



Where do we stand?

Georgia's achievements and challenges through different lenses

Georgia's commitments as described in the European Neighborhood Policy Action Plan (ENP AP) involve reforms in almost all policy areas. While the government has already achieved tangible results in several policy directions, more action must be taken in many other fields. This report summarizes the government's achievements and future challenges as perceived by the incumbent government, the opposition and NGO representatives.¹ The report is based solely on information provided by respondents and focuses on policy rather than political issues. The first part of the report outlines success stories as told by the three sides, while the second focuses on policy issues deemed to be in urgent need of attention. The report concludes with a summary of opinions on the government's achievements and the challenges still to come.

While interviewees were asked to comment on positive and negative policy developments vis-à-vis the ENP AP, several also offered opinions on the actual content of the ENP AP as well. Levan Ramishvili of Liberty Institute questioned the importance of the ENP AP as a benchmark document for Georgian policy reform. He argued that conformity to EU policies, particularly in the spheres of agriculture and labor affairs, will undermine the competitiveness of the Georgian economy. Salome Zurabishvili of Sakartvelos Gza (Georgia's Way) spoke about the ENP AP as a very important document for Georgia's political and economic development. However, she also noted that the ENP AP is not the product of negotiation between equal partners and that the government failed to take account of Georgia's national interests in the Action Plan, particularly insofar as the visa regime could have been simplified and special work migration arrangements negotiated with the EU. According to Tinatin Khidasheli of the Republican Party, the ENP AP fails to secure EU assistance in the areas of institution-building where local expertise is insufficient, namely the reform of independent regulatory agencies and the establishment of arbitration courts.

Success stories

The reforms initiated by the government after the Rose Revolution resulted in varying levels of success and elicited different kinds of evaluations. As expected, the government representatives described recent successes in a very straightforward manner. The opposition representatives were reluctant to speak about successful policies and focused on challenges instead: they recognised positive trends in the reform agenda but also highlighted problems of implementation.² Representatives of non-governmental organizations displayed a more balanced approach: they acknowledged the government's successfully implemented policies but also outlined the steps still needed to complete the reforms most effectively.

Education reform was the single policy issue recognised by nearly all the interviewees as a success of the current government. Nika Gvaramia, Member of Parliament from the National Movement, mentioned that

¹ Only one representative of the incumbent government was available for interview; we interviewed five opposition and two NGO representatives.

² The same trend could be observed when government and opposition representatives summarized the results of the previous year. While the government did not report on its achievements in a unified manner, several ministers organized briefings where they focused exclusively on accomplishments. On the other hand, opposition press releases (by the New Right party and Sakartvelos Gza [Georgia's Way]) in particular) concentrated on failures and for the most part avoided discussion of the incumbent government's successes.



although the reforms were initiated and implemented within a rather short period of time, the results are already tangible and unique in the post Soviet space. Almost every person interviewed identified two successful components of the education reforms: (1) national exams that give students the opportunity to enter universities on a competitive basis and eliminate the kinds of corruption that plagued the old system of exams; (2) the introduction of school boards to decentralize decision-making process. Under the old system the Ministry of Education and Science made the most important decisions pertaining to primary and secondary education, including budgetary issues, curricula, and hiring and dismissal of faculty. The new legislation introduced school boards comprised of teacher and parent representatives. Students and local governments also have one representative each. School boards are now responsible for school management: they appoint a director, approve a budget, and supervise school administration and disciplinary procedures.

Higher education reforms, however, elicited more controversial opinions among the interviewees. Ghia Nodia of the Caucasus Institute for Peace, Democracy and Development noted that the government cannot afford to wait for Georgia's highly corrupt system of higher education to reform on its own. Thus, he argued, government interference was inevitable and, given the complexity of the issues, the reform strategy required excessive government heavy-handedness. According to Nodia, due to the persistence of objective obstacles to the system, for example the lack of human resources, tangible results should not be expected in the near future.

A more radical evaluation of the higher education reforms was offered by representatives of the opposition. Kakha Kukava of the Conservative Party claimed that the reforms called for the dismissal of existing faculty and selection of new faculty based on political views. Pikria Chikhradze of the New Rights Party blamed the government for failing to prioritize its goals for higher education and for leaving it to an "invisible hand" to determine which professions are most needed in the workforce. Koka Guntsadze, an independent Member of Parliament, argued that the reforms eliminated the old system of academics and research without systematically planning for its replacement. He noted that there is no permanent or standing budget for funding research, but only competitive funding for specific projects.

A second policy reform area considered by many interviewees to be successful is Georgia's **economic liberalization**. A new tax code reduced both the quantity of taxes collected and their percentage rates, simplified the process for registering a business, and eliminated close to 90% of previous licensing requirements. These changes have enabled the government to curb economic corruption and increase the state budget by several times. According to Nika Gvaramia, these reforms are expected to attract foreign direct investment and facilitate economic growth in 2007. It is interesting to note that the new labor code, with its flexible stipulations regarding employer-employee relations, was regarded as one of the most progressive steps towards economic development by opposition and civil society representatives (Levan Ramishvili, Koka Guntsadze). However, Ramishvili suggested that to increase the flexibility of the labor force even more follow-up reforms in work force training and lifelong learning will be necessary.

The opposition also recognised progress in the sphere of economic liberalization, but took note of a number of existing challenges to come as well. For instance, Tinatin Khidasheli commented on the need for greater transparency in the new legislation. She noted that, while the new customs code contains advantageous provisions for business development, it is written in rather opaque language and a number of its less well-formed articles could easily be subject to rather arbitrary interpretation.

Reform of the army and police forces helped to establish a new and sustainable system of national security, according to most interviewees. The police reforms can be divided into two components: (1) introduction of the traffic police force, and (2) reform of the intelligence service. According to Nika Gvaramia, these changes have made it possible to increase effectiveness and dramatically reduce corruption



in law enforcement agencies. Effective regulation of the Kodori Gorge crisis, for example, proved a key success of the reformed intelligence and police forces.

According to Koka Guntsadze, the reform of law enforcement institutions has had the negative consequence of increasing the power of the Ministry of Internal Affairs. In his opinion, delegating specific ministry functions to a National Security, Criminal Police and Municipal Police department would deliver more effective results in this sphere.

Interestingly, the establishment of a standing national army was offered as the government's most successful policy Salome Zurabishvili. In her opinion the major factor of successes was less politicisation of this policy area and closer monitoring by international actors.

According to Nika Gvaramia, Georgia's **foreign policy may be considered very successful** in view of the fact that the country has become an important international player and that President Saakashvili has gained recognition as a politician of international importance. Successful foreign policy initiatives have resulted in closer relations with NATO and are projected to move Georgia closer to attaining full NATO membership.

The opposition was more cautious in its evaluation of the government's foreign policy. Salome Zurabishvili focused on Georgia's cooperation with NATO and argued that the government's target should have been the finalization of a Membership Action Plan (MAP). Instead, Georgia settled for Intensive Dialogue (ID) status—a stage in the membership accession process that was originally designed for Ukraine. Other opposition representatives (Koka Guntsadze, Kakha Kukava) evaluated the government's policies toward Russia as inconsistent and at times too aggressive.

Levan Ramishvili regarded decentralization policies as a major success. He noted that the new integrated local government system holds great potential for economic and political development given that pluralism is only possible in large communities. The integrated system, according to Ramishvili, will result in lower service costs (an effect of economies of scale) and help to promote the development of interest groups and civil society activity.

In contrast, Kakha Kukava regarded the local government reforms as a step backward. Since local government budgets are no longer collecting revenues from property taxes, he argued, large local government bodies with insufficient financial resources will become excessively dependent on the central budget.

Other successful policies mentioned by individual respondents included the development of infrastructure and designated public spaces (Ghia Nodia), peaceful regulation of the territorial conflict in Adjara (Nika Gvaramia), increased investment in Adjara (Koka Guntsadze), and an increase in the state budget (Tinatin Khidasheli).

Challenges ahead

Reform of the judiciary system was recognised by all respondents as the government's top priority for the next few years. Some respondents focused on systemic problems, while others commented on results achieved thus far.

The interviewees discussed a number of objective difficulties facing the existing judicial system, for example the lack of human resources and the institutional legacy of corruption. A major obstacle to reform of the judiciary, however, was identified in the contradictory objectives of the reform strategy itself: on one hand,



the government strives to achieve quick results and its political distrust of many judges leads to interference in court decisions; on the other hand, it plans long-term reforms that will establish the courts as an independent branch of authority. According to Ghia Nodia, at present these contradictory objectives have made the courts particularly vulnerable to government intervention.

Many opposition representatives regarded judiciary reform as the weakest aspect of the government's reform effort. Kakha Kukava and Koka Guntsadze claimed that judges are under heavy influence of the Prosecutor General's Office and the Council of Justice. They highlighted two primary concerns: first, the selection process for judges is hardly transparent – there are cases when applicants with high exam scores do not receive an appointment, even in cases when there are still vacancies to be filled. The opposition suspects that the selection process is based on personal loyalties instead of exam scores. Second, judges are appointed and dismissed by an administrative body (the Council of Justice); such decisions would ideally be made by a self-governing body, for example a conference of judges.

Salome Zurabishvili argued that a strong and impartial judiciary is the single most important factor in a balanced political system. She highlighted the negative effect of public distrust toward the courts: in many cases court decisions are called into question without significant investigation simply because it is assumed that the judge's decision were not impartial. One of the sources of public distrust is the knowledge that judges are under government pressure. On the other hand, she noted, too much public pressure on the courts can be equally dangerous. According to Zurabishvili the situation could be improved if the EU increased its monitoring efforts in Georgia. Additionally, the involvement of experienced EU judges in Georgia's judicial system would both improve performance and increase trust in the institution as a whole.

Koka Guntsadze recognised a number of positive trends in the judiciary reforms: recent constitutional amendments, for example, have shifted responsibility for the appointment of judges from the President to the Council of Justice. Guntsadze spoke positively of the government's intent to introduce court juries. He mentioned that the Procedural Code of Criminal Law that passed in Parliament during the first hearing is a step forward. Still, the clause regarding “unavoidable circumstances” when the judicial process goes into plea bargaining is too vaguely defined. According to Guntsadze, this clause opens the door for arbitrary application of plea bargaining procedures.³

Levan Ramishvili focused on ongoing reform of the judiciary system and noted that the government has failed to provide the public with sufficient information on ongoing and planned changes. He mentioned that the new legislation will be based on two fundamental principles: the equality and the competition of each side involved. In the near future, he reported, more reforms will be implemented: a court computer network will be developed, libraries will be established, and a training system for judges will be in effect within the next year. Nevertheless, at present the courts are already more independent than they were in previous years. For example, in cases pertaining to administrative and tax issues the percentage of cases lost by the government to private entities increased. In more and more criminal cases the suspect has been deemed not guilty. The opposition, however, did not demonstrate much confidence in these statistics: according to Tinatin Khidasheli, what matters is who wins against the state; according to Pikria Chikhradze, the financial loss to the government in each case is more important than the number of cases lost.

³ Currently, the judiciary may resort to plea bargaining in a case where the suspect admits guilt and agrees to cooperate with law enforcement bodies. In this case, a document outlining the terms of the bargain is signed and submitted to the court. The prosecutor may subsequently advise a shortening of the sentence or release of the accused. The court also has the right to determine the sentence without substantial hearing based on the terms of the document. After the Rose Revolution this practice was frequently used to bring justice to formerly high-ranking officials. More recently the practice was used against private property owners accused in unlawful privatisation schemes. These individuals avoided serving a jail sentence by signing a plea bargain with the prosecutor according to which they would return the property in question to the government without further penalty.



All respondents were eager to comment on the latest policy developments regarding Georgia's business climate. Every respondent agreed that **protection of property rights** is a fundamental value that the state must protect. However, the government, opposition and civil society representatives view this problem through different lenses. Ghia Nodia noted that recent debates about property rights represent a persistent tension between full liberalization and justice. Indeed, the government representatives insisted that the state must not tolerate illegal privatisation of property. However, according to Nika Gvaramia, the state should eventually declare an amnesty, after which point property ownership will no longer be investigated. The opposition representatives argued that by calling rights to property into question the government is engaging in institutionalized racket against private enterprise. In this way the government is promoting a system of "selective justice," declared Koka Guntsadze. The opposition cited the Sony, Badagoni and Schirnhofers cases, in which the government placed unjustifiable pressure on foreign investors⁴ (Kakha Kukava, Koka Guntsadze, Pikria Chikhradze). It is believed that these cases will result in a long-term decrease in economic activity in Georgia, following a general decline in foreign investments. Interestingly, Tinatin Khidasheli pointed out that in the last quarter of 2005 45% of state budget revenues had their sources in plea bargaining agreements and fines from law enforcement agencies.

Privatisation was cited as a key aspect of economic development by all respondents. The opposition found serious faults in the process associated primarily with a lack of transparency in the sale of state property. According to Kakha Kukava, large-scale state assets have been privatised by direct sale, though greater budget revenues could be generated if these assets were privatised by auction.⁵ Kukava has thus been led to believe that the objective of privatisation is not to attract strategic owners, but rather for state officials to broker deals and informally secure shares of property. Salome Zurabishvili identified legal mechanisms as a driving force for increasing foreign investment: due to distrust of the Georgian judiciary system, only companies backed by their respective governments (Russian, Kazakh, Turkish) have been willing to risk investing in Georgia. According to Zurabishvili, Georgia may lose a chance to become a delocalization site for Eastern European enterprises after Bulgaria and Romania join the EU if its unpredictable business climate persists.

Ms. Zurabishvili also criticized the government for selling 100% of its share of private enterprises. Given that local economic actors are not yet prepared to participate in large-scale privatisation processes, a sound privatisation policy would allot a share of the assets to the state for sale in the future, when local businesses have more wealth to invest.

According to Levan Ramishvili, much remains to be done for Georgia's economic development. The government's priority should be to fight private corruption through legislation that facilitates the enforcement of contracts, the protection of shareholders' rights, and the regulation of corporate governance. Ramishvili also mentioned the need for the government to provide information on export opportunities to small- and medium-size enterprises.

⁴ In the Sony case, the dispute involved the space Sony was renting from a private owner. The government claimed that the space had been privatised illegally and asked Sony to vacate the building. In the Badagoni case, Georgia's financial police entered the Italian-owned factory and ordered workers to dispose of one large container of wine because "its quality did not meet the standard." In the Schirnhofers case, the customs office stopped accepting the goods of an Austrian meat-import company at the border for an extended period, again claiming that the products were of poor quality.

⁵ The current system of privatisation involves three methods of sale: auction, competitive bidding, and direct sale. According to the Georgian law on privatisation, the buyer is identified according to the method of sale. In an auction, the highest bidder wins the item. In competitive bidding, the decision is made based upon the total offer (not only price). In a direct sale, the decision is made exclusively by the President of Georgia.



A way forward

It is not surprising that the incumbent government, opposition and NGO representatives view the government's successes and future challenges through different lenses. The government tends to focus on successful reforms without regard for the obstacles ahead; the opposition blames the government for arbitrariness in the spheres of higher education, economic and judiciary reform; the NGOs are moderately critical and eager to suggest possibilities for improvement. Nevertheless, the respondents all agreed that the government has made achievements, for example the introduction of school boards and a system of national entrance exams, the institutionalization of an effective patrol police force, a reduction in widespread corruption, and an increased liberalization of economic legislation.

The interviews revealed an additional positive trend: all agreed that making the independent judiciary work is the most pressing need in terms of Georgia's political and economic development. They also recognised the fundamental value of property rights and declared that the continued revision of property ownership rights must be brought to an end. But the respondents had different views on the ways these issues should be addressed: the government claims that it is acting according to a timetable and that improvements will be made gradually. In contrast, the opposition is calling for an immediate withdrawal of state interests from the affairs of the courts and private business.

Still, shared ideas about the state's priorities suggest that the government, opposition and civil society organizations will cooperate to implement the first two ENP AP priorities – strengthening of Georgia's rule of law and improvement of its business climate. To make cooperation fruitful, however, the government must adjust its policy formulation and implementation practices to involve the opposition and civil society representatives more fully in decision-making processes. In this way cooperation will achieve a twofold result: first, reforms will be regarded with a greater degree of legitimacy and second, the fundamental value of democratic and participatory policymaking will be more fully realized.

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