Results of Public Opinion Poll and International Practice

about the draft law of Georgia on Conflict of Interest and Corruption

April 2007

1.1 **Focus group analysis**[1]

In April 2007, Transparency International Georgia, together with the Parliamentary Legal Issues Committee and with the financial assistance of the Swiss Agency for Development and Cooperation, held focus groups in Tbilisi and Kutaisi on the draft law of Georgia on Conflict of Interests and Corruption of High-ranking Officials. The representatives of Transparency International Georgia together with Ms. Lali Papiashvili, a member of the Legal Issues Committee, and Committee staff led the focus group meetings.

The focus group meeting in Tbilisi was attended by representatives of the Ministry of Education and Science; the Ministry of Environment Protection and Natural Resources; the Ministry of Economic Development; the Ministry of Energy; the Ministry of Justice; the Ministry of Defense; the Ministry of Culture, Monument Protection, and Sport; the Ministry of Refugees and Resettlement; the Ministry of Foreign Affairs; the Ministry of Finance; the Ministry of Labor, Health, and Social Affairs, and representatives of the Chamber of Control and the Office of the Prosecutor General.

The focus group meeting in Kutaisi was attended by representatives of the local self-governance, law enforcement bodies, the Revenue Service, the Tax Inspection, and other interested individuals. In total, 30 people participated in the meeting.

Participants' viewpoints on the draft law:

The main positive aspects of the draft

The participants approved of the main objective of the draft – the perfection of the system of financial and property declarations of high-ranking officials and enhancement of government control mechanisms in this sphere.

The following was also positively assessed:

1. The distinction between corruption and conflict of interest and systematizing the norms determining concrete instances and consequent penalties.
2. The definition of the term high-ranking official in such a way that, despite structural changes, all principal high-ranking officials have to submit financial and property declarations. The classification of officials into first, second, and third group officials according to their responsibilities is one more innovation of the draft.
3. The definition of the new terms and responsibilities for the submission of financial and property declarations of high-ranking officials. The innovation of the draft is the following: a high-ranking official is responsible for submitting a financial and property declaration only once a year within a month of his\her appointment even if during this year s/he will change positions (exception is the case when an official acquires a higher position than s/he previously held). In addition, while filling out future declaration

[1] The focus group report represents only members' ideas. The views expressed in this report are those of the focus group participants and not those of Transparency International Georgia or the Swiss Agency for Development and Cooperation.

forms, an official has to fix only those changes that occurred during the year, simplifying the process.

4. The enhancement of the functions of the Bureau regarding monitoring financial and property situation of high-ranking officials. On the one hand, the Bureau is obligated to take measures when the law regarding declaration submission has been violated and is responsible for issues related to conflict of interest and corruption. On the other hand, it is required to process and analyze submitted declarations.
5. The obligation that the Bureau send a copy of the previous declaration form or, in case multiple declarations have been previously submitted, send statistically processed declaration data to an official one month before the time of submission of a new declaration.
6. The abolishment of the obligation of presenting copies of documents confirming property ownership. This obligation caused considerable difficulties in the past.
7. The simplification of the procedures of paying fines imposed if a declaration is not submitted. The head of the Bureau will have the authority to impose a fine (a protocol of administrative offence will be send to the court if the lawbreaker does not comply).
8. The identification of more practical criteria for the definition of the term "gift," which is one of the basic components of a corrupt deal.

On the whole, it was mentioned that the new draft law will be more effective than the current law and transparent and efficient administrative mechanisms are clearly defined in the draft. Many participants considered the enhancement of the Bureau's functions (tasking it with processing and systematizing submitted data) as the most important amendment to the Law.

Remarks made on the draft law

At the meetings the participants also expressed their viewpoints on the disadvantages of the draft. They expressed their dissatisfaction regarding the following:

Definition of terms

According to the participants' viewpoints the terms defined in the draft need further clarification. In article 2 of the draft the term "duty oversight" is not clearly defined. Also the definition of "corruption" is insufficient. According to the participants, not only should activities conducted against state interests be considered an abuse of power and corruption offence by a high-ranking official but also activities conducted against the interests of physical and legal persons.

According to the participants' opinion, there are also other terms in the draft that need clarification or additional definition (i.e. "intentional" and "obstinately").

It is necessary to define more accurately the list of high-ranking officials. Namely, the list of those legal entities under public law and their representative officials who will be responsible to submit declarations should be included in the draft.

In the opinion of the representative of the Chamber of Control it is necessary to bring the term of "high-ranking official" and the list of these officials into compliance with the specific structure of the Chamber of Control.

According to the participants of the focus group the list of individuals that fall under the definition of "family member" must be limited, and also the terms "relative," "registered person," and "permanent resident" must be precisely defined. It will help to avoid future uncertainties while filling out declarations.

A general remark was expressed regarding legal terms. The participants underlined the necessity of creating a unified (explanatory) glossary of legal terms that have legal authority and whose usage is necessary when elaborating new draft laws. The participants noted that in current legislation very frequently one and the same term is defined differently in different laws (such expressions as "for the purpose of this law" cause many uncertainties).

Legal Entities under Public Law

According to the draft law, high-ranking officials of legal entities under public law in which the state possesses controlling interest or shares and with annual assets or turnover of 1 million GEL must submit a financial and property declaration, though exceptions are made in healthcare, education, and cultural spheres. In the opinion of the focus group participants the activities of the newly established legal entities under public law in different spheres are so diverse that it will be rather difficult to distinguish those that must submit declarations from those that do not. The question becomes more complicated since the draft law does not provide a precise list of those legal entities under public law and high-ranking officials that must complete declarations.

According to the participants, some legal entities under public law have annual assets or turnover less than 1 million GEL, but because of their function and activities (oversight, purchasing, etc.) it would be reasonable to include them in the draft.

In general the participants thought that imposing the requirement of submitting a declaration should depend not on the sum of assets or turnover of the organization, but on the type of activities it undertakes and the potential for corruption.

Conflict of position

Some participants of the focus groups did not agree with those restrictions that prohibit a high-ranking official to conduct other paid activities (besides education and creative activities). According them:

1. The restriction must be extended only to activities in those organizations that are under the supervision of a high-ranking official;
2. A high-ranking official must only be responsible to not conceal the second employment.

Ranking of officials

As mentioned above, the participants approved of the ranking of officials and imposing different responsibilities according to their duties and obligations. The draft law divides public servants into three categories. Public servants of the first category have many more responsibilities than servants under the second category. Likewise, servants under the second category have many more responsibilities than servants under the third category because the higher the rank of a public servant, the greater the opportunity for corruption. The participants of the focus groups agreed on the whole with this principle but thought that it must be more clearly outlined in the draft.

For example, the Mayor of Tbilisi falls under the first category and officials of the city hall are in the second category. The state trustee of the president also falls into the second category.

Restrictions in the draft law regarding gifts

The viewpoints of the participants regarding the definition of the term "gift" varied. According to the draft, an official and all members of his family may receive things worth a total of less than one thousand GEL from one person and it will not be considered a gift. While considering this issue, the participants paid attention to the following aspects:

- According to some participants the admitted total value of things received during the year is very low, particularly, when considering events like birthday parties, jubilees, or wedding parties. Thus, participants considered that the limit of the gift must be increased or exceptions must be allowed for particular cases.
- The draft sets a limit on the receipt of gifts by officials' family members. The draft considers not only a spouse and a child as family members, but also persons registered in that household. Participants noted that IDPs or other relatives of an official might fall into this category and it will be quite difficult to control the process of their receiving the gifts.
- A gift, as defined by the law, must be handed over to the state within three working days of its receipt. Some participants thought that instead of giving the gift to the state it would be better to return it to the person who had presented the gift. Others considered that setting a timeframe for returning a gift is inappropriate, since a high-ranking official is prohibited to receive an illegal gift in the first place. The opinion was also expressed that there will possibly be objective reasons when an official will not be able to return the gift within three days (i.e. when a gift is received by his\her family members an official might not be in the country, etc.).
- According to the participants, the draft must make a clear distinction between the definitions of "gift" and "bribe." A public servant must not be prohibited from receiving gifts in exchange for which no corrupt deal is expected.

On the whole, the focus group participants noted that it would be better to include such restrictions and prohibitions in the draft that can practically be regulated.

Declared information

According to the draft law, in order to have exhaustive information about a high-ranking official, his/her declaration must include information about the financial and property situation of his/her family members and, for officials in the first group, information on the salaries of close relatives is also required. In the participants' opinion it would be rather difficult for first group officials to declare the salaries of his/her close relatives (sisters, brothers, parents), especially if those relatives do not live with him/her. Frequently people do not have information about their relatives' salaries.

Obligation of filling out a declaration while holding a position temporarily

According to the draft law, a public servant is responsible for submitting the declaration if moving to a higher position. This responsibility includes even those public servants who hold a position only temporarily. The focus group participants noted that sometimes a person could hold a position for only several days or weeks when filling in for a recently dismissed official until a new one has been appointed. Consequently, participants thought that a public servant must be responsible for submitting a declaration only if holding a higher position longer than one month.

Property declarations

According to the current law, only the property in ownership of an official must be included in the declaration. The draft law includes not only property in ownership but property in possession. Participants objected to including property in ownership in the declaration because a person might rent some property, which constitutes an expense rather than an asset. The draft is not designed to address the declaration of officials' expenditures.

Conflict of interest

Participants believe some restrictions regarding conflicts of interest must be amended, namely:

- The draft law prohibits a public servant from bargaining with the relatives of high officials of the organization where s/he works. In Kutaisi, focus group participants noted that to observe this restriction would be difficult for public servants as in the majority cases they are not be informed about the family connections of their superiors.
- Upon leaving his/her position, a high-ranking official and his/her family members are banned from holding any position, conducting any activities, or possessing shares in any organization that was previously under his/her supervision. Participants remarked that employees of specific services, such as the Tax Inspection, the Revenue Service, and the Financial Police, considering the wide reach of their activities, might be unable to find work after leaving their positions.

The participants of the meetings also mentioned the possibility that an official could disclose or sell important information after leaving the position and harm the interests of the organization.

Norms of responsibility

The participants made several notes concerning the norms of responsibility.

- According to the draft, if the information that is required by the law is not given to the Bureau or the information submitted to the Bureau is not complete or correct, the high-ranking official is subject to various sanctions. The penalty for each violation is fixed. In the opinion of the participants it would be better if the amount of the penalty is based on the assets that were not properly declared by the servant, i.e. the more assets that are hidden the bigger the amount of the fine.
- In addition, it is not clear for the participants how "incomplete" and "incorrect" information will be assessed. Participants questioned why declaring incomplete information is a less important violation than declaring incorrect information.
- According to the Criminal Code, community service is a possible sanction if an official avoids submitting the financial and property declaration or intentionally indicating the wrong data. As participants mentioned, today there are no real possibilities in Georgia to complete such an alternative and in this case the fine is the only form of sanction.
- Participants assume that there should be some exceptions regarding the timeframe for submitting the declaration. Mainly the draft should consider some justifications (e.g. a person is not in the country or has health problems) for which a public servant would not be subject to sanctions for missing the deadline. It can be indicated that the public servant can be excused for missing the deadline in case the delay is caused by reasons beyond their control (obviously the fairness of the reasons can become the subject of court disputes).

Implementing oversight

According to Article 30 of the draft, when staff changes take place "the head of the appropriate body or other authorized person must inform the Bureau of the changes within seven working days." Participants think that the person responsible for this is not clearly defined (e.g. is the public servant who made the change responsible, the head of the organization, or other person/unit working in the same body?). Participants think that it would be much better if a special unit is established in the organization will be accountable to the Bureau (human resources unit, general inspection).

The authority of the Bureau on the monitoring the financial and property declaration of higher ranking officials

Most participants positively assessed the increase in the Bureau's functions and the establishment of a more effective structure. According to one segment of the participants, the Bureau should have the right of inquest and investigation. However most participants think that, at this stage, the Bureau should only have the right to process and organize received information. They assume that the Bureau should analyze changes in declarations submitted at different times.

A number of participants think that it would be interesting to rank officials according to finances and property owned and compare this with their position.

According to participants, the Bureau should have the ability to consult as well. Specifically, the Bureau should assist officials in filling out the declarations and remind them about deadlines for submission (participants mention that the Bureau currently undertakes this function, however it would be better if this were regulated by the law).

Participants emphasized that neither the existing law nor the draft obligate the Bureau to prepare and submit periodic reports. They mentioned that it is necessary for the Bureau to have such responsibilities and they should be described in detail in the legislation.

Finally, when talking about the Bureau, participants noted that generally it is necessary to have a strong controlling body that is not law enforcement, which will oversee conflicts of interest related to civil servants.

Guarantees for the protection of high-ranking officials

As previously mentioned, participants positively assessed the draft law where the rules for violations are stricter. However they observed that, in addition to tightening regulations in order to reduce corruption, it is necessary to offer some incentives (social guarantees) to public servants as practiced in developed countries.

Financial justification of the draft

According to the draft, its adoption will influence the revenue (financial sanctions on violations) and expenditure (new financial responsibilities) section of the budget. The draft does not contain other detailed financial justification. Participants asked if the current draft was created based upon an analysis of the revenue from violations in the past and whether or not the sum received from financial sanctions is enough to finance the Bureau's activities. Generally participants think that financial justification provided in the draft is formal and not based upon thorough research.

They also assume that making the Bureau dependent on the fines imposed will establish a bad relationship between the Bureau and public servants, since the Bureau will be interested in imposing more fines in order to finance its activities and will pay less attention to consulting services.

1.2 International Experience Concerning a "Gift" as a Main Component of Corruption

According to Article 2, point II of the draft law on Conflicts of Interest and Corruption of High-Ranking Officials that was elaborated by the Ministry of Justice and presented by the Legal Issues Committee of the Parliament of Georgia:

Gifts received by a high-ranking official and his family members during the fiscal year, the price of which per family member does not exceed 1,000 (one thousand) GEL and the non-permanent gift the price of which does not exceed 500 (five hundred) GEL and are not taken from one source will not be considered a "gift."

According to the law, "a gift is any financial or other kind of benefit given to a high-ranking official or his family members without any charges or with favorable conditions, release from obligations, services obtained at favorable prices from a person who receives good revenue for the same service."

International experience and acts elaborated by international organizations are important in respect to this provision.

According to Chapter IV of the UN Anticorruption Resolution adopted in 1997 #A/RES/51/59, "public servants are prohibited directly or indirectly to receive any kind of gift or services that may influence the execution of their responsibilities."

Articles 18 and 19 of the recommendation #R (2000)10 of the Council of Europe's Committee of Ministers address the regulation concerning a "gift."

Article 18 articulates that:

1. A public servant shall not demand or receive a gift, services, or other favor for himself or his family, close relatives, or friends, or for persons or organizations having business or political relations with him because it may influence him during the fulfillment of his responsibilities. This does not relate to small gifts.
2. If the public servant is not sure about the legality of his action while taking a gift, he should consult his supervisor about the situation.

Article 19 explains how the public servant should behave if he is given a gift (as defined by the law):

If a public servant is offered a gift or favor of any kind, in order to protect himself he should take the following actions:

- Refuse to take the gift (it is not necessary to take a gift and submit it to the appropriate body as evidence);
- Try to determine who is really providing the gift (not the person who passes the gift to him, but the person who intends to receive some benefit in return);
- If for certain reasons it is impossible to refuse the gift, the public servant must take the gift and submit it to law enforcement bodies as soon as possible (the time is not specified);
- Find a witness who will confirm that the gift was given (it can be a coworker);
- Make appropriate notes concerning the situation in a special journal (explaining the situation when the gift was received);
- Inform his supervisor about the incident or directly inform law enforcement bodies;
- Continue working as normal.

Each action mentioned above can be undertaken independently from each other as the situation dictates.

As to the practices of other countries, the Russian Code of Ethics on Public Servants of 2002 word for word reiterates the recommendation of the Council of Europe already mentioned above.
In Turkey, where the legislation and especially the Criminal Code is very strict, a public servant will not be reprimanded for receiving a gift only in the following cases:

1. If he initially refuses to take the gift;
2. If he takes the gift, but will not make an illegal (corruption) action.

It should be emphasized that the cases mentioned above may be addressed in a court of law.

According to Article 13 of the Latvian law on the Prevention of Conflicts of Interest of Public Officials, a public servant is prohibited to take a gift. A gift is any financial or other kind of benefit, including services, transfer of rights, release from obligations, and refusal from any rights in favor of a public official or his or her relatives, as well as other activities by which any benefit is granted to such persons. Different conditions are defined for diplomatic gifts. The law articulates that diplomatic gifts are gifts that official representatives of foreign states present to the President, Chairperson of the *Saeima*, Prime Minister, and Minister for Foreign Affairs and officials of the Ministry of Foreign Affairs, as well as to other officials during visits in accordance with protocol. The registration of diplomatic gifts is made in the state protocol register of the Ministry of Foreign Affairs. As to receiving a gift outside the performance of the duties, the law allows a public servant to accept the gift from relatives. A public servant may accept a gift from physical or legal entities if the price of the gift does not exceed the amount of the minimum salary (which is approximately €170). The law determines that the receiver (a public servant) of the gift should not have any professional relations with the person who passed the gift for two years before and two years after receiving the gift.

According to the Anti-corruption Act of 1999 of Estonia, public servants, their close relatives, and the relatives of their spouses are prohibited to take any kind of gift, if it is related to the performance of the duties of the public servant. The act does not allow any exceptions.

In Great Britain the act of 1889 on Facts of Corruption of State Organizations and the act of 1906 on the Prevention of Corruption are in use. The acts prohibit public servants to take any kind of gift. However some state organizations use organizational statutes, which provide for some exceptions to the rule. For example, the Central Information Office of Great Britain allows its employees to receive smaller gifts, such as calendars, pens, and diaries.

In the United States the rules for accepting gifts are very strict. This is regulated by both federal legislation and a special act, which covers corruption of officials or representatives of international organizations or of foreign countries.

Beginning in 1853, according to the special criminal act, public servants were subject to sanctions even for accepting food and groceries as gifts. The systematization and unification of the anti-corruption legislation took effect in 1962. The main norms on conflicts of interest were unified with some norms of the Criminal Code. In 1998 Congress ratified the Inter-American Anti-corruption Convention, where public servants are prohibited to take any kind of gift.

It is very interesting to look through the US legal practice. The most famous case in the US is the United States v. Sun Diamond Growers, where the Minister of Agriculture was accused of taking products as a gift from a group of farmers. It is also very interesting to look through the experience of Connecticut, where the governor was sentences to eight years imprisonment for taking construction materials and corresponding services as a gift from some construction companies to repair his house.

There is an exception in US legislation. Specifically, in accordance with the special federal anti corruption regulations, public servants have the right to accept a gift worth less than 20 USD, but the total price of gifts received should not exceed 50 USD. It should be mentioned that the prohibition does not extend to family members.

Sources:

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Latvian Law on Conflicts of Interest

Council of Europe's Code of Ethics for Public Servants