



Report on the Implementation of Georgia's European Neighbourhood Policy Action Plan

Georgian NGO Coalition
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Executive Summary

The European Neighbourhood Policy (ENP) provides a framework through which the EU can offer assistance and encourage political, economic and social reforms in its neighbours, both old and new. These reforms are intended to enhance democracy in the target countries, protect human rights, encourage economic development, and bring the countries into closer alignment with the EU. Georgia agreed to a set of reform priorities with the EU under the ENP in an individual action plan that was ratified in 2006. The plan covers a wide range of areas of Georgian domestic politics, economics, governance and security.

Civil society in Georgia has been actively involved in the development and monitoring of the ENP process from the beginning and its involvement has been essential in ensuring wider understanding of the ENP process, and wider participation in the development of the action plan. In September 2005, approximately 70 civil society organizations, with support of the Open Society-Georgia Foundation and the Heinrich Boell Foundation prepared recommendations to be considered in the development of the action plan.

Since 2006, the government and the EU have continued to update and evaluate the implementation of the action plan. In order to maintain civil society involvement, in 2006 the Open Society-Georgia Foundation, the Heinrich Boell Foundation and the Eurasia Foundation initiated a European Neighbourhood Policy monitoring group.¹ As a part of this initiative the group prepared recommendations that were subsequently discussed with the European Commission and some of the comments were incorporated into their ENP progress report published in April 2008.²

While this involvement in the European Commission evaluation was useful it was also considered that civil society should maintain a separate evaluative voice. To that end, in 2008 The Heinrich Boell Foundation, Transparency International Georgia (TI), the Georgian Young Lawyers' Association and Green Alternative initiated an informal coalition to monitor the implementation of the European neighbourhood policy in Georgia.

The purpose of this report is for members of the Georgian NGO Coalition to provide a supplementary analysis, from the position of civil society, on some of the priorities and actions set out in the 2006 ENP Action Plan and on the 2008 progress report from the government.³ The intention is not to be comprehensive but to offer insights into the ENP AP and its implementation in the areas that specifically relate to the expertise within the Coalition. Therefore, the focus of analysis has been on issues that relate to the rule of law, human rights and the environment.

The focus on the rule of law also serves an additional purpose. The government's ENP AP Implementation Plan for 2008 is a far more comprehensive document than the Implementation Strategy adopted in 2007. It sets detailed timeframes for the expected realisation of specific activities, identifies responsible agencies for the implementation, outlines funding sources and includes status sections. However the 2008 Action Plan does not follow the structure of the ENP AP for 2007-2011 and does not support the Criminal Justice Reform Strategy Action Plan, which is indicated in the ENP AP as the strategy for the reform of the whole judicial system. As a result, the 2008 implementation plan is less exhaustive in its consideration of legal reforms than the original ENP AP and so it is even more important to provide original evaluation of it.

The report as a whole is structured in accordance with the ENP action plan. The ENP action plan is made up of a section called 'Priority Areas' that highlights the main themes of importance to the ENP and a

¹This group releases a monthly bulletin entitled 'European neighbourhood policy and Georgia.' To support public debate, discussion on various issues regarding EU-Georgian relations are held periodically, where any interested person may take part (www.enp.ge).

²'Georgian civil society overview of the EU-Georgia action plan priorities 2007-2009'

³Although the analysis will also include the Georgian ENP AP Implementation Plan for the year 2008 and Georgia's Progress Report on Implementation of the ENP Action Plan (*January-June 2008*) prepared by the State Ministry for European and Euro-Atlantic Integration.

section entitled 'General Actions and Objectives' that lays out more specific actions. Unfortunately, the second section does not simply elaborate detail springing from the first – so there is some overlap in the suggestions they make. Following this model, the report does have some thematic repetition.

The coalition analysis of specific reform sectors identified or prioritised by the ENP Action Plan are summarised below. The majority of them are included in the 2008 Implementation Plan adopted by the government. However, the assessments of positive or negative progress by the NGO coalition highlight omissions in the implementation schedule as well as forthcoming problems and areas which have not been paid sufficient attention by this government.

Judicial and Legal Reform

Despite ongoing reforms in the judiciary aimed at boosting both its transparency and impartiality it remains one of the least trusted institutions in Georgia. All stakeholders recognise there are problems in the judiciary and the government is taking active steps to amend it, including the introduction of jury trials, fairer arrangements for selection and training of judges and institutional oversights independent of the ruling party. However the reforms are only likely to be successful if conducted with a higher degree of public and civil society consultation than is currently planned, with a particular attention paid to informational campaigns and public scrutiny.

Legal Aid was officially introduced in Georgia from mid 2007 and although it is in a relatively early stage of development it appears to be operating well. One potential future problem pinpointed in the report concerns the outsourcing of legal aid services by public tender. Although this system was included in law the state does not have a clear plan regarding whether this outsourcing will be implemented in reality.

The introduction of a new criminal procedural code is a clearly overdue reform. Under the ENP guidelines this should be remedied as soon as possible, however the report suggests there should be significant changes made, in consultation with civil society, to the current draft prior to its introduction.

Penal reform

This was crucially missing from the 2008 ENP implementation plan and progress on reforms of the penitentiary and probation service are likely to be slowed by the absence of a new penal code which was drafted in 2007 but has not yet accepted by the government. The penitentiary system in Georgia, which suffers from critical overcrowding, is not generally recognised by the government as a problem of the judiciary in itself, as crowded prisons are taken to suggest successful criminal prosecutions.

Actions taken by the authorities to reduce overcrowding, firstly by reconstructing prisons and building new ones, secondly by promoting non custodial sentences, are found to be generally positive albeit underfunded and largely inadequate by the Coalition. The assessment cites a lack of available reliable data and public consultation, problems that should also be rapidly addressed by the authorities.

Recommendations by the European Committee for the Prevention of Torture have yet to be implemented in the penitentiaries, particularly with regard to the levels of education and healthcare available to prisoners. The recent lowering of the age at which children can be prosecuted, is a subject of grave concern.

Civil Service Reform

The necessity for comprehensive reform measures in Georgia's civil service bureaucracy is undeniable. The NGO Coalition highlights the key debate between traditional and flexible reform models which is holding up any progress on this sector. The civil service code, still in draft form, is not available to the public demonstrating the lack of consultancy in this critical sector.

Elections

The conduct of the most recent elections in Georgia was chaotic and popularly criticised, which demonstrates that insufficient progress has been made towards reforms recommended in the ENP Action Plan. Despite some positive improvements in the election administration and the attitudes of the courts to electoral regulations, the abuse of administrative resources, problems with new legislation and vote counting, undemocratic and unequal system of distribution of the mandates per constituency and

intimidation of voters and election observers are all problems that need to be addressed in order for Georgia to meet the terms of the Action Plan.

Strengthening democratic institutions

Under this heading the Coalition looks at the ENP priorities of strengthening parliament and the political opposition. The Parliament, which has lost and continues to lose its role to the stronger executive branch, has become weakened by the lack of democratic participation, as a result of electoral problems and the institutionalised execution of Presidential influence. The assessment is not optimistic about the prospects of the situation improving under the proposed 'New Wave' of democratic reforms promised by the President, which have not yet become apparent. Furthermore, the lack of political pluralism in Georgia, exacerbated by the latest elections and fractures in the opposition movement, should be a subject of real concern when it comes to assessing its democratic progress.

Ensuring respect for human rights and fundamental freedoms

Under this heading progress on the implementation of legislation to support the UN convention against torture is examined and found to be institutionally mismanaged as well as legally stalled. Minority rights which are upheld by the Action Plan require some particular investment. The promotion and development of Georgian language training is essential but in the meantime to ensure that minority language communities are not isolated, mass media should be available in minority languages. The absence of a coherent minority policy or an effective ministry responsible for minorities is likely to maintain the trend of slow progression.

The office of the public defender should be strengthened in Georgia according to the 2006 ENP AP. The main recommendation of this report is that the public defender's budget should be separated from political institutions.

The biggest problems on issues of human rights and the rule of law is that legislative changes have not necessarily created action by the authorities. This is dangerous for the country and for the Government since there now exists a strong feeling in Georgian society at large that the legal system is applied selectively. This has produced resentment, disenchantment and conflict with the Government.

Economic and social reform, poverty reduction and sustainable development

Reforms in social security, initiatives to boost employment and the privatisation of health facilities do not help to achieve the ENPs objective of poverty reduction.

Statistics

The decentralised data collection system in Georgia, split between 3 departments varying in size, political links and influence, does not coincide with the aim in the Action Plan or correspond to European standards. But in this arena, unlike many others covered by this report, every stakeholder agrees that change is needed though it has been falteringly promoted in the political and legislative arena.

Public internal financial control

The government has not approved legislation which would underlie a sound attempt to impose internal financial control of the public sector. The rejection of the previous attempt meant the de-regulation of the auditing structure currently in place, which is far from uniform across ministries and lacks coherence in staffing and record keeping which compares unfavourably to EU states.

Citing lack of transparency and the increased usage of single source procurement, the coalition regards that this has become worse, rather than better.

Energy security

The main flaw of Georgia's recent reforms in this sector relate to the privatisation of energy production, distribution and sale which effectively created energy monopolies and reduce transparency. The report suggests these changes are reversible and should be reversed to match the EU's energy security agenda. The Georgian government has not met any of its objectives for expected improvements regarding innovative renewable energy investment, instead it has privatised hydroelectric energy production and no legislation has been adopted, or taken into account for the development of other pertinent laws.

The Environment

Georgia is lagging behind its European neighbours in terms of legislation, cooperation with the public, reporting, transparency and the administration of environmental impact assessments. It is clear that too much of the government's responsibility is being passed onto stakeholders with vested interests.

Georgia's specific reform needs in the environmental sphere centre on those resources which are most valuable and least protected. However, despite the ENP's recommendations, Georgia's management of waste & sanitation, forests and water basin resources are far from rational, often driven by short-term financial considerations. This has produced unnecessary and potentially destructive privatisation, with little or no concern for affected inhabitants. Radical changes are needed to fall in line with European policy.

ENP Priority One: Democracy Enhancement and the Rule of Law

The first priority area of the ENP is the rule of law. This is elaborated under priority area one and encompasses the judicial system itself, the penitentiary system and the operation of state institutions where this relates to the operation of a lawful society. Explicitly, the ENP Action Plan suggests the need for

Reform of the whole Judicial System in line with European Standards notably through the implementation of the reform strategy for the criminal justice system, developed with the assistance of EUJUST Themis

This is specifically connected to a range of themes; the independence of the judiciary, training on human rights, access to justice and legal aid, the penitentiary and probation service and the system of execution of Court decisions. This section will consider each of these in turn

Reform of the Judiciary

The first action suggested under this category is that the reforms should be ‘ensuring proper separation of powers, independence and impartiality of the judiciary, prosecution, police and law enforcement agencies’ (ENP AP 2006 p4)

Several reforms have been undertaken to fulfil this objective and should be welcomed. A change in the Constitution in late 2006 removed the right of the President to appoint judges. The composition of the supreme body of judicial self governance and discipline, the High Council of Justice (HCJ), had already been altered to reduce the number of presidential appointees. Further, the President no longer chairs the HCJ, the president of the Supreme Court assuming this position. This is especially important since the HCJ is the body appointing all lower court judges. However the existing appointment procedures to the Supreme and Constitutional Courts are separate and have remained unchanged.⁴

Unfortunately the judiciary remains one of the least trusted public institutions, despite the process of ongoing reforms. The Courts’ impartiality is popularly contested and the judges are thought to be constantly pressured by the executive, particularly the prosecution. Several high profile cases have further tarnished the Courts’ image. The rate of acquittals remains problematic and severe prison overcrowding continues to undermine basic human rights standards for the inmates.⁵

On top of this the ENP Action Plan 2008 has the following requirement

Drafting of legislative changes to the Organic Law of Georgia on Courts of General Jurisdiction, according to which new procedures of appointment of judges after completion of higher school of justice will be stipulated (provision from the ENP AP Implementation Plan 2008, p1).

The action is scheduled for September-December 2008. The draft amendments to the Organic Law of Georgia on Common Court have not been prepared yet, but the general criteria of judge selection is stipulated in the Organic Law (article 47.4 last amended on 29.12.2006) and defined in detail in the Charter of the competition of candidates for judicial appointment, adopted by the High Council of Justice on 25 September 2007.

While some of the reforms have been slower than anticipated, the political will for legal reform is continually restated and the government at least seems to recognise there is a problem. In September 2008 during his annual address to the Nation, the President of Georgia indicated that there would be a “new wave of democratic reforms” in the field of justice. President Saakashvili acknowledged the lack of

⁴ Publication, ‘Refreshing Georgia’s Courts; Trial by Jury: More Democracy or a Face-Lift for the Judiciary’, *Transparency International Georgia*, forthcoming report

⁵ European Convention for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment (CPT) *Council of Europe*, European Treaties, 2002, available at: <http://www.cpt.coe.int/en/documents/ecpt.htm>

independence in the judiciary and indicated a number of reform steps planned by the government, including: a) the inclusion of member of the Parliamentary Opposition to the High Council of Justice; b) the life-long appointment of judges; c) the introduction of jury trials. Although these initiatives should be considered positive, they are not in fact new (all of them already having been considered by the Parliament during the period 2007-2008).

In order to be effective, all of these reforms need to be formulated in consultation with different stakeholders and the reforms need to be responsive to their criticisms. Two concerns are particularly important. First, the High Council of Justice needs to be more inclusive. The inclusion of one member of the Opposition could improve the transparency of the Council's work, but to enable effective reform of the body other representatives of the legal profession should also be included (e.g. members of the Bar).

Second, life-long appointment of the judges to the Council should be conducted with a high-level of public scrutiny and disciplinary proceedings against judges should be revised to ensure protection from political pressure. Jury trials should increase the level of public participation in the justice, but a wide public information campaign should be conducted in advance of the reform and clear mechanisms for the independence and security of the lay jurors should be concretely guaranteed.

Improved access to justice notably through the establishment of an effective legal aid system

The Law on Legal Aid was adopted in June 2007 following a draft that had been developed in 2006. By the end of 2007 all branches of the State Legal Aid Service had been opened in most of the regions of Georgia and they have been functioning effectively, providing legal aid on criminal cases and legal counsel in regard to general legal issues.

The law provides possibility for the outsourcing of this service, wherein non-state legal aid providers are invited to participate in a tender to the state, to fill the requirements of the population. The NGO coalition notes that at this time it remains unclear whether the present government intends to enforce this article in the near future.

Penitentiary and probation service reform

The ENP AP Implementation Strategy for 2007 envisaged a provision regarding the Improvement of legislation on Penitentiary and Probation. Unfortunately this provision did not feature in the Implementation Plan for 2008, despite the fact that this specific action has not been fully implemented before this time. The new Penal Code, which contains some progressive provisions, was initiated in the Parliament at the start of 2007. However this code was felt to require extensive consideration and improvement, so that the parliamentary committees subsequently postponed its consideration. To date there are no clear plans to reconsider the draft during the autumn 2008 session of the Parliament.

The Penitentiary System

Georgia's own progress report regarding the implementation of the ENP Action Plan, January – June 2008 includes a significant amount of information specific to the reform of the penitentiary. The report itself, along with local and international actors, identifies overcrowding of the prison facilities as the principal problem of the penitentiary system in Georgia.

However, while the progress report indicates that the State considers the overcrowding of penitentiaries as an outcome of an efficient fight against criminality, international and local human-rights groups suggest that the problem is the consequence of a mistaken criminal justice policy that favours incarceration over rehabilitation.⁶

The progress report argues that the Georgian government has taken two sets of measures to address the problem of overcrowding and its attendant human rights abuses. First, they have expanded penal

⁶ European Convention for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment (CPT) available at: <http://www.cpt.coe.int/en/documents/ecpt.htm>, Council of Europe, European Treaties, 2002.

facilities through reconstruction/construction. Second, the report argues that the government has promoted the use of non custodial sentences. This report will evaluate both of these claims.

Construction and reconstruction of prisons

In terms of the construction and reconstruction of prisons the government has achieved a large degree of success. The budget allocation demonstrates that the reconstruction activities have been the government's priority in the recent period. In the report there are in particular details about Gldani prison #8, Geguti #8 institution, a new building in Rustavi #2 penitentiary and a plan to build a new institution in Guria region, in Laitauri village. However there is no information about new buildings and refurbishment work already carried out in some existing penitentiaries (Women and juvenile prison #5, Rustavi #1).

In order to calculate the living spaces in each penitentiary and consequently identify the level of overcrowding, GYLA applied to the Penitentiary department and requested information about the existing living spaces in each penitentiary and living spaces that have been added to the penitentiaries due to reconstructions, but the Department denied access to that information, referring GYLA to the President's decree on State Secrecy.

The use of non-custodial sentences and early release

The government is keen to highlight its success in promoting non-custodial sentences. However, the analysis of GYLA suggests that this has not been as successful as they suggest. The promotion of non-custodial sentences is one of the most efficient measures for tackling overcrowding, but it should be targeted in the first instance at the Court System itself, and allow for the penitentiary department to use remedies to initiate early release. The government report refers to the statistic of the use of the bail bond system and suspended sentences instead of imprisonment. As we see in the table below.

Total Number of pre-trial measures	Arrest	Bail	Bail with arrest guarantee	Personal Guarantee	Put military servant under supervision	Put Juvenile under supervision
19690	8929 (46%)	7653 (39%)	2955 (15%)	84	56	13

These figures refer to the data available for 2007 which was requested, released and analyzed by GYLA in a prior project.⁷ But the chart above illustrates the low usage of non-custodial measures like the personal guarantee and supervision. Most importantly the 2007 statistics reveal the popular usage of the institute of 'bail with arrest guarantee'. In fact this measure can hardly be described as a non-custodial measure as the person is imprisoned while he/she meets the bail price demanded, which is generally high (minimum bail is 2000 GEL). The usage rate of pre-trial measures according to requests of the prosecutor is markedly high, at 97%, 20839 motions out of 21767 motions of the prosecutor were satisfied in 2007.

In terms of early release, law on imprisonment regulates the following methods:

- early release due to health conditions
- conditional early release
- release due to change or abolition of a court judgment
- release due to amnesty or pardon
- release due to the prisoner reaching an advanced age (65 for women and 70 for men)

The available evidence does seem to suggest that there has been a dramatic increase in the use of early release in the 2005 to 2007 period. The chart below reveals the main usage trends of early release, by reference to the overall numbers of prison inmates in those periods.

Year	2005	2006	2007 (first 6 months)
Release	9051	15464	18310

⁷ Unfortunately the data available on the Ministry of Justice website is not detailed enough to allow more up-to-date analysis for this project.

Unfortunately the available statistical data on the use of these provisions only relates to 2005, 2006 and the first 6 months of 2007.

Probation System

The Law on the State Budget of Georgia outlines that the budgetary allocation for the National Service on the Enforcement of Non-custodial Punishment and Probation, in 2008 is just GEL 1.363 million. This is an extremely low level of funding in comparison to GEL 20.393 million allocated for the Penitentiary Department as a whole. This suggests that significantly more action is needed on the part of the Georgian government to financially substantiate its commitment to the improvement of the probationary, non custodial system.

In March 2008, draft amendments were initiated by the government of Georgia which introduced new regulations for socially useful labour as a form of punishment. This report notes that the system that is proposed by the initiative contains shortcomings and requires further discussion in order to create an improved model, which will be applicable, as it is extremely important for inmates to have access to this opportunity for alternative sentence and labour treatment. Unfortunately, the Legal Committee postponed the hearing of the draft in September 2008, so it remains unclear whether the initiative will be implemented.

That said, the government report indicates an agreement between the Ministry of Justice of Georgia and Autocephalic Orthodox Church of Georgia on the church's potential involvement in the probation system. The agreement was signed and published in March 2006⁸, which theoretically means it is in force, but the provisions for potential cooperation in relation to probation and the occupation of probationers in Church reconstruction projects has not yet been realised.

Adoption of a new Criminal Procedural Code

The Action Plan 2006 also called for the implementation of a new criminal code by 2007. The Code rather it was adopted in its first reading during the autumn session 2007 and remains at the committee hearing stage. It was not implemented during the Parliamentary spring session of 2008 and there is no concrete schedule for the CPC readings during the autumn 2008 session. One of the most important aspects of the new Code would be the introduction of trial-by-jury in Georgia. This level of public involvement in adjudication is expected to improve levels of public trust in the judiciary.

At the same time there are a number of issues of concern with regard to the content of the new CPC which make it inappropriate for the Georgian context. Concerns relate to the following issues: interest of the victims; proportionality and parliamentary (public) control on the discretionary prosecution; trial in *absetia* for any type of crimes; equal opportunities for the defence side, etc. On these matters GYLA applied with an open letter to MPs, asking them to review topical issues in the draft CPC, in relation to specific actions in the ENP AP (see *GYLA letter to MPs*)⁹.

Prevention of Torture and improvement of conditions in Prisons.

In the period up to April 2006 prisoners saw some of their rights removed. In particular all prisoners (including juveniles, women and those who were indicted on petty crimes) have been deprived of the right to see their relatives for long meetings (1-3 days). New administrative punishments have been enacted, including the addition of 15-60 days of administrative imprisonment (which are not included in the imprisonment term) for inmates who violate internal regulations. The coalition is unable to assess 2007 or the first six months of 2008, as a period of potential improvement in respect of penitentiary and probationary legislation.

⁸ Agreement (text) between Apostolic Autocephaly Orthodox Church of Georgia and Ministry of Justice, available at ministry of justice website: <http://www.probaton.ge/indexp13.html> October 14 2002 (NB the date shown is an error, it was agreed in 2006)

⁹ Press Release: "GYLA Chairman applies to the Members of the Parliament", Georgian Young Lawyers Association, 03.09.2007, <http://www.gyla.ge/?display=news&view=574&lang=eng>

The state of the Georgian Penitentiary system has been extensively analyzed and presented in the Report of the European Committee for the Prevention of Torture (CPT), published on 25th of October, 2007.¹⁰ Specific progress on three penal reform issues, related to the CPT, are examined below; healthcare, education and age of criminal responsibility. This is by no means an exhaustive list however and the legislative aspects of this key sector will be returned to later in this report, regarding progress on implementing the National Action Plan against Torture.

Healthcare

In the Progress Report, the new healthcare insurance system is considered to be a successful but there have been no reports published that assess in detail how successfully the system functions. The medical supervision unit in the General Inspection of the Ministry of Justice have not produced any assessments, despite the fact that it was the primary function of the unit.

The work of Aldagi – BCI insurance company- has been negatively assessed by medical personnel at the penitentiaries (they are now employees of the Aldagi – BCI, working in penitentiaries). They allege that the medications are provided only in limited quantities and that the medical services that the system supports are also limited. In addition to this in becoming employees of Aldagi – BCI these personnel lost their social benefits and their status as public servants, which will also affect their social benefits in the future.

The report refers to another agreed progressive step in institutional reform – the creation of the Human Rights Unit and Medical Supervision Unit, under the General Inspection of the Ministry of Justice, in March 2008. It should be emphasised that there had existed a separate department of Penitentiary Reform, Monitoring and Medical Supervision, until March 2008 but this department was abolished and all its functions subsequently transferred to the General Inspection of the Ministry.

Education

The ENP Action Plan Progress Report indicates that various employment and education programs have been gradually activated within the penitentiary system, but there is no statistical data provided and no concrete education or employment programs are mentioned. In reality other assessments have reported the situation regarding education in Georgia's penitentiaries to be extremely poor. This fact is underlined in the recent CPT report¹¹ and all of the penitentiary monitoring commissions refer to this problem in their own periodic reports.

Further, the employment programs that had been implemented in the recent period have only been set up for less than 50 prisoners. This is a strikingly low number for a penitentiary system in which there are nearly 19 thousand inmates, the rest of whom will find little opportunity for meaningful occupation. The Georgian legislation indicates that the right to an education should be guaranteed to inmates, but in reality there are no conditions for education imposed; in particular it is felt that juvenile inmates suffer most from this lack of educational infrastructure being available.

Age of criminal responsibility

The government's ENP progress report also refers to the draft Strategy on Juvenile Justice Reform, prepared with the support of UNICEF. This initiative is positive, and it is hoped that the public discussions of the draft Strategy will follow shortly.

On May 23 2007, the Criminal Code of Georgia was amended, and the age of criminal liability was lowered from 14 to 12 years, for what was considered to be especially grave crimes (murder, assault, rape, carrying of knife).¹² However, the law stipulated that the provision would be enacted on 1 July 2008

¹⁰ European Convention for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment (CPT) available at: <http://www.cpt.coe.int/en/documents/ecpt.htm>, Council of Europe, European Treaties, 2002. Also Press Release: "The Georgian Young Lawyers' Association upholds the CPT report", Georgian Young Lawyers Association, 25.10.2007, <http://www.gyla.ge/?display=news&view=596&lang=eng>

¹¹ European Convention for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment (CPT) available at: <http://www.cpt.coe.int/en/documents/ecpt.htm>, Council of Europe, European Treaties, 2002

¹² Article 33 of the Criminal Code of Georgia, amended 23 May, 2007. Available from the Department of Justice.

only if by that point the government was able to provide appropriate conditions for 12-14 year olds (i.e. a separate institution or a separate facility within the Juvenile Prison). Neither of the above mentioned conditions has been fulfilled to date. So a draft law was initiated in spring 2008 in the Parliament of Georgia postponing the execution of the law and lowering the age of criminal liability until 1 July 2009. However this draft was not considered by the Parliament.

On 1st June, International Day of Children's Rights, international and national non-governmental organisations applied to the President of Georgia, asking him to revoke this law and introduce more efficient measures of crime prevention regarding children. Unfortunately, the issue has not been resolved yet. Some high officials have stated that the amendment won't be executed. Others state that the law is already in operation and that the criminal liability age in Georgia for some crimes is already 12 years but that the custodial sentences won't be used for them as there is no appropriate penitentiary. Therefore, the situation remains unclear and requires prompt action to resolve the ambiguity. It is hoped that no child will suffer from this legislative disparity.

Civil Service Reform

Still under the category of 'rule of law' the 2006 ENP AP requires that the government

Adopt a public service reform strategy and legislation for the civil service in order to improve good governance and transparency

The Georgian civil service has not been systematically reformed. Structural changes have been frequent in order to merge some state bodies, abolish others and reduce the size of staff. However, so far a coherent strategy for changing the civil service has not been identified. There exists a dispute in the government over the form that the civil service should take. One side advocates a rigid approach, with uniform grading, protection and benefits system for the entire bureaucracy. The other side advocates more flexibility and competition where individual agencies act as firms competing for a quality workforce. This approach calls for individual arrangements and greater discretion for the agency heads¹³. These positions have yet to be reconciled.

Following the dismissal of the head of the Civil Service Bureau in the autumn of 2006, a new head was not appointed until March 2008. A new draft Civil Service Code, reflecting the first, rigid, approach, initiated in the Parliament, had been submitted for parliamentary hearing late in 2007, but has since stalled. It is understood that the draft created such a high degree of friction with the executive branch that a new working group was established to consolidate the two approaches and find a consensus. However, the proceedings have not yet become public. Neither has a new draft proposal been made publicly available.

Develop a functioning civil register

The development of a functioning civil register (intended for completion by the end of 2009) was a significant breakthrough in this sector and the reform of the register was one of the most successful reforms in recent years. Nevertheless, even the most successful reforms can have shortcomings. In September 2007 GYLA observed and reported on gross violations of the rights of the citizens when the Civil Register fined more than 41,000 citizens unlawfully.¹⁴ No remedy was offered by the Ministry of Justice or Civil Register.

Elections

The 2006 ENP Action plan suggested that the government should

¹³Publication 'Reforming the Georgian Civil Service: Grand Corporation or a Competitive Market?' *Transparency International Georgia*, November 2006, Available at: http://www.transparency.ge/files/215_273_133431_Civil%20Service%20Reform_17Nov06%20Eng.pdf

¹⁴ See "The National Agency of Civil Registry fines citizens illegally for taking ID cards with delay" at the following link - <http://www.gyla.ge/?display=news&view=576&lang=eng>

Ensure the local (2006), parliamentary (2008) and presidential (2009) elections in Georgia are conducted in accordance with international standards, through implementation of OSCE/ODIHR and Council of Europe recommendations, notably regarding the need for a reliable voter registry and a functioning and transparent electoral commission

Assessments of whether these elections conform to international standards have produced a range of insights. International organisations, local NGOs and the Georgian public have generally focused on the abuse of administrative resources, late changes to the election code, the ineffective election administration system, bias in the majoritarian electoral system and intimidation of voters.

The United National Movement's (UNM) discretionary use of state administrative resources¹⁵ was one of the major problems cited in the 2006 local¹⁶ 2008 extraordinary presidential¹⁷ and parliamentary elections held in Georgia. In all cases pre-election campaigns have been marked by extensive popular social programmes, including the state 'employment programme', where private businesses were subsidised by the state to provide jobs. During the Presidential elections of January 2008 the state also distributed subsidies for electricity and gas, medication vouchers for pensioners, food packages for the poor, and fire-wood vouchers throughout rural communities. Prior to the May parliamentary elections rural residents were also given free diesel fuel for their spring work.

The Georgian public and international community did however pay significantly closer attention to the abuse of administrative resources in the 2008 elections than had been the case in the past. Greater voter awareness has also been fostered regarding the legislative changes that took place. The election code was amended partially as a response to public pressure. However the definition of the misuse of administrative resources became more ambiguous, rather than less, contrary to recommendations from local and international observer organisations to tighten the regulations. Despite changes to the law and NGOs raising the issue with the election authorities on numerous occasions, the active participation of government officials in party campaign activities was common.

While in some cases alterations to the Election Code of Georgia were tendered to a public demand, changes that were made late in the pre-election period were also cited as divergent from international standards. Changes to the electoral code just weeks prior to the day of the Presidential Elections altered the composition of the Central Election Commission (CEC), from its previous "professional" members, appointed by the state, to a mixed model, where 7 members remained as appointed by the state, while 6 represented opposition parties. Although ostensibly a positive change, since the "professional" CEC had been highly criticised for its links with the ruling party, in practise the OSCE noted that the reformed CEC was unable to work in a professional and impartial manner¹⁸ and opposition members frequently complained of being isolated from decision-making.

Despite positive reforms to the election administration, including a fairer partisan composition of the DEC's (District Electoral Commission) supported by GYLA and ISFED (International Society for Fair Elections and Democracy) monitors after the May parliamentary elections, the administration has met with severe criticism regarding the vote count. Allegations by opposition groups particularly after the presidential elections that PEC (Precinct Electoral Commission) figures released did not correspond with vote summary protocols from PECs collected by their own representatives, were supported by some domestic observer organizations and international monitoring missions.

¹⁵ Publication, 'Monitoring Misuse of Administrative Resources during 2006 Local Government Elections', *Transparency International Georgia*, available at: http://www.transparency.ge/files/190_222_418251_TI%20Georgia%20-%20Monitoring%20Misuse%20of%20Administrative%20Resources%20-%202006%20LG%20Elections%20-%20E.pdf

¹⁶ Report on observation at **2006 Local self-government elections** -assessed poll positively with indication of the important shortcomings and concrete recommendations, *Georgian Young Lawyers Association*, 2006 available at <http://www.gyla.ge/?display=news&view=371&lang=eng>.

¹⁷ Report on observation at **2008 5 January Special presidential Elections and Plebiscite** (Pre-election, Election Day and post-election day procedures)- "In GYLA's view, the Election Day was realized and the people expressed their will. At the same time, in view of a whole range of violations and shortcomings, during the pre-election period and in the course of hearing complaints and summarizing the results following the Election Day, the current elections were not as democratic, transparent and fair as required by international and local standards." *Georgian Young Lawyers Association*, 2008, available at: <http://www.gyla.ge/?display=news&view=637&lang=eng>

¹⁸ Publication : 'International Election Observer Mission Statement of Preliminary Findings and Conclusions' *Organisation for Security and Cooperation in Europe*, 2008, available at: http://www.osce.org/documents/odihr/2008/01/29182_en.pdf

Other criticisms levelled at the administration in January included the failure to respond effectively to domestic observer complaints and an inability to influence both media coverage granted to parties and the Election Day environment¹⁹. GYLA and ISFED's joint mission noted improvements in DEC transparency and Court responses to complaints in May but held they were inconsistent, noting that some witnesses in post election complaints procedures were subject to abuse (Gori # 48 and Mtskheta # 2 Precincts).²⁰

The majoritarian system reforms imposed were not in line with the ENP AP, as the new system provides a distinct advantage for the ruling party. The opposition had proposed reversing the current winner-takes-all majoritarian system into a more representative, regional multi-mandate system of proportional distribution. While the ruling party had initially indicated it would also support the proposal, it later reversed this stance, and amended the Law to provide for 75 majoritarian MPs, each representing one single-mandate constituency. Not only does this unfairly disadvantage smaller parties, the single mandate constituencies are arguably less statistically democratic; the district of Lentekhi has one majoritarian MP representing 6, 115 voters and the district of Zugdidi has one for 126, 106 voters, over 20 times more.

Intimidation was noted as a frequent feature by monitoring missions to both 2008 elections. The presidential election campaign was overshadowed and hindered by the state of emergency declared in November, limiting both freedom of expression and association, ensuring opportunities for the incumbent and opposition candidates were unequal and mismatched. The state of emergency withstanding, harassment and intimidation of opposition politicians and their supporters was reported, especially outside the capital, prior to both presidential and parliamentary elections. Coercion of public employees, commonly teachers, librarians and employees of other State funded institutions, to vote for the incumbent president, as well as to participate in campaign rallies, was also common. Identity cards were demanded in both 2008 elections, along with those of family members, to ensure allegiance, causing much anxiety among the public²¹. The exploitation of prisoners families was also lately alleged, as promises circulated that imprisoned relatives would be released or offered a plea bargain in exchange for a list of people (of one hundred or more) pledging their votes to the ruling party²².

The intimidation of observers remains a feature of international and domestic monitoring missions, including that of GYLA for the 2008 21 May parliamentary elections (pre-election, election day and post-election day procedures), which released the following comment;

Unlike the previous presidential elections, coercion exercised over the observers/their expulsions from the polling stations on the day of parliamentary elections did negatively influence an assessment of the Election Day as both transparent and democratic. Despite this, observers lodged respective appeals before election administration and Court with regard to the revealed violations.²³

¹⁹ Press Release: 'Georgian Young Lawyers' Association publishes pre-election campaign and Election Day monitoring report of 21 May, 2008 Parliamentary Elections' *Georgian Young Lawyers Association* 2008 available at <http://www.gyla.ge/?display=news&view=669&lang=eng>

²⁰ Press Release: 'Joint statement of Georgian Young Lawyers' Association and International Society for Fair Elections and Democracy (ISFED) on district election commissions' monitoring results' *Georgian Young Lawyers Association* 2008 available at: <http://www.gyla.ge/?display=news&view=670&lang=eng>

Also Press Release: 'The Georgian Young Lawyers' Association (GYLA) and the International Society for Fair Elections and Democracy (ISFED) publish the 21 May 2008 parliamentary elections' post election period monitoring report' *Georgian Young Lawyers Association*, 2008

<http://www.gyla.ge/?display=news&view=675&lang=eng>

²¹ Publication, 'Monitoring Misuse of Administrative Resources during Pre-election Campaign, Preliminary Results' *Transparency International Georgia*, 2008, available at: http://www.transparency.ge/index.php?lang_id=ENG&sec_id=210&info_id=368

²² Publication: OSCE/ODIHR 2008 Parliamentary Elections in Georgia: Interim Report 2; *Organisation for Security and Cooperation in Europe*, 2008, available at <http://www.osce.org/odihr-elections/30930.html>

²³ Press Release: 'Georgian Young Lawyers' Association publishes pre-election campaign and Election Day monitoring report of 21 May, 2008 Parliamentary Elections' *Georgian Young Lawyers Association* 2008 available at <http://www.gyla.ge/?display=news&view=669&lang=eng>

General Objectives and Actions

In addition to the ‘priority areas’ the ENP Action Plan includes an extremely wide range of specific actions that it is suggested could be implemented. Some of these have direct and clear connection to the priority areas. Some of them do not. Below is a selective consideration of the ‘Objectives and Actions’. The areas selected for consideration, like those in the priority area, reflect the expertise of the Coalition and those areas which are seen as the main source of concern.

Strengthening democratic institutions

Further to the priority reforms areas of the ENP, the ‘General Actions and Objectives’ of the ENP provides for a range of specific actions necessary to enhance the Georgian democratic system. We will consider these below.

Strengthening of the Georgian parliament

The ENP Action Plan highlights the development of the Georgian parliament, ‘particularly in the fulfilment of its oversight role (including in the security and defence sector)’ as a key priority. Any discussion of the separation of powers in Georgia has to be seen within the context of the 2004 constitutional reforms. These reforms undermined the separation of powers. They diminished the role of parliament and disproportionately empowered the already strong executive branch. The President now has the ability to disband the legislature and approve a state budget upon the parliament’s failure to do so. Correspondingly, the parliament is largely dominated by the executive. In the current political context this is made worse because the constitutional majority of the ruling party further obliterates the need for meaningful debate and discussion in the Legislature.

As mentioned above, in September 2008 the President of Georgia publically announced a promised “*new wave of Democratic reforms*”. In his State of the Nation address, Saakashvili pledged “to simplify procedures” which allow parliament to call for a vote of no-confidence, as well as “to make it more difficult for the President to dissolve parliament.”²⁴ No specific initiatives to this end had been publicised or discussed prior to the publication of this report.

The correct functioning of democratic institutions has also been problematic at the local level. The local self-government reform of 2005 consolidated the self governing units from nearly 1000 to 69 units, helping to consolidate scarce resources but at the same time distancing them from their populace. All local self-governing units are subject to strict centralised control as the law on administrative oversight states that not only legality and integrity of the local actions/decisions can be checked, but also their “appropriateness”. The presence of the President’s Special Representatives in the regions (the Governor), unilaterally appointed by the President, serves to magnify this situation.²⁵

Encourage greater political pluralism: strengthen the role and functioning of political parties in Georgia

Political pluralism in Georgia, although present in the form of multiple parties active on the political scene, has significantly declined since 2003. Georgia’s party system is by no means consolidated and has, since independence, tended to be dominated by one party at any given moment. This dominant-party style has historically amalgamated the Party and the state. The repeated parliamentary elections in 2004 effectively produced a one-party legislature, marginalising opposition party seats. Relations with parties outside parliament were predominantly strained.

November 2007 saw bitter political confrontation between opposition and the ruling party, as a peaceful opposition protest rally gathering thousands in downtown Tbilisi was dispersed with truncheons, rubber bullets, tear gas and water cannons. In defending what appeared to be a disproportionate use of force, the

²⁴ Article ‘Saakashvili speaks of a new wave of democratic reforms’ 16 September 2008 available at : <http://www.civil.ge/eng/article.php?id=19526&search=new%20wave%20of%20democracy>

²⁵ Publication: ‘Division of Authority in Georgia’ *Transparency International Georgia* 2007 available at: http://www.transparency.ge/index.php?lang_id=ENG&sec_id=215&info_id=273

government accused the opposition of plotting a coup and attempting to take over government buildings, later declaring a state of emergency and publicly discrediting opposition politicians.²⁶

Despite past grievances the ruling and opposition parties have cooperated recently, most notably, in re-negotiating the party financing legislation and changes to the election code in early 2007. The electoral threshold for the parliament has been lowered to 5% of the vote, from the previous 7%, a move long urged both by the opposition and national and international non-governmental organisations, as well as pressure groups²⁷.

The May parliamentary elections reveal the lack of political pluralism in Georgia as the ruling party secured an overwhelming constitutional majority, though the newly formed Christian-Democrats and the Labour party cleared the 5% threshold for a seat in parliament. Majoritarian opposition candidates fared even worse, winning only 4 out of 75 seats. This led to a boycott of parliament, initiated by successful candidates in the opposition, although not every candidate complied, exacerbating fractures within the Opposition and the Christian democrats are now regarded as being linked to the ruling party. The “United Opposition”, once comprising nine parties, revealed serious fissures during the campaign, and has since largely broken up.

Although it is not the responsibility of the government in power to foster a coherent opposition, clearly the practises of elections which have been discussed above exacerbate the lack of plurality. Any progress on political reforms designed to include more opposition actors has been further negated by July 2008 amendments to the law regulating state funding of political parties. Under the new system, state funding may be withdrawn from the eligible parties in cases where all MPs who are member of the given party leave the parliament or the party. This initiative is largely viewed as a punitive measure against the opposition parties, leaving them without a significant source of income.

Ensuring respect for human rights and fundamental freedoms

Law on detention and Prevention of Torture

Further to issues of health, education, and juveniles in the penitentiary that has already been mentioned, the ENP highlights the following action.

Further improvement in the legal basis and practice in the sphere of detention, in particular pre-trial detention, to prevent torture and ill-treatment of detainees; Implement the National Action Plan against Torture

A proper legal framework that outlaws torture has not yet been implemented in Georgia; this would include the Optional Protocol to the UN Convention against Torture (OPCAT), preparation of the National Anti Torture Action Plan and preparation of the internal (national) preventive mechanisms (NPM). As the OPCAT was ratified by the Georgian parliament on June 22, 2006 the Georgian government had an obligation to create a National Preventative Mechanism (NPM) within one year, by June 22, 2007, but the NPM has not been created yet. In the same period, the NGO coalition, including GYLA and Penal Reform International (PRI) prepared a model for the NPM for the effective implementation of the OPCAT and presented it to the government, however, no feedback has followed.

On June 20, 2007 the President issued a decree and approved the establishment of the Interagency Coordination Council (the Interagency Council) to implement actions against torture, inhuman and degrading treatment. The members of the commission are representatives from the different state agencies (Parliament; Ministry of Internal Affairs; Ministry of Justice; Ministry of Education and Science, Ministry of Labour; Health and Social Affairs; Judiciary; General Prosecutor Office); NGO representatives were also invited to participate in the work of the Council.

²⁶ Publication ‘Georgia: Sliding towards Authoritarianism?’ *International Crisis Group*, December 2007, Europe Report # 189, Available at: <http://www.crisisgroup.org/home/index.cfm?id=5233&l=1>

²⁷ Publication ‘Political Parties in Georgia: Issues of Party Financing’ *Transparency International Georgia*, 2007, available at http://www.transparency.ge/index.php?lang_id=ENG&sec_id=215&info_id=273

According to the charter of the Council, its mandate is both wide and relatively undefined, including: monitoring, elaboration of the recommendations to the President, assistance and coordination of the anti torture activities, assistance to the NPM activities. But in practice the members of the Council and invited experts do not have authority to conduct monitoring and there is no NPM established to assist; members from GYLA and PRI have requested that the elaboration of the NPM model be featured in the agenda but the issue has been postponed. Instead the Council has focused on producing an Action Plan for 2008-09 which was recently approved by the President, though it was criticised for not including an analysis of the effectiveness of the previous Action Plan.

On 31 March 2008, the Interagency Council presented their concept of NPM which billed the Public Defender in the role, by Presidential decree. Civil society actors have protested the proposed model and applied to the President of Georgia with an open letter asking him to support the creation of NPM mechanism based on civil society participation²⁸ but it is still under consideration. More action is required regarding this sector of the ENP Action Plan. For general information on the situation in the penitentiary system of Georgia, see above in the section *Penitentiary and Probation*, or see GYLA analysis “Obligations of Georgia under the recommendations of some International Institutions (Prevention of Torture, Child’s Rights, Women’s Rights)” in Georgian, June 2008.²⁹

Minority Rights

Georgia is a multiethnic country. The biggest minorities are Armenians and Azeris, who have historically been concentrated in the regions bordering their kin states (Samtskhe-Javakheti and Kvemo Kartli, respectively), suffering from a high degree of political, economic and social isolation from the rest of Georgia, not least due to limited Georgian language abilities. Although underdevelopment is common in rural communities of ethnic Georgians, the minority communities share a sense of relative deprivation, compounded by an absence of effective communication channels to the authorities. This has yet been assuaged by improvements in transport infrastructure and proactive education policies implemented by the Education Ministry of the current administration.

The specific actions highlight the need to,

Ensure respect for rights of persons belonging to national minorities; sign and ratify European Charter for regional or minority languages

Further reforms are needed, including expanding language-training facilities for school leavers and adults, as currently pupils can benefit from the policy to introduce Georgian textbooks for non-native speakers. Aside from the training of teachers, and to a certain extent civil servants, through the Zurab Zhvania School of Public Administration in Kutaisi, the state does not provide language training opportunities for adults, while prevalent minority-language public schools both do not support an integration agenda and often provide poor quality teaching, especially of Georgian language.

Without long term education restructuring, university enrolment of minority students is likely to remain low; this is exacerbated by the Unified National Exams system (implemented 2005), which aims at merit-based enrolment but disadvantages those whose first language is not Georgian. While the Ministry of Education has initiated a special training program for the graduating minority students in 2007 to better prepare them for the exams, the scale of the program is far too limited to offset this general picture.

The minority regions are also still isolated from the flow of information as signals of most national media outlets fail to reach the minority-populated regions. The Public Broadcaster does have a daily news program in five minority languages (Russian, Armenian, Azeri, Abkhaz and Ossetian), but with the current arrangements the news is being broadcast in these languages just once a week, not sufficient to

²⁸ Press Release “Open letter to the President on creation of the National Prevention Mechanism for the Prevention of Torture (NPM)” Georgian Young Lawyers Association April 2008, Available at: <http://www.gyla.ge/?display=news&view=653&lang=eng>

²⁹ Publication (in georgian language) ‘Obligations of Georgia under the recommendations of some International Institutions’ Georgian Young Lawyers Association, 2008, available at: <http://www.gyla.ge/?id=9&view=63>

provide comprehensive political coverage. Foreign, mostly the kin-state and Russian outlets are thus the main channels of information.

The government has yet to produce a cohesive minority policy aimed at integrating national minorities into the Georgian state and society. Although the State Minister on Civic Integration, an ethnic Ossetian, officially has a post in the Cabinet, the office is largely dysfunctional.³⁰

The Public Defender

The Office of the Public Defender³¹ of Georgia is an independent watchdog for human rights, accountable only to the parliament, although nominated initially by the President. The institution is easily one of the most trusted by the public, and along with institutional trust, its current head enjoys extensive popular support. He has spoken out against the violations of human rights, the crackdown on property rights, abuse of power by the police, and inadequacy of the judiciary. The actions highlighted in the ENP Action Plan suggest that in order to safeguard human rights it is necessary to,

Enhance the role and independence of the Public Defender's/Ombudsman institution in accordance with the 'Paris Principles'

Unfortunately the Public Defender's outspoken criticisms have alienated him from the government and inhibited the capabilities of the Office. Both the executive and the ruling parliamentary majority have accused him of going beyond his remit to make political statements, rather than solely focusing on human rights. The level of strained relations led to the parliamentary majority refusing to endorse the Ombudsman's biannual report, as is customary. They merely "took notice" of it. His latest report (covering the year 2007) delivered to parliament on July 15 received the same treatment. The report's hearing had already been delayed due to the Presidential and then the parliamentary elections and it invited severe criticism from the ruling party, who accused him of incompetence and political bias. The current Ombudsman's term expires in 2009, and the role and independence of his replacement remains to be seen.

While the Ombudsman is not directly politically constrained in his activities, the Office is still dependent on the government for funding. Both the institution itself and civil society organizations have long called for its financial autonomy, to insulate it from political pressures, as translated into subsequently diminished funding. To date the Public Defender relied on international donors, since the budgetary allocations were not nearly sufficient for its designed capacities. Insulating public spending for the Ombudsman's Office from the government (or the parliament's) has been urged, setting it as a percentage of public spending or GDP. Without such safeguards the Office is likely to suffer from indirect policy pressures, impeding its protection of the most vulnerable.

Safety and Security in body and in property

The issue of safety and security for the civilian population is particularly relevant at the current time because general feeling of insecurity amongst ordinary citizens is frequently cited as the trigger of the November 2007 protests³². The feeling that the state was the enforcer of its own interest, distinct to that of its citizens, was felt at different levels.

The specific actions of the ENP highlight the following.

Continue efforts to create conditions of safety and security for the civilian population, including respect for property rights, focusing on those areas which are mostly populated by Georgian citizens of various ethnic origins

³⁰ Publication 'Georgia's Policy Towards its National Minorities: Tolerance or Integration' *Transparency International Georgia* – forthcoming

³¹ Publication 'Institution of Public Defender in Georgia' *Transparency International Georgia* – forthcoming

³² Press Release "GYLA Commenced Human Rights Week with Freedom of Assembly" <http://www.gyla.ge/?display=news&view=617&lang=eng>

Property rights insecurity has not been a common concern in Georgia since the end of the civil war and paramilitary control of the mid 1990s. Hence the ENP AP only refers to the protection of property rights in respect to minorities, who were viewed as especially vulnerable. This right is enshrined and well protected by Georgian legislation. Besides the Constitution guaranteeing its unassailable protection, two additional laws provide the grounds and procedures for expropriation of private property in the state and public interest. While the definitions of these can be open for interpretation, the laws set a clear set of rules and circumstances.

These rules have not been consistently upheld since 2004. Three distinct waves of assault on these principles can be identified, the first affecting former officials of the Shevardnadze regime in 2004, who lost their homes amongst charges of corruption. The second involved restaurant owners in Tbilisi, Mtskheta and other lucrative tourist areas in late 2005, to early 2006, who were forced to “gift” their property to the state. Also allegedly linked to corruption, the land and facilities were taken over by the state and used for future development. The third wave in late 2006 to early 2007 led to the demolition of booths, stalls and other small sized constructions mainly around metro stations. Citing the appearance of the city as the main interest, or an absence of permits, the authorities gave owners no chance of appeal and were not compensated, despite protests³³.

Economic and social reform, poverty reduction and sustainable development

Poverty alleviation

The actions highlighted in the ENP Action Plan suggest that in order to reduce poverty levels it is necessary to,

Introduce effective poverty reduction measures aimed at significant reduction of the number of people with income below the poverty line and improved social cohesion, including sustainable systems for education, health and other social services with access for all; Continue reform of the social security system

Social Security Reform

The Georgian government has already delivered on its commitment of transforming the social security system³⁴. The Basic Data and Directions paper, the government’s strategy document adopted in 2006, called for the creation of a residual social security system that would be needs-based, rather than category based. Implementation of this objective began in September 2006 and has resulted in creating a database of the extremely poor, ranked according to the methodology adopted by the Ministry of Health. The households considering themselves poor apply for government aid and are added to the database upon visits of two separate social agents to assess their living conditions and overall conditions.

However the allowances allocated are insufficient, standing at 30 GEL for one person and additionally 12 GEL for any added persons (i.e. a household of two persons would receive 42 GEL, three persons - 54 GEL, etc). Nor is the administration devoid of criticism, first for not communicating the changes acceptably and second for its assessors, who are alleged to be highly subjective. In addition, although the extremely poor are also entitled to health insurance there is a conflict within the policy process between two distinct models, one for Tbilisi and Kutaisi, where the beneficiaries could take the state voucher to any private insurance company of their choosing, the other model for beneficiaries from the rest of the country provides only for service providers contracted by the state. This certainly limits their prospects for suitable healthcare.

³³ Publication ‘Property Rights in Post-Revolutionary Georgia’, *Transparency International Georgia*, available at: http://www.transparency.ge/files/215_273_728457_Property%20Rights%20in%20Post-Revolution%20Georgia-E.pdf

³⁴ Publication ‘Reforming Georgia’s Social Welfare System’ *Transparency International Georgia*, available at: [http://www.transparency.ge/files/215_273_340979_Reform%20of%20Georgias%20Social%20Welfare%20System%20\[Engl\].pdf](http://www.transparency.ge/files/215_273_340979_Reform%20of%20Georgias%20Social%20Welfare%20System%20[Engl].pdf) (the factual information regarding the cut-off points in the ranking are currently outdated, due to the changes in the appropriate legislation)

Unemployment

Unemployment remains one of the most persistent problems of Georgia, with official Department of Statistics figures set at 13%, far below real rates. Unemployment and losing a job is the biggest public fear, according to public opinion polls.

The government however has exploited this situation for political reasons, highlighting the issue only in pre-election campaigning and introducing popular pilot programmes. The employment programme, initiated just prior to the 2006 local government elections was a three-month internship programme³⁵. 50,000 unemployed persons were invited to register their preferred field of employment, and sent to private companies. The beneficiaries were paid by the state a 150 GEL stipend, per month but in fact the program provided very little or practically no training, let alone permanent employment. The participating enterprises were pressured by tax officials into taking large numbers of people, so they were ineffectively used. The government's politicised approach was shown when with the President publicly presented bus-loads of people to enterprises, often televised, ordering entrepreneurs to take them in. Despite a lack of sustainability the practise was repeated prior to the extraordinary Presidential elections of January 2008, this time including 100,000 unemployed, who were granted a 200 GEL monthly stipend.

Another approach taken between these two programmes, however, has been more pragmatic. The state offered preferential loans to small and medium-sized enterprises (SME) operating in the tourist sphere, so that they could create more employment opportunities in the regions. A similar initiative was promised during a pre-election campaign, though its design and implementation is pending. The SME programme, despite the much better planning and program design, has not proven immune from criticism related to a lack of public information transparency in procurement procedures. Long term spending and reform in institutions designed to impact unemployment is needed if the ENP AP specific actions are to be met.

Health

In early 2007 the government initiated a new scheme for reforming the hospital sector, the "100 New Hospitals"³⁶. Discontented with the results of two previous attempts, the government decided to optimize the hospitals to 100 with 7,800 hospital beds (4,185 in Tbilisi and 3,615 for the rest of the country) for the whole of Georgia. Minimising the number of medical facilities has been achieved through the direct sale of state property, usually by large composite lots comprised of several facilities throughout the country.

Although this went some way towards what the ENP required, the privatization process itself, however, was far from being transparent or well planned. While the number of hospital beds was already pre-determined, in practise the policy was reversed and beds featured as one of the most important conditions for determining the winners. The scheme provides for construction of new hospitals, on the premises of the old facilities, and the investors are only responsible for maintaining the newly built hospitals for seven years. There have been no safeguards put in place to ensure continuity of the service provision, in case the owner decides to sell and civil society groups have expressed concern that the quality of new facilities may be jeopardized by excessive emphasis on the speed of completion.

Other Key Areas

Public Procurement

In order to reform public procurement in line with the ENP Action Plan, the government should,

Converge with and effectively implement key principles in the EU legislation on public procurement (e.g. transparency, non discrimination, competition and access to legal recourse)

³⁵ Publication 'Fighting Unemployment in Georgia', *Transparency International Georgia*, available at: http://www.transparency.ge/files/215_273_847895_Fighting%20Unemployment%20in%20Georgia%20-%20E.pdf

³⁶ Publication 'One Hundred New Hospitals for Georgia: How Long Will They Last?' *Transparency International Georgia* available at: http://www.transparency.ge/files/215_273_425695_One%20Hundred%20New%20Hospitals%20for%20Georgia-%20E.pdf

According to the National Anti-corruption Strategy Implementation Action-Plan approved in June 2005, one of the government's priorities was the simplification of state procurement procedures. Instead, the changes passed to the procurement legislation over the past two years have made these procedures more complex and ambiguous, thus resulting in their insufficient enforcement.

The practise of sole source procurement, over open tendering, is high in many public institutions. Data on 2006 public procurements provided by ministries reveals that for most of them the percentage of sole source procurement was over 30%, possibly due to the recent increase of price limits for sole source procurement to 20 000 GEL. In the Ministry of Foreign Affairs this number was over 46%, for the Ministry of Health it was over 60%.³⁷

Statistics

Historical disregard in the Georgian government for the effective collection and management of statistical data led to the ENP Action Plan promoting the,

Adoption of statistical methods fully compatible with European standards and advance the modernisation of the department of statistics of Georgia with the view to strengthen the independence and sustainable functioning of official statistics

The system of national statistics is decentralized, with the Department of Statistics, Ministry of Finance and the National Bank of Georgia sharing the bulk of responsibility. The Department of Statistics formally has the most responsibilities as the coordinating body but it is a subdivision of the Ministry of Economic Development, rather than a sovereign body and therefore lacks political independence. While the National Bank has the most formal independence, it is the Ministry of Finance that enjoys most influence. The data released by all agencies is subject to political approval and is considered to be relatively distorted. Frequent changes in the Departmental leadership are generally tied to politics rather than to performance.

The need for reforming the Statistics Department as well as the entire system is largely recognized both by the government and civil society. A draft reform strategy has already been prepared by the Department with support from the UN, proposing the creation of a statistical body subordinated directly to the Prime Minister, with its head appointed for a fixed term (5 years) not coinciding with the electoral cycle. This proposal prohibits his/her dismissal for political reasons but it has stalled in the parliamentary approval process³⁸. A renewed commitment and emphasis on the importance of quality statistical data was voiced when the new government took charge in late January 2008 but so far there have been no progress or public discussions on the topic.

Public Internal Financial Control

The ENP Action Plan placed emphasis on sound management and control of public finances in general and, in particular,

Develop a strategy paper for the public internal financial control system (managerial accountability and internal audit

The Georgian Government has not implemented a strategy paper, though the draft legislation was prepared in 2005. The proposal, although not officially registered, was presented to the Parliament but was rejected for the reason against criticism it suggested a mechanism of Soviet-style control. The Legislature did not, however, propose a viable alternative, effectively deregulating the system.

³⁷ Publication 'Alternative progress report on the implementation of the OECD CAN recommendations by the Georgian Government', *Transparency International*, September 2007, available at: http://www.transparency.ge/index.php?lang_id=ENG&sec_id=215&info_id=426

³⁸ Publication 'Reforming the System of National Statistics in Georgia' *Transparency International* available at: http://www.transparency.ge/files/215_273_228990_Reforming%20the%20System%20of%20National%20Statistics%20in%20Georgia-E.pdf

In the place of this framework, managerial accountability and auditing is upheld by internal control units, generally called General Inspectorates (GIs), which are present in every ministry and Tbilisi City structure, and are regulated by the institution-level by laws, signed by the respective ministers. Their functions and mandate vary correspondingly, granting them divergent levels of autonomy. While some GIs are fashioned as separate entities directly under a minister's control, others are positioned as a regular division, giving them no particular structural superiority over the rest of the ministry. Generally GIs face the limitation of being dependent on the Minister's orders to undertake an investigation, rather than being proactive, focusing on investigations of misconduct, rather than performing as an auditing unit.

The ineffectiveness of GIs is exacerbated by the frequency of employees having law enforcement background, rather than financial and staff turnover is high, resulting in poor institutional memory. GI heads are typically replaced in line with the cycle of Ministers, which itself is a frequent occurrence in Georgia. Record-keeping is generally poor, making statistical and other data practically useless and inaccessible both for internal staff and outsiders alike.

The effectiveness of the GIs would be enhanced by setting common standards and procedures throughout the system. Contracting out could also be a viable option for increasing both effectiveness and efficiency.³⁹

Energy

Energy Security

The ENP Action Plan requires,

A coherent long-term energy policy converging gradually with the EU energy policy objectives including security of energy supply

No specific action has been undertaken in this direction and Georgian national energy legislation does not set as an objective the development of liberalised, competitive electricity and gas markets, consumer protection and public service or universal service obligations. Electricity supply is not properly defined and remains overshadowed by a monopolistic distribution activity.

In general, separate activities in the Georgian electricity market were not unified as a bundle (except regarding supply) and critically the owners of generation, transmission and distribution companies have been different individuals. But during the recent privatisation of some distribution companies to Energo-Pro in 2007, in order to increase the value of those companies applying for privatisation, distribution was integrated with generation. This is a breach of key market principles, and should be reversed as soon as possible. Georgian legislation does not go far enough to meet the legal deregulation requirements set by the EU Electricity Directive (2003). The mere separation of accounts does not guarantee the non-discriminatory and transparent operation of the market, as transmission and distribution licensees in possession of both transmission or distribution assets together with the generation assets, or carrying out supply activities, have the potential to give preference to their peers, supply branches and discriminate outsiders.

Renewable Energies (RES)

Under the energy section of the ENP, the Action Plan specifically highlights the need to,

Adopt legislation addressing energy efficiency and renewable energy

A similar obligation arises from an EBRD contract (the second loan agreement pertaining to the rehabilitation of Enguri hydropower plant) which the Georgian parliament ratified in 2007, promising to

³⁹ Publication 'Institutions of Internal Control in Georgia: Internal Police vs. Internal Auditing', *Transparency International Georgia* available at: http://www.transparency.ge/files/215_273_276212_Institutions%20of%20Internal%20Control-E.pdf

develop a complete legislative package on energy efficiency and renewable energy by 1 January 2008.⁴⁰ However, despite these commitments, prior to this point no draft law has been proposed for public review, nor approved. During the preparation of the Building Code draft, all relevant amendments on Energy Efficiency proposed by energy institutions were omitted by the government.

Instead of fostering the implementation of RES, the Georgian government gives preference to traditional schemes of energy generation, that depends upon large hydro plants which are not generally seen as 'renewable' because of their negative ecological impact. Since 2005 the government has approved the construction of nine Large Hydro Power Plants like the Namakhvani Cascade (installed capacity of 700 MW), Khudonhesi (Khudoni hydropower plant with installed capacity of 638 MW), Oni Cascade (installed capacity 272 MW) and another six HPPPs with a total capacity of 1,747 MW.⁴¹ Feasibility studies for the Khudoni (supported by the World Bank) and the Namakhvani dams are already finalised and the government now seeks to obtain about 1.5 billion Euro for construction through the Public Private Partnerships.

The Environment

The ENP makes specific reference to conformation with international standards regarding environmental governance and protection. Progress regarding key areas is examined here.

Environmental Governance

With respect to the environment, the ENP Action Plan highlights as a recommended approach that the government,

Adopt legislation and establish procedures regarding access to environmental information and public participation, including implementation of Aarhus Convention

Environmental governance remains problematic in Georgia. Public information has not historically been supported by regular government reports, although in late 2007 this legislation was amended and now the government is required to prepare the State of Environment Reports on a tri-annual basis. The State of Environment Report for 2005 is the most recent available report for the public, and the next is set to be issued in early 2009, which will include the period 2006-2008. Until this report has been released, it is not possible to make a full assessment of the validity of the reports and the progress of the government in line with the ENP AP in environmental governance.

Public participation pursuant to the Aarhus Convention should be secured through full accessibility to the Environmental Impact Assessment (EIA) system, in which developments that will have an environmental impact should apply for a permit to the Ministry of Environmental Protection and Natural Resources.

The EIA legislation⁴² does not comply either with the requirements of Aarhus convention, or with the relevant EU directives⁴³. The areas of particular concern include the applicability of EIAs, as they apply only to private projects/activities listed in Article 4 of the Law governing Permits for Impact on the

⁴⁰ Resolution of Georgian Parliament no. 4457 on ratification EBRD second loan agreement of rehabilitation of Enguri hydropower plant, 15 March 2007

⁴¹ For specific details on the hydro-projects refer to their website and projects tab at: http://www.georgiahydroinvest.com/proj_intro.htm

⁴² The Law on Licenses and Permits of 2005 (sets general procedural framework for granting all types of licenses and permits, including permit for impact on the environment; the permit is granted based on the environmental impact assessment); The Law on the Permit for Impact on the Environment of December 14, 2007 (the law sets detailed rules of decision-making on granting the permit for impact on the environment) – the law virtually reiterates provisions of so called temporary regulation of September 1, 2005 on the permit for impact on the environment. The regulation was adopted to enforce the Law on Licenses and Permits and remained in force till the adoption of the Law on the Permit for Impact on the Environment.

⁴³ Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment; Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC of June 1985 on the assessment of the effects of certain public and private projects on the environment; Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC

Environment. Public (state-owned) projects are exempt from EIA, while the majority of the activities listed in the abovementioned article can in principle only be implemented by public institutions. The list does not include projects related to, for example, mining, nuclear power stations, agricultural and food industries, wood, paper, leather and textile industries, so it does not comply with either Annex I of the Council Directive 85/337/EEC or Annex I of the Aarhus Convention and is not open ended on activities that may be subject to EIA as it is foreseen under the Council Directive 85/337/EEC (Annex II activities).

Administration of EIAs is underdeveloped, as there is little screening of projects subject to the EIA process, so that the Ministry is overwhelmed by requests and developers of small and medium size projects which have no significant environmental impact are disproportionately burdened to apply for a permit. The law itself is also contradicted by the Law on State Support to Investments, which makes it possible for anybody to start implementing an activity without conducting EIA and obtaining a permit on the condition that they will fulfil these obligations in the future.

An effective scoping stage is absent from the legislation, which explains why the EIA reports submitted for ministerial consent are of poor quality, though many are still approved. The problems outlined are compounded by a lack of public participation, as the Ministry is neither obliged nor entitled to ensure public participation in the decision-making on granting the permit for impact on the environment. Instead the project developers are obliged to inform and consult the public on the draft EIA report, i.e. before their application to the Ministry. The Ministry is not obliged to inform the public about decisions on granting the permits. There is ongoing progress on “*Rules of Conducting the State Ecological Examination*” but currently this would not strengthen the administrative capacities; neither would it reinforce structures and procedures to carry out EIAs.

Environmental Resource Management

The ENP Action Plan in regard to Georgia’s environmental resources prioritises the following,

Prevention of deterioration of the environment, protection of human health and achievement of rational use of natural resources

In order to meet this objective the government should have made significant reforms and implemented new rational policies regarding waste management, forests and water basins, as a protected natural resource. So far the attempts to reform this sector have stalled, while much of Georgia’s natural wealth has been privatised.

Waste and Sanitation

state reforms in the environmental management system have directly impacted municipal waste management although the existing legislation concerning waste management remains fragmented.

In municipal waste management, the authorities (municipal level) in large cities have devolved control over waste collection, allocation and operation of land field sites to private companies, based on contracts. The state has no function to control implementation of legal and regulatory requirements under this system. This requires significant reform or at the very least, oversight.

The situation differs in regard to water supply and sanitation systems. According to Decree N245, 10 April 2008, from the office of the President of Georgia, the direct privatization of 100% state shares in the following companies “Tbilisitskali”, “Rustavitskalkanali”, “Saqtskalkanali” and “Mstkhetatkanali” to the Swiss company “Multiplex solutions” was approved. The decree also defines the water tariff, quality, supply and consumption regimes for the multiplex until 2018, as well as request for the Ministry of Environment, in conjunction with the investor, to prepare an Environmental Action Plan to avoid historical pollution responsibility for the investor. The privatization agreement itself is confidential⁴⁴ and

⁴⁴ This contradicts with Priority 2, of the ENP AP, that requires that the government “pursue (a) transparent privatisation process both as regards divestiture and use of privatisation proceeds”

it is not clear what are the rights and obligations of the state and how it would be regulated. Although a July 2008 legal amendment puts relations between suppliers and consumers within the remit of the Energy and Water Supply Regulatory Commission their responsibilities have not been sufficiently clearly articulated.

Forests

In specific reference to forestry management, the government of Georgia has failed to make progress with Sustainable Forest reform. The World Bank Forestry Development Project has apparently “stalled due to the both technical and policy concerns related to the development of forest inventories”⁴⁵. Interruption of the project had been requested by a number of environmental NGOs in Georgia, following the government’s violation of obligations and commitments in regard to the implementation of the “Forestry Development Project”, ignoring the project aims and the principles of sustainable forestry underlined within the World Bank Forest Strategy and Policy.

Public involvement in decisions is limited. The policy document draft developed in the beginning of 2007 became a subject of public consultation only in response to strong pressure from civil society groups. Moreover, the draft elaborated with public participation differs from the policy document eventually reported by the Prime Minister to parliament in September 2007. There has been no progress since that point but it has been suggested that it would be almost impossible for the parliament to adopt this policy document as it contradicts a number of the organic laws, such as the Law on Local self-governance

In the absence of an updated state inventory, not completed since 1997, the government of Georgia in 2007-2008 approved a number of long-term leases for the next 20 years on territory of about 60 000 ha. As a safeguard the government requests that project sponsors should physically protect forests, as well as complete inventories and prepare management plans that would be audited by accredited companies in OECD countries but the requests are not legally binding. The Georgian Public Defender’s office insisted that the Ministry of Environment suspend a number of licenses due to violations that include denial of the rights of citizens to participate in decision-making that would affect their livelihoods, as well as license conditions which would not ensure the protection of forest ecosystems from degradation and satisfy the socio-economic needs of the local population.⁴⁶

Water basin management

Though a priority of the European Union, Water Basin Management has not yet been introduced in Georgia, although for the last two years the government has been considering the introduction of principles regarding integrated river basin management. There were two concept papers on water policy, one initiated by the Ministry of Environmental Protection and Natural Resources (with the support of the USAID Water Programme) and another by the State Minister on Reforms Coordination. Both concept papers indicate different understandings of integrated river basin management and its tools, and neither of them was subject to public hearings. In addition, the Ministry is drafting a new law on water⁴⁷, which among other issues refers to integrated river basin management; and the understanding of the issue is again different from those contained in the concept papers⁴⁸.

The introduction of the term water basin management per se does not mean necessarily harmonization with EU principles. A shared feature of the proposals is that they place emphasis on the importance of economic profit from water resources. Crucially, a river is presented in these documents as a “single physical and economic object.” The applicability of river basin management infrastructure is indicated to lie in two converging principles, first a geographical one, that “a basin should be physically united” with a river and second an economic principle that “a basin should be economically sustainable.” This reveals a

⁴⁵ Georgia Country Partnership strategy progress report , IDA/R2008-0130 IFC/R2008 - 0123 , May 12, 2008

⁴⁶ Press Release: “Georgian Ombudsman support Green Alternative demands”, May 2008 , available in Georgian language only at : http://www.forestgeo.net/?filename=ge_01_05_2008_18_37_40.new&path=webmill/data/news/&lng=ge_&more=1&page=

⁴⁷ There were number of requests to the Ministry of Environmental Protection and Natural Resources to realize the draft law on Water and Water Basin Management in accordance of Aarhus convention, however draft never have been realized and discussed publicly

⁴⁸ It is known that a new draft Law on Water is elaborated at the Ministry of Environment Protection and Natural Resources for more than two years, which should replace the acting law of the same title. The draft law has not yet been disseminated officially. Therefore the description or comments about the draft law are based on the version unofficially obtained in March 2007.

high emphasis on profitability, over environmental concerns, with the involvement of the private sector allowing the state to free itself of the obligation towards water as a national resource.