ALTERNATIVE PROGRESS REPORT ON THE IMPLEMENTATION OF THE OECD ACN RECOMMENDATIONS BY THE GEORGIAN GOVERNMENT

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The reforms initiated by the government in the four years after the Rose Revolution have resulted in varying levels of success and elicited different kinds of evaluations. Opinions defer on the depth and sustainability of the government's frequently rash anti-corruption measures. In terms of overall corruption, however, there is a general consensus among public officials and civil society organizations alike, that there is much less petty corruption than there was during Shevardnadze's time. In 2007 Georgia's Corruption Perception Index score, for the first time, exceeded 3 points and reached 3.4, what means that Georgia has moved out of the group of countries considered to have a rampant corruption. Last year this score was 2.8, thus, the improvement in 2007 results is significant. Since the Rose Revolution, Georgia's CPI score has steadily risen, starting at 1.8 in 2003.

The Freedom House Nations in Transit (NiT) rankings and averaged scores also showed Georgia's progress in 2007. Its Corruption Score improved from 5.5 in 2006 to 5.0 in 2007 and its overall Democracy Score improved from 4.86 to 4. 68 (the NiT ratings are based on a scale of 1 to 7, with 1 representing the highest level of democratic progress and7 the lowest. The 2007 ratings reflect the period January 1st through December 31st of 2006).

In 2006, the Business Environment and Enterprise Performance Survey BEEPS (Doing Business) study published by the World Bank and International Finance Corporation (IFC) gave Georgia the title of "best reformer" in the world with regard to its business environment: Georgia moved from 112 to 37 in the list of 175 countries with the best environment for doing business and was considered the country that had made the most progress in the course of the year.

The concern, however, is that these improvements and the actions undertaken by the government to promote economic growth and reduce corruption have not yet translated into the improved social-economic conditions for a large number of Georgian citizens who remain under the poverty line.

(A) ANTI-CORRUPTION STRATEGY ELABORATION AND TRANSPARENCY OF THE ANTI-CORRUPTION CAMPAIGN

Anti-Corruption Campaign Enforcement and Transparency

Some of the major approaches used by the post-revolution government to combat corruption in Georgia are as follows:

(a) Demonstrating that, unlike the previous regime, it does not accept corruption as an 'only way of doing business' in civil service. During these four years a great number of medium- and lower-level officials have been arrested for demanding or accepting bribes, or otherwise abusing their authorities. In result of frequent *TV arrests of state officials suspected of corruption* (that continued in the past two years, as they were in the first two years after the revolution), civil servants have become more cautious about getting involved in corrupt negotiations. Among the individuals arrested on corruption charges are not only the members of the former government, but also those appointed by the new one;

(b) *Increasing the salaries* of public officials and by that creating an incentive against corruption in civil service;

(c) *Cutting unnecessary bureaucracy* and simplifying official procedures in order to reduce opportunities for corruption and promote higher efficiency of service delivery by the government offices. The so-called 'one-stop shop' and 'silence means consent' principles have been introduced in a number of instances;

(d) *Conducting a rigorous privatization in different sectors* in order to transfer formerly state-owned enterprises to private ownership, by that reducing government's involvement in these sectors and fostering market economy.

(e) Abolishing abundant regulatory bodies and frameworks prone to corruption instead of ensuring consistent enforcement of legislation and provision of fair conditions for all players in the field (there are concerns, however, that the government has abolished a number of oversight agencies/frameworks hastily, all in the name of total deregulation).

As for the sectoral improvements, positive changes were implemented in the following sectors:

(a) *University entrance exams:* Over 90% percent of the university applicants, their parents and test administrators surveyed by Transparency International Georgia (TI Georgia) in 2005 and 2006 after the introduction of a new, unified, test-based admissions process approved the new examination system and said it helped to eliminate widespread corruption in university admissions.

(b) *State licensing and permissions:* The new law adopted by the Parliament reduced the number of licenses and state institutions by almost 60% and streamlined the procedures for issuing the licenses and permissions, which contributed to reducing corruption in this sphere.

(c) *State revenue collection:* After the November revolution the Government managed to improve state revenue collection which lead to a significant increase of the state budget in 2005, 2006 and 2007.

(d) *Issuance of citizens' IDs and passports:* Compared to previous years, the system for issuing citizens' IDs and passports has improved significantly. Currently citizens are able to obtain these documents in full adherence to the legal procedures and timeframes, and without having to pay bribes to speed up the process.

(e) *Election of school boards:* In the summer of 2006 Georgian public schools, for the first time, elected their own school boards composed of teachers, parents and students. These school boards are to take an active role in planning and overseeing the school management and educational policy implementation. In 2007 these boards elected school principals. In previous years, principals were appointed by the Minister of Education. It should be noted, however, that in order for the school boards to function effectively, they require intensive trainings and consultancy from highly-qualified sources.

(f) *Public registry:* The National Agency for Public Registry (NAPR), which is responsible for providing property registration documents, has significantly improved its operations. Among the major improvements in this field are the reduction of the time required for citizens to obtain necessary documents and services provided by this agency, improved provision of the information and consultation, simplification and increased practicality of legal framework, and in result, greater client satisfaction.

(g) MTEF: The government has moved from annual budgeting to mid-term (3-year) program budgeting in accordance with the Medium Term Expenditure Framework (MTEF) requirements. As of 2006 the state budget formulation is based on the Basic Data and Direction (BDD) document, the strategic document of the government that delineates its sectoral priorities for the three-year period. Although currently this process is not fully sufficient and substantial efforts are necessary for its perfection, introduction of the MTEF principles in Georgia's budgetary process is a significant improvement in its public finance sector.

(h) Social welfare system: Development of the targeted and need-based social assistance system, initiated in March of 2005, can be regarded as the final break with the Soviet-era approach to social protection. By denying assistance along category or status lines – IDP, disabled, war veteran, etc., no matter the actual financial conditions of the person/household, the state has reserved aid for those who need it most but may not fit any one category. The state intends to discontinue aid to those who fit the above or other categories but have sufficient household income not to require additional support from the government. This system is in many ways very sensible, particularly in a country like Georgia in which resources are scarce and social conditions are often extreme, however, it is because of this scarcity of resources that it is especially important that the social assistance be need-based and targeted.

Concerns have remained, however, with regards to:

(a) A lack of *transparency of government's policy-making process*, inexistence of predictable procedures in this process, and a lack of political participation;

(b) A lack of *research-based fight* against bribery and corruption, insufficiency of the efforts invested in studying the causes of bribery and corruption in order to address the roots of the problem;

(c) *Insufficiency of governmental checks and balances*, concentration of power within the executive, and low public trust in the judiciary;

(d) A lack of stable and *effective mechanism for interaction between the government and civil society*;

(e) *Insufficient communication* of the content of Georgia's strategic reform documents and government's priorities *to the public*;

(f) Weak performance of the *democratic institutions at the local level*;

(g) Inconsistency related to the *protection of legal requirements* during TV arrests and other anti-corruption initiatives,

(h) Difficulties faced by the civil society in *accessing public information*, especially in the regions, etc.

The following negative developments, frequently brought up by the Georgian NGOs, require special attention (not all relate to corruption):

(a) Excessive Use of Force: One of the main concerns voiced by Georgian civil society is the high rate of victims during special operations conducted by the Ministry of Interior's special forces. According to statistics for 2005-2006, 25 people were killed during 73 special operations conducted in these years.

There were cases when ordinary citizens were also murdered or injured by accident due to poor planning and execution of operations. The government fell short in investigating such cases and in providing the public with comprehensive responses to questions raised around the violent operations. Official data shows that in 2006, out of 25 incidents of excessive use of force by the police, investigations were started in only 4 cases.

Statements made by some of high-ranking state officials, including the President and the Minister of Interior, somewhat contributed to the increase in excessive use of force by police forces. The President publicly stated: "Policemen have instructions to fire directly, because the life of one policeman is more valued than the lives of entire worlds of criminals and their accomplices to me and to the public." The Interior Minister also reported to the Parliament that he had ordered policemen to freely use arms in cases of danger to policemen or other persons.

(b) Plea Bargaining: A great deal of controversy still surrounds the amounts received through plea bargaining. The Prosecutor's Office has not developed a mechanism for providing periodic reporting on plea bargaining proceeds. There is no specific line item in the revenue section of the budget either that would allow interested parties to track these funds. There is no law or statutory act that would talk about accounting-reporting rules and procedures of the plea bargaining revenues. That's why this process has been relatively relaxed and somewhat inconsistent. Even today the degree of tracking of these revenues is not quite satisfactory.

After January 1, 2006 the accounting-reporting of plea bargaining revenues has relatively improved. This improvement was stimulated by creation of the Treasury Single Account. Now, the State Treasury Office has regular information not only on the amounts of plea bargaining revenues but also on their movement from the moment accused individuals pay them up to the moment these monies end up in a common pool of state budget revenues. The remaining deficiency in terms of reporting of plea bargaining revenues, however, is that the information obtained by the Treasury from the General Prosecutor's Office and the Ministry of Interior can not be considered comprehensive since the latter do not possess a centralized data base of these funds. These proceeds are kept in deposit accounts of the Ministry of Interior and the General Prosecutor's Office. Part of these amounts are then transferred to the Treasury, part is refunded partly or fully to indigents who are found innocent and another part is kept by the Prosecutor's Office or the Ministry of Interior. Due to this complicated pattern of flows, the reporting mechanism of these two agencies is unsatisfactory.

(c) Bail System: In 2006 the Ombudsman's Office reviewed the use of the bail system by Georgian courts. According to Georgia's legislation, bail should be set at a rate that corresponds with the severity of the crime committed and the financial conditions of the convict. As the Ombudsman's review showed, in a number of cases judges ignored these requirements and made decisions that conflicted with the defined criteria. In particular, there were cases when some citizens were requested to pay over 100,000 Georgian laris for purchasing stolen cell phones, even though their families were extremely poor, while patrol police officers who were charged with professional negligence that resulted in the accidental shooting death of a 19 year old citizen, who allegedly was robbing a neighbor's basement, were released after paying 2,000 laris. Penitentiary system personnel who were charged with beating up prisoners were required to pay 3,000 laris.

(d) Penitentiary System: Currently the Georgian government is investing state funds in the construction of new prisons and repairing existing ones, but at this moment the conditions in which prisoners are held in the majority of prisons are devastating. The majority of Georgia's prisoners, including those held in pre-trial detention, remain in over-crowded cells. Some of them are forced to sleep in turns because there are not enough beds in these cells for all prisoners held there. There were also a number of cases of beatings of inmates by prison officials, but few of such cases were properly investigated.

(e) Property Rights: NGOs have expressed a numerous concerns about the authorities' abuse of private property rights. In 2006 and 2007, there were many cases of businessmen voluntarily giving their property to the state without any compensation and also of private property being demolished on short notice in violation of the legally stipulated timeframe. NGOs have expressed worries about the Tbilisi municipality's recent acquisition of the right to destroy a building without a court order or written notice. The municipality says that decisions on demolition are made if the norms and rules of construction have been violated, though without further definition, NGOs worry about the consistent enforcement.

There also have been several cases of the Tbilisi municipality's supervisory agency demolishing commercial spaces under the pretext that the buildings did not correspond with the appearance of the city, however, the Georgian legislation does not provide for such justification. In some cases, private property was demolished even when the owner had appealed the decision to court, which meant that demolition should have been suspended.

(f) Public procurement: According to the National Anti-Corruption Strategy Implementation Action Plan approved in June of 2005, one of the priorities of the Government was the simplification of 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. In addition, the ratio of sole source procurement in comparison to open tendering is considerably high in many public institutions. TI Georgia sent FOIA requests to all ministries asking them to provide information about the 2006 public procurements administered by these institutions and learned that for the majority of the ministries the percentage of sole source procurement was over 30% of all procurements conducted by these ministries (increase of price limit for sole source procurement to 20 000 Georgian laries could be one reason to this, however). In the case of the Ministry of Foreign Affairs this number was over 46%, in the case of the Ministry of Healthcare – over 60%, etc.

(g) Chamber of Control: According to the Georgian legislation, one of the mechanisms for the Parliament to carry out oversight into the public revenues and expenditures is scrutiny of these funds by the Chamber of Control. The head of the Chamber is nominated by the Parliament Chairperson and approved by the Parliament. The Chamber has documented a number of irregularities in the government's expenditures and financial documentation; however, to date the Parliament has not acted on any of them.

(h) Direct sales: One of the priorities of the Government in the economic sector has been the privatization of state owned property. As said, through this the Government aims to reduce its involvement in economic activities and hence its opportunities for corruption. Although in general the privatization process is a positive development, two major concerns surround this process. The first one relates to conducting privatization through direct sale (as opposed to two other methods: auctioning and competitive bidding). In this case, the property/enterprise/object is sold to a specific

physical person on the basis of the Presidential order. Therefore, too much discretion rests with the president himself as well as with those officials who prepare the text of the Presidential order. Even though during 2005 and 2006 over 70% of privatization sales were conducted through auctioning, then came competitive bidding and then direct sales, the concern is that some very important objects were sold through direct sale and the President provided no explanation for that to the public.

Worries also remain with regards to inconsistency of some privatization processes. Cases were cited when the Government first announced that a specific object was to be sold or already was sold to an interested party for a high price when in face the negotiated price was either much lower or the object was not sold. Although the process of prolonged negotiation itself cannot be regarded as an important impediment to the privatization process, questions arise due to conflicting statements of responsible officials about the continued process and reluctance from the Government's side to provide more comprehensive information about the ongoing negotiations.

(i) Reserve funds: According to the Law on the Budget System of Georgia and on the Law on the Tbilisi Budget, the President, the Government, and Tbilisi Mayor are allowed to have certain amounts of budgetary resources set aside each year to spend at their discretion but in accordance with the law (According to the Law on Budget System of Georgia, the total volume of the President's Reserve Fund and Government Reserve Fund should not exceed 2% of the total fixed appropriations). Expenditures from the reserve funds are authorized on the basis of the President's, Government's, and Tbilisi Mayor's written decision respectively. These written decisions are usually general and non-descriptive. In the majority of cases, they only indicate the recipient's name and the amount to be transferred from the fund. In rare cases, they specify the activity to be financed. Even more rarely, they provide justification of funding. These decisions are public documents, except for the Presidential orders marked with "s" (Secret).

According to the laws, the reserve funds may be spent in cases of special state importance, such as: natural and other calamities and for financing of other unforeseen public expenditures. The law provides no definition for "unforeseen public expenditures." Thus, the purpose of the fund is ambiguous and the President, the Government, and Tbilisi Mayor enjoy absolute leeway in appropriating these funds.

(j) Public officials' financial declarations and business affiliations: Concerns have also prevailed with regards to inconsistent enforcement of the legal provisions regulating financial declarations and public officials' business affiliations. In 2006 the Georgian Parliament suspended the immunity of opposition MP Valeri Gelashvili and the majority MP Badri Nanetashvili citing their alleged involvement in business activities. The public suspects that there are many more MPs involved in illegal business activities, especially among those representing single-mandate districts. Nevertheless, there have been no other investigations of this kind. Besides, the system of scrutinizing of public officials' financial and asset declarations remains to be rather deficient.

(k) Reform of the judiciary: Independence of the judiciary is one of the most problematic issues often raised by the Georgian society and the international community active in Georgia. Though 2006 was planned to be the year of reform of the judiciary, the level of performance in this regard remains low. A clear strategy for reform has still not been publicized for interested groups to be able to contribute to the reform process. The government has released no in-depth analysis of problems in the judiciary or actions planned to address these problems. As a result, public awareness of developments in this sector

is very low and the large majority of Georgian citizens still believe that the judiciary lacks independence from the executive.

There are claims that 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. However, further analysis of these statistics shows although the number of cases won against the state has increased over the past years, but this number decreases when larger sums are involved.

Two major improvements in this system can still be cited, these are (a) the recent constitutional amendments (passed in January of 2007) according to which the President will no longer be the Chairman of the High Council of Justice, the body overseeing the judiciary system, and the Chairman of the Supreme Court will instead serve as chair. The President will also lose the right to appoint or sack judges; and (b) increased funding for courts to improve their infrastructure and technical equipment. The government's intent to introduce court juries also deserves an affirmative appraisal. In this regard, the Criminal Procedural Code of Georgia that passed in Parliament during the first hearing is a step forward. This system was first introduced in the Georgian legislation through an amendment to the Georgian Constitution passed in February of 2004.

When commenting on the appointment of judges, it should be stressed that the fact that the Constitution was amended restricting the President's power to appoint and dismiss judges of the common courts after the President had already selected the vast majority of judges, who will serve ten-year terms. The President appointed these judges on the recommendation of the High Council of Justice, of which he was the head at that time. Although such judges had to pass a qualification examination, selection and appointment was also based on subjective criteria, such as professional and moral reputation and professional work experience. The basis for selecting certain judicial candidates rather than others was neither clear nor transparent.

Nevertheless, the government has by now started taking more active steps to reform the judiciary, but these steps need to be actively communicated to the public in order to promote effective implementation and increased confidence in the sector.

Anti-Corruption Action Plan Elaboration and Implementation

The Georgian government has produced a number of strategy documents to guide its reform efforts. Several key documents take the form of international commitments that, if complied with, can help to earn Georgia greater economic and political privileges within a broader European community (NATO Individual Partnership and Implementation Action Plan, European Neighborhood Policy Action Plan). Other documents like the Anti-Corruption Strategy and Action Plan and the Basic Data and Directions are designed to unify reform strategies in various state sectors and to provide a framework for inter-sectoral cooperation.

The government adopted its first national Anti-Corruption Strategy and Implementation Action Plan in June of 2005. In March of 2006 the President adopted a revised version of the Action Plan, which almost entirely repeated the June Action Plan, but additionally included concrete timeframes and individual state agencies responsible for implementing the actions listed in this document which were missing in its previous version. Despite of this improvement, during 2005 and 2006, TI Georgia expressed its concerns over the lack of transparent and participatory process of elaborating these anti-corruption documents, as well as over the lack of coordination of and reporting on their implementation.

Coordination of the Action Plan implementation was assigned to the State Minister for Reform Coordination, according to the Presidential Decree by which the Action Plan was approved, the whole government and the Prime Minister were also personally responsible for the implementation. For this all line ministries, as well as the Office of the Prosecutor General, and the High Council of Justice were required to designate their representatives to a special working group that would be responsible for ensuring consistent implementation of the activities listed in the Action Plan. However, due to an inadequate instruction on the exact role and the status of this working group, some of the named government offices assigned their deputy heads to the working group, while others established their own, internal working groups.

In addition, according to the same Presidential Decree, all ministries, the Office of the Prosecutor General and the Supreme Council of Justice were required to report to the Office of the State Minister for Reform Coordination on their progress in implementing the Action Plan on a quarterly basis. Solicitation of there reports, however, appeared to be problematic and thus, they could not be presented to the interested NGOs and the general public either.

Nevertheless, in November of 2006 the Office of the State Minister for Reform Coordination organized a conference (the Council of Europe funded this event), where it publicized a six-month progress report on the implementation of the Action Plan and also distributed it to the conference participants. Among the invitees were the representatives of Georgian and international NGOs, and media. During the conference the participants were able to ask questions about the undertaken and planned by the government, and to share their opinions about the improvements and the remaining challenges. Another six months later, in April of 2007, the Office of the State Minister for Reform Coordination presented yet another, more detailed progress report. Unlike the November report, the April one presented brief descriptions of implemented initiatives, and additionally, broke the Action Plan into three major sections: (a) completed activities, (b) activities underway, and (c) activities that had not been started (this somewhat followed the methodology in which the OECD Anti-Corruption Network members assess member countries' progress reports on the implementation of the network recommendations).

Despite of this improvement in reporting on the Anti-Corruption Action Plan implementation, it should be noted, that ambiguities in the Action Plan (as described in the first alternative report presented by TI Georgia to the ACN) made it difficult to meaningfully assess the progress made by individual agencies. Given that the Action Plan itself failed to specify concrete benchmarks for measuring success and in many cases lacked detail on implementation methodology, the terms in which progress was reported at the conference were also very general.

In addition to the updated progress report, in April of 2007 the Office of the State Minister presented an updated draft Anti-Corruption Action Plan (according to the National Anti-Corruption Strategy, its Implementation Action Plan is subject to an annual updating). This document was an improvement over its earlier version as, in addition to identifying responsible agencies, partner agencies, and implementation timeframes, it also delineated implementation indicators, the element missing from the previous Action Plan. Besides, the new draft was more concrete and wide-ranging. Most importantly, this time the government presented the draft document to the civil society and provided it with ample time to give its input.

Despite of these improvements, the following three major concerns have still remained in relation to the Action Plan: (a) like the previous Action Plan, it provides no comprehensive examination of the causes and types of corruption in priority sectors, (b) in a number of places it talks about developing or strengthening targeted areas, but says nothing about how, or based on what principles, this should be done, and (c) it contains no provisions for ensuring public involvement in the design, implementation and assessment of anti-corruption reforms.

The President approved the draft Action Plan on July 2nd of 2007. The new version of the Action Plan, as well as the two progress reports discussed in this section are posted on the official website of the Office of the State Minister for Reform Coordination at www.reforms.ge.

A Special Anti-Corruption Agency and Anti-Corruption Statistics

A specialized anti-corruption agency within the system of the Office of the Prosecutor General of Georgia was established by the decree of Prosecutor General on October 10th of 2003. It was named the Special Service for the Criminal Proceedings against the Legalization of Illegal Proceeds. Currently this service closely cooperates with other law enforcement agencies and with a number or public organizations. Its purpose is to respond to the allegations of bribery, unlawful gifts, illegal participation in entrepreneurial activities, etc. and conduct pre-trial investigations as necessary. Investigation of corruption offences committed by high-ranking officials falls under the authority of this Service. During the period of 2003-2006 this unit has initiated criminal cases against tens of high-level public officials.

Currently there is no special legal document enshrining the leverages for independence and impartiality of this anti-corruption agency. Structurally it is separated from the rest of the Office of the Prosecutor General, however, institutionally it is subordinated to the Prosecutor General. This status gives the unit some degree of independence, but it is not enough for unbiased and partial investigation, as there are both, legal and factual opportunities of direct interference. Besides there are only general provisions protecting the independence of the prosecutor prescribed in Criminal Procedure Code of Georgia (Articles 55-56; 58).

As for the inter-agency cooperation, the unit receives the information from the Financial Monitoring Service created under the National Bank of Georgia on the basis of the Law of Georgia “On Prevention of Legalization of Illegal Incomes”, as well as from the Parliamentary commissions, and the Control Chamber. There are no formal guidelines for reporting and exchange of information, though. No written regulations are available introducing a team-work approach in complex investigations either.

Existence of the guidelines for reporting and information exchange is of high importance, especially in case of vivid duplication of functions among different anti-corruption agencies. For instance, there are few departments within the Office of the Prosecutor General that have the authority of procedural supervision of investigations in different ministries such as Ministry of Finance, Ministry of Interior, Ministry of Defense and Ministry of Justice. They have the power of supervision of operative-searching activities and ensuring the objectiveness of the pre-trial investigation. Department prosecutors and their supervisor are authorized to directly conduct investigative actions on criminal cases under their subordination which does not excludes investigation of anticorruption cases.

There is another special unit created within the Ministry of Interior that is authorized initiate the actions against high-ranking officials – the Constitutional Safety Department. According to the internal regulations of the Ministry of Interior, the Constitutional Safety Department is an independent militarized structural unit of the Ministry that is responsible for protecting constitutional security, and political and economic safety of the country, using the methods and forms of a special service. The Department is broken into 10 sub-departments (regional departments) performing their functions in different territorial divisions of the country.

Currently no updated statistics are available on anti-corruption cases either on the State Statistics Department web page, or on the web pages of the Ministry of Interior and the Office of the Prosecutor General.

Guidelines for Increased Cooperation

There are no formal guidelines for information exchange and professional cooperation between the agencies engaged in anti-corruption and anti-organized crime activities. The urgency of elaborating the common policy for information exchange is vital, as several government agencies are involved in anti-corruption legal proceedings.

According to the National Anti-Corruption Strategy of Georgia, the emphases is to be made on legislation reform for better defining functions of law enforcement bodies (Prosecutor General's Office, Ministry of Interior, Financial Police) for avoiding duplication and strengthening cooperation between these law enforcement agencies, however, the measures taken in this direction to date have been rather insufficient.

(B) ANTI-CORRUPTION LEGISLATION: CRIMINALIZATION OF CORRUPTION

Revision and Harmonization of Legislation Related to Disciplinary, Administrative and Criminal Corruption

Although since the change of the government in 2003, quite a large number of changes and amendments have been passed to Georgia's criminal legislation, still no significant measures have been taken to provide more precise definitions of various corruption crimes and sanctions. The law of Georgia on "Corruption and Conflict of Interests in Civil Service" remains to be the only piece of Georgia's legislation that provides the definition of corruption. The Criminal Code and the Code of Administrative Offences still have no special chapters that would systematize corruption crimes and infringements.

However, it should be noted that by now Georgia has ratified both, the Council of Europe Civil Law Convention Against Corruption and the Council of Europe Criminal Law Convention Against Corruption. The government has also started the preparatory works to join the United Nations Convention Against Corruption (UNCAC). According to the most recent version of the Anti-Corruption Action Plan, it will join the UNCAC before 2008. The government has already conducted a comparative review of the compliance of Georgia's legislation with the UNCAC requirements (the review was conducted in cooperation with ABA/CEELI Georgia Office).

Harmonization of Active and Passive Bribery with International Standards: Increasing Sanctions against Bribery, Increasing of Limitation Period

In July of 2006 the Parliament passed few changes and amendments to Articles 338 and 339 of the Criminal Code of Georgia, however, none of them were aimed to make distinct differentiation of passive and active bribery to bring Georgia's legislation in line with international standards (such as the Council of Europe's Criminal Law Convention on Corruption, the United Nation's Convention on Corruption and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions). These changes and amendments introduced new, broader definitions of passive and active bribery, but they failed to fully meet the international standards. In particular, the new definitions did not extend to the bribery of foreign public officials, members of foreign public assemblies, officials of international organizations, members of international parliamentary assemblies, and judges and officials of international courts.

In addition, Article 340 of the Criminal Code of Georgia is not in full compliance with the international standards, as the issue of low sanctions remains unsolved. According to the Article, undue influence is punished by a fine or correctional labor from 200 up to 400 hours, or seizure of authority or right to hold a post for a period up to 3 years, or restriction of liberty for a period from 2 up to 4 years.

Definition of Public Official in Criminal Legislation

The Criminal Code of Georgia contains no definition of a" public official". Instead, the special reference legal norms are included to refer to the Law of Georgia on Public Service. As for the Law on Public Service, it defines a public official/servant as "a citizen of Georgia, who performs a paid work in public or local self-governing body according to the rule of this law and applicable to the position s/he holds".

In July of 2007, however, the Parliament passed an amendment to the Criminal Procedural Code of Georgia that provided the following definition for a public official: an official (against whom criminal action is initiated) for the purpose of this law shall mean the public officials defined by Article 2 of the "Law on Conflict of Interest and Corruption in Public Service", public servant, chair or deputy-chair of legal entity of public law or enterprise where the state holds 50% and more percentage of shares or/and person having the representative authority, who is charged for the crime against the interest of public or private organization, legalization of illicit income, racketeering, conversion or defalcation, tax avoidance, violation of customs rules, torture or threat of torture or inhuman or degrading treatment during the period of holding the post, despite the fact s/he is dismissed or not.

Although this definition brings Georgia's legislation closer to the definition provided in the UNCAC, but it is still not as precise the Convention version of the definition and contains indicative norms to different legal terms clarified by other laws, what ultimately gives the term dubious meaning and creates difficulties in identifying the right persons. Besides, the new definition, opposite to the international standards, does not consider the part-time official, who is appointed for specific period as the subject of the crime. The need in unification of legal terminology regarding the terms of "Official" and "Public Servant" is also insistent.

Article 2 of the United Nations Convention Against Corruption defines "Public Official" as follows: (i) any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority; (ii) any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party; (iii) any other person defined as a "public official" in the domestic law of a State Party. However, for the purpose of some specific measures contained in chapter II of this Convention, "public official" may mean any person who performs a public function or provides a public service as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party.

Imposing Criminal Responsibility for the Corrupt Acts Committed by the Foreign and International Public Officials

There is no definition of foreign or international public officials in Georgia's legislation. As for the UNCAC, according to its Article 2, (b) "Foreign public official" shall mean any person holding a legislative, executive, administrative or judicial office of a foreign country, whether appointed or elected; and any person exercising a public function for a foreign country, including for a public agency or public enterprise; and (c) "Official of a public international organization" shall mean an international civil servant or any person who is authorized by such an organization to act on behalf of that organization.

Liability of Legal Persons

In December of 2006 the Georgian Parliament ratified the Council of Europe Criminal Law Convention Against Corruption and passed changes to the legislation to harmonize it with the requirements of the newly ratified Convention. Accordingly, it introduced criminal liability of legal entities for corruption offences. In particular, if a legal entity is found guilty of paying a bribe or of trading in influence, it becomes subject to paying a fine.

In relation to this issue the Parliament has considered a legislative package consisting of the draft laws on changes and amendments to the organic law of Georgia on the Suspension and Prohibition of the Activities of Public Unions, and draft laws on changes and amendments to the Criminal Code of Georgia, Criminal Procedural Code of Georgia, Civil Code of Georgia, law of Georgia on Licensing and Permissions, law of Georgia on Entrepreneurs, etc.

(C) CIVIL SERVICE TRANSPARENCY

Ensuring Transparency of Employing and Promoting Civil Service Officials

Despite the overall recognition of the need for changes in the civil service and the donors' readiness to support reform design and implementation, the government has fallen behind in taking active steps in this direction. During 2004 and 2005, a number of government offices were optimized and the number of public servants was reduced significantly, what, along with the improved revenue collection, allowed to increase public officials' salaries. However, the problems of inadequate transparency and fairness of employing and promoting civil service officials have persisted, as well as the vast majority of the problems discussed in the first alternative report of December 2005.

The draft Civil Service Code that was already completed by the time the first alternative report was submitted to the ACN still has not been discussed by the Parliament. The process stalled due to the disagreement among the key players on major principles of the Code and the civil service reform, in general. While one part of the government maintains that civil service should resemble a grand corporation that is characterized by uniform grading, protection, and benefit systems, the second part considers civil service as a competitive labor market, where individual agencies act as firms that compete for a quality workforce.

For the followers of the first approach, two general reasons for the civil service reform could be identified: Firstly, the current system of civil service is regulated by several laws, such as the Public Service Law of 1997 (as amended), the Law on Conflict of Interest and Corruption of 1997 (as amended), the Law on Structure, Responsibilities and the Rule of Operations of the Government of 2004 (as amended). Therefore, a unified code is seen as a more effective regulator of the public sector employment. Secondly, the current law on the Public Service was approved almost a decade ago and there is a need to address changes in the government structure as well as new challenges that the government faces. Not only was the law amended dozens of times but also the Presidential Ordinance #286 of 21 July 2001 on the Roster of Public Service Positions was being amended several times a year to address frequent structural changes of the government. The proponents of this approach also argue that personalities holding similar positions across the government should be paid equal amounts.

Although the followers of the second approach also support the idea of a unified code, they maintain that the reform is necessary to lift most of the regulations that became a burden for a functional civil service. From this perspective, a new code should define the general principles of the civil service, identify what is not permitted for civil servants and delegate rights of hiring, firing, performance evaluation and remuneration to particular agencies. However, it is also possible to sketch several management models in the law and empower the agencies to choose the one that best fits their objectives. The proponents of this approach believe that remuneration should be based on contracts and should be agency specific. They maintain that since the government will never be able to compete with the private sector for the best qualified workforce, the only attraction to the civil service will gradually become a relatively generous system of benefits.

This dispute over whether the government should implement reforms uniformly sector-wide or allow for a more decentralized approach has prevailed for almost two years by now and this has put breaks on the actual action in this field. At this time the government should make a final decision on what type of civil service system it wants to build and begin taking steps to establish this system.

Preparing Civil Servants' Code of Ethics

The ethical norms for civil service officials are still scattered throughout laws concerning "Conflict of Interests and Corruption in Civil Service" and "Civil Service". The government still has not developed a general code of ethics for all civil servants that would be common and obligatory for all of the civil service institutions in Georgia.

According to the updated National Anti-Corruption Action Plan, in 2008 the government plans to integrate the Police Code of Conduct in the educational curriculum for the employees of police.

Improving the Law on Conflict of Interests and Corruption in Civil Service

The Ministry of Justice of Georgia, in cooperation with a Georgian NGO United Nations Association (UNA) has prepared a new draft law on Conflict of Interests and Corruption of High-ranking Officials that aimed to perfect the system and enhance government control mechanisms in this sphere.

The main positive aspects of the draft could be summarized as follows:

(a) The distinction between corruption and conflict of interest and systematizing the norms determining concrete instances and consequent penalties;

(b) The definition of the term high-ranking official in such a way that, despite structural changes, all principal high-ranking officials have to submit financial and property declarations. The classification of officials into first, second, and third group officials according to their responsibilities is one more innovation of the draft;

(c) The definition of the new terms and responsibilities for the submission of financial and property declarations of high-ranking officials. The innovation of the draft is the following: a high-ranking official is responsible for submitting a financial and property declaration only once a year within a month of his\her appointment even if during this year s/he will change positions (exception is the case when an official acquires a higher position than s/he previously held). In addition, while filling out future declaration forms, an official has to fix only those changes that occurred during the year, simplifying the process;

(d) The enhancement of the functions of the Bureau regarding monitoring financial and property situation of high-ranking officials. On the one hand, the Bureau is obligated to take measures when the law regarding declaration submission has been violated and is responsible for issues related to conflict of interest and corruption. On the other hand, it is required to process and analyze submitted declarations;

(e) The obligation that the Bureau send a copy of the previous declaration form or, in case multiple declarations have been previously submitted, send statistically processed declaration data to an official one month before the time of submission of a new declaration;

(f) The abolishment of the obligation of presenting copies of documents confirming property ownership. This obligation caused considerable difficulties in the past;

(g) The simplification of the procedures of paying fines imposed if a declaration is not submitted. The head of the Bureau will have the authority to impose a fine (a protocol of administrative offence will be send to the court if the lawbreaker does not comply);

(h) The identification of more practical criteria for the definition of the term "gift," which is one of the basic components of a corrupt deal.

On the whole, it is expected that the new draft law will be more effective than the current law and transparent and efficient administrative mechanisms are clearly defined in the draft. The enhancement of the Bureau's functions (tasking it with processing and systematizing submitted data) should be regarded as one of the most important amendment to the Law. Generally it is necessary to have a strong controlling body that is not law enforcement, which will oversee conflicts of interest related to civil servants. It is also very important for the Bureau to have the ability to consult. Specifically, the Bureau should assist officials in filling out the declarations and remind them about deadlines for submission (participants mention that the Bureau currently undertakes this function, however it would be better if this were regulated by the law).

Besides these improvements, the draft law also has a number of disadvantages. In particular:

(a) The definitions of "family member", "relative," "registered person," and "permanent resident" are not precisely defined, what might cause future uncertainties while filling out declarations.

(b) The draft law divides public servants into three categories. Public servants of the first category have many more responsibilities than servants under the second category. Likewise, servants under the second category have many more responsibilities than servants under the third category because the higher the rank of a public servant, the greater the opportunity for corruption. Although this principle is, in general, a positive development, it is necessary to have it more clearly outlined in the draft. For example, the Mayor of Tbilisi falls under the first category and officials of the city hall are in the second category. The state trustee of the president also falls into the second category.

(c) According to the draft, an official and all members of his family may receive things worth a total of less than one thousand Georgian laries from one person and it will not be considered a gift. While considering this issue, attention should be paid to the following aspects: (1) the draft sets a limit on the receipt of gifts by officials' family members. The draft considers not only a spouse and a child as family members, but also persons registered in that household. IDPs or other relatives of an official might fall into this category and it will be quite difficult to control the process of their receiving the gifts; (2) A gift, as defined by the law, must be handed over to the state within three working days of its receipt. Setting a timeframe for returning a gift seems somewhat inappropriate, since a high-ranking official is prohibited to receive an illegal gift in the first place. Besides, there might be cases where there will possibly be objective reasons when an official will not be able to return the gift within three days (i.e. when a gift is received by his\her family members an official might not be in the country, etc.).

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

(e) Some restrictions regarding conflicts of interest need to be amended, namely: upon leaving his/her position, a high-ranking official and his/her family members are banned from holding any position, conducting any activities, or possessing shares in any organization that was previously under his/her supervision. Employees of specific services, such as the Revenue Service, considering the wide reach of their activities, might be unable to find work after leaving their positions.

(f) Several points should be taken into account with regards to the norms of responsibility: (1) according to the draft, if the information that is required by the law is not given to the Bureau or the information submitted to the Bureau is not complete or correct, the high-ranking official is subject to various sanctions. The penalty for each violation is fixed. It would be better if the amount of the penalty is based on the assets that were not properly declared by the servant, i.e. the more assets that are hidden the bigger the amount of the fine; (2 in addition, it is not clear for the participants how "incomplete" and "incorrect" information will be assessed. It is difficult to understand, why declaring incomplete information is a less important violation than declaring incorrect information.

(g) The increase in the Bureau's functions and the establishment of a more effective structure should be assessed positively. Currently, the final decision has not been reached on the role of the Bureau. According to some evaluations, the Bureau should have the right of inquest and investigation. However others think that, at this stage, the Bureau should only have the right to process and organize received information as, at the moment, its capacity is not strong enough. They assume that the Bureau should analyze changes in declarations submitted at different times. In particular, it would be interesting to rank officials according to finances and property owned and compare this with their position. Finally, neither the existing law nor the draft obligate the Bureau to prepare and submit periodic reports. It is necessary for the Bureau to have such responsibilities and they should be described in detail in the legislation.

(h) According to the draft, its adoption will influence the revenue (financial sanctions on violations) and expenditure (new financial responsibilities) section of the budget. The draft does not contain other detailed financial justification. It is unknown if the current draft was created based upon an analysis of the revenue from violations in the past and whether or not the sum received from financial sanctions is enough to finance the Bureau's activities. Financial justification provided in the draft seems to be formal and not based upon thorough research. Making the Bureau dependent on the fines imposed might establish a bad relationship between the Bureau and public servants, since the Bureau will be interested in imposing more fines in order to finance its activities and will pay less attention to consulting services.

Transparency of Public Information

An effective implementation of the regulations on public information was hampered in the past two years, as it was in 2004 and 2005. During these years, no additional researches have been conducted by the Georgian or foreign NGOs to study the nationwide situation in this field, however, as reported by the national and regional NGOs, and media at different public events and discussions, the problems of receiving incomplete (partial) responses to their FOIA requests, as well as the problems of receiving these responses with significant delays, or not receiving any responses have persisted. Lack of transparency in a number of public institutions, mainly in the regions, have contributed to increased allegations about corruption in these institutions. Remaining gaps in the system of administrative litigation have played a part in obstructing an effective enforcement of the FOIA regulations.

In 2006 TI Georgia conducted a survey of 109 journalists from various national and regional media sources (7 television stations, 4 radio stations, 35 newspapers, and 6 news agencies). The survey questions related to ease of receiving information from government institutions, methods used to receive this information, and the overall experience in working with government institutions. According to journalists' responses to the survey, the majority manages to obtain information from government structures (61%). However, it is especially difficult to obtain information regarding a current problem (46%) or violation in a given sphere, and information about finances (30%). Although in the majority of cases government institutions explain the refusal to provide information by saying that the requested information is not available at the time, 59% of journalists think that government has this information and simply does not want to reveal it.

TI Georgia compared the responses from journalists in Tbilisi and those in the regions. In general there was a large correspondence between these two groups. Both, Tbilisi and regional journalists identified the Ministry of Interior, the Office of the General Prosecutor, and the Ministry of Defense as the most closed government institutions. Regarding the most open government institutions, many journalists from both groups named: the Ministry of Culture, Monuments Protection, and Sport; the Ministry of Labor, Health and Social Affairs; and the Ministry of Agriculture.

In addition to specific questions about their relations with government institutions, journalists were asked about the government's overall attitude toward the media. 50% of the total respondents indicated that the attitude of government structures has gotten worse since the Rose Revolution (this includes 65% of print journalists in Tbilisi, 56% of regional journalists, and a mere 25% of broadcast journalists). 37% said that the situation has not changed and 13% said the situation has gotten better.

LIBERALIZATION OF BUSINESS ENVIRONMENT

Improvement of the Law on State Procurement

One of the most important improvements to the public procurement legislation of Georgia has been the increase of the structural independence of the Public Procurement Agency; it has been removed from the subordination of the Ministry of Economic Development and established as a legal entity of public law. The Prime Minister appoints its head.

Besides, in result of the changes and amendments to the law of Georgia on Public Procurement, following advancements have been introduced: closed tender has been abolished; tendering fee has been reduced to 200 Georgian laries; tendering timeframes have been reduced; the scope of the legislation has been extended to legal entities of public law more than 50% of required capital of which are owned by the state or by local government bodies; etc. In case of the disqualification of tender participants, in compliance with the legal requirements established by the Georgian legislation, the procuring agencies send the information about the disqualified participant to the Procurement Agency; the Agency keeps a record of such participants, and later provides this list to the interested procuring organizations.

However, what remains of concern is the problem of the execution of the legislation. The use of force majeur exemptions in the public procurements has prevailed. High rate of sole source procurements also contribute to the criticism of the current procurement system.

According to the new Anti-Corruption Action Plan, in 2007 the government plans to pass new changes and amendments to the public procurement legislation in order to perfect this system and further enhance independence of the Procurement Agency. The draft law has already been produced and is expected to be discussed by the Parliament during the fall session of this year.

Eradicating Administrative Barriers to Business Development

The Georgian government has made significant efforts to eradicate administrative barriers to business development. Starting up a business in Georgia is relative simple. It only requires simple procedures of submitting notarized application to the local tax authorities. The tax authorities are obliged to register the entrepreneur in one business day according to the Article 5'.5 of the Law on Entrepreneurs of Georgia. There is no fee for registration of Individual Entrepreneur and no minimum capital is required either. As for the LTD (Limited Liability Company) registration, the minimum required capital is 200 GEL. The number of licenses was cut from more than 900 to approximately 100. In order to simplify procedures for businesses, Georgia has adopted the “one-window” principle (one-shop stop) which means that the administrative body issuing the license has to ensure the approval of additional licensing conditions by the other administrative bodies. Furthermore the 'silence means consent' principle has been adopted which means that the administrative body that issues the licenses has to make a decision within a set term upon receiving the application. The license or permit is automatically granted if no notification has been made within the set timeframe. A new tax code, adopted after the revolution, reduced both the quantity of taxes collected and their percentage rates.

The customs system has also been simplified. Currently there are only 3 different customs tariffs: 0%, 5% and 12%. All kinds of raw materials and equipment imported into Georgia, except for construction materials, are exempt from custom fees. All in all more than 7 000 products enjoy duty-free access to Georgia. The number of permits in connection with export and import has been reduced to 8.

Although these changes have enabled the government to curb economic corruption, attract foreign direct investment, facilitate economic growth and increase the state budget by several times, there are worries that a lack of firm judicial independence and an inconsistent enforcement of property rights will cause substantial damage to Georgia’s liberal market economy in the medium- and long-term future.

The Doing Business index published by the World Bank and IFC, that positioned Georgia as one of the top reformers, ranked it only 135th out of 175 countries regarding how well investments are protected; mistrust of the judiciary is considered to be the main reason. In April 2006, 50% of those polled by the Institute of Polling and Marketing for the International Republican Institute (IRI) had an unfavorable opinion of the court system in Georgia. This constituted a decline from June 2005, when 39% said that they did not have confidence in the courts.

Seizures and demolition of private property that peaked in late 2006 and then in 2007 have also galvanized public concern about the issue of improper guarantees for property right protection. In late

2005 to early 2006, the government, without formally pressing any charges, "reminded" the owners of a number of restaurants and other businesses that they had received their licenses/permissions for business through corrupt deals with Shevardnadze-era officials. To correct these past errors the owners

then "voluntarily" handed over their property to the state. These transfers were officially registered as "gifts" to the state, rather than confiscations or expropriations. Business owners were never reimbursed. The gift agreement was signed between the owner and the Ministry of Economic Development and subsequently notarized. One peculiarity of this process, as noted by the media, was that all agreements were concluded with one particular official of the Ministry and registered at the office of one particular notary. In late 2006 to early 2007 the confiscations targeted primarily small shops, booths and stalls mushroomed around metro stations, and less so at other locations. The Tbilisi Mayor's office's Supervision Agency tore down these structures with only a few days' verbal notice, without presenting court order or written notice. The city justified its actions by claiming that the buildings were illegal – i.e., did not have proper permits and/or were not registered with the Public Registry; that demolition was needed to free up space for "public use;" or that the structures "did not correspond with the city's image," i.e., marred its appearance.

CONCLUSION

In the past four years since the 2003 revolution, the Georgian government implemented a number of anti-corruption initiatives that have helped to improve Georgia's international image after its considerable deterioration in late 90's and early 00's. One of the most frequent assessments of the government's anti-corruption campaign internally is that, in general, its guiding principles are constructive, but when it comes to implementation, due to insufficient planning and communication, the government makes the mistakes that, in the end, defy the good ideas. Taking this into consideration, in order for Georgia's anti-corruption efforts to yield effective and sustainable results, the government should take into account the following:

(a) Engage public in the process of reform design in order to ensure greater public support for the reforms at the earlier stage, what will help to further secure it. If the public sees that it is the part of the decision, it is more likely to engage actively in the enforcement of this decision;

(b) Put additional efforts into explaining its reform ideas and considerations to public before beginning their implementation, as well as during the implementation. This is especially necessary for the reforms that are expected to be taken rather painfully by the public. More painful the reform is expected to be, more time should be provided for explaining it to public before the government starts its execution;

(c) Promote greater legitimacy, transparency and public trust in the agencies involved in fighting corruption;

(d) Ensure continuous monitoring and assessment of anti-corruption reforms and of their impact, and execute further revisions, as found necessary over the course of continuous reformation in order to make sure that important details are not left out in the initial reform design, or that new problems do not emerge;

(e) Develop realistic and concrete benchmarks for evaluating reform outcomes to make sure that the progress is assessed adequately and rationally, as well as to promote civil servants' and public understanding of what is expected out of the planned changes;

(f) Ensure that reform decisions are based on thorough analysis of existing problems and potential challenges in order to address root causes of corruption and introduce long-term solutions to the problem of corruption;

(g) Ensure that policy-making process is improved in a way that first main principles are agreed upon by major stakeholders, then potential strengths and weaknesses identified, and only after that the details are written out in the respective draft laws;

(h) Report to public on a regular basis not only about the positive achievements, but also about the setbacks and challenges, so that the public trusts the information given by the government and does not take it is simple PR for its own endorsement.