre-election campaign, the CEC interprets "campaigning" and "participation in a campaign" as identical acts, which, in our opinion, does not correspond with the aims of the law and therefore public employees who are illegally engaged in a campaign remain unpunished.

6. State Audit Office

Party financing was one of the most problematic issues during the 2012 elections. The State Audit Office often without appropriate basis applied various sanctions and limitations mostly to opposition parties and their followers.

In 2013, there have been no complaints in regards with this agency because of a very simple reason, during this period the parties have been fined only couple times and with very small sums of money. This "passive" character of the State Audit Office raised questions whether refusing extra activity meant that this agency was trying to improve its bad reputation that it has acquired during the previous year.

7. Parliamentary Inter-Faction Group

In March 2013 the Inter-Faction Group was created in the Parliament, main aim of which was to reform the election legislation. One representative of each qualified election subject, with a consultative voting power, could have participated in the group's work. Observation missions were also actively involved in the group's work.

According to the plan, opinions must have been agreed on 6 topics until May 31, 2013 and they should have been initiated in the Parliament, however the working process has lagged so much, the group processed only 2-3 issue and initiated them in the Parliament, this must be assessed as a serious shortcoming.

Despite the fact, that the inter-faction group was planning on adopting many of our and other NGO opinions, in the end it declined to adopt some important amendments. In the end only the issue of party finances has been adequately reformed. Some amendments have be adopted regarding the limitation of use of administrative resources for election purposes, however these amendments were cosmetic and the issue has not been substantially reformed.

8. Interagency Task Force

The Interagency Task Force that was transferred to the Ministry of Justice in August 2013, has adopted some very important recommendations in the pre-election period. Especially worth noting is work of the Task Force in regards with making clear details of the rules of involvement of civil servants in the pre-election campaign and defining individual rules, which shall be positively assessed, however in cases of issues raised by the "United National Movement", instead of conducting constructive talks, the sessions of the Task Force turned into a political debate.

Despite the fact that the report of the Task Force issued on 30th of September, 2013 included some of the recommendations of the observation missions, negatively must be assessed the fact that the task force has not reacted to several important instances of voter bribery, misuse of administrative resources, pressure and threat instances.

II. Introduction

The Parliamentary Elections in 2012 resulted in the first transfer of power through elections in Georgia. This marked significant progress in the development of the country. The 2013 Presidential elections was another test for Georgian democracy. One of main problems during the 2012 Parliamentary elections was the use of administrative resources for electoral purposes. As a rule, administrative resources have been used to benefit the ruling party. This has been seriously damaging to the electoral environment. In addition, the oppression of dissenting individuals by the state through various means has significantly violated human rights.

For this reason, the use of administrative resources for electoral purposes merits great attention. Transparency International Georgia has been studying this issue for years. On 24 October 2013 we presented an interim monitoring report on misuse of administrative resources. Now we present the final report covering the period from 1 July to 12 November 2013. The date of the Presidential elections (27 October) was officially announced on 1 July, launching the pre-election period and the final results of the elections were announced on 12 November.

Our organization was registering all incidents during the reporting period during which the possible use of administrative resources, or acts to the same effect, could have occurred. These facts have been examined and double-checked by the organization's lawyers, the three regional offices and the five regional coordinators. Moreover, the lawyers verified whether the relevant facts comply with the Georgian electoral legislation and international standards. Information on violations of the law has been sent to the responsible state agencies. To monitor the misuse of institutional administrative resources for election purposes, TI Georgia sent requests for public information regarding vacations of public servants in the months of September and October to all local self-government bodies, in order to observe if there were any suspicious tendencies regarding the involvement of public servants in pre-election campaigning.

The report first provides the types of administrative resources and an explanation of the ways may be used for electoral purposes. The following chapters review concrete incidents of the possible use of administrative resources during 2013 Presidential elections. In chapter 8 we assess the work of the Inter-Agency Task Force for Fair and Free Elections, the Inter-Faction Group of the Parliament, the Central Election Commission and the State Audit Office, whose activities are closely connected to the elections. At the end of the report we offer our recommendations.

III. Definitions of the Use of Administrative Resources for Electoral Purposes

There is no precise or commonly accepted definition for state administrative resources and their use for electoral purposes in Georgian or in international law. However, multiple international documents pertain to this issue attempting to establish somewhat common approach to it. Based on the analysis of these documents and scholarly opinions, we can identify the following types of administrative resources[1]:

Type of Administrative Resource	Example of its Use for Electoral Purpose
Legal (Legislative, Regulatory) Resources	*Use of legislative, executive and judicial branch of the government for the interests of electing certain political party or candidate. For example, adoption of a law that puts one party in an advantageous position over others.*
Institutional Resources	*Use of office equipment, means of transportation, premises, subordinate civil servants as well as use of other material and human resources financed by the state for organizing-conducting election campaigns.*
Financial Resources	*Use of budgetary resources of the central or local government agencies to facilitate election campaign of certain political party or candidate*
Coercive Resources	*Illegal use of state coercive powers against political opponents, their supporters and voters, including politically motivated detention of individuals, intimidation, assault, threatening, discharge or other forms of coercion.*
Media Resources	*Media outlets financed by state or/and municipal budgets giving preferential treatment to certain political party or candidate.*

The Electoral Code of Georgia defines the use of administrative resources for electoral purposes very narrowly, often leaving many issues unregulated. More specifically, an administrative body might undertake a set of acts where it will not violate the law, but the manner it can provide goods to society might have a significant influence on the voters' will. In such cases, it is very difficult to draw a line between the state and a political party, which is a requirement of the document of the 1990 OSCE Copenhagen Conference[2].

Consequently, by the use of administrative resources we mean not only violations of Georgian law, but also acts against the spirit of the Copenhagen document.

[1] Monitoring Election Campaign Finance: a handbook for NGOs, *Open Society Justice Initiative, 2004*
[2] http://www.osce.org/odihr/elections/14304

IV. The Use of Legal Administrative Resources for Electoral Purposes

State legal resources constitute one of the strongest means to place political opponents on an unequal footing and ensure the preferential treatment of a ruling party. These types of resources include the use of the legislative, executive and judicial branches of the government for electoral purposes. These may include amending laws disadvantaging only certain political groups, uneven application of the law, making unjust court decisions etc.

Compared with the 2012 Parliamentary elections, this type of administrative resource might have been used in only several cases during the pre-election period of this Presidential election. Also, the functioning of the State Audit Office – the most "active" state agency during the previous elections – was far calmer and even passive during this pre-election period. With regard to concrete facts, four cases must be singled out.

1. The Salome Zourabichvili Case

On 3 September 2013, the Central Election Commission (CEC) refused to register Salome Zourabichvili as a presidential candidate. Zourabichvili holds both Georgian and French citizenship. The CEC cited Article 29(1[1]) of the Georgian Constitution, which provides that a Georgian citizen who is also a citizen of a foreign country cannot take office as President[3].

Neither the Election Code nor the Constitution of Georgia requires that a presidential candidate must hold only Georgian citizenship. Article 70 of the Constitution and Article 96 of the Election Code, which provide quite detailed requirements for the registration of a presidential candidate, are silent on the issue of dual citizenship. Article 29(1[1]) of the Georgian Constitution is the only regulation posing restrictions in such cases. However, the provision bans individuals with dual citizenship from taking office as President, but does not ban them from running in the elections. Therefore, if an individual with dual citizenship wins the elections, s/he can simply renounce the citizenship of the foreign country, and thereby will not infringe on the Constitutional provision.

Moreover, the principle of proportionality requires that a measure aimed at achieving the objective of the law (the Constitution) must be the least restrictive of legal rights. We believe that the intent of Article 29(1[1]) of the Georgian Constitution – that only individuals with Georgian citizenship can take office as President – would have been fully satisfied if Salome Zourabichvili had been allowed to register as a presidential candidate and had renounced her French citizenship if her candidacy was successful.

In addition, Article 29(1[1]) is a later amendment to the Georgian Constitution. If the legislative intent had been to apply it also to the presidential candidates, it would have been added to Article 70 (this is the provision which determines requirements for the registration of a presidential candidate), instead of Article 29. Alternatively, it would have been specified in the Election Code that individuals with dual citizenship cannot run in elections, or the Constitutional provision in question would have been drafted in a manner so that it also applied to the candidates.

Salome Zourabichvili is a rather well known politician in Georgia and would have probably been a promising candidate in the 2013 Presidential elections, increasingly the plurality of the electoral race.

[3] http://www.civil.ge/eng/article.php?id=26412

Consequently, we believe that the unjustifiable restriction of her right to run in the elections likely amounts to the use of legal resources for electoral purposes.

RECOMMENDATION:

- It is important that the eligibility requirements for the presidency are specified more clearly and the issue is regulated in a way that leaves no room for unclarity about who can register and who cannot.

2. The Clearing of Probationary Sentences and Criminal Records by the President

On 19 August 2013, Georgia's President Mikheil Saakashvili announced an initiative to vacate probationary sentences and clear the criminal records of "thousands of individuals" by individual pardoning acts. This initiative encompassed all crimes except for grave crimes, such as premeditated murder, murder under aggravating circumstances, the premeditated murder of a newborn by its mother, etc.[4]

Although this did not violate the law, recalling that the President initiated the "zero tolerance" policy towards crime in 2006 and that his government had been pursuing a rather strict criminal justice policy, this massive pardoning so close to the elections can be interpreted as an attempt to win the favor of the pardoned and their families. This may be equated with the use of administrative resources for electoral purposes.

RECOMMENDATION:

- The state bodies should refrain from introducing large-scale amnesty and pardon initiatives in the pre-election period.

3. Secondary Admissions to Universities

The Minister of Education and Science of Georgia issued an order allowing secondary admissions to universities in September 2013[5]. Specifically, on 11-13 September, all applicants who had passed the minimum threshold in exams in four disciplines, but had still not received a sufficient score for admission, were allowed to re-register and receive admission in universities[6].

Although the law permits the Ministry to make such decisions, such changes in the university admission rules have not occurred in recent years. Therefore, there is a justifiable doubt that this was an act to win the favor of several thousand voters.

RECOMMENDATION:

- Requirements for primary and secondary admissions to universities should be defined in advance and the public should be informed so that the applicants have appropriate expectations. Otherwise, the unexpected decisions made in the pre-election period may be perceived as misuse of administrative resources for election purposes.

[4] http://www.civil.ge/eng/article.php?id=26372
[5] http://goo.gl/PhHB8v
[6] http://goo.gl/8cuS6D

V. Use of Coercive Administrative Resources for Electoral Purposes

As shown by past experiences, the use of coercive resources for electoral purposes usually includes the application of formal or informal pressure on activists by various political forces. Formal pressure implies the criminal prosecution of a politically active individual (or administrative legal process). Informal pressure encompasses duress by officials, which they exert unofficially through means of abuse of office. Such incidents occurred frequently prior to the 2012 Parliamentary elections, and have been included in our reports[7].

In this regard, the current pre-election period was far calmer. The widespread use of coercive resources was not reported. This implies that important improvements have been made since last year's parliamentary elections. However, there were some notable incidents:

1. Case of Ivane Merabishvili

The arrest of Ivane Merabishvili, Secretary General of the United National Movement and former PM and Minister of Internal Affairs, for several alleged crimes, caused a strong reaction from various foreign politicians and international organizations.

Our organization has been monitoring the court trials of high-profile criminal cases since February 2013. The results of the first stage of the monitoring process of these cases have been reflected in "the interim report on the judicial monitoring of high-profile criminal cases"[8]. The monitoring of high-profile criminal cases is still ongoing, and the results of the monitoring of these trials after the interim report will be included in the following report.

In the monitoring period, no substantial procedural violations were revealed in the trial of Vano Merabishvili. The United National Movement had most of the questions regarding the application of preventive measures against Merabishvili. At the trial, the prosecutor set the motion to apply preventive measures against all individuals involved in the case. However, the court approved the motion only in relation to Ivane Merabishvili.

The prosecutor argued that the detention was necessary because the accused could have crossed state borders and gone into hiding as well as influence the witnesses and avoid the investigation. Ivane Merabishvili has been one of the most influential officials in Georgia. He was the Minister of Internal Affairs from 2004 to 2012, and the Prime Minister from July 2012 to 25 October 2012. Also, in 2013, he attempted to leave the country together with the Presidential delegation holding a passport issued with a different name[9].

The defense disagreed with the argument of the prosecution and noted that detention, as a preventive measure, was not necessary as Merabishvili had arrived for interrogation and had not gone into hiding. The judge agreed with the prosecutor's argumentation and granted pre-trial detention. The judiciary has not announced that the judge was under any type of duress.

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[7] http://goo.gl/ghwD2; http://goo.gl/d4hpzl
[8] http://goo.gl/1tVjQw
[9] http://www.radiotavisupleba.ge/content/vano-merabishvili/24792278.html

The defense and their supporters have been protesting that the trials were conducted in Kutaisi. However, the prosecution has such formal discretion pursuant to the criminal procedural legislation of Georgia.

According to our observations, the substantial rights of the defendant have not been violated in the trial. The principles of equality of parties and adversarial trial have been observed. We think that it will be difficult to assess whether the detention of Merabishvili was politically motivated until the end of the trial. Also, it is difficult to evaluate the Government's decision to begin an investigation against one of the leaders of an opposition party. Certainly, using political arguments when guided by the principles of rule of law is not justifiable. Everybody is equal before the law. The court will establish the culpability.

2. Other Incidents

Apart from the Merabishvili case, several other interesting incidents took place during the reporting period. At 6.00 AM on 20 October, Davit Kapanadze, head of Regional Police Division of Kharagauli, together with ten policemen, entered the house of Nino Pkhaladze, a member of the **Kharagauli** electoral office of the United National Movement's candidate – Davit Bakradze, head of the UNM's office in the village of Partskhnali in Kharagauli region and member of local council of Kharagauli representing the UNM. According to reports, the police had been informed that weapons and explosives were being stored in the house of Nino Pkhaladze. Our representatives spoke with Nino Pkhaladze, who stated that the search went on for several hours and the police did not find any firearms. Also, she noted that she had received calls from certain individuals offering her cooperation with the Georgian Dream. She added that there was no threatening. It is a notable fact that, together with the head of Davit Bakradze's electoral office in Kharagauli Tornike Avalishvili, she was holding campaign meetings with residents of Kharagauli just a day before the search.

On 6 September, the Anticorruption Agency of the Ministry of Internal Affairs arrested Boris Mikava, deputy head of the Local Council of **Martvili**, for alleged bribery. He is charged with taking 5,000 GEL as a bribe for the sale of 2,500 sq/m of state-owned land by means of the abuse of office and protectionism. We have talked with Zaal Gorozia, head of the Local Council, and Guram Tsotsoria, head of the administration of the Council. The head of the Council stated that members of the Council were put under direct duress. According to him, members of his staff and the Commissions of Infrastructure and Social Affairs were summoned to the Financial Police or Prosecutor's Office multiple times over the last months, where they are investigating activities from 2006 up until today.

An incident of direct political pressure being applied on activists of the United National Movement was not confirmed in **Poti**. The representatives of the party stated that the prosecutor's office was placing pressure on its members. More specifically, on 28 August 2013, Nugzar Gogua, Grigol Ghvania and Luiza Jolokhava were summoned to the prosecutor's office for witness interrogation. This issue was discussed at the Task Force where it was clarified that the District Prosecutor's Office of Western Georgia is investigating a case related to the purchases of votes in favor of the UNM. The purchases were allegedly made through the "Program on the Registration of Employment Seekers" and finances from the state budget. The implicated individuals were summoned as witnesses in this case. One of the interrogated activists confirmed with us that the interrogation was held in a calm manner and that there was no pressure applied. Although the use of pressure was not confirmed, the Task Force reminded the Prosecutor's Office of the recommendation made in the 2013 by-elections. According to this recommendation, it is desirable to refrain from interrogating activists and members of the electoral

offices of political parties in investigation procedures. The exceptions include when there is a high societal interest in a case or there is risk of missing a procedural deadline[10].

In the reporting period, several facts of possible pressure were reported which might not be directly related to the Presidential elections, but their prevention is important for holding fair and free elections. The situation in local councils and municipalities has indirect but critical impact on the election environment. Often, it is the local political situation that ensures the functioning of local district and precinct election commissions in an efficient and law-abiding manner.

In this regard, a notable incident took place in the **Bolnisi** municipality. On 26 August, the head of the local council of Bolnisi – Malkhaz Eradze, was dismissed. As a result, there were protest rallies in front of the building of the municipal body. Eradze and his supporters state that a seizure of power took place in the Bolnisi region. Members of the local council made the decision to dismiss Eradze at an extraordinary session. According to them, he was unable to properly perform his duties. Eradze told our representative that his dismissal, which was decided by 13 members of the council at an extraordinary session, was illegal and that the minutes of the meeting were fabricated. He also stated that the members of the local council were summoned and intimidated in the departments of the Ministry of Internal Affairs in Marneuli and Bolnisi during the month prior to his impeachment. "They have managed to intimidate three Azerbaijani members of the council. As for me, I was put under duress – they were interrogating me for 8 hours and were demanding that I hand over the seal of the council. As I refused, they manufactured another seal in some factory."

"Also, a search of Eradze's office and house was carried out with violations. An authorized person was not present at the search and no court's warrant was presented," – stated Soso Khakhutashvili, Eradze's lawyer.

On 12 September, the Minister of Justice Tea Tsulukiani, and members of the Inter-agency Task Force, visited Bolnisi to study the matter[11]. Tsulukiani met with members of the local council in a private meeting. According to the official report of the Task Force: "It was found that two groups of the Georgian Dream went against each other in the local council. The chairperson of the Task Force held a meeting with all council members, including the adversaries, the new chairperson of the local council and new head of the municipality. After this, the situation calmed down. There have been no other incidents in Bolnisi during the reporting period. However, the Task Force is observing events in Bolnisi so that political processes there do not prevent the Presidential elections from being held in a fair environment."[12]

Despite this, locals claim that the conflict is not over and the situation remains tense. Therefore, the matter should be kept on the agenda of the Inter-agency Task Force until it is finally resolved. The police should take relevant steps in regard to the alleged fact of duress.

Another incident of possible duress occurred in **Akhmeta**. On 22 August, the Information Center Kakheti reported[13] that members of the local council of Akhmeta were put under duress. The council members were summoned to the bureau of Zurab Zviadauri, majoritarian MP, and were coerced to add the matter of the dismissal of Zakaria Kinkladze, head of the Council, to the 23 August Council session's agenda. The Information Center Kakheti also published an interview with a member of the Council (s/he requested anonymity) where s/he confirmed that Zurab Zviadauri, majoritarian MP, Beka Baidauri,

[10] http://goo.gl/IRoKMV
[11] http://kkpress.ge/index.php?do=fullmod/news&id=1370
[12] http://goo.gl/ldvkTD
[13] http://ick.ge/articles/15520-i.html

incumbent head of the municipality, and Gogita Garibashvili, deputy head of the Kakheti Police Department, were coercing him/her to sign a petition for the dismissal of the head of the Council. Otherwise, s/he was threatened that "we will find drugs on you and arrest you."[14]

On the same day, members submitted a petition to the council for the dismissal of its chairman. Twelve council members signed the petition. A bureau session had to decide whether to add the matter of dismissal to the 23 August council session's agenda. Only 7 members of the council were present at the bureau session, and only two supported initiating the impeachment of the chairman. The following day, on 23 August, members re-submitted the petition to the council for the dismissal of its chairman. This time, the petition, which provided no explanation, was signed by those members who had rejected it at the bureau session a day before. According to the Information Center Kakheti, the majoritarian MP of Akhmeta, Zurab Zviaduri, coerced the council members into re-submitting the petition for impeachment. The interviewee of the Information Center Kakheti who attended this meeting stated that the majoritarian MP and the incumbent head of the municipality threatened them with the police and the prosecutor's office, declaring that "the matter of dismissing the council chairman was approved by the Prime Minister[15]. Therefore, there is no point in resistance." On 2 September, 16 out of 19 attending members supported the dismissal of Kinkladze at an extraordinary session of the council[16]. At the same session, Davit Imerlishvili, former member of the United National Movement, was elected as the new chairman of the Council.

These incidents were discussed at the Inter-Agency Task Force for Free and Fair Elections (IATF)[17]. As a result, the IATF issued the following recommendation for local self-governing bodies: to refrain from the significant reshuffling of staff, including through dismissing chairpersons (head of municipality or Council) and impeachment. This is to avoid the perception of politically motivated discharges and attempts to influence election results. The said recommendation might possibly have had a preventive effect, however, we think that it was necessary that the law enforcement agencies react adequately upon the alleged fact of duress.

RECOMMENDATION:

- The law enforcement agencies need to immediately react on all reported cases of possible intimidation and inform the wider public about the developments of the case in a timely manner. Merely the recommendations of the IATF are not sufficient in discharging the tensions in the election period.

[14] http://goo.gl/7eOE2Q
[15] http://ick.ge/articles/15530-i.html
[16] http://ick.ge/articles/15628-2013-09-03-06-42-31.html
[17] http://justice.gov.ge/News/Detail?newsId=4294

VI. The Use of Institutional and Media Administrative Resources for Electoral Purposes

The use of state institutional resources for political purposes is another type of misuse of administrative resources. It includes the use of office equipment, means of transportations, premises, subordinate civil servants, as well as the use of other material and human resources financed by the state for organizing or conducting election campaigns. However, as we noted already, this is not a clearly formulated definition, and the use of institutional resources might also encompass other activities. On the other hand, the use of media resources implies the use of media outlets financed by the state for or against the interests of certain political parties.

Since 1 July 2013, institutional resources have been used most often for electoral purposes. Particularly, there have been frequent cases of civil servants illegally participating in election campaigns.

1. Civil Servants Participating in Election Campaign

On 11 September, a pre-election campaign meeting of the United National Movement's candidate – David Bakradze - took place in **Zugdidi**[18]. Members and supporters of the party attended the meeting. Simultaneously, representatives of the Defend Georgia movement held a rally against the UNM.

Our representatives observed that the 11 September campaign meeting was attended by staff from the Zugdidi local Sakrebulo, including by Temur Basilaia, head of staff of the council, Bartlome Shelia, head of the Material and Technical Supply Division of the council, Levan Makatsaria, head of the Social Affairs Division of the council, and Anna Tsitlidze, chief specialist at the Legal Affairs Division of the council. The simultaneous anti-UNM rally, led by Kakha Mikaia, a member of Defend Georgia, was attended by Edem Kekutia, head of municipality of the village of Chkhori in the Zugdidi region, and Nukri Jichonaia, chief specialist at the Zugdidi city municipality. These individuals are civil servants of the local municipal bodies. Therefore, the Election Code bans them from conducting or participating in pre-election campaigns during business hours (Article 45(4)(h) of the Election Code). Due to the fact that the rally was taking place during business hours (it started at 16.00 o'clock), the civil servants violated the Electoral Code.

We submitted information about this incident to the Central Election Commission and requested that they fine the violators of this law. The CEC denied our petition on the grounds that inaction cannot be considered campaigning. Therefore, the attendance at the election campaign does not amount to participation in it. However, we think that attendance at a campaign meeting is an action. Besides, Article 45(4) of the Election Code bans civil servants from campaigning, as well as participating in election campaigns during business hours. According to the Election Code, campaigning is "any public action" facilitating the election of a candidate. Thus, conducting a campaign meeting for Margvelashvili fully falls into this definition and attending it must be considered as participation in the election campaign.

A similar incident took place on 7 October in the city of **Poti** where Otar Kharchilava, assistant to the Mayor of Poti, was present at a meeting of the candidate Margvelashvili. Kharchilava is a civil servant in the local municipality and therefore, is banned from campaigning or participating in a campaign

[18] http://goo.gl/N0QeYf

during business hours. According to the TSpress, the chairperson of one of the precinct election commissions was also present at the same meeting despite the fact that he is banned from participating in campaigns even outside of business hours[19]. Subsequent to our petition, the CEC revealed that the assistant to the mayor was temporarily suspended from office for these reasons. In the case of the chairperson of the election commission, the CEC did not find that his attendance implied participation in the campaign.

The illegal participation of civil servants in pre-election campaigning was also reported in **Chokhatauri** on 13 September. According to Guria News[20], a campaign meeting with Giorgi Margvelashvili was attended by Gocha Persashvili, head of the Guria Military Police Department, Guram Asatiani, his deputy, Akaki Maisuradze, head of the Chokhatauri Police Department and Zaza Dolidze, his deputy. The attendance of personnel from the Ministry of Internal Affairs at the pre-election meeting is perceived as participation in pre-election campaigning. This is a violation of Article 45(4)(c) of the Election Code and entails a fine of 2,000 GEL.

We appealed to the CEC on this matter, which found that the policemen were present at the campaign meeting only to ensure order.

On this matter, the Inter-agency Task Force for Free and Fair Elections made the recommendation[21] that the Ministry of Internal Affairs instruct the policemen to wear an official uniform when they attend campaign meetings to ensure the public order. This is to eliminate any confusion about the purpose of the police attendance such meetings. The MIA agreed with this proposition. The Ministry made amendments to the electoral instructions of the police whereby all staff of the MIA must strictly observe the principle of political neutrality, as well as to wear an official uniform when attending campaign meetings.

RECOMMENDATIONS:

- The Election Code needs to more clearly define what campaigning entails, as well as participation in a campaign. Attending the campaign meeting should also be considered as participation in a campaign;
- The list of officials allowed to campaign at any time should not include political officials who are not elected, such as deputy ministers, governors and gamgebelis.

2. The Discharge of Officials in Violation of the Election Code

On 18 October, the local council of **Keda** dismissed Jemal Sharadze, its deputy chairperson[22]. By making this decision, the council violated Article 49(5) of the Electoral Code which stipulates: "From the expiration of the term of registration of electoral subjects until the end of the polling day, the reshuffle of senior officials of the body of local self-government, police and the Prosecutor's Office, except for the expiry of the term of their authorities and/or in cases when they have violated the law, shall be

[19] http://goo.gl/H3F4Um
[20] http://goo.gl/K6Wa7L
[21] http://goo.gl/cMxwIj
[22] http://goo.gl/Cmmwuk

prohibited." Due to the fact that a deputy chairperson of a local council is an official of the local self-government, his/her discharge before the end of the polling day is illegal[23].

3. Placement of Campaign Materials

Apart from the civil servants' illegal participation in campaigning, other incidents of the use of other type of institutional resources for electoral purposes have been reported. Specifically:

There have been cases of placing campaign materials in violation of the set rules during the pre-election period. Namely, the electoral poster of Giorgi Margvelashvili, presidential candidate, was displayed on Aghmashenebili Square in Kutaisi in violation of the law. The poster was placed on the facade of the building where his electoral office is situated – in the corner of Tbilisi and Queen Tamara Streets, zone one of the city.

According to Article 46(4) of the Election Code, local municipal bodies determine the list of buildings where election/campaign materials are allowed to be, or banned from being, displayed. In the case of Kutaisi, Order #784 of the chairperson of Kutaisi local council, issued on 10 July 2013, sets such a list. The display of campaign materials is forbidden on the facade of all buildings in zone one of the city. Aghmashenebili Square, as well as Queen Tamara and Tbilisi Streets, received the status of zone one by Resolution #153 of the Kutaisi local council, adopted on 4 April 2008 and entitled "On the adoption of the rules for the territorial use and development of the city of Kutaisi." Consequently, the display of campaign posters in zone one of the city violated Order #784 as well as the Electoral Code.

Other presidential candidates also violate these same rules by displaying their campaign materials on the facades of their offices[24], though all the offices are situated in zone one of Kutaisi (Giorgi Margvelashvili – 3, Str. Queen Tamara; Davit Bakradze – 9, Str. Saint Nino; Koba Davitashvili – 26, Str. Queen Tamara; Nino Burjanadze's electoral office – 7, Str. Grishashvili), which is forbidden by the local council's mentioned Order.

4. The Mobilization of Supporters Employed in Budget-financed Bodies

The mobilization of civil servants or other staff employed in bodies financed by the state budget at political party events was a pervasive trend of the 2012 pre-election period. Such a trend was often the result of officials influencing civil servants, professionally subordinated or otherwise dependant on them. There is a particularly high risk of the illegal use of administrative resources at this type of events. Such forced events have not been apparent during the current pre-election period, however, the relatively small scale mobilization of civil servants has still been reported in several municipalities. It also needs to be added that these mobilizations appear to have been more voluntary than forced.

On 7 September, teachers of public schools met with Giorgi Margvelashvili, the Georgian Dream's presidential candidate, in **Kaspi**. According to information provided by the Shida Kartli Information Center, the mobilization of the supporters occurred in an organized manner and was supervised by the heads of municipalities in Khandaki, Akhalkalaki, Akhaltsikhe, Khovle and other municipalities. The head of the municipality of Khandaki told the journalist that he had ensured the transportation of 120 people. Heads of local municipalities are civil servants of local self-governing bodies, thus, there is a

[23] http://goo.gl/X0Cvd3
[24] http://goo.gl/Cg0dFv

justifiable doubt that they have used state administrative resources in favor of a specific political subject. This is a violation of Article 48(1)(c) of the Election Code and entails a fine of 2,000 GEL.

We submitted this possible violation to the Central Election Commission, which did not find it in violation of the Election Code. According to the ordinance of the CEC, they have retrieved the information from the Georgian Dream – Democratic Georgia and the municipality. Both the political party and the municipality denied their participation in transporting the teachers. As it can be seen in an explanatory note issued on 25 September by Ramaz Berianidze, chairperson of Margvelasvhili's election office in Kaspi, according to their information, only two minibuses of the transportation vehicles used belonged to a person who voluntarily transported the individuals. The note further reads that] the rest of the mini-buses were so-called "line buses" which also might be private property. As it appears, the CEC could not precisely establish the belonging of the minibuses. In the Ordinance, the CEC is requesting information from various agencies (Georgian Dream, Kaspi Municipality), but not from the governor of the Khandaki territorial entity. He is the only person who, according to the information we provided, knows with precision about the belonging of the minibuses used for transportation.

Giorgi Margvelashvili, the candidate of the Georgian Dream, held similar campaign meetings in Velistsikhe, Gurjaani and Sagarejo. Mostly public school teachers and civil servants attended the meetings. The meeting in Velistsikhe was held in front of the house of culture. Several teachers of a public school told the Information Center Kakheti that Nino Nesuashvili, the principle of the school, announced to the gathered teachers in the morning that they had to go to the meeting with Margvelashvili at 12.00 o'clock. After Velistsikhe, a meeting with Margvelashvili was held in Gurjaani, on Guramisvhili Street. The street was closed prior to the meeting in order to install the stage. However, the municipality did not published information about closing the street in advance. After Gurjaani, Margvelashvili travelled to Sagarejo. The meeting there started at 15.00. Mostly teachers attended this meeting also. Approximately an hour before the meeting, parents of school students were asked to arrive at the school and were given school books. After receiving the books, the parents joined the meeting with Margvelashvili.

On 1 October, Margvelashvili held a campaign meeting in Telavi. According to reports from the Information Center Kakheti, teachers arrived at the meeting from Akhmeta, Gurjaani, Kvareli, Sighnaghi, Lagodekhi and other regions of Kakheti, which was organized by the regional representations of the Georgian Dream. They picked 10-15 teachers from each school to greet the Prime Minister and the presidential candidate. Later, regarding the mobilization of teachers, Giorgi Margvelashvili stated that his central election office would study this case. There was, however, no follow-up on this afterwards.

5. Vacations of Employees of Local Self-Government Bodies

The Election Code of Georgia does not allow civil servants to campaign in the pre-election period during work hours or while performing their professional duties. However, a civil servant may be involved in the election campaign during his/her vacation time.

Despite this, the fact remained problematic in previous years. For example, during the period preceding 2010 local elections, in many local public agencies a large number of employees had taken vacations simultaneously. In some public institutions, more than 50 per cent of all employees took vacations during the same days, which raised serious doubts, that many public employees, upon or

against their wish were actively involved in the pre-election campaign[25], which, of course, puts the effectiveness of these public agencies under question. It is logical that with halved staff the agency will not be able to perform adequately and if it still does so, then the size of staff is not adequate and is artificially inflated. Another factor that indicated to possible election motives, were the periods when many employees were requesting vacations. It is difficult to explain why such large numbers many employees would want to have vacation between April-May when the traditional vacation months are July and August.

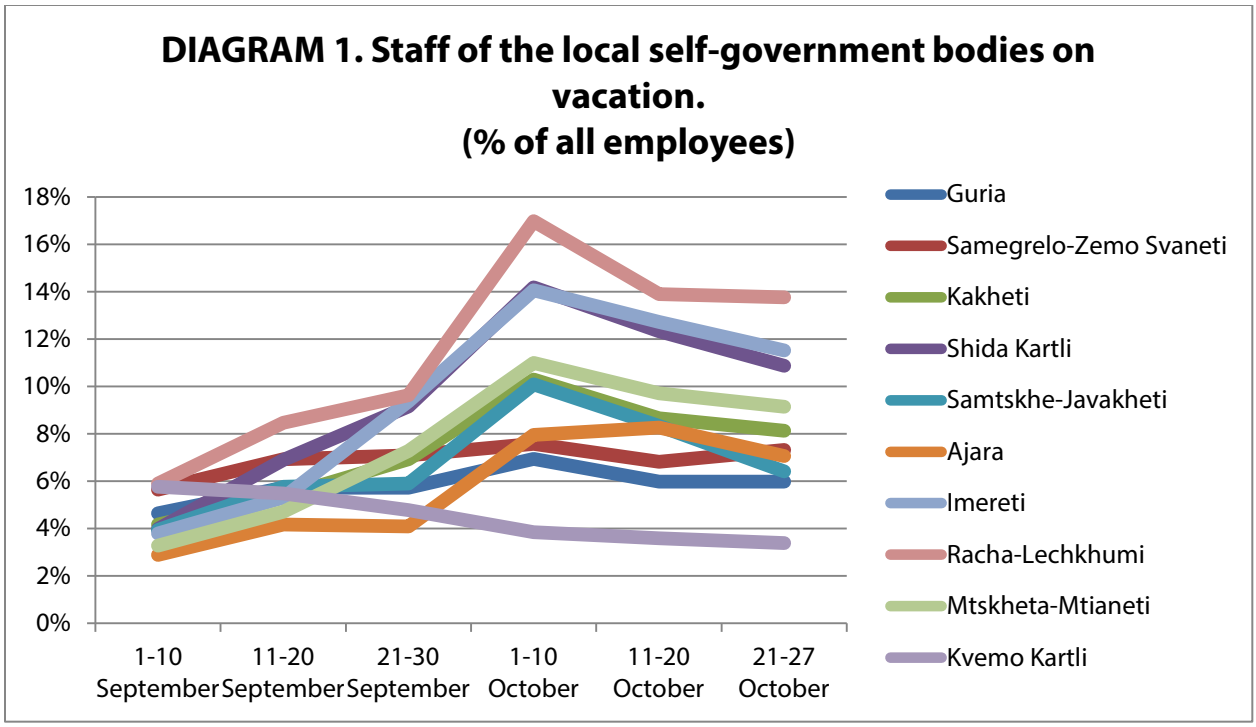
We tried to study this issue during the 2013 presidential elections as well; we requested information regarding vacation periods of the employees in September-October from all sakrebulos and gamgeobas of local self-governments. We deemed the agencies of central government inappropriate for such study, because in most of them a great number of officials are employed and therefore employee mobility and its connection with elections is hard to research. Besides, most of the employees of the central government work in the capital and their involvement in election campaign throughout the country is more limited. Also, as previous years have shown, in election matters, as a rule, civil servants of the local self-governments are more actively involved and monitoring of their behavior is more important in this regard.

In the beginning on November 2013, we sent letters in all self-government sakrebulos and gamgeobas, asking list of employees and list of employees who took vacation in September and October, with dates of the vacation period. Unfortunately, we could not receive such information from some agencies. Especially worth noting such agencies were the agencies of the local self-government of Tbilisi. In the capital only Tbilisi Sakrebulo and Saburtalo Gamgeoba provided appropriate response, while Tbilisi City Hall and gamgeobas of other 9 districts submitted incomplete data. Despite additional contact through telephone, they refused to answer the questions of our letter; this constitutes grave violation of General Administrative Code of Georgia. We are under impression that these agencies were acting in a coordinated manner and had received instructions, not to provide us with complete information. Because of this shortcoming organs of the local self government of Tbilisi could not be included in our analysis.

Based on the information received from the other agencies, following tendencies have been noticed:

In most regions of the county, it was clear, that civil servants of local self-governments were more actively going on vacation, than in September, that is, with the coming of the elections more employees wanted to "go on vacation" simultaneously (see diagram 1). If this event is not connected with the elections, it is hard to logically explain why more people wanted to go on vacation in October than, for example, in September. Because of warm weather September, along with July-August is the most popular vacation month. This trend of vacation was more evident in the self-government bodies of Racha-Lechkhumi, Shida Kartli, Imereti, Mtskheta-Mtianeti and Kakheti.

[25] http://transparency.ge/sites/default/files/post_attachments/Final%20Report%20on%20AAR_GEO.pdf



As a rule, more employees (in percents) of Sakrebulo administrations were on vacation at the same time. For example, 50% of Senaki Sakrebulo employees were on vacation during entire period of October. In the same month, on average 35% of Tsageri Sakrebulo employees were on vacation simultaneously; in Gurjaani Sakrebulo - more than 33%; in Lentekhi Sakrebulo - more than 28%; in Tsalka Sakrebulo - 25%; in Khoni and Rustavi sakrebulos - 24%; in Zugdidi Sakrebulo - 23% (See diagrams 2-11 in the appendix).

It must be noted that higher percentage in the sakrebulos data is generally caused by the smaller number of people employed in them, compared to gamgeobas; therefore, each employee has a larger percentage share in the staff list. For example, Senaki Sakrebulo apparatus employs 10 people, and when 5 people are on vacation, that is already 50% of the whole staff. However, this does justify of functioning of the apparatus with just half its staff for the whole month.

In regards with local gamgeobas, Gori gamgeoba deserves special mention, where 223 people are employed, from which during the entire period of October 23% were on vacation (See diagram 5 in the appendix).

Besides, the information confirmation procedure has shown that 7 members of the administration were members of the election committee in Gori election district for the presidential elections and this was the reason why they took long vacations[26]. The orders regarding granting the vacation confirm this trend, in the orders it is written that these people are given vacation until the day of final act regarding the election results is issued.[27] It must be noted that this does not constitute a violation of the law, because the election code permits civil servants to act so. What is more interesting here is, how can

[26] The composition of the precinct commissions created for 27 October 2013 Presidential elections, in Georgian: http://cec.gov.ge/uploads/other/25/25326.pdf

[27] http://goo.gl/eKZCda

being of more than 50 employees out of 223 of the Gori gamgeoba on vacation simultaneously not harm the performance of the agency.

At the same time, employees of other public offices also took long vacation to work in election commissions. For example, one employee of Gori Sakrebulo and one employee of Tkibuli administration were members of election commission, so they took one month vacation for October. There was an interesting case in Khashuri gamgeoba, where two deputies of the gamgebeli of total three were on vacation from October 15 to October 25, which probably was caused by their engagement in electoral processes. Case of government of Autonomous republic of Ajara is also interesting, here 25% of all employees were on vacation at the same time (see diagram 10).

One more detail, that further strengthens our doubt that employees of self government took vacation in September and especially in October because of elections, is the average length of the vacation periods. The vacation periods of the public employees in September-October, studied by us, mostly exceeded 12 working days, that is, more than half of the paid vacation days as defined by the law (see diagram 12-21 in the appendix)[28]. It is strange that one would use more than half of his/her vacation time in October, rather than for example in July or August.

As has been mentioned above, civil servants have right to be involved in pre-election campaign during non-working hours or during the vacation period, therefore, we are not trying to say that law has been broken by the above mentioned trends. We just think that because of the involvement of civil servants in the election campaign process, proper functioning of the public offices should not be undermined. This is possible, when for a long period of time a lot of employees of the agency are simultaneously absent from the agency. In this case, either the head of the agency is not performing his/her managerial functions well, or the number of employees is artificially increased and there is no need for such number of employees.

RECOMMENDATIONS:

- Supervisors of state bodies should more responsibly handle the issue of granting vacation time to their employees. The work of the public body cannot be paralyzed due to the fact of many employees being on a vacation;
- Municipality sakrebulos should better supervise the work of the apparatus of sakrebulos and gamgeobas;
- As part of the self-governance system reform, the rules for drawing up personnel lists employed at the local self-government bodies should be addressed, in order to optimize personnel.

5. The Use of Media Resources

Together with the abovementioned institutional resources, one case of the possible use of media resources for electoral purposes was reported. Namely, on 10 September, the Georgian Public Broadcaster (the GPB) declined a request from the United National Movement to air six videos of a political nature, citing that the videos did not comply with the requirements set for pre-election political advertising. More specifically, it argued that the electoral subject – the United National

[28] Law of Georgia on Civil Service allows 30 calendar days of paid vacation for public servants which, usually, entails 24 working days. Moreover, public bodies also employ non-civil servants among their staff to whom the regulations of the Labor Code of Georgia apply, which set 24 working days of paid vacation time as the maximum to be provided by the employer.

Movement - could not be seen anywhere in the videos. We believe that the GPB should not have refused to broadcast at least two of the six videos provided by the political party.

Due to the particular nature of this issue, the GPB's decision to broadly interpret the concept of a qualified electoral subject seems correct. According to this interpretation, it considers a political party and its corresponding presidential candidate an electoral subject. However, there is still was one problem in the GPB's statement: the Election Code provides that an electoral subject or/and its ballot paper number must be visible in a pre-election ad. This does not mean that the ads should only be concerned with the electoral subject that commissioned the video. In this case, we can infer any electoral subject because the law does not specify which electoral subject or ballot paper number must be visible in an ad. Consequently, the GPB should not have refused to broadcast at least two (video Employment 1 and Industry 3) out of the UNM's six videos, because the electoral subject Georgian Dream is visible in them – satisfying the requirements of the law. This problem was solved after several days when the UNM indicated its name in the videos. Despite this, we still believe that the GPB's previous decision was politically motivated. This doubt is further strengthened by the statement of Tamaz Tkemaladze, incumbent Director General of the GPB, who noted that he would not air the UNM's ads because they were ads against the Georgian Dream. For the record, according to Georgian legislation, pre-election political advertising can also include messages against election subjects.

VII. The Use of Financial Administrative Resources for Electoral Purposes

During the pre-presidential election period, there has been almost no instance of use of this type of administrative resource. One case has been reported in Ajara when funding of certain programs of the local budget has been increased since 1 July. This was a violation of the law because increasing funds for any budgetary program is forbidden in a pre-election period. Later, an amendment was made to the law restricting the fund increases to budgetary programs for the period of 2 months prior to elections instead of the whole pre-election period. Consequently, the court did not find the mentioned facts to be violations of the law because the amendments were made more than 2 months prior to the elections.

More specifically, on 24 July, the High Council of Ajara made amendments to the 2013 budget of Ajara Autonomous Republic and increased funding of several budgetary sub-programs. This was a violation of the provision of the Election Code in force at the time. Namely, pursuant to Article 49(3) of the Election Code, during the period of announcement of election date to the conclusion of election results, it was forbidden to increase the funding of programs planned before the elections. Although Article 49 only mentions budgetary programs and does not specify sub-programs which constitute parts of programs, the intent of the provision is to prevent the government from manipulating the will of the voters through the budget. This can be achieved by increasing funds to both budgetary programs and sub-programs. Consequently, it is clear that the changes made by the High Council to the budget on 24 July violated Article 49 of the Election Code in the wording that was in force at the time.

There were no facts of violation of the law, however, effect of use of financial administrative resources was created by some projects financed from the state budget. In these cases, we talk about expenditure from the state funds with electoral motivation, or the cases when one or two month prior to the elections budgetary projects are initiated, which mostly aim to win the voters' sympathy and may not correspond with the long term interests of the country. Also, there are some state programs with social context that encompass transfer of visible social welfare to the large portion of the population. An example of this might be an increase of social aid or other welfare programs. It is of the utmost importance for the healthy and competitive election environment, that such programs are not initiated in a small time period prior to the elections, because in this case ruling party candidate or party gets a serious advantage.

In the previous years, such expenditure prior to the elections was quite intensive. In the pre-election period of 2013 presidential elections this problem was less relevant; however several budgetary programs might still be mentioned.

1. Increase of Pensions

Starting from 1st September of 2013, based on the paragraph 6 of the article 32 of the Law of Georgia "About 2013 year Budget", pension for all age categories of the pensioners has increased from 125 GEL to 150 GEL (20% increase). Because the increase of the pension was already planned in the beginning of the budgetary year, election code, which prohibits such budgetary amendments prior to the elections, has not been violated. However in our opinion this issue was still problematic.

Of course we have nothing against the increase of pensions; however this could have been done much earlier to the elections or after the elections, so that it would not look like an electorally motivated

program. When increase in such program happens in the pre-election period, there is a suspicion that there is an attempt to influence will of the voters.

RECOMMENDATION:

- The government should refrain from increasing funding for pensions, social aid and programs with similar effect in the pre-election period. It would be advisable to make improvements to the law regulating this issue.

2. Reserve Fund of the President

In 2013, GEL 10 million was allocated from the state budget in the President Reserve fund. This amount should have sufficed for the whole year; however it was fully spent in first 10 month, or until the end of the term of Mikheil Saakashvili. Spending the whole amount of money until the end of the year does not constitute a violation of law and does not automatically represent use of state financial resources for electoral motives, if such expenditure is in accordance of the state interests. However some expenditure of the fund might raise some questions.

GEL 1,013 535 was spent from the reserve fund of the president to encourage acquiring of higher education in educational institutions of the foreign countries by citizens of Georgia. Transparency International Georgia requested information regarding contestants who were awarded the grant; however the President's Administration did not provide us with the information, for what we appealed to the court. The court has not ruled on this case yet, and therefore we still do not have the information. Despite this, the media has published some information regarding persons financed by the fund [29]. More concretely, most of the money was awarded to the close circle of the president and activists of United National Movement or members of their families.

Son of the singer Merab Sepashvili, Nikoloz Sepashvili was awarded 80 498 Gel; employee of the President's Administration Meri Kokaia - GEL 49,626; former Head of the President's Administration, Davit Tkeshelashvili - GEL 24,592; also financial aid of GEL 35,000 was received by Irakli Megrelishvili, who worked at the Ministry of Sport and Youth and was the Vice-President of the Tbilisi State University Student Self-Government; financial aid of GEL 35,000 was allocated for former deputy Minister of Sport and Youth and former president of Tbilisi State University Student self government Giorgi Avaliani[30].

RECOMMENDATIONS:

- The resources available by the president's or the government's reserve funds, as well as the municipality budgets, should be used to achieve the goals of the wider public and it is unacceptable to allocate these funds to sponsor activists and supporters of one or another political party.
- The goals and purposes of transactions that are provided as financial aid to a specific, small group of individuals should be especially well documented and grounded.

[29] http://ick.ge/articles/16334-i.html

[30] Ibid.

VIII. Assessment of Government Agencies Working on the Election Issues

1. Central Election Commission (CEC)

The Central Election Commission (CEC) played an important role in formation of 2013 election environment: decision taken on 16th of October, according to which amendments have been made to procedure of video and photo recording on the election day, must be positively assessed. More concretely, some regulations that unreasonably limited right of the interested parties to photo/video recording have been annulled. Despite this, we think, there is still potential danger of misuse or wide interpretation of the mentioned regulation the heads of the district election commissions and we think it is better to annul it completely.

Role of the CEC during the review of the complaints regarding possible violations of election code is of most importance. In this case, not only the concrete decisions are worthy of noting, but also, how the CEC interprets various norms. It must be noted, that compared to the parliamentary elections, number of our complaints has significantly decreased. The CEC has reacted to these complains mostly in an adequate way. However it must be noted that, regarding definition of participation of civil servants in pre-election campaign, the CEC interprets "campaign" and "participation in a campaign" as identical acts, which, in our opinion, does not correspond with the aims of the law and therefore public employees who are illegally engaged in campaign remain unpunished. Besides this, there was a problem regarding measures taken against the employees of the Ministry of Interior, when the case involved participation of policemen in the pre-election meetings. In these cases, their behavior was interpreted as performance of their professional duties. However this issue was mostly resolved, after the Ministry of Interior defined the rules of professional duty performance in the pre-election period.

2. State Audit Office (SAO)

Party financing was one of the most problematic issues during the 2012 elections. The State Audit Office often without appropriate basis applied various sanctions and limitations mostly to opposition parties and their followers.

In 2013, there have been no complaints in regards with this agency because of a very simple reason, during this period the parties have been fined only couple times and with very small sums of money. This "passive" character of the State Audit Office raised questions whether refusing extra activity meant that this agency was trying to improve its bad reputation that it has acquired during the previous year. This doubt is further strengthened by the fact that in August-September the State Audit Office started investigation regarding large amount of undeclared money spent by "Democratic Movement – United Georgia"[31]. However, the decision regarding this case still has not been made.

3. Parliamentary Inter-Faction Group

In March 2013 the Inter-Faction Group was created in the Parliament, main aim of which was to reform the election legislation. One representative of each qualified election subject, with a consultative voting power, could have participated in the group's work. Observation missions were also actively involved in the group's work.

[31] http://sao.ge/monitoring-service-of-finance/statement

The goal of the Inter-Faction Group was to reform nice election related issues and to initiate appropriate legislation. These 9 topics were: 1. Basic principles; 2. Voter lists; 3. Voter bribery and financing of parties and election subjects; 4. Ban on use of administrative resources and budgetary funds; 5. Coverage of pre-election campaign by media (election advertisement); 6. Voting day procedures; 7. Complaints; 8. Electoral administration; 9. Electoral system[32].

According to the plan, opinions must have been agreed on 6 topics until May 31, 2013 and they should have been initiated in the Parliament, however the working process has lagged so much, the the group processed only 2-3 issue and initiated them in the Parliament, this must be assessed as a serious shortcoming.

Despite the fact, that the Inter-Faction Group was planning on adopting many of our and other NGO opinions, in the end it declined to adopt some important amendments. In the end only the issue of party finances has been adequately reformed. Some amendments have be adopted regarding the limitation of use of administrative resources for election purposes, however these amendments were cosmetic and the issue has not been substantially reformed.

RECOMMENDATIONS:

- For the future, it is important that the work of the Parliamentary Inter-Faction Group is better organized and results-oriented.
- The recommendations of the stakeholders involved should be taken into consideration and better incorporated in the outputs of the Group.

4. Inter-Agency Task Force for Free and Fair Elections

The format of the inter-agency task force is very important in the pre-election period, because the political parties and the observation missions have the opportunity to raise the issues of pre-election period that are most important to them in front of the task force and to inform the members of the task force regarding possible violations. Based on this information, the Task Force issues recommendations, adoption of which is important for conducting free and fair elections.

The Interagency Task Force that was transferred to the Ministry of Justice in August 2013, has adopted some very important recommendations in the pre-election period. Especially worth noting is work of the Task Force in regards with making clear details of the rules of involvement of civil servants in the pre-election campaign and defining individual rules, which shall be positively assessed, however in cases of issues raised by the "United National Movement", instead of conducting constructive talks, the sessions of the Task Force turned into a political debate.

Despite the fact that the report of the Task Force issued on 30th of September, 2013 included some of the recommendations of the observation missions, negatively must be assessed the fact that the task force has not reacted to several important instances of voter bribery, misuse of administrative resources, pressure and threat instances.

[32] http://goo.gl/hnuc0m

RECOMMENDATION:

- Even though the Georgian law does not prevent the ministers and their deputies from campaigning in the pre-election period, it was advisable that the Task Force had restricted participation of its members in the election campaign, in order to achieve more trust and objectivity. If this commission will still be operating during next elections, we hope that it takes this recommendation into consideration.

IX. Recommendations

The problematic areas analyzed in this report have demonstrated the need for taking the following recommendations into consideration:

- It is important that the eligibility requirements for the presidency are specified more clearly and the issue is regulated in a way that leaves no room for unclarity about who can register and who cannot.
- The state bodies should refrain from introducing large-scale amnesty and pardon initiatives in the pre-election period.
- Requirements for primary and secondary admissions to universities should be defined priorly and the public should be informed about those so that the applicants have appropriate expectations. Otherwise, the unexpected decisions made in the pre-election period may be perceived as misuse of administrative resources for election purposes.
- The law enforcement agencies need to immediately react on all reported cases of possible intimidation and inform the wider public about the developments of the case in a timely manner. Merely the recommendations of the IATF are not sufficient in discharging the tensions in the pre-election period.
- The Election Code needs to more clearly define what campaigning entails, as well as participation in a campaign. Attending the campaign meeting should also be considered as participation in a campaign;
- The list of officials allowed to campaign at any time should not include political officials who are not elected, such as deputy ministers, governors and gamgebelis.
- Supervisors of state bodies should more responsibly handle the issue of granting vacation time to their employees. The work of the public body cannot be paralyzed due to the fact of many employees being on a vacation;
- Municipality sakrebulos should better supervise the work of the apparatus of sakrebulos and gamgeobas;
- As part of the self-governance system reform, the rules for drawing up personnel lists employed at the local self-government bodies should be addressed, in order to optimize personnel.
- The government should refrain from increasing funding for pensions, social aid and programs with similar effect in the pre-election period. It would be advisable to make improvements to the law regulating this issue.
- The resources available by the president's or the government's reserve funds, as well as the municipality budgets, should be used to achieve the goals of the wider public and it is unacceptable to allocate these funds to sponsor activists and supporters of one or another political party. The goals and purposes of transactions that are provided as financial aid to a specific, small group of individuals should be especially well documented and grounded.
- For the future, it is important that the work of the Parliamentary Inter-Faction Group is better organized and results-oriented. The recommendations of the stakeholders involved should be taken into consideration and better incorporated in the outputs of the Group.
- Even though the Georgian law does not forbid the ministers and their deputies to campaign in the pre-election period, it was preferred that the Task Force had limited participation of its members in election campaign, in order to achieve more trust and objectivity. If this commission will still be operating during next elections, we hope that it takes this recommendation into consideration.

APPENDIX

DIAGRAM 2. Vacations of employees of Guria local self-government bodies.
(% of total staff)

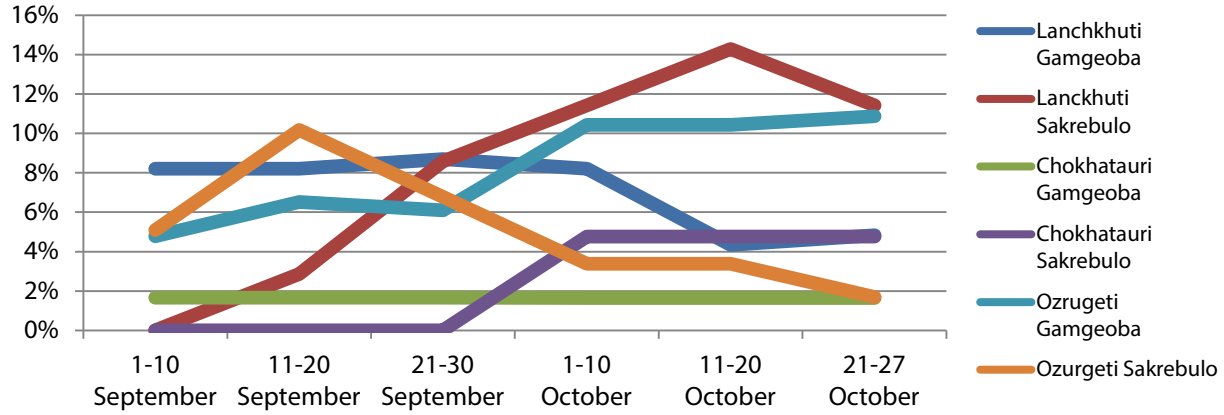
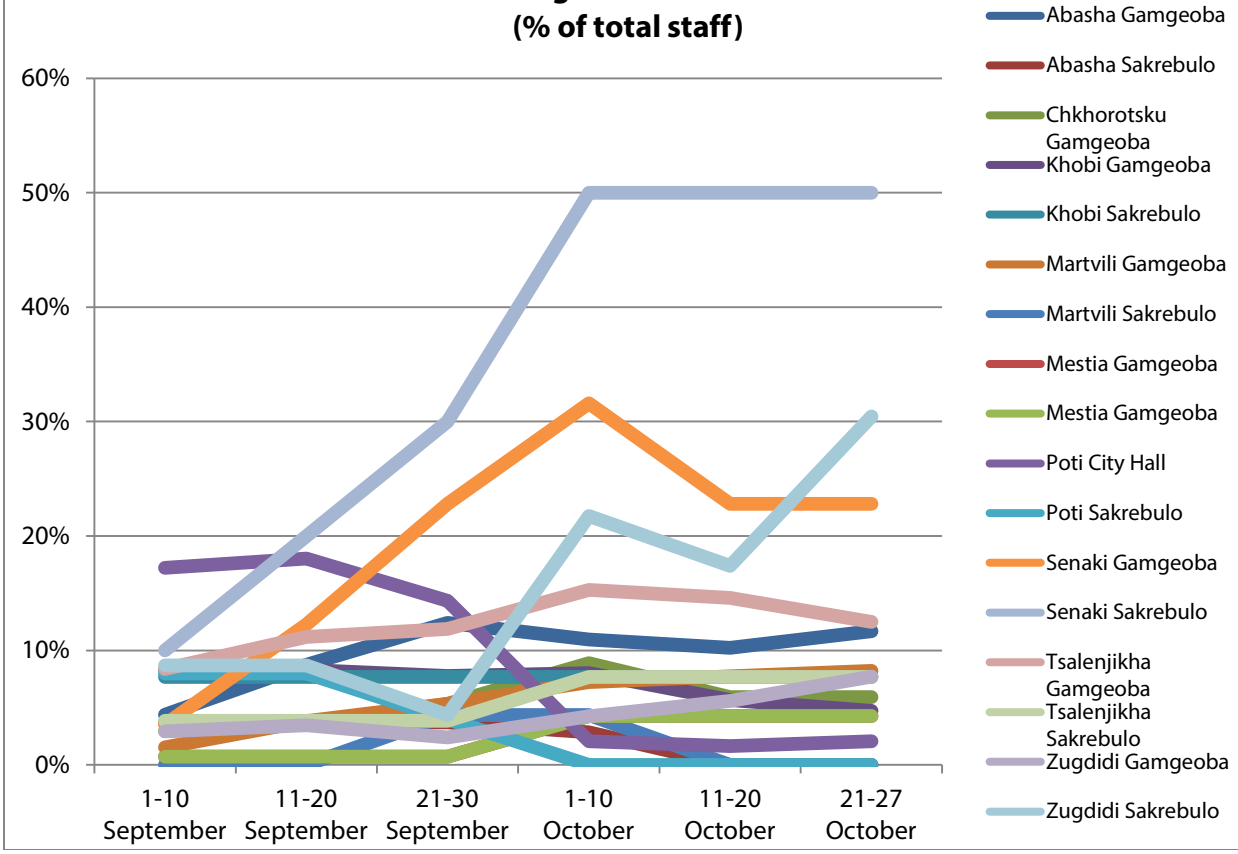


DIAGRAM 3. Vacations of employees of Samegrelo-Zemo Svaneti local self-government bodies.
(% of total staff)



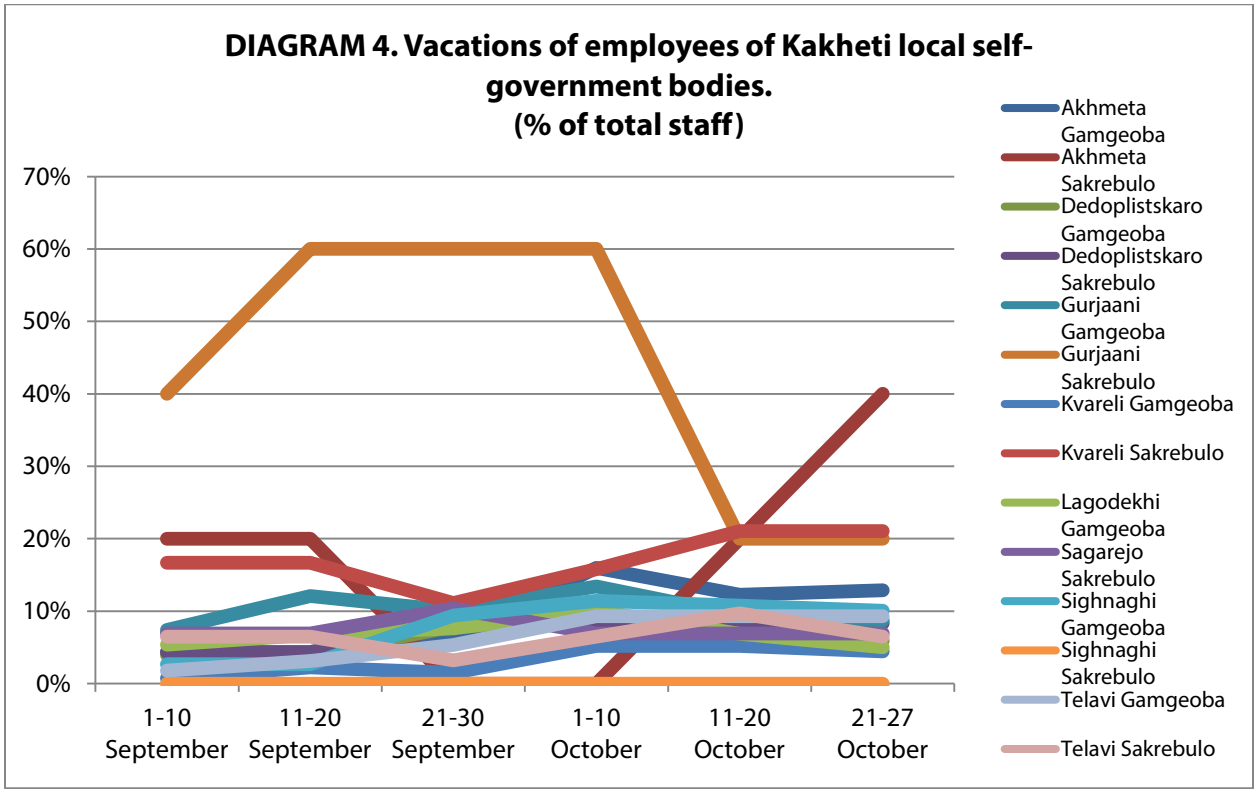


DIAGRAM 4. Vacations of employees of Kakheti local self-government bodies.
(% of total staff)
70%
60%
50%
40%
30%
20%
10%
0%
1-10 September
11-20 September
21-30 September
1-10 October
11-20 October
21-27 October
Akhmeta Gamgeoba
Akhmeta Sakrebulo
Dedoplistskaro Gamgeoba
Dedoplistskaro Sakrebulo
Gurjaani Gamgeoba
Gurjaani Sakrebulo
Kvareli Gamgeoba
Kvareli Sakrebulo
Lagodekhi Gamgeoba
Sagarejo Sakrebulo
Sighnaghi Gamgeoba
Sighnaghi Sakrebulo
Telavi Gamgeoba
Telavi Sakrebulo

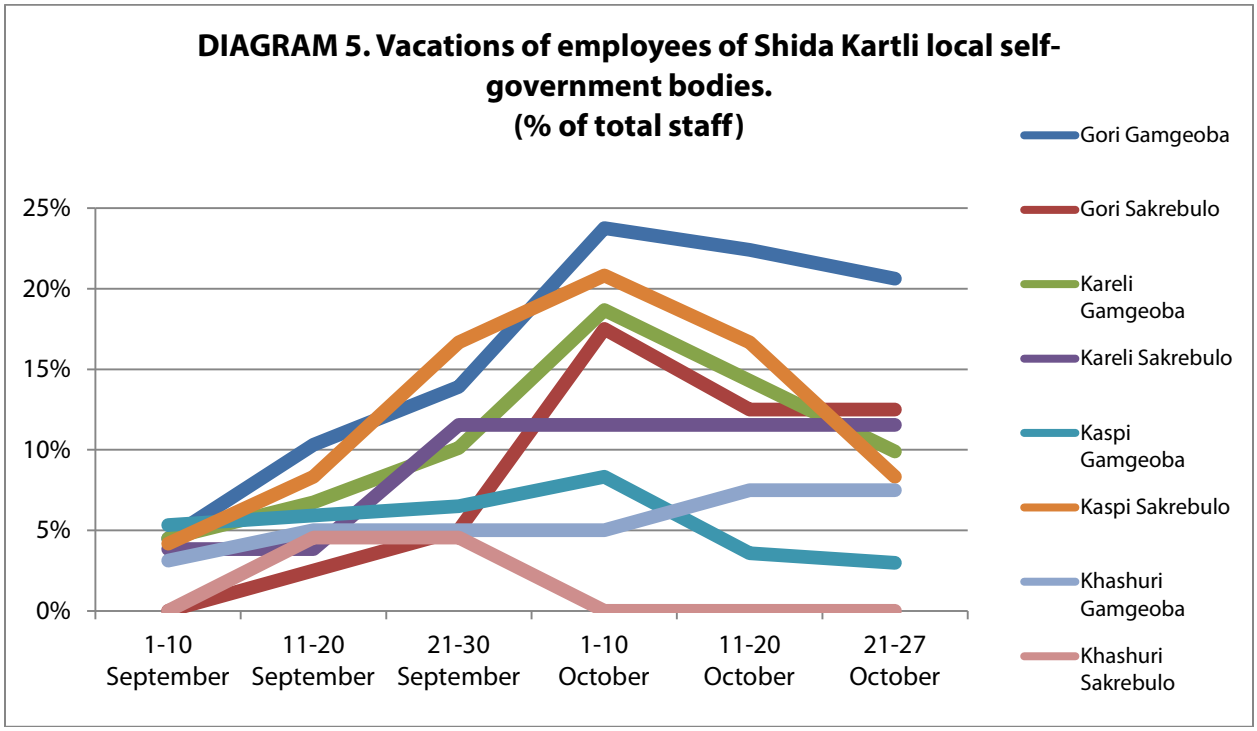


DIAGRAM 5. Vacations of employees of Shida Kartli local self-government bodies.
(% of total staff)
25%
20%
15%
10%
5%
0%
1-10 September
11-20 September
21-30 September
1-10 October
11-20 October
21-27 October
Gori Gamgeoba
Gori Sakrebulo
Kareli Gamgeoba
Kareli Sakrebulo
Kaspi Gamgeoba
Kaspi Sakrebulo
Khashuri Gamgeoba
Khashuri Sakrebulo

DIAGRAM 6. Vacations of employees of Samtskhe-Javakheti local self-government bodies.
(% of total staff)

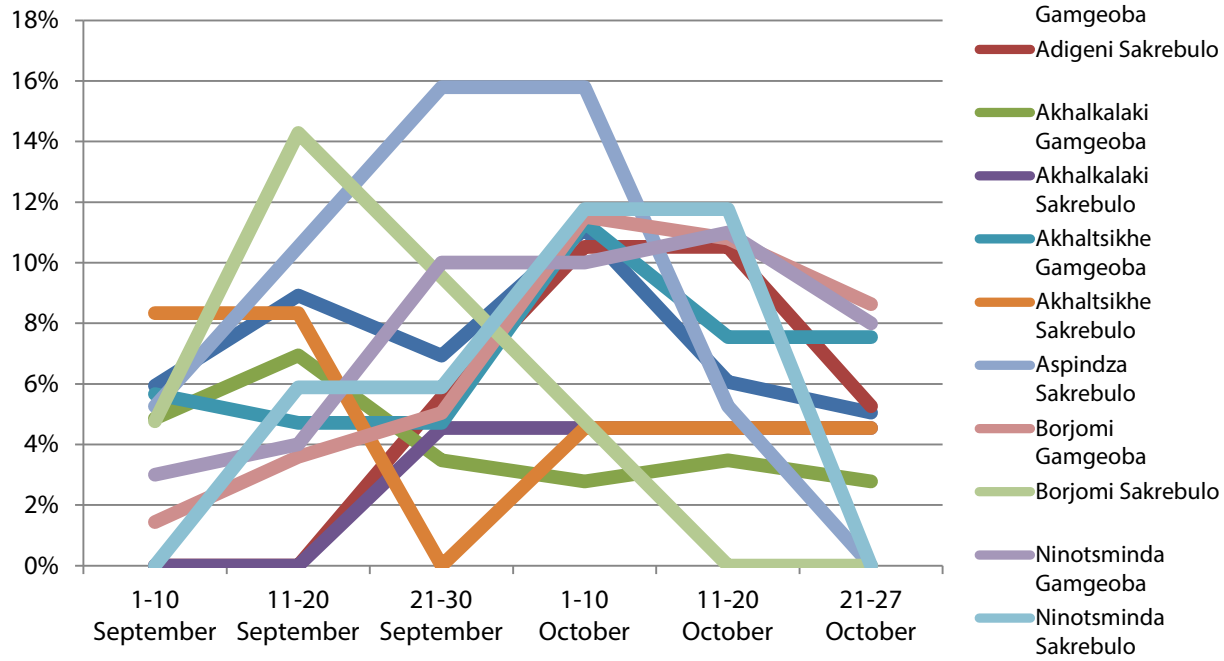


DIAGRAM 7. Vacations of employees of Racha-Lechkhumi local self-government bodies.
(% of total staff)

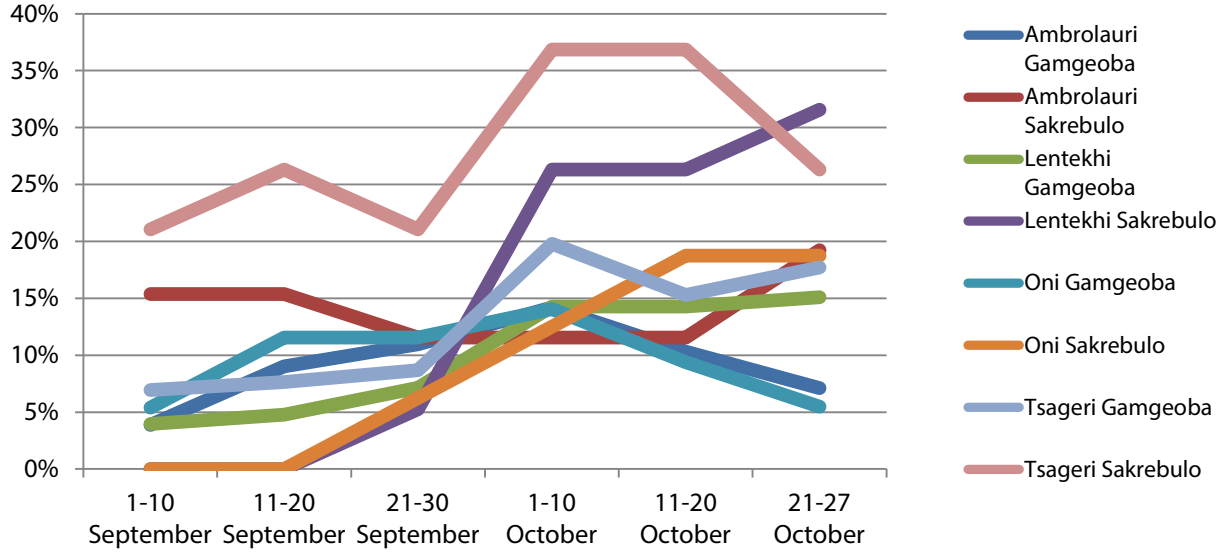


DIAGRAM 8. Vacations of employees of Mtskheta-Mtianeti local self-government bodies.
(% of total staff)

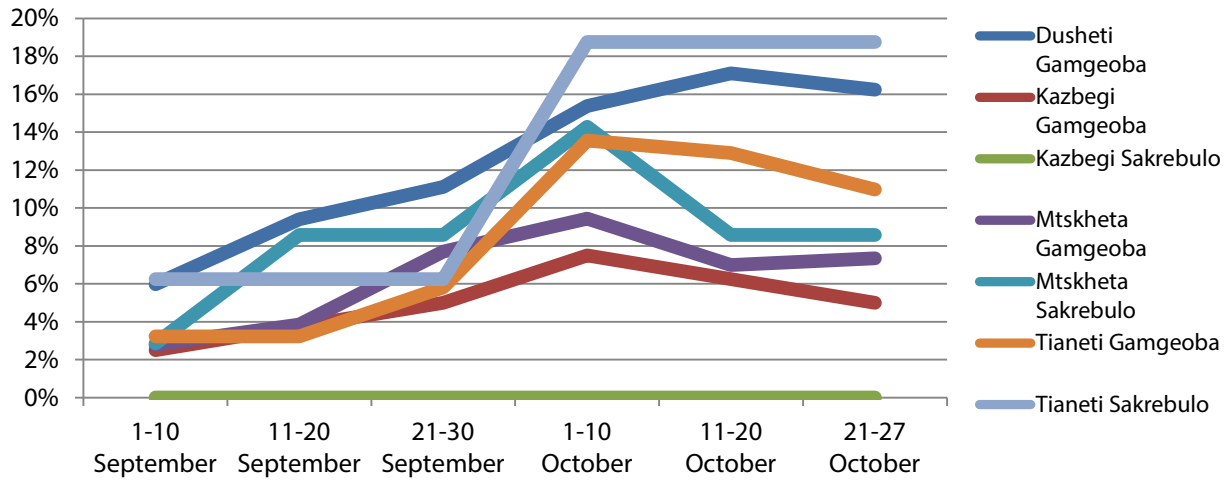
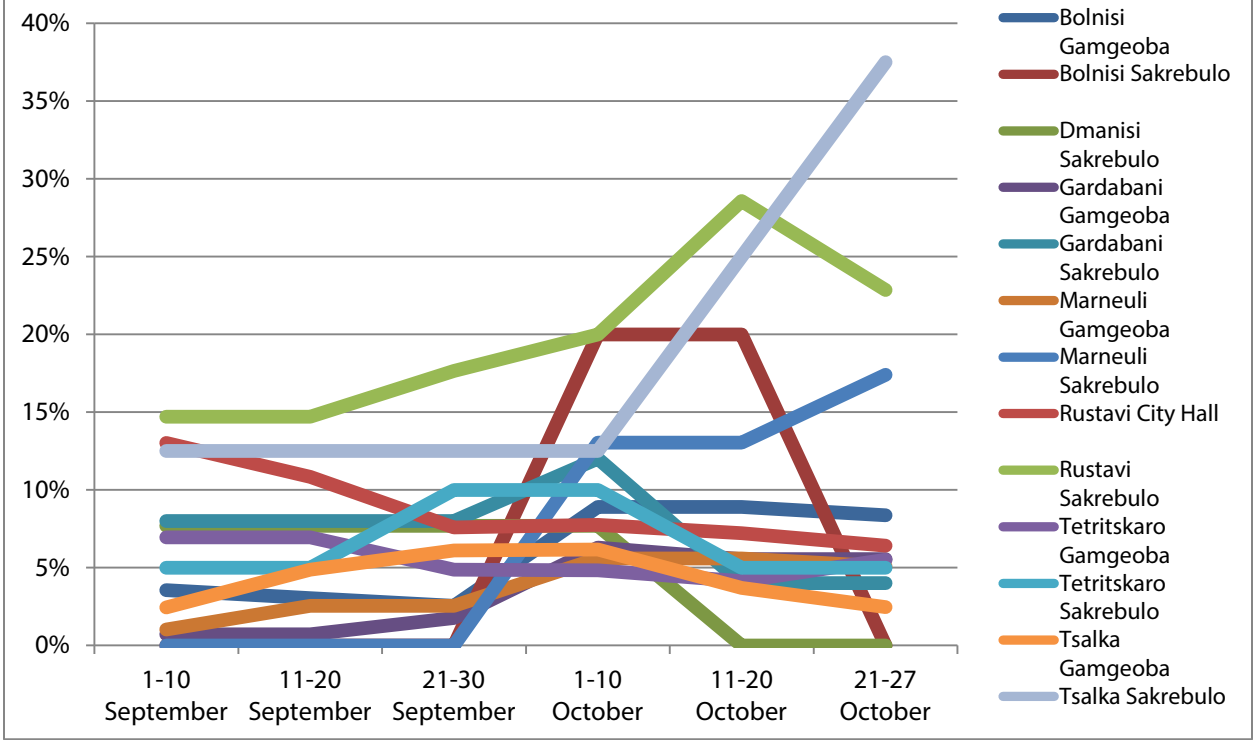


DIAGRAM 9. Vacations of employees of Kvemo Kartli local self-government bodies.
(% of total staff)



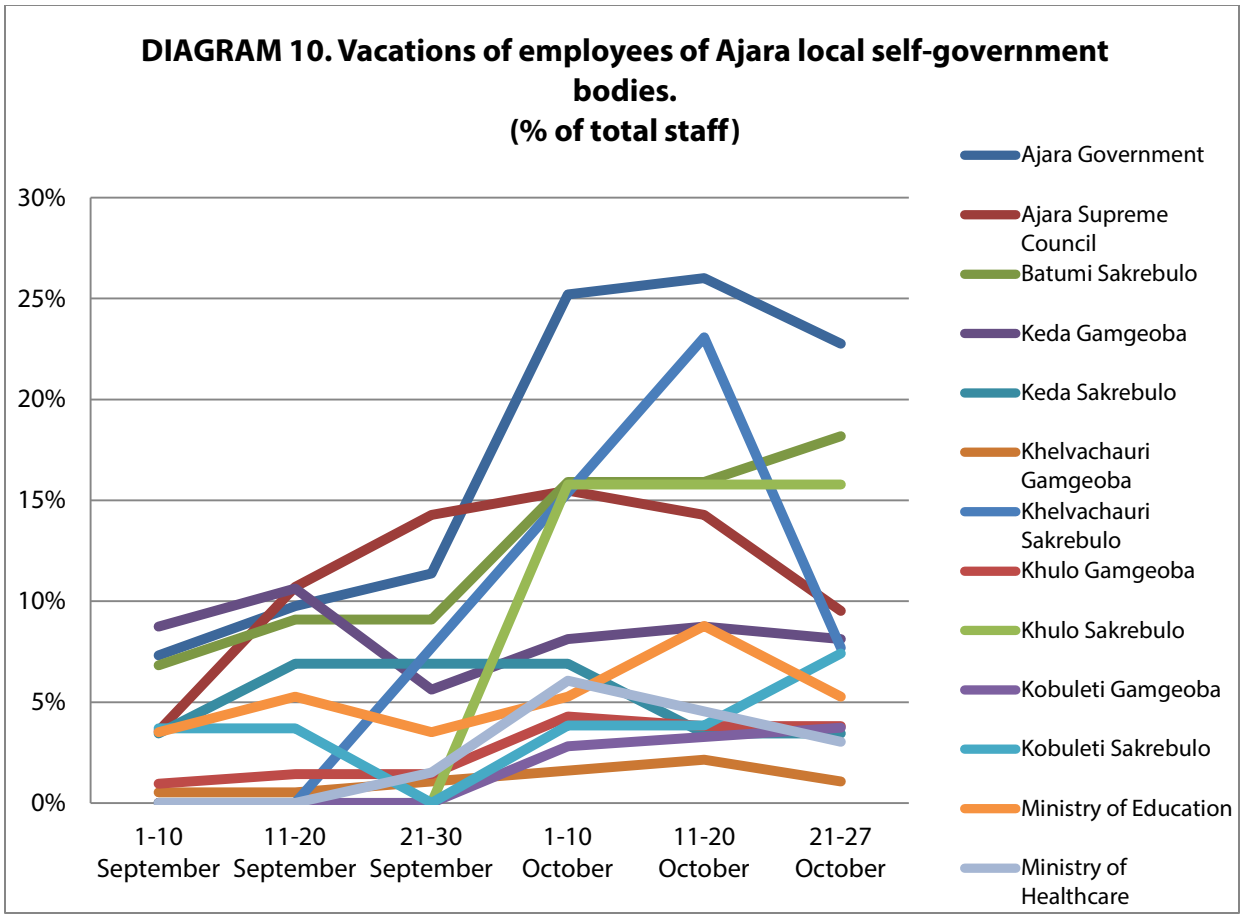


DIAGRAM 10. Vacations of employees of Ajara local self-government bodies.
(% of total staff)
30%
25%
20%
15%
10%
5%
0%
1-10 September
11-20 September
21-30 September
1-10 October
11-20 October
21-27 October
Ajara Government
Ajara Supreme Council
Batumi Sakrebulo
Keda Gamgeoba
Keda Sakrebulo
Khelvachauri Gamgeoba
Khelvachauri Sakrebulo
Khulo Gamgeoba
Khulo Sakrebulo
Kobuleti Gamgeoba
Kobuleti Sakrebulo
Ministry of Education
Ministry of Healthcare

DIAGRAM 11. Vacations of employees of Imereti local self-government bodies.
(% of total staff)

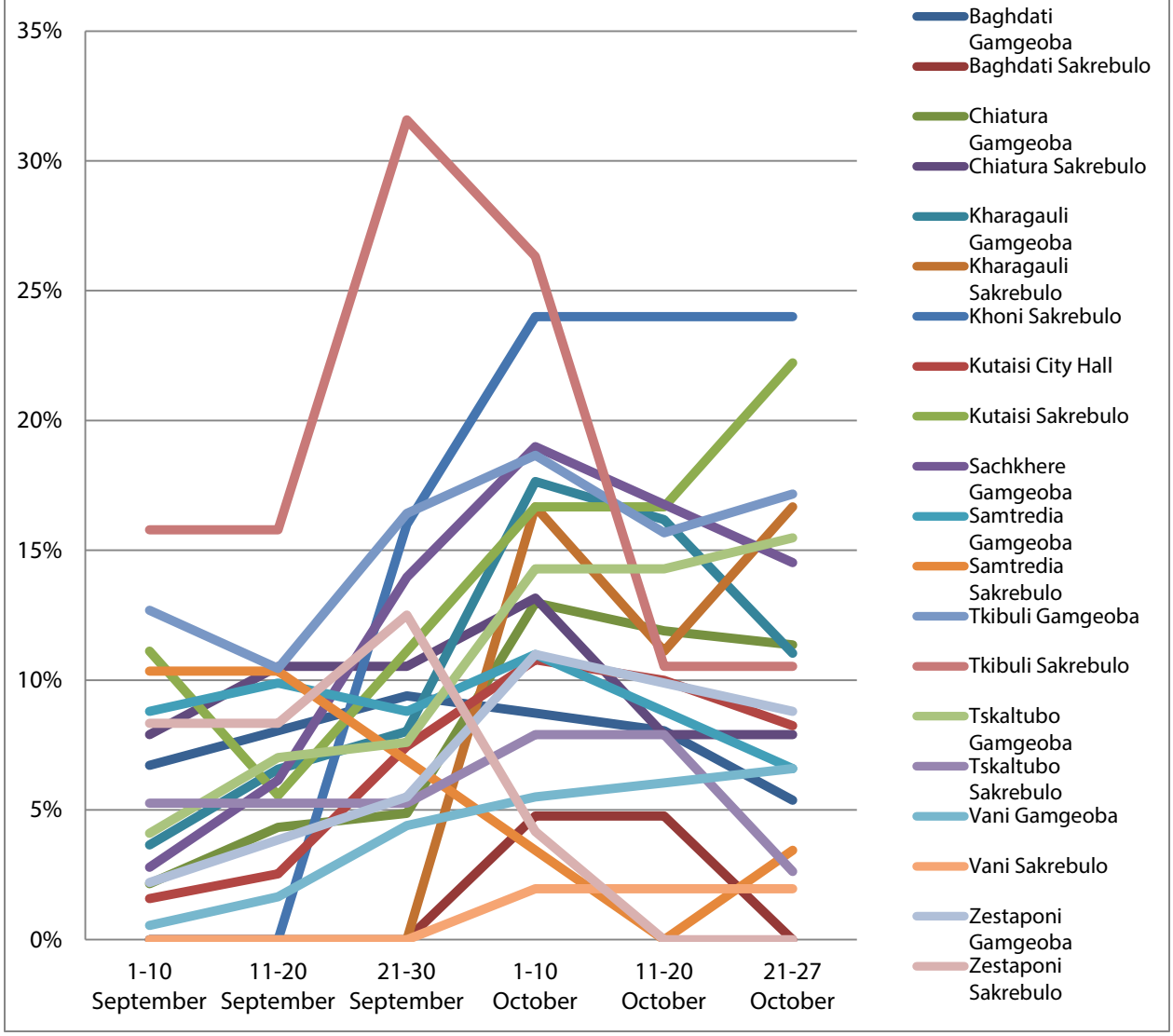


DIAGRAM 12. Employees of Guria local self-government bodies on vacation for longer than 12 days during September and October 2013.
(% of total staff on vacation)

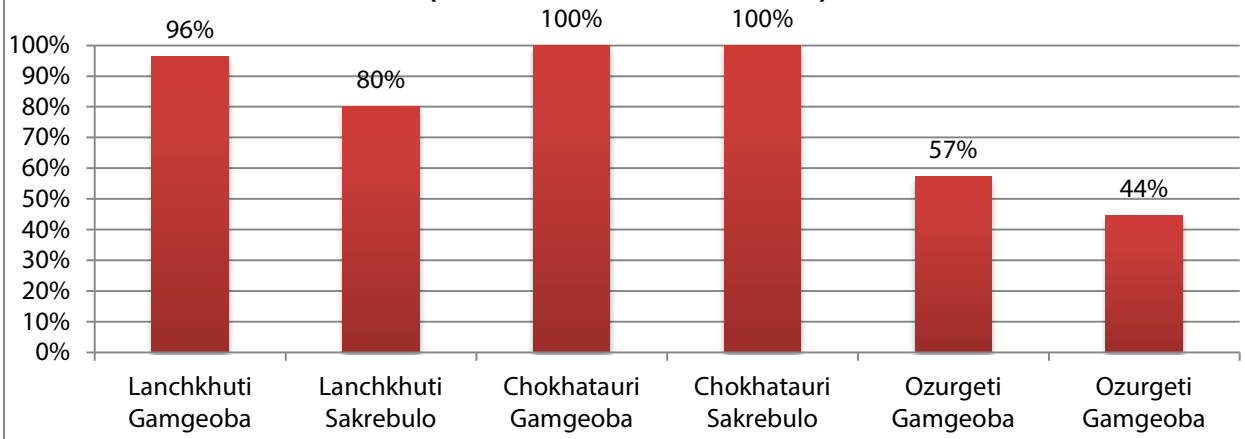
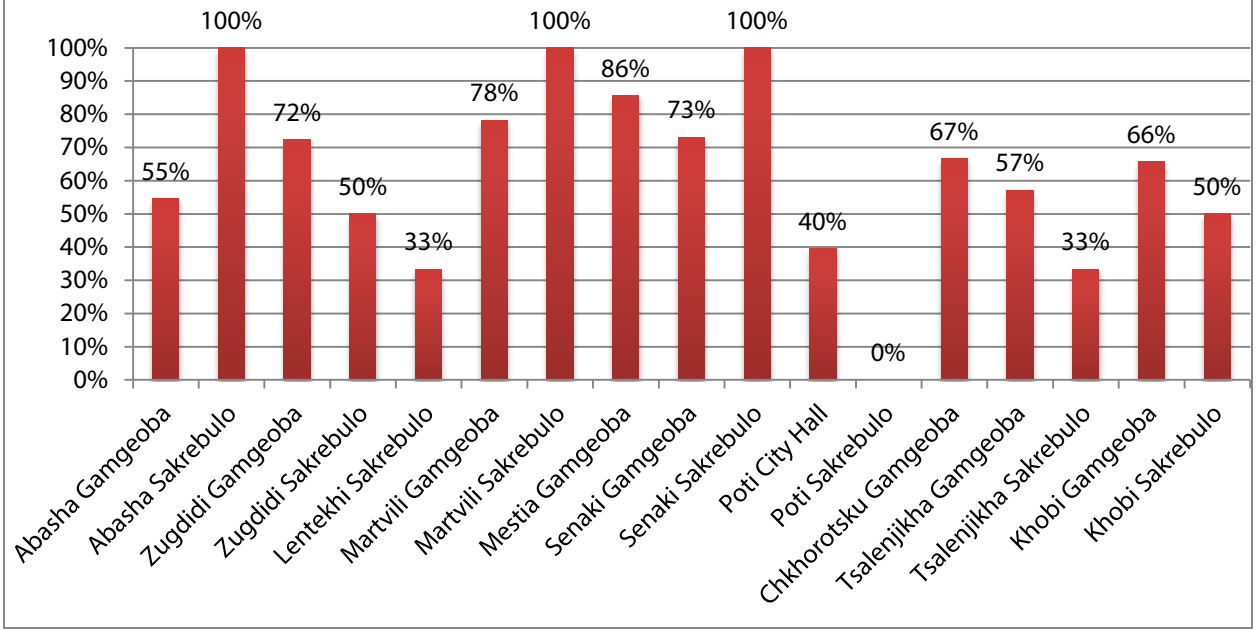


DIAGRAM 13. Employees of Samegrelo-Zemo Svaneti local self-government bodies on vacation for longer than 12 days during September and October 2013.
(% of total staff on vacation)



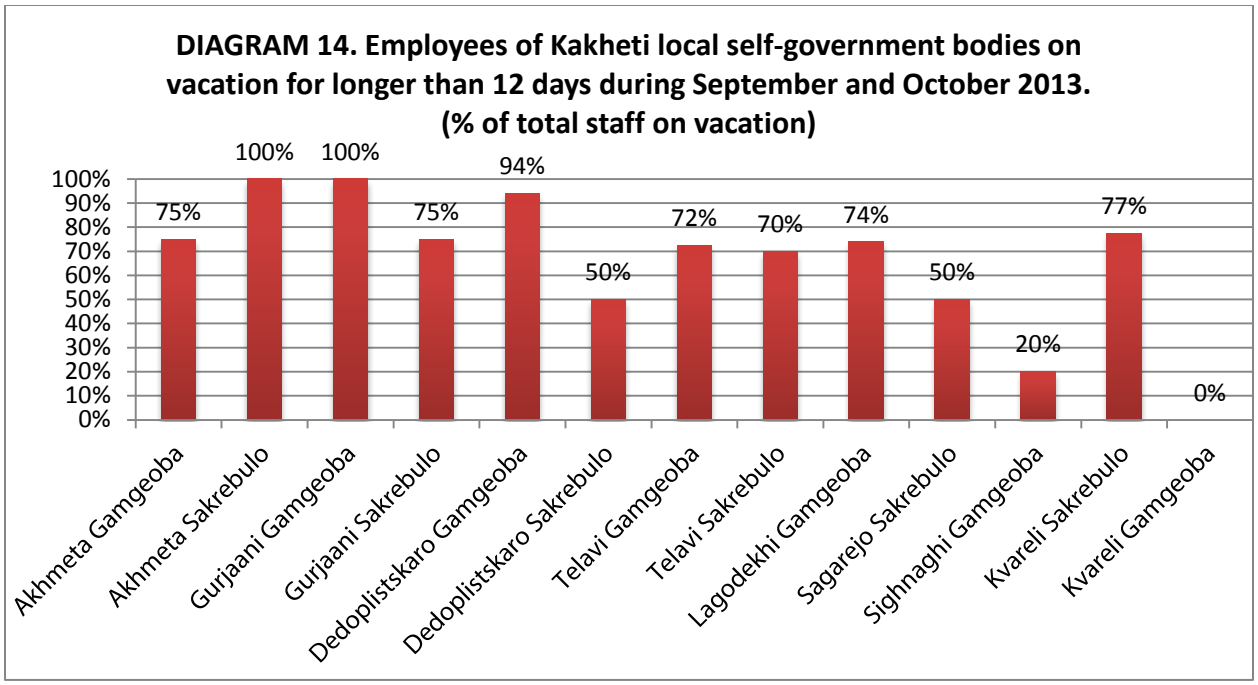


DIAGRAM 14. Employees of Kakheti local self-government bodies on vacation for longer than 12 days during September and October 2013.
(% of total staff on vacation)
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
75%
100%
100%
75%
94%
50%
72%
70%
74%
50%
20%
77%
0%
Akhmeta Gamgeoba
Akhmeta Sakrebulo
Gurjaani Gamgeoba
Gurjaani Sakrebulo
Dedoplistskaro Gamgeoba
Dedoplistskaro Sakrebulo
Telavi Gamgeoba
Telavi Sakrebulo
Lagodekhi Gamgeoba
Sagarejo Sakrebulo
Sighnaghi Gamgeoba
Kvareli Sakrebulo
Kvareli Gamgeoba

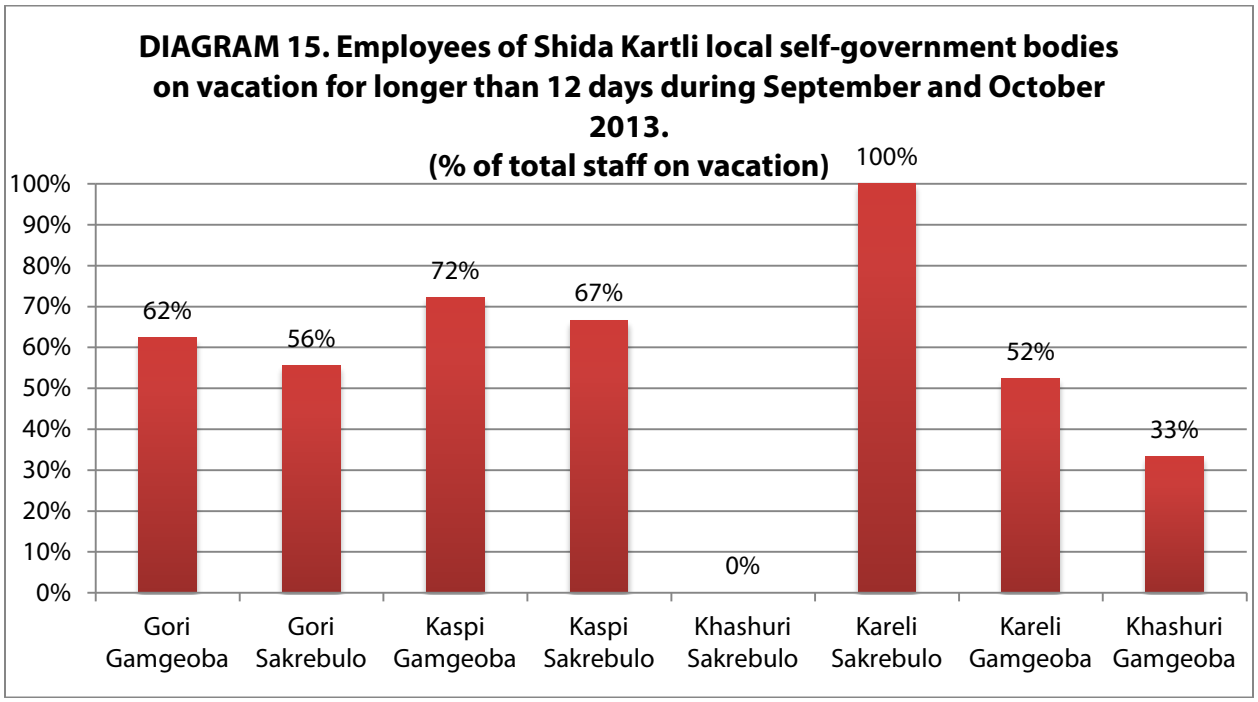


DIAGRAM 15. Employees of Shida Kartli local self-government bodies on vacation for longer than 12 days during September and October 2013.
(% of total staff on vacation)
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
62%
56%
72%
67%
0%
100%
52%
33%
Gori Gamgeoba
Gori Sakrebulo
Kaspi Gamgeoba
Kaspi Sakrebulo
Khashuri Sakrebulo
Kareli Sakrebulo
Kareli Gamgeoba
Khashuri Gamgeoba

DIAGRAM 16. Employees of Samtskhe-Javakheti local self-government bodies on vacation for longer than 12 days during September and October 2013.
(% of total staff on vacation)

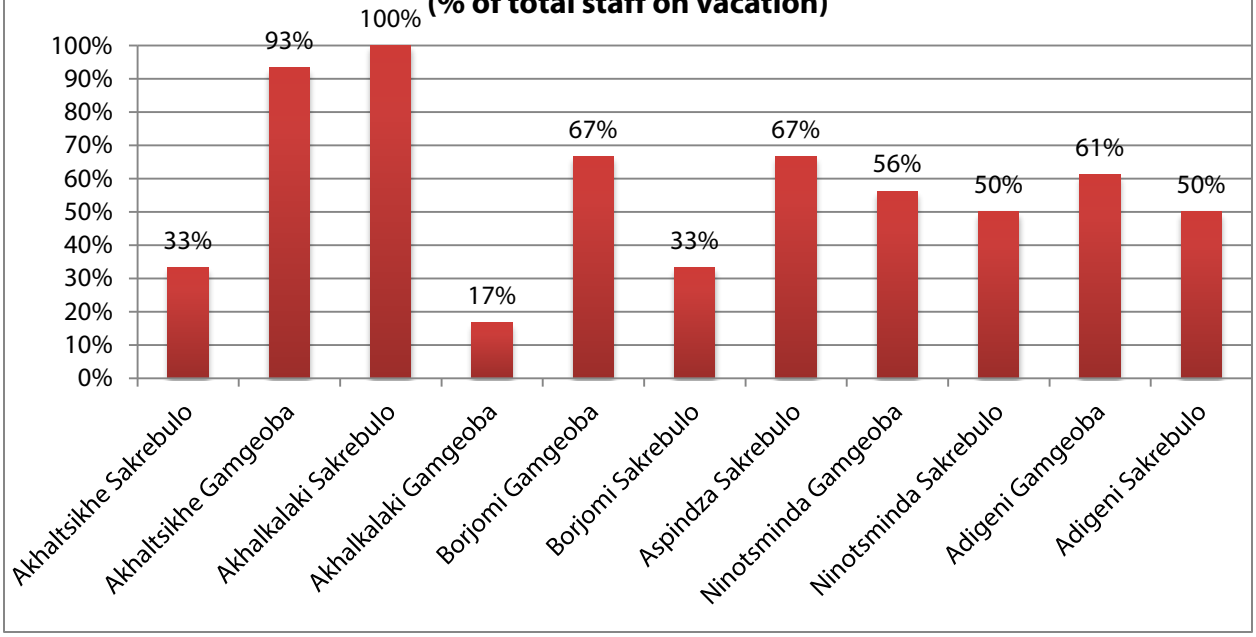


DIAGRAM 17. Employees of Ajara local self-government bodies on vacation for longer than 12 days during September and October 2013.
(% of total staff on vacation)

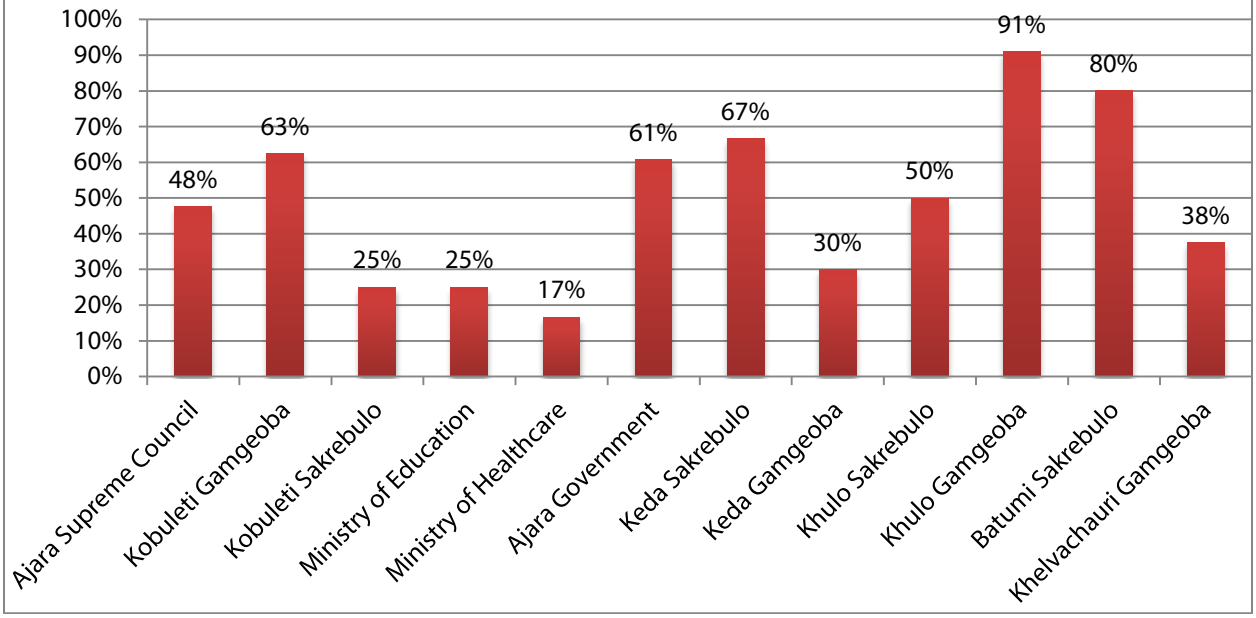


DIAGRAM 18. Employees of Imereti local self-government bodies on vacation for longer than 12 days during September and October 2013.
(% of total staff on vacation)

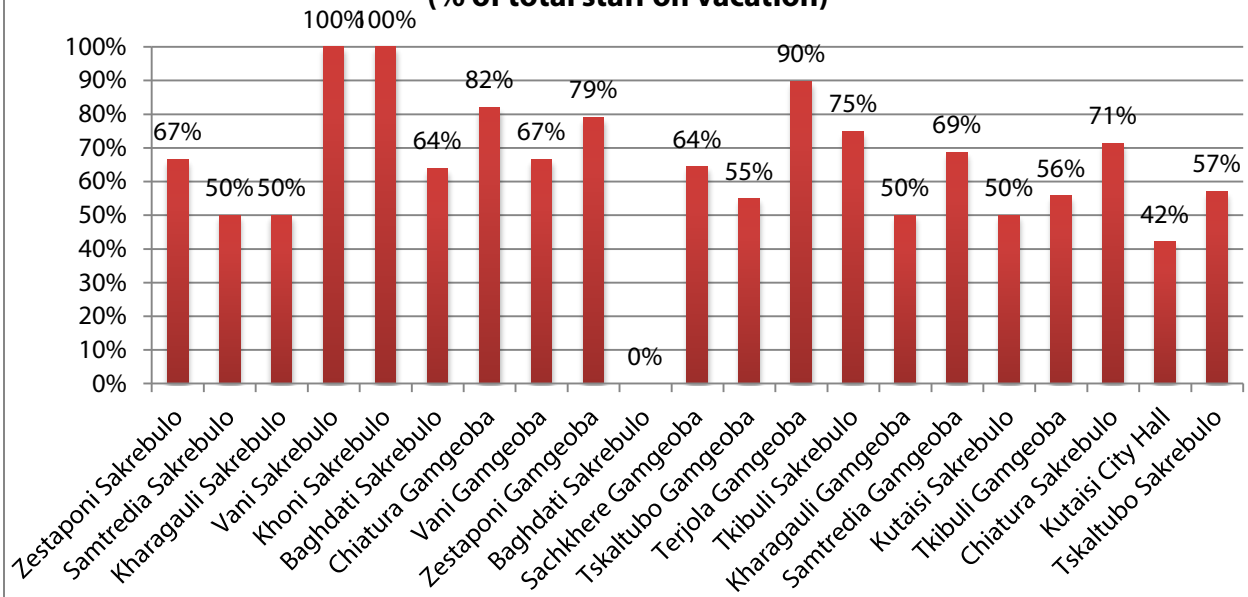


DIAGRAM 19. Employees of Racha-Lechkhumi local self-government bodies on vacation for longer than 12 days during September and October 2013.
(% of total staff on vacation)

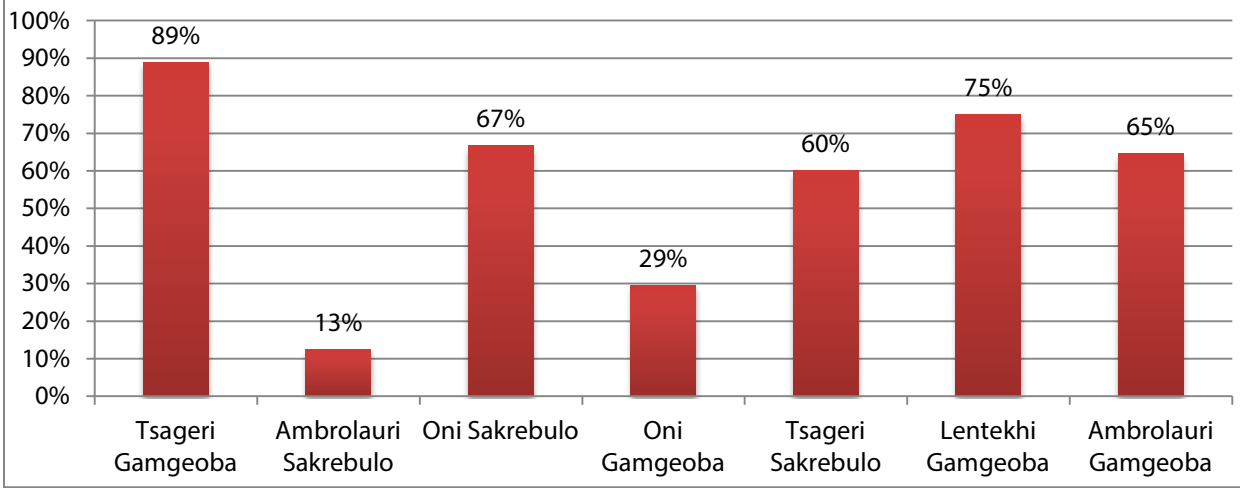


DIAGRAM 20. Employees of Mtskheta-Mtianeti local self-government bodies on vacation for longer than 12 days during September and October 2013.
(% of total staff on vacation)

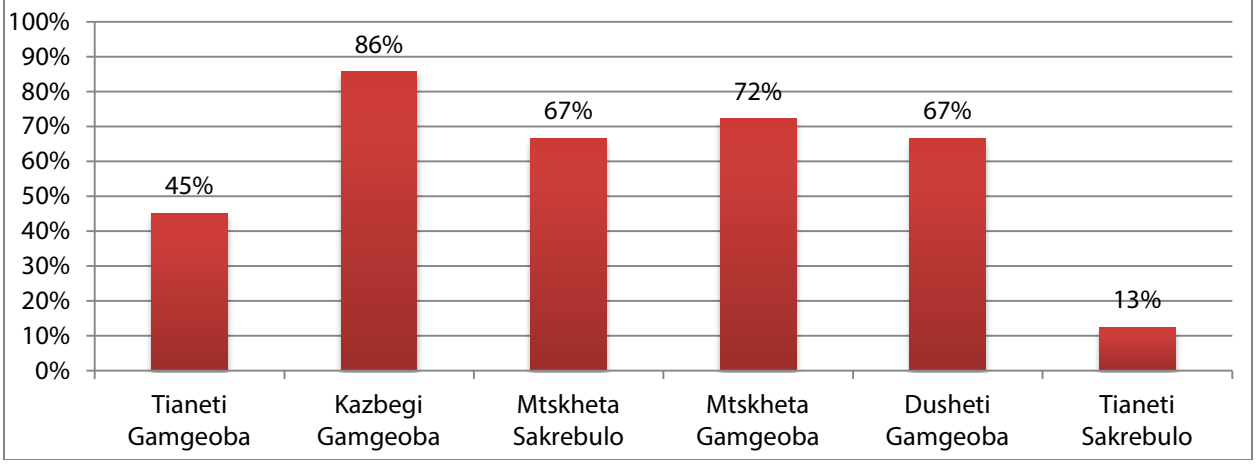
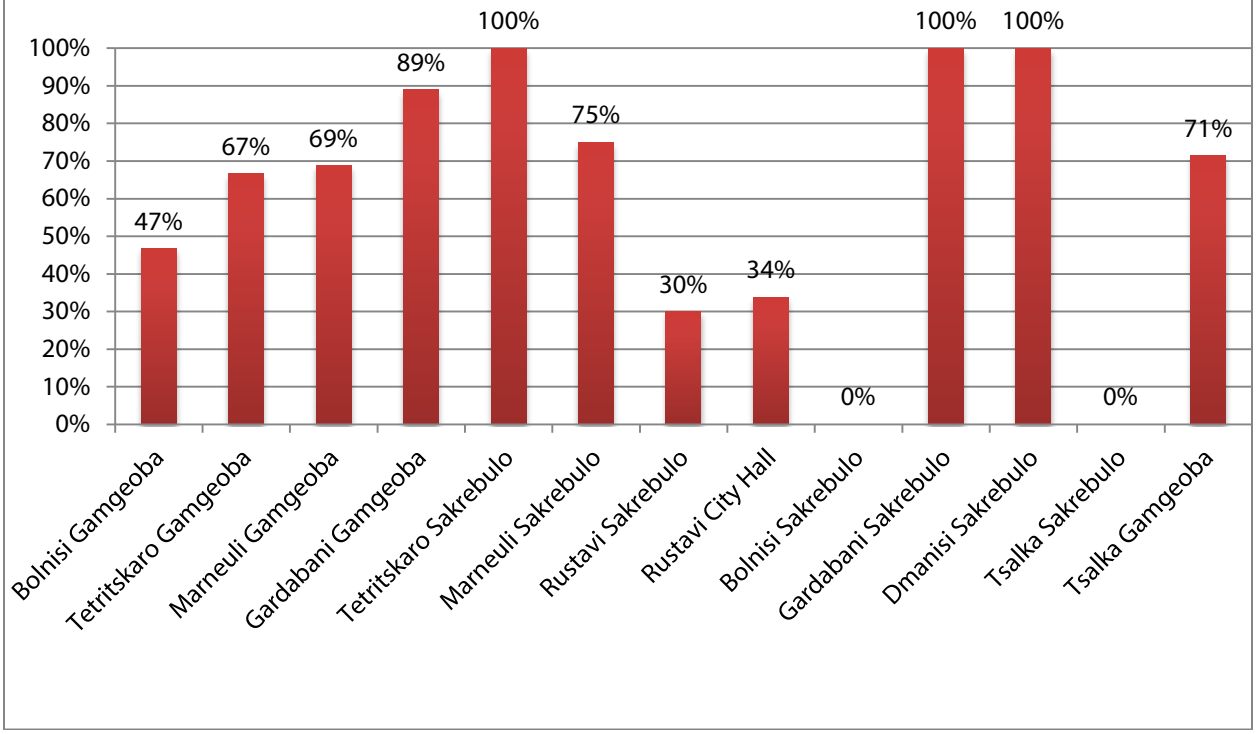



DIAGRAM 21. Employees of Kvemo Kartli local self-government bodies on vacation for longer than 12 days during September and October 2013.
(% of total staff on vacation)