

# National Integrity System

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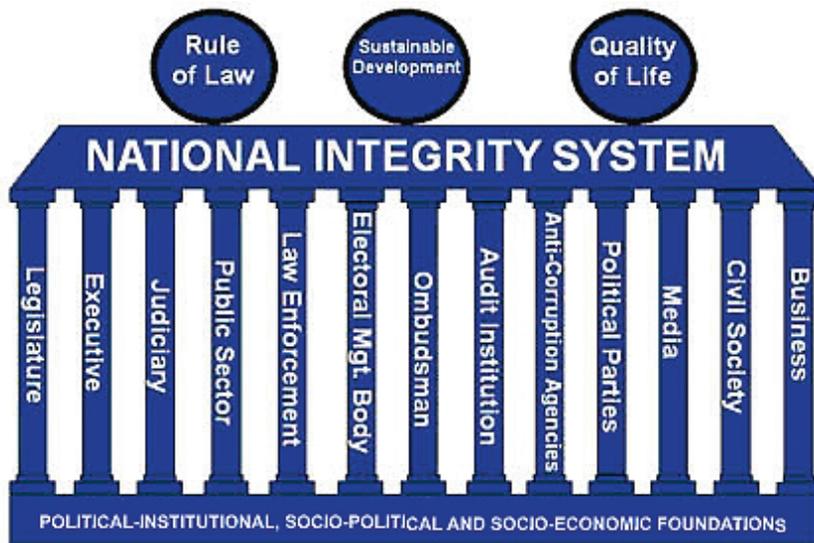
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# About National Integrity System (NIS) Assessment



The National Integrity System (NIS) assessment offers an evaluation of the principal institutions of governance responsible for enhancing integrity and preventing corruption in a country.

Stemming from the Latin adjective *integer* (whole, complete), integrity is the inner sense of “wholeness” deriving from qualities such as honesty and consistency of character. As such, one may judge that others “have integrity” to the extent that they behave according to the values, beliefs and principles they claim to hold.

In western ethics, integrity is often regarded as the opposite of hypocrisy, in that it regards internal consistency as a virtue, and suggests that parties holding apparently conflicting values should account for the discrepancy or alter their beliefs.

Wikipedia

A well-functioning NIS safeguards against corruption and contributes to the larger struggle against abuse of power, malfeasance and misappropriation in all its forms. Corruption undermines good governance, the rule of law and

fundamental human rights. It leads to the misuse of resources, cheats citizens, harms the private sector and distorts financial markets. But when the NIS institutions are characterised by appropriate regulations and accountable behaviour, corruption is less likely to thrive, with positive knock-on effects for the goals of equitable growth, sustainable development and social cohesion. Strengthening the NIS promotes better governance across all aspects of society and, ultimately, contributes to a more just society overall.

The purpose of conducting the assessment in Georgia is to gather a strong evidence base about the state of governance in the country and to contextualize the performance of different sectors with regards to their abilities to support just and democratic rule. Not only does this study highlight specific areas in which reform is needed, it also provides a starting point for further evidence-based research and advocacy. The assessment may also be used as a benchmarking tool to measure progress over time and to compare performance across institutions.

The Georgia NIS country report addresses 12<sup>1</sup> “pillars”:

Core governance	Public sector	Non-governmental
1. Legislature	4. Public Administration	9. Media
2. Executive	5. Law Enforcement Agencies	10. Civil Society
3. Judiciary	6. Electoral Management Body	11. Political Parties
	7. Ombudsman	12. Business
	8. Supreme Audit Institution	

Each of the 12 institutions is assessed along three dimensions that are essential to its ability to prevent corruption: First, the pillar’s overall **capacity** in terms of resources and independence, which underlies any effective institutional performance. Second, its internal **governance** regulations and practices, focusing on whether the institution is transparent, accountable and acts with integrity, which are seen as essential in preventing the institution from engaging in corruption. Third, the extent to which the institution fulfils its assigned **role** in the anti-corruption system, such as providing effective oversight of the government (for the legislature) or prosecuting corruption cases (for the law enforcement agencies). Together, these three dimensions cover the institution’s ability to act (capacity), its internal performance (governance) and its external performance (role) with regard to the task of fighting corruption.

Each dimension is measured by a common set of indicators. The assessment examines both the legal framework of each pillar as well as the actual institutional practice, thereby highlighting discrepancies between the formal provisions and reality on the ground. In order to take account of important contextual factors, the evaluation is embedded in a concise analysis of the overall political, social, economic and cultural conditions in which these governance institutions operate.

<sup>1</sup> In some countries a 13<sup>th</sup> pillar, the Anti-corruption Agency, is also assessed. However, because Georgia’s Anti-Corruption Coordination Council lacks dedicated resources or a relevant legal framework that would empower it to proactively fight corruption, it is not assessed here. The Council’s work and structure are described in the chapter dealing with anti-corruption activities.

Dimension	Indicators ( <i>law, practice</i> )
Capacity	Resources Independence
Governance	Transparency Accountability Integrity
Role within governance	<i>system Between 1 and 3 indicators, specific to each pillar</i>

The assessment does not seek to offer an in-depth evaluation of each pillar. Rather, it seeks breadth, covering all relevant pillars across a wide number of indicators in order to gain a view of the overall system. The assessment also looks at the interactions between institutions to understand why some are more robust than others. The NIS presupposes that weaknesses in a single institution could lead to serious flaws in the entire system. Understanding the interactions between pillars also helps to prioritize areas for reform.

## Methodology

The NIS assessment is a qualitative research tool based on a combination of desk research, first-hand interviews and field tests. A final process of external validation and engagement with key stakeholders ensures that the findings are as relevant and accurate as possible before the assessment is published.

The assessment is guided by a set of “indicator score sheets” developed by the TI Secretariat during the changes introduced to the NIS methodology in 2008. These sheets consist of a “scoring question” for each indicator, supported by further guiding questions and scoring guidelines. For example:

Sample indicator score sheet: <i>Judiciary Capacity – Resources (practice)</i>	
Scoring Question	To what extent does the judiciary have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?
Guiding Questions	Is the budget of the judiciary sufficient for it to perform its duties? How is the judiciary’s budget apportioned? Who apportions it? Is the judiciary apportioned a minimum percentage of the general budget? In practice, how are salaries determined (by superior judges, constitution, law)? Are salary levels for judges and prosecutors adequate or are they so low that there are strong economic reasons for resorting to corruption? Are salaries for judges roughly commensurate with salaries for practising lawyers? Is there generally an adequate number of clerks, library resources and modern computer equipment for judges? Is there stability of human resources? Do staff members have training opportunities? Is there sufficient training to enhance a judge’s knowledge of the law, judicial skills including court and case management, judgment writing and conflicts of interest?

<b>Minimum Score (0)</b>	The judiciary has some resources. However, significant resource gaps lead to a certain degree of ineffectiveness in carrying out its duties.
<b>Mid-point Score (50)</b>	The judiciary has some resources. However, significant resource gaps lead to a certain degree of ineffectiveness in carrying out its duties.
<b>Maximum Score (100)</b>	The judiciary has an adequate resource base to effectively carry out its duties.

The guiding questions for each indicator were developed by examining international best practices, existing assessment tools for the respective pillar, the experience of the TI movement's own experience, and by seeking input from international experts. The indicator score sheets provide guidance to the researcher, but when appropriate TI Georgia has provided additional information or left some questions unanswered, as not all guidance is relevant to the national Georgian context. The full toolkit and score sheets are available on TI Georgia's website, at [www.transparency.ge](http://www.transparency.ge)

To answer the guiding questions, the lead researcher relied on three main sources of information: national legislation, secondary reports and research, and interviews with key experts. Secondary sources included trusted reports by national civil society organizations and international organizations.

A minimum of two key informants were interviewed for each pillar – at least one representing the institution under assessment and one expert external to it. In some cases there simply were no external experts available, or the most knowledgeable experts worked for international donor organizations and were not willing to go on the record. In other cases, these key informants were only able to speak about a particular aspect of the pillar's function (such as the public procurement function of the public administration pillar). In addition, secondary data sources for some institutions were sparse. This is particularly true of the Chamber of Control and Parliament. In those two cases, the NIS assessment represents one of the first pieces of original research in those fields.

A full list of interviews is contained in the appendix. To be as honest as possible regarding the sources of information used to justify the conclusions and scores, full citations are included in footnotes rather than endnotes.

In addition, a series of field tests were conducted in spring 2010 to assess the responsiveness of public agencies to freedom of information requests. Along with other sources, the results of the field tests are used as evidence in the scoring of the *transparency (practice)* indicator for all public and key governance institutions. The full methodology and results of the field tests are available in the appendix.

The assessment represents the current state of integrity institutions in the country, using information cited from the last two to three years. It reflects all major legislative changes as of June 2011.

## The scoring system

While the NIS is a qualitative assessment, numerical scores are assigned in order to achieve a macro perspective, promote a view of the interactions across institutions and help to highlight key weaknesses and strengths of the integrity system. The sheer length of the report can obscure a holistic perspective. Thus the scores are a way to see all 12 institutions, each assessed according to 12 or more indicators, as if from an aerial viewpoint. They prevent the user from getting lost in the details and promote reflection on the system as a whole, rather than focusing only on its individual parts.

Scores are assigned on a 100-point scale in 25-point increments (0, 25, 50, 75, 100). Indicator scores are averaged at the dimension level, and the three dimension scores are averaged to arrive at the overall score. The difference in practice versus law can also be calculated at both the individual indicator level and for an institution as a whole. The scores are not suitable for cross-country rankings or other quantitative comparisons due to differences in data sources across countries applying the NIS methodology and the absence of an international review board tasked to ensure comparability of scores.

## Consultative approach and validation of findings

Each draft pillar chapter went through a series of rigorous internal and external reviews. TI Georgia's team of senior analysts reviewed the draft materials and agreed upon or adjusted the preliminary scores assigned by the lead researcher. Some chapters were sent to external experts for further feedback.

The NIS assessment process in Georgia had a strong consultative component, seeking to involve the key anti-corruption actors in government, civil society and other relevant sectors. This approach had two aims: to generate valid evidence and to engage a wide range of stakeholders with a view to building momentum, political will and civic demand for reform initiatives. The consultative approach had two main parts: a high-level Advisory Group and a National Stakeholder Workshop.

NIS Advisory Group	
Caterina Bolognese, Sabrina Buechler	Council of Europe
Tamar Chugoshvili	Georgian Young Lawyers Association
Nino Danielia	Georgian Institute of Public Affairs
Khatuna Gogorishvili	Member of Parliament
Khatuna Khvichia	US Agency for International Development
Vakhtang Lezhava	Office of the Prime Minister

Levan Ramishvili	Liberty Institute
Oliver Reisner	Historian and Caucasus expert
David Usupashvili	Republican Party
Shota Utiashvili	Ministry of Interior

The members of the advisory group met twice (23 June 2010 and 13 April 2011). The second meeting was entirely dedicated to the discussion of the key findings of the pillar reports and indicator scores. While only two advisory group members were able to attend the score validation meeting, TI Georgia’s research team received feedback from other members separately, and in some cases extensively. The meetings resulted in a number of further adjustments to scores and evidence. Final discretion over scores remained with TI Georgia.

On 30 May 2011 TI Georgia presented the methodology and emerging findings of the assessment at a National Stakeholder Workshop. The report was available in advance to participants and the workshop drew significant attendance from representatives of public and key governance institutions. The second half of the workshop was dedicated to working groups, where participants provided feedback on each chapter and discussed the overall scores. These working groups were also well attended.

The workshop elicited a strong interest in the research, findings and especially the scores from a number of public and governance institutions. Participants were invited to submit written feedback within one week, and TI Georgia spent the next month incorporating this information along with information from additional meetings with relevant institutions into the study. Again, the workshop and follow-up meetings resulted in a number of adjustments to the evidence and scores.

Finally, the full report was reviewed and endorsed by the TI Secretariat, and an external academic reviewer provided an extensive set of comments and feedback.

## **Background and history of the NIS approach**

The concept of a “National Integrity System” originated within the TI movement in the 1990s as the primary conceptual tool to understand how corruption is best fought and, ultimately, prevented. The focus on “integrity” signified the positive message that corruption can indeed be defeated if integrity reigns in all relevant aspects of public life. The NIS concept made its first public appearance in the 1997 TI Sourcebook, which sought to draw together the actors and institutions seen as crucial in fighting corruption into a common analytical framework. This analytical framework was called the “National Integrity System”. The Sourcebook suggested ‘National Integrity Workshops’ to put the framework into practice.

In the early 2000s TI developed a basic research methodology to analyse the main characteristics of National Integrity Systems in countries around the world. In 2008 TI engaged in a major overhaul of the research methodology, adding two crucial elements – the scoring system and the consultative element. The latter consists of an advisory group and of the National Integrity Workshop, which had also been part of the original approach.

While the conceptual foundations of the NIS approach originate in the TI Sourcebook, they are also closely intertwined with the wider and growing body of academic and policy literature on institutional anti-corruption theory and practice (e.g. Rose-Ackerman 1999<sup>2</sup>, OECD 2005<sup>3</sup>, Head et al 2008<sup>4</sup>, Huberts et al 2008<sup>5</sup>).

The NIS research approach is an integral component of TI's overall portfolio of research tools which measure corruption and assess anti-corruption efforts. By offering an in-depth and country-driven diagnosis of the main governance institutions, the NIS' main aim is to provide a solid evidence base for advocacy actions at the country level that are geared to improving the anti-corruption mechanisms and their performance. It is complemented by other TI tools, which are focused more towards raising public awareness of corruption and its consequences via global rankings (e.g. Corruption Perception Index, Bribe Payers Index) or via reporting the views and experiences of the public (Global Corruption Barometer). In addition, the NIS approach fills an important gap in the larger field of international governance assessments, which is dominated by cross-country rankings and ratings (e.g. Global Integrity Index, Bertelsmann Transformation Index), donor-driven assessments (which are rarely made public) or country-specific case studies. It does so by offering an in-depth and systematic assessment of the anti-corruption system, which is based on a highly consultative, multi-stakeholder approach. This combination of being driven by an independent local civil society organisation, involving consultations with all relevant stakeholders in-country, and being integrated into a global project architecture (which ensures effective technical assistance and quality control), makes the NIS approach unique.

In 2005-2006 the Open Society – Georgia Foundation coordinated an NIS assessment for Georgia, which was published in 2007. TI Georgia contributed research to the 2007 study along with a number of other researchers and civil society organizations. With this publication, TI Georgia is one of the first to conduct research under the revised methodology, beginning the research for this study in September 2009. To date, five assessments using the new methodology have been published across the globe, and a further 30 are expected to be complete within the next year. These are available at [http://transparency.org/policy\\_research/nis/](http://transparency.org/policy_research/nis/)

<sup>2</sup> Rose-Ackerman, Susan, *Corruption and Government: Causes, Consequences, and Reform*, Cambridge: Cambridge University Press, 1999.

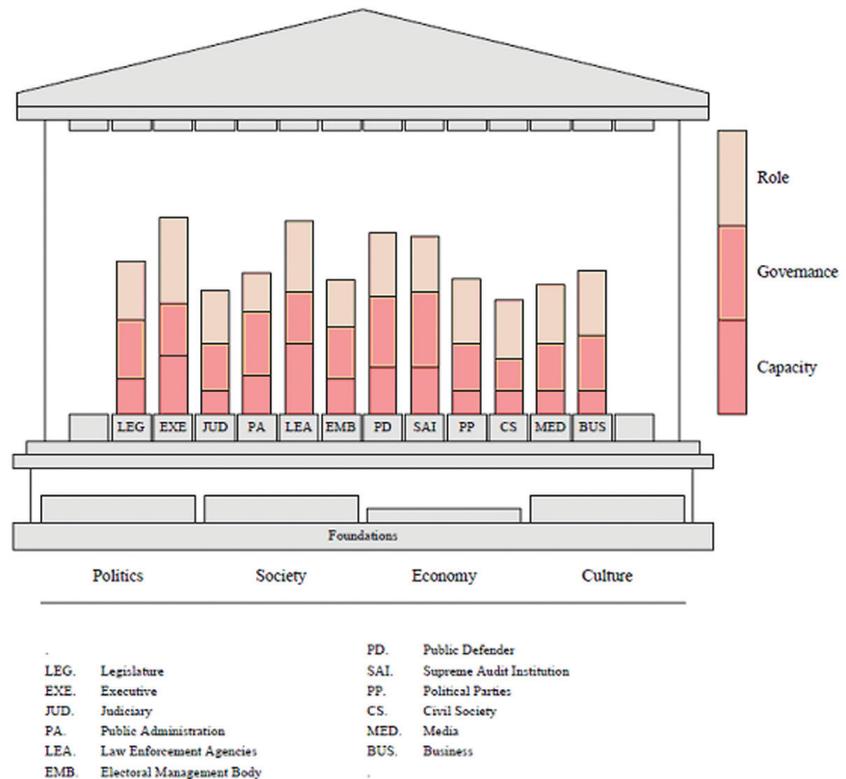
<sup>3</sup> OECD, *Public Sector Integrity: A Framework for Assessment*, 2005.

<sup>4</sup> Head, Brain W., AJ.. Brown, Carmel Connors (Eds.), *Promoting Integrity: Evaluating and Improving Public Institutions*, Ashgate, 2008.

<sup>5</sup> Anechiarico, Frank, Leo Huberts and Frederique Six (Eds.), *Local Integrity Systems: World Cities Fighting Corruption and Safeguarding Integrity*, Den Haag: BJu Legal Publishers, 2008.

# Executive Summary

The Georgian National Integrity System is characterised by the dominance of the executive branch and the relative weakness of other key institutions.



**Note:** The final scores presented in the graph reflect the overall performance of the institutions and are based on average scores for three dimensions: capacity (resources, independence), governance (transparency, accountability, integrity) and role (pillar-specific).

The executive branch and the law enforcement agencies are particularly strong compared with others, especially in terms of their capacity and their role in fighting corruption. They rank in the middle of the pack on the internal governance indicators (transparency, accountability and integrity). While strength in any area is a positive sign, the comparative weakness of other pillars warrants particular

attention. Shortcomings in the legislature's and the judiciary's independence and ability to oversee the executive suggest critical deficiencies in the system of checks and balances. This is particularly worrying since the non-state pillars that are supposed to serve as watchdogs – the media, political parties and civil society – are among the weakest institutions in the integrity system. As a result, the potential for abuse of entrusted power remains a concern.

## Country and Corruption Background

The government that came to power in Georgia after the 2003 Rose Revolution implemented a number of reforms that successfully tackled the widespread corruption of the time. A combination of law-enforcement measures, increases in funding of many public agencies, and reduction of bureaucratic red tape led to a virtual eradication of corruption at the lower levels of public administration. At the same time, the concentration of power at the top tier of the executive branch and the weak system of checks and balances creates possibilities for abuse and raises concerns about the commitment to the rule of law.

Since these early changes, the government's anti-corruption efforts have been characterized by a continuous process of reform of the legal framework. A number of anti-corruption laws have been adopted and/or amended since 2004, including regulations on conflict of interest and disclosure of assets. New laws on public procurement, the supreme audit institution and internal audit units were introduced in 2005-2010. At the same time, the implementation of these newer legal amendments is not complete. This is either due to a lack of political will or a lack of robust implementation mechanisms.

The early anti-corruption efforts were implemented without a single policy framework or a dedicated anti-corruption body. The first anti-corruption strategy was developed in 2005-2006. In late 2009, the president established the Interagency Coordinating Council for Combating Corruption and tasked it to produce a new anti-corruption strategy and action plan (both documents were adopted in 2010).

## NIS Pillars

The **executive branch** and the **law enforcement agencies** are the strongest institutions of the Georgian National Integrity System. These bodies are well-resourced and generally fulfill their respective roles with the NIS (including public sector management, anti-corruption reform and corruption prosecution) properly. At the same time, the accountability of these institutions is not achieved in practice due to the relative shortcomings of other institutions.

The weaknesses of **legislature** and the **judiciary** are particularly notable vis-à-vis the executive branch. Like the majority of Georgia's government agencies,

parliament and the judiciary receive sufficient funding from the budget and have implemented a number of positive changes both in terms of law and practice. However, they still lack independence and are incapable of effectively fulfilling their important role of executive branch oversight. This undermines the entire setup of checks and balances in the country's governance system.

**Public administration** has undergone radical reform since 2004, resulting in notable improvements in many public services and virtual elimination of bribery. At the same time, the government has failed to develop an overall strategy of public administration reform, which has led to an uneven application of many legal provisions across the sector. While some agencies have implemented impressive measures in the fields of transparency and accountability, others are yet to do so. The government's approach prioritizes flexibility in human resources management over the independence of civil servants. As a result, changes in the political leadership of government agencies often lead to major overhaul of staff, thereby abetting an institutional culture that rewards loyalty rather than professionalism.

The **Chamber of Control** (the supreme audit institution) has seen considerable improvements since 2008, both in terms of legal framework and practice. However, questions remain as to whether the chamber already has sufficient capacity to conduct all types of audits effectively.

The **Public Defender** (ombudsman) is a strong and independent institution that has been largely successful in detecting violations of human rights. At the same time, the Public Defender faces some problems in terms of resources and other government bodies do not always assist its inquiries or act upon its recommendations.

Georgia does not have a functioning multi-party system. The ruling United National Movement won an overwhelming majority in the last two parliamentary elections and presently controls around 80 percent of seats in the legislature, while also dominating all other government bodies both centrally and locally. Other **political parties** play no meaningful role in decision-making at any level. Given the lack of democratic decision-making in Georgian parties, including the ruling party, this means that almost entire political power is concentrated in the hands of the president and several key members of his team. The weakness of political parties is the result of both their internal flaws (such as their inability to build a broad support base or to aggregate social interests), as well as the lack of a level playing field, especially with regard to financing and media access. Since there is no clear separation between the ruling party and the public administration in practice, the former essentially enjoys unhindered access to administrative resources during elections.

The **electoral management** body has improved its work in recent years but has still failed to handle some aspects of the electoral process properly. These include vote count and tabulation, as well as the processing of election-related

complaints and appeals. It also lacks adequate legal powers to monitor and regulate campaign finance.

The external watchdogs – the **media** and the **civil society** – are also underperforming at present. A lack of resources and the absence of a pluralistic governance system in Georgia have reduced civil society's ability to hold the government accountable and to contribute to policy formulation through advocacy. The civil society's legitimacy is also undermined by its lack of a broad social base (itself the result of the post-soviet experience and low levels of civic engagement more generally). Most of the mainstream media, meanwhile, suffers from a lack of editorial independence and is thus incapable of informing the public on policy issues in an unbiased manner.

**Business** and civil society rarely collaborate to tackle issues of mutual interest (including corruption). Georgia's business entities benefit from a very favourable legal framework but do not enjoy sufficient protection in practice because of the lack of an independent judiciary and heavy-handedness tax authorities. Nor have they implemented any notable integrity-related measures.

Overall, considerable gaps between law and practice are an evident feature of the Georgian NIS. All pillars scored higher in law than in practice and the difference was very substantial in the majority of pillars. This kind of discrepancy is particularly notable in terms of the independence of public institutions. The majority of governmental pillars received a high score for this indicator in law but almost all of them scored 50 or lower for independence in practice. The analysis also showed that, while Georgia has very progressive legislation in the fields of political parties, media and business, these are not always implemented effectively.

Only the executive branch and the law enforcement agencies currently perform their role within the National Integrity System adequately. All other government institutions scored 50 or lower for role, while all non-governmental pillars received a low score of 25 for this dimension. The role dimension is particularly important because it shows how individual institutions are performing their specific tasks within the National Integrity System. The fact that only two of Georgia's 12 NIS pillars scored higher than 50 in role is a sign of serious weaknesses in the system.

## NIS Foundations

Some of the pillars' weaknesses are linked to the socio-political and socio-economic foundations of the Georgian National Integrity System.

For example, the political system is exclusive and driven by elites. The weak link between the political class and society at large undermines the strength of po-

litical parties and contributes to a general lack of pluralism in governance structures. The low level of citizen activism and participation also weakens political parties, while simultaneously hampering the development of a strong and effective civil society that is able to hold the government accountable.

The Georgian economy remains weak despite high growth in 2004-2007. Poverty and unemployment figures remain high. The weak economy has implications for a number of NIS pillars. For example, it means that there is a small advertising market for the media. As a result, the largest media entities (TV stations with a nationwide audience) have to rely on politically-motivated financial injections to stay afloat, with obvious implications for their independence. The weak economy also limits fundraising opportunities for civil society and political parties.

## Policy Recommendations

While the reform of the executive branch and the law enforcement agencies has helped reduce or even eliminate certain types of corruption since 2004, strengthening of other institutions – most importantly the legislature and the judiciary – is necessary in order to ensure integrity throughout the governance system. The weaknesses of non-governmental pillars must also be overcome in order to attain this goal.

The lack of a functioning multi-party system is a major flaw of the Georgian NIS. It reduces the independence of parliament and thus undermines any system of checks and balances. Changes that would ensure better representation of diverse political and societal interests in various governance institutions are required. Addressing the imbalances of the electoral system and ensuring a level playing field in elections would be good initial steps in this direction.

It is also extremely important to ensure that the existing anti-corruption laws (including the legal provisions on conflict of interest, asset disclosure, etc.) are applied thoroughly and consistently in practice and cover all important public agencies and officials. The internal audit units that were established in public agencies under a 2010 law have the legal responsibility to enforce some anti-corruption provisions, but it is not clear whether they currently have the capacity or authority to do so. The government must work to enhance both the resources and the independence of these institutions.



# Country Profile: Foundations for National Integrity System

## Political-Institutional Foundations Score: 50

To what extent are the political institutions in the country supportive to an effective national integrity system?

Georgia's legal framework guarantees civil and political rights of citizens and provides for fundamental democratic processes, but these legal provisions are not applied thoroughly and consistently in practice.

The Georgian Constitution and other laws provide for free competition for government offices. However, free and fair competition is not always ensured in practice (especially during elections) because, as noted by the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and a number of other local and international organizations, there is a lack of a clear separation of the ruling party and the state, creating an "uneven playing field".<sup>1</sup> The ruling party enjoys exclusive access to administrative resources and a privileged access to some private resources (such as major private media outlets and private financing).<sup>2</sup>

Civil rights are guaranteed in the Constitution and other laws, although the ability of citizens to seek redress for the violation of their rights is sometimes undermined by the weakness of the judiciary and insufficient accountability of certain parts of the government, particularly the law enforcement agencies.<sup>3</sup>

Decisions on all matters that affect the lives of citizens are made by an elected government. No powerful economic actors can manipulate the state to their advantage, while the military is under firm civilian control.<sup>4</sup> At the same time, there is a lack of balance between different parts of the government. The executive branch is by far the most powerful government body in the country, while the legislature's role in public affairs is often limited because of its lack of independence from the president.<sup>5</sup>

The rule of law, while enshrined in the country's legal framework, is undermined in practice by the dominance of the executive branch and the weakness of the

<sup>1</sup> OSCE/ODIHR *Georgia: Municipal Elections 30 May 2010*, OSCE/ODIHR Election Observation Mission Report, (Warsaw: OSCE/ODIHR, 2010), 1-2.

<sup>2</sup> See the chapter on political parties.

<sup>3</sup> See, for example: US Department of State, *2010 Human Rights Report: Georgia*, <http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154425.htm>

<sup>4</sup> Bertelsmann Stiftung, *BTI 2010 – Georgia Country Report* (Gutersloh: Bertelsmann Stiftung, 2009), 7.

<sup>5</sup> Freedom House, *Nations in Transit 2010*, <http://www.freedomhouse.eu/images/Reports/NIT-2010-Georgia-final.pdf>, (accessed on 2 May 2010).

legislature and the judiciary. The Constitution is believed to have lost its function of establishing fundamental rules. For example, Parliament's role of executive oversight is anchored in the constitution but, as further documented in the relevant chapters, it is unable to do so in practice. Furthermore, the divergence between formal rules and political practice is a matter of concern.<sup>6</sup>

There is no strong or explicit opposition to democratic institutions and all principal actors accept and support them. At the same time, it has been suggested that the discontent among the excluded and marginalized segments of the population could change this situation in the future if some political actors manage to mobilize their support. Also, the commitment of both the government and the opposition to applying principles of democracy in practice has been called into question.<sup>7</sup>

## Socio-Political Foundations

### Score: 50

To what extent are the relationships among social groups and between social groups and the political system in the country supportive to an effective national integrity system?

The link between Georgian society and the political system is somewhat weak at present due to the weakness of political parties, civil society groups and unions. The political elite tend to be exclusive.

There are no significant conflicts in the parts of Georgia that are currently controlled by the Georgian government, although ethnic minorities and women are underrepresented in the political system.

There are nearly 200 registered parties in Georgia and about 10 of them have been more or less active in recent years, although the level of citizen participation in party activities is "low and sporadic".<sup>8</sup> The party system has only a limited ability to articulate and aggregate societal interests and to serve as a link between society and the state. Parties tend to form around influential politicians and rely on the personal popularity of their leaders for electoral success.<sup>9</sup> Internal democratic governance of parties is underdeveloped and changes of leadership are rare, regardless of electoral performance.<sup>10</sup>

The general level of citizen participation and activism is low<sup>11</sup> and there are very few (if any) citizen associations or interest groups capable of serving as mediators between society at large and the political system. Trade unions are few and their influence is negligible, mainly because of high levels of unemployment and self-employment.<sup>12</sup> A lack of a culture of association and a general scepticism towards unions dating back to the Soviet times have been identified as other possible factors behind this situation.<sup>13</sup>

<sup>6</sup> Freedom House, *Nations in Transit 2010*, <http://www.freedomhouse.eu/images/Reports/NIT-2010-Georgia-final.pdf>, (accessed on 2 May 2010).

<sup>7</sup> Bertelsmann Stiftung, *BTI 2010 – Georgia Country Report*, 10, 26.

<sup>8</sup> Freedom House, *Nations in Transit 2010*, <http://www.freedomhouse.eu/images/Reports/NIT-2010-Georgia-final.pdf>, (accessed on 2 May 2010).

<sup>9</sup> Interview of Ghia Nodia, head of the Caucasus Institute for Peace, Democracy and Development, with the author, Tbilisi, 30 October 2009; Bertelsmann Stiftung, *BTI 2008 – Georgia Country Report*, (Gutersloh: Bertelsmann Stiftung, 2007), 2, 10.

<sup>10</sup> Freedom House, *Nations in Transit 2010*, <http://www.freedomhouse.eu/images/Reports/NIT-2010-Georgia-final.pdf>, (accessed on 2 May 2010).

<sup>11</sup> Caucasus Institute for Peace, Democracy and Development, *An Assessment of Georgia Civil Society: Report of the CIVICUS Civil Society Index (2010)*, Tbilisi, Georgia, 12-13.

<sup>12</sup> Bertelsmann Stiftung, *BTI 2010 – Georgia Country Report*, 11.

<sup>13</sup> Centre for Training and Consultancy, *An Assessment of Georgian Civil Society (2005)*, CIVICUS Civil Society Index Shortened Assessment Tool Report for Georgia, 62.; Freedom House, *Nations in Transit 2010*, <http://www.freedomhouse.eu/images/Reports/NIT-2010-Georgia-final.pdf>, (accessed on 2 May 2010).

While Georgia has an active civil society, the number of well-resourced CSOs is small and their ability to influence policies and decisions through advocacy is limited both by their lack of a broad social base/support and the present lack of pluralism in the country's governance system (which is overwhelmingly dominated by just one party).<sup>14</sup>

The country's political elite tends to be exclusive. Power is concentrated within a relatively small group of individuals close to the president and political influence is determined by personal relationships rather than formal positions in the government,<sup>15</sup> creating possibilities for cronyism and insider dealings.<sup>16</sup>

As a result of the ethnic conflicts dating back to the early 1990s, two of the country's regions – Abkhazia and South Ossetia – are presently outside the Georgian government's *de facto* rule, instead controlled by separatist governments and the Russian army units stationed there. There are presently no significant ethnic or religious conflicts in the parts of Georgia that are within the Georgian government's area of control, although the largest ethnic minority groups – Armenians and Azerbaijanis – are underrepresented in both in parties and in government bodies, possibly because the establishment of region-based parties is prohibited. National parties devote little attention to the regions with minority populations.<sup>17</sup> Ethnic minorities are often also excluded from the political dialogue and participation, and access to higher education, due to language barriers. Freedom of religion is guaranteed by the Constitution and the fundamental rights of religious minorities are generally respected in practice, although cases of harassment have been reported and the dominant Georgian Orthodox Church has a superior legal status than all other denominations,<sup>18</sup> in addition to financial support from the state.

Women are also severely underrepresented in politics: there were only eight women in the 150-seat parliament in spring 2011. Nor do they seem to have equal access to economic opportunities since formal employment is lower among women and their average earnings are well below those of men.<sup>19</sup>

## Socio-Economic Foundations

Score: 25

To what extent is the socio-economic situation of the country supportive to an effective national integrity system?

The socio-economic situation has improved as a result of government efforts over the past seven years but significant challenges remain, particularly in terms of unemployment, poverty, healthcare and social protection.

After a long period of post-Soviet stagnation, the Georgian economy expanded rapidly between 2003 and 2008 as a result of the government's pro-business

<sup>14</sup> Freedom House, *Nations in Transit 2009* (Freedom House, 2009), 220.

<sup>15</sup> International Crisis Group, *Georgia: Securing a Stable Future*, (Tbilisi/Brussels: International Crisis Group, 2010), 2.

<sup>16</sup> Bertelsmann Stiftung, *BTI 2010 – Georgia Country Report*, 25.

<sup>17</sup> Freedom House, *Nations in Transit 2010*, <http://www.freedomhouse.eu/images/Reports/NIT-2010-Georgia-final.pdf>, (accessed on 2 May 2010).

<sup>18</sup> The US Department of State, *International Religious Freedom Report 2010: Georgia*, 17 November 2010, <http://www.state.gov/g/drl/rls/irf/2010/148936.htm> (accessed on 4 May 2011).

<sup>19</sup> Bertelsmann Stiftung, *BTI 2010 – Georgia Country Report*, 17.

reforms and policies aimed at attracting foreign investment. Economic growth hit 12 percent in 2007 and budget revenues increased by 172 percent in 2003-2007 despite the reduction of both tax rates and the number of different taxes.<sup>20</sup> Following the twin blows of the August 2008 war with Russia and the global financial crisis, Georgia experienced a rapid fall in foreign investments, resulting in a contraction of the economy by four percent. An extensive foreign aid package enabled the government to maintain macroeconomic stability and economic growth began to pick up again in 2010, although it has not yet reached pre-2008 levels.<sup>21</sup> Still, the per capita GDP remains low at USD 4,800 and the average income is yet to reach pre-1991 levels.<sup>22</sup> High inflation rates have been a constant problem in recent years.<sup>23</sup>

<sup>20</sup> Bertelsmann Stiftung, *BTI 2010 – Georgia Country Report*, 14.

<sup>21</sup> National Statistics Office of Georgia, *Gross Domestic Product*, [http://www.geostat.ge/index.php?action=page&p\\_id=119&lang=eng](http://www.geostat.ge/index.php?action=page&p_id=119&lang=eng) (accessed on 6 May 2011).

<sup>22</sup> UNDP, *Georgia Human Development Report 2008* (Tbilisi: UNDP, 2008), 33.

<sup>23</sup> Inflation reached 11.2 percent in 2010 according to the National Statistics Office, [http://www.geostat.ge/index.php?action=page&p\\_id=128&lang=eng](http://www.geostat.ge/index.php?action=page&p_id=128&lang=eng) (accessed on 6 May 2011).

<sup>24</sup> UNDP, *Georgia Human Development Report 2008* (Tbilisi: UNDP, 2008), 33.

<sup>25</sup> National Statistics Office of Georgia, *Employment and Unemployment*, [http://www.geostat.ge/index.php?action=page&p\\_id=146&lang=eng](http://www.geostat.ge/index.php?action=page&p_id=146&lang=eng) (accessed on 6 May 2011).

<sup>26</sup> International Crisis Group, *Georgia: Securing a Stable Future*, 8.

<sup>27</sup> UNDP, *Georgia Human Development Report 2008*, 36.

<sup>28</sup> Bertelsmann Stiftung, *BTI 2010 – Georgia Country Report*, 13.

<sup>29</sup> Bertelsmann Stiftung, *BTI 2010 – Georgia Country Report*, 12, 17, 21.

<sup>30</sup> UNDP, *Georgia Human Development Report 2008*, 33-39.

<sup>31</sup> Bertelsmann Stiftung, *BTI 2010 – Georgia Country Report*, 17.

<sup>32</sup> UNDP, *Georgia Human Development Report 2008*, 50-51.

<sup>33</sup> Enterprise Surveys, *Running a Business in Georgia*, Enterprise Surveys Country Notes Series, 2009, 4.

<sup>34</sup> Enterprise Surveys, *Running a Business in Georgia*, Enterprise Surveys Country Notes Series, 3; also, The Global Competitiveness Report 2010-2011, <http://gcr.weforum.org/gcr2010/> (accessed on 5 May 2011);

<sup>35</sup> The Heritage Foundation, *2010 Index of Economic Freedom*, <http://www.heritage.org/index/download> (accessed on 8 February 2011).

<sup>36</sup> World Economic Forum, *The Global Competitiveness Report 2010-2011* (Geneva: World Economic Forum, 2010), 162-163.

Economic inequalities persist, with some 30 percent of the population living below the poverty line. A large majority of citizens have not seen significant improvements in their income despite the impressive annual growth figures in 2003-2007.<sup>24</sup> Official unemployment figures remain high at almost 17 percent,<sup>25</sup> while a significant number of the so-called “self-employed” do not have steady sources of income either.<sup>26</sup>

The agricultural sector employs more than half of the workforce but has largely been excluded from economic improvements in recent years and has actually seen its output decrease.<sup>27</sup> Rural residents also face significant problems in terms of access to water, healthcare and education.<sup>28</sup> It has been suggested that the government’s failure to include socially marginalized groups into public life has been one of the factors behind political strife and street protests in recent years.<sup>29</sup>

Since 2004 the government has attempted to introduce targeted and needs-based welfare and social aid programs. Both the number of the people in poverty receiving aid and the size of aid have increased as a result,<sup>30</sup> although it is still inadequate for meeting even the basic needs of the beneficiaries.<sup>31</sup> Similarly, the government’s efforts to ensure universal access to healthcare through state-sponsored insurance programs far from meeting their stated goals. The population is generally not well informed about the benefits of health insurance. The government aims to provide coverage for the elderly and socially vulnerable, but the funds allocated for this purpose in the state budget are inadequate to meet the needs.<sup>32</sup>

Georgia’s business sector benefits from the country’s liberal legal framework and a very low level of administrative corruption. According to one survey, on average, Georgian businesses spend less time dealing with bureaucratic procedures and are less likely to have to pay a bribe than their counterparts from other countries of the region.<sup>33</sup> At the same time, companies face a number of significant problems, including limited access to capital and credit<sup>34</sup> and a general lack of judicial remedy in disputes with the authorities, in particular related to protection of property rights.<sup>35</sup> Infrastructure improved significantly as a result of government efforts since 2004 but still remains a problematic factor for business, according to the Global Competitiveness Report.<sup>36</sup>

## Socio-Cultural Foundations

Score: 50

To what extent are the prevailing ethics, norms and values in society supportive to an effective national integrity system?

The values of Georgian society are, to some extent, conducive to a functioning national integrity system, although the lack of interpersonal trust is significant.

The general level of interpersonal trust is very low in Georgia. According to the 2009 data from World Values Survey, only 13 percent of the respondents believe that most people can be trusted, while 44 percent said that caution was necessary and 30 percent said that only friends and relatives are possible to trust.

Georgia received a very high score in the same survey in terms of citizen's "public-mindedness". An overwhelming majority of the respondents disapproved of bribery (98 percent), tax evasion (97 percent) and obtaining of public benefits through deception (96 percent).<sup>37</sup> These answers suggest that personal integrity is regarded as an important value but, as noted in a 2010 study, these answers do not necessarily reflect the respondents' behaviour in practice.<sup>38</sup>

<sup>37</sup> Data from the World Values Survey cited in Caucasus Institute for Peace, Democracy and Development, *An Assessment of Georgia Civil Society: Report of the CIVICUS Civil Society Index*, 47-48.

<sup>38</sup> *Id.*

# IV. Corruption Profile

A number of surveys reflect the notable improvements that have occurred in Georgia in recent years in terms of corruption. At the same time, suspicions of high-level corruption are still being voiced and are sometimes borne out by factual evidence. There is a shortage of empirical data regarding different types of corruption.

In the 2010 edition of the Corruption Perceptions Index, Georgia ranked 68<sup>th</sup> (out of 178 countries surveyed), with a score of 3.8 out of ten. The country performed better than all of its neighbours (except Turkey) and all of the former Soviet republics (except for the three Baltic states). Georgia ranked the fourth cleanest country in terms of corruption in Eastern Europe and Central Asia (behind Turkey, Croatia and the FYR Macedonia).<sup>1</sup>

In a separate corruption measurement tool, the 2010 Global Corruption Barometer, only three percent of respondents in Georgia reported paying a bribe to any of nine service providers listed during the preceding year. The government's anti-corruption policy was described as effective by 77 percent of the respondents, while 78 percent said that the general level of corruption had decreased during the preceding three years. Respondents identified political parties and the judiciary as the institutions most affected by corruption, both being ranked an average of 2.9 on a scale from one (not corrupt) to five (extremely corrupt). These were followed by public officials (2.7), parliament (2.6) and business and media (2.4).<sup>2</sup> The findings of the Global Corruption Barometer support the widespread belief that petty corruption, including bribery, has been virtually eliminated in Georgia. This kind of assertion is further reinforced by the results of the Caucasus Barometer 2010 survey, where only one percent of the respondents reported paying a bribe.<sup>3</sup>

In the Global Integrity Index study which assesses the strength of anti-corruption mechanisms in different countries, Georgia's rating has fluctuated in recent years from "moderate" in 2006, to "weak" in 2007, to "very weak" in 2008, to "moderate" again in 2009. Also, in 2009, Georgia was dropped from Global Integrity's Grand Corruption Watch List,<sup>4</sup> while government accountability, the budget process, business regulation and law enforcement were listed among the key areas of concern.<sup>5</sup>

<sup>1</sup> Transparency International, *Corruption Perceptions Index 2010 Results*, [http://www.transparency.org/policy\\_research/surveys\\_indices/cpi/2010/results](http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results) (accessed on 17 May 2011)

<sup>2</sup> Transparency International, *Global Corruption Barometer 2010 Report*, [http://www.transparency.org/policy\\_research/surveys\\_indices/gcb/2010/results](http://www.transparency.org/policy_research/surveys_indices/gcb/2010/results) (accessed on 17 May 2011)

<sup>3</sup> Caucasus Research Resource Centers, *Caucasus Barometer 2010 Georgia*, <http://www.crrc.ge/oda/> (accessed on 17 May 2011)

<sup>4</sup> Global Integrity, *Global Integrity Report: 2009 Key Findings*, <http://report.globalintegrity.org/globalindexfindings.cfm#NewCountriesAdded> (accessed on 17 May 2011)

<sup>5</sup> Global Integrity, *Global Integrity Report, Georgia: 2009*, <http://report.globalintegrity.org/Georgia/2009> (accessed on 17 May 2011)

While virtually no one challenges the idea that the government has largely succeeded in eradicating petty corruption, it is sometimes argued that corruption has changed shape in Georgia in recent years. For example, it has been suggested that, while the country suffered from rampant and all-encompassing corruption until 2003, presently, a “clientelistic system” has emerged where the country’s leadership “allocates resources in order to generate the loyalty and support it needs to stay in power”.<sup>6</sup> It has also been suggested that there are significant opportunities for “cronyism and insider deals” because of the “concentration of power among a small and interwoven circle of individuals”.<sup>7</sup> The fact that Georgian society is generally characterised by a low level of confidence in public institutions and instead dominated by more traditional, informal relations<sup>8</sup> could be a contributing factor here (together with the general weakness of the government’s internal system of checks and balances and of external watchdogs, which will be discussed later in this report).

The allegations regarding high-level, “elite” or “grand” corruption in Georgia are often speculative, although some of the cases publicised in recent years point to a lingering problem. In 2007, Irakli Okruashvili, formerly the Minister of Defence and, for a time, one of the most influential members of President Saakashvili’s government, was arrested on charges of extortion, money laundering, misuse of power and criminal negligence.<sup>9</sup> Some allege that Okruashvili’s arrest was politically motivated. However, if the charges that were brought against him were valid, it would indicate that powerful members of the executive branch can still get away with corruption-related crimes (Okruashvili was a powerful insider and closely connected with the President for several years), as long as they remain loyal to the leadership. Okruashvili was arrested nine months after his resignation and shortly after he announced his decision to join the opposition.

Other recent public cases also indicate that corruption remains a problem at the higher tiers of the executive branch. In the autumn of 2010, deputy ministers of healthcare and finance and a former deputy minister of education were all implicated in corruption within a short period of time. Violations concerned public procurement in all three cases.<sup>10</sup>

As it was rightly pointed out in the OECD Anti-Corruption Network’s 2010 report, most of the existing studies on corruption in Georgia focus on perceptions, while little research has been done regarding the “levels, forms, types, manifestations and location of corrupt practices”.<sup>11</sup> The Georgian government is advised to sponsor research aiming to “qualify and quantify” corruption as it would provide reliable information to “inform, trigger and monitor policy change”.<sup>12</sup> To date, no such effort has been undertaken.

<sup>6</sup> Alexander Kupatadze, “Similar Events, Different Outcomes: Accounting for Diverging Corruption Patterns in Post Revolution Georgia and Ukraine”, *Caucasus Analytical Digest*, No 26, 26 April 2011, 2.

<sup>7</sup> Bertelsmann Stiftung, *BTI 2010 – Georgia Country Report* (Gutersloh: Bertelsmann Stiftung, 2009), 25.

<sup>8</sup> Caucasus Institute for Peace, Democracy and Development, *An Assessment of Georgia Civil Society: Report of the CIVICUS Civil Society Index (2010)*, Tbilisi, Georgia, 47.

<sup>9</sup> Civil.ge, *Okruashvili Arrested for Alleged Extortion, Money Laundering*, 27 September 2007, <http://www.civil.ge/eng/article.php?id=15896> (accessed on 17 May 2011).

<sup>10</sup> Expressnews, *Chamber of Control Accuses Deputy Finance Minister of Embezzlement*, 23 September 2010, <http://www.epn.ge/?p=25262> (accessed on 17 May 2011); Medianews, *Prosecutor’s Office Has Arrested Former Deputy Minister of Education*, 12 October 2010, <http://medianews.ge/index.php/ka/content/47932/> (accessed on 17 May 2011); Expressnews, *Chief Prosecutor’s Office To Hold Briefing Regarding Deputy Healthcare Minister’s Arrest*, <http://www.epn.ge/?p=24210> (accessed on 17 May 2011) (all in Georgian).

<sup>11</sup> OECD Anti-Corruption Network for Eastern Europe and Central Asia, Istanbul Anti-Corruption Action Plan, *Second Round of Monitoring, Georgia Monitoring Report*, (Paris: OECD ACN, 2010), 11.

<sup>12</sup> OECD Anti-Corruption Network for Eastern Europe and Central Asia, Istanbul Anti-Corruption Action Plan, *Second Round of Monitoring, Georgia Monitoring Report*, 11.

# V Anti-Corruption Activities

As noted in the 2008 UNDP Human Development Report on Georgia, it is “almost impossible to exaggerate the scale of the corruption problem” faced by Georgia’s post-revolution government.<sup>1</sup> The new leadership showed the political will to fight corruption, especially bribery in public administration.

## Anti-Corruption Measures and Reforms

From late 2003 Georgia’s new leadership implemented a number of drastic anti-corruption measures immediately upon coming to power. Reforms and policies targeting corruption included: (1) prosecuting and sanctioning those involved in corruption to tackle the entrenched sense of impunity, (2) reducing the oversized public sector bureaucracy that was a major source of corruption under the old government, and (3) raising salaries of public officials and civil servants, so that they would no longer need to resort to corruption in order to make a living.

Reform of law enforcement agencies – the Interior Ministry and the Prosecutor’s Office – was an important element of the government’s anti-corruption efforts. The capacity of the two institutions increased immensely after 2004 and they have been in the vanguard of the fight against corruption ever since. Arrests of public officials suspected of corruption were a prominent feature of the anti-corruption policy in the early years of the Saakashvili administration and remain so at present, although to a lesser extent.<sup>2</sup> In an often-cited example of the Georgian government’s anti-corruption reforms, the old traffic police that was widely perceived as one of the most corruption institutions in the country was disbanded and the large majority of its staff were fired. A new Patrol Police was established and thousands of new police officers were recruited.<sup>3</sup>

Since corruption was considered a major obstacle to the government’s proclaimed policy of promoting economic growth and attracting foreign investment, the government set out to tackle the problem through a reduction in the overall number of public regulatory agencies, as well as the number of regulations and licences required for various commercial activities. The number of

<sup>1</sup> UNDP, *Georgia Human Development Report 2008* (Tbilisi: UNDP, 2008), 11.

<sup>2</sup> Alexander Kupatadze, “Similar Events, Different Outcomes: Accounting for Diverging Corruption Patterns in Post Revolution Georgia and Ukraine”, *Caucasus Analytical Digest*, No 26, 26 April 2011, 2.

<sup>3</sup> UNDP, *Georgia Human Development Report 2008*, 12

taxes, as well as tax rates, was also slashed. Salaries of public officials and civil servants increased significantly, reducing the need for them to engage in corruption in order to make a living.<sup>4</sup> Following these measures, only a small percentage of businesses operating in Georgia expected to have to pay a bribe to “get things done”, according to a 2009 survey.<sup>5</sup>

The education system, in particular university entrance exams, was another area with high levels of corruption prior to 2004. An overhaul of the system was conducted in 2004 and there is a common consensus that bribery was effectively eradicated as a result.

## Legal Framework

The government’s anti-corruption reforms in recent years have involved considerable changes in the country’s legal framework. Some of the older laws were amended and a number of entirely new laws were adopted to fill the existing gaps.

Important steps were taken in terms of the legal framework of law enforcement activities and criminalisation of different types of corruption. Both active and passive bribery and trade in influence are now punishable offences, criminal responsibility of legal persons for corruption was introduced,<sup>6</sup> and the provisions on money laundering were improved through multiple amendments.<sup>7</sup> Georgia also became a party to the UN Convention Against Corruption in 2008.

In terms of the legal provisions designed to ensure integrity of public officials, significant amendments were made to the Law on Public Service, and the Law on Conflict of Interest and Corruption in Public Service: a general Code of Ethics for civil servants was added to the former,<sup>8</sup> while the rules establishing restrictions on gifts and ensuring disclosure of assets of public officials were incorporated into the latter. Provisions on whistle-blower protection were also introduced.<sup>9</sup>

Finally, efforts were made to strengthen the legal capacity of the institutions that play an important role in preventing corruption. A new law on the Chamber of Control was adopted in 2008 with the goal of transforming the agency into a modern supreme audit institution.<sup>10</sup> A law on internal audit and inspection was adopted in 2010.<sup>11</sup> Reform of the public procurement framework commenced with the adoption of legal amendments in 2009 and continued with the launch of an electronic procurement system in 2011.

These legislative changes were important improvements and have contributed to the strengthening of the country’s overall anti-corruption framework. At the same time, some of the laws still contain gaps and/or are not applied consistently in practice. This will be discussed in the relevant chapters of the report.

<sup>4</sup> *Id.*, 12

<sup>5</sup> Enterprise Surveys, *Running a Business in Georgia*, Enterprise Surveys Country Notes Series, 2009, 4.

<sup>6</sup> Criminal Code of Georgia, adopted on 22 July 1999, Articles 338, 339, 339<sup>1</sup>-Section Six<sup>1</sup> (added on 25 July 2006).

<sup>7</sup> *Id.*, Article 194.

<sup>8</sup> The Law on Public Service, originally adopted on 31 October 1997, Chapter VI<sup>1</sup> (added on 12 June 2009).

<sup>9</sup> The Law on Conflict of Interest and Corruption in Public Service, originally adopted on 17 October 1997, Article 5 (27 March 2009), Article 18 (12 June 2009), Chapter V<sup>1</sup> (27 March 2009).

<sup>10</sup> The Law on Chamber of Control, adopted on 26 December 2008.

<sup>11</sup> The Law on State Internal Audit and Inspection, adopted on 26 March 2010.

## Anti-Corruption Strategy and Agency

The government's initial efforts described above were largely implemented without an overall strategy or a central agency responsible for preparing anti-corruption policies and monitoring their implementation. Georgia's first anti-corruption strategy was drafted in 2005-2006 and a corresponding action plan was adopted in 2007. The efforts were led by the Office of the Minister of State for Coordination of Reforms. A decision was made in 2008 to essentially re-write both the strategy and the action plan from scratch. A new body, the Interagency Coordinating Council for Combating Corruption, was established specifically for this purpose.

The Council was set up by the president in December 2008 and is made up of senior officials from the executive branch, the legislature and the judiciary, as well as several representatives of civil society organizations (including TI Georgia). The Council is chaired by the Minister of Justice, while the ministry's Analytical Department serves as the Council's secretary. The Council's responsibilities include formulating the general state policy for combating corruption; developing and updating the national anti-corruption strategy and the relevant action plan and monitoring their implementation; coordinating interagency activities in order to facilitate the implementation of the strategy and the action plan; ensuring implementation of recommendations by international organizations regarding the fight against corruption and producing relevant reports.<sup>12</sup> The Council's activities are governed by a special article in the Law on Conflict of Interest and Corruption in Public Service and the agency's own Charter.

The National Anti-Corruption Strategy, adopted by the Council in January 2010, identifies the following main goals of the anti-corruption policy: (1) improving effectiveness and eliminating corruption of the public sector (*inter alia*, through the improvement of the tax, customs and public procurement systems and public finance reform); (2) enhancing competitiveness prevention of corruption of the private sector; (3) improving the justice system; (4) improving anti-corruption legislation; (5) inter-agency cooperation on anti-corruption activities; and (6) improving the system of party finance monitoring.<sup>13</sup> The Action Plan, approved via rushed and less open process in early September 2010, identifies the expected results in each of these policy areas and the agencies responsible for the implementation of the relevant activities. General time frames for these activities are also provided.<sup>14</sup> At the same time, it appears that the Action Plan was compiled on the basis of general reforms that were already planned in different government agencies, rather than through an analysis of specific corruption-related issues. Some important areas of concern, such as transparency of media ownership, were omitted from the anti-corruption strategy and were addressed completely outside its framework later.

The Council is an ad hoc body, rather than a full-fledged anti-corruption agency. It does not have its own budget or dedicated staff, with the Justice Ministry's Analytical Department serving as its secretariat. While the Analytical Department has handled the responsibility of compiling the anti-corruption strategy

<sup>12</sup> Order #622 of the President of Georgia on the Approval of the Composition and the Charter of the Interagency Coordinating Council for Combating Corruption, 26 December 2008.

<sup>13</sup> The National Anti-Corruption Strategy of Georgia, approved by the Georgian president's decree #376 on 3 June 2010, [http://www.justice.gov.ge/files/Documents/analtikuri/antikorusiuli\\_stategia.pdf](http://www.justice.gov.ge/files/Documents/analtikuri/antikorusiuli_stategia.pdf) (accessed on 16 May 2010).

<sup>14</sup> The Action Plan for the Implementation of the National Anti-Corruption Strategy of Georgia, approved by the Georgian president's decree #735 on 14 September 2010.

and action plan successfully, it only has six full-time employees who have numerous other responsibilities as well. It is not clear whether the Council will be able to cope with broader tasks (such as monitoring the implementation of the strategy and the action plans) with these resources.

The Council does not enjoy the degree of independence that an anti-corruption agency would ideally have. Its members are appointed by the president and can be recalled at any time, while the staff members of the Secretariat are Justice Ministry employees and thus subordinated to the minister.

Given the Council's lack of status as a separate public agency, there are few legal safeguards to ensure its transparency and especially accountability.<sup>15</sup> The Council has generally operated in a transparent manner in practice so far. However, from TI Georgia's own experience, the civil society representatives of the Council are not always notified about the Council's plans in a timely manner. In particular, a draft 2010 Action Plan was presented without warning or participation by CSOs, and CSOs were not provided adequate time for comment.

### Civil Society, Business and External Actors

Civil society's involvement in the development of the government's anti-corruption policy is mainly achieved through the participation of several NGOs in the work of the anti-corruption council,<sup>16</sup> although the degree of engagement has varied. Outside this framework, a number of civil society organisations have conducted research into areas where corruption is suspected, produced shadow reports on the government's implementation of its international commitments (some of which were related to the fight against corruption),<sup>17</sup> advocated for better freedom of information laws and practices,<sup>18</sup> and generally made transparency, accountability and good governance priorities of their work.

Anti-corruption activities of Georgian business have been very limited so far. There are no business representatives in the country's anti-corruption council and the private sector has not been involved in the formulation or implementation of the government's anti-corruption policies in any other way either.<sup>19</sup> There have been no joint business-civil society initiatives in this area to date. Few Georgian companies participate actively in the UN Global Compact or implement internal ethics codes or programmes.<sup>20</sup>

External actors have contributed to the development of Georgia's anti-corruption legislation and policies in recent years. For example, GRECO and the OECD Anti-Corruption Network have continuously monitored Georgia's commitments within their respective frameworks and have offered recommendations.<sup>21</sup> This has contributed significantly to the improvements discussed in the section above on reform of the legal framework. Moreover, the National Anti-Corruption Strategy was developed with direct support from the Council of Europe's GEPAC project, with Dutch funding.<sup>22</sup> Foreign donors have also provided financial support to the local civil society's anti-corruption watchdogs.

<sup>15</sup> OECD Anti-Corruption Network for Eastern Europe and Central Asia, Istanbul Anti-Corruption Action Plan, *Second Round of Monitoring, Georgia Monitoring Report*, (Paris: OECD ACN, 2010), 13.

<sup>16</sup> Georgian Young Lawyers Association, Liberty Institute, American Bar Association, Open Society – Georgia Foundation, and Transparency International Georgia were invited to participate in the Council's work at the time of its establishment in December 2008.

<sup>17</sup> See, for example, Open Society Georgia Foundation, *European Neighbourhood Policy: Implementation of the Objectives of the EU-Georgia Action Plan* (Tbilisi: OSGF, 2010).

<sup>18</sup> See, for example, an online database of public information set up by the Institute for Development of Freedom of Information: [www.opendata.ge](http://www.opendata.ge)

<sup>19</sup> OECD Anti-Corruption Network for Eastern Europe and Central Asia, Istanbul Anti-Corruption Action Plan, *Second Round of Monitoring, Georgia Monitoring Report*, 45-46.

<sup>20</sup> United Nations Global Compact, Participants and Stakeholders, [http://www.unglobalcompact.org/participants/search?business\\_type=2&commit=Search&cop\\_status=all&country\[\]=65&joined\\_after=&joined\\_before=&keyword=&listing\\_status\\_id=all&organization\\_type\\_id=&page=1&per\\_page=50&sector\\_id=all](http://www.unglobalcompact.org/participants/search?business_type=2&commit=Search&cop_status=all&country[]=65&joined_after=&joined_before=&keyword=&listing_status_id=all&organization_type_id=&page=1&per_page=50&sector_id=all) (accessed on 8 February 2011).

<sup>21</sup> See, for example, OECD Anti-Corruption Network for Eastern Europe and Central Asia, Istanbul Anti-Corruption Action Plan, *Second Round of Monitoring, Georgia Monitoring Report*; Group of States against Corruption, *Second Evaluation Round Compliance Report on Georgia*, adopted by GRECO at its 42<sup>nd</sup> Plenary Meeting (Strasbourg, 11-15 May 2009).

<sup>22</sup> The Council of Europe, GEPAC: Support to the Anti-corruption strategy of Georgia, [http://www.coe.int/t/DGHL/cooperation/economiccrime/corruption/projects/GEPAC/gepac\\_en.asp](http://www.coe.int/t/DGHL/cooperation/economiccrime/corruption/projects/GEPAC/gepac_en.asp) (accessed on 16 May 2011).

# VI. The National Integrity System

## 1. Legislature

### Summary

The legislature is a key actor in Georgia’s national integrity system due to its role in overseeing the activities of the executive. The assessment finds, however, that the legislature is presently incapable of effectively using the oversight powers set out in the law, mainly because of its current composition (with few opposition representatives) and the parliamentary majority’s lack of independence from the president. On the positive side, the legal provisions governing parliament’s capacity and governance are generally adequate, as are the availability of resources and transparency of the legislature’s work in practice. Also, in recent years, parliament has passed a number of important laws designed to reduce corruption and improve governance.

The table below summarizes the indicator scores for three dimensions critical to a strong parliament: capacity, internal governance and role within the country’s “integrity system”. The remainder of this section presents a qualitative assessment for each indicator.

### Total Score: 54/100

Dimension	Indicator	Law	Practice
Capacity 63/100	Resources	100	50
	Independence	75	25
Governance 63/100	Transparency	75	75
	Accountability	50	50
	Integrity	75	50
Role 38/100	Executive Oversight		25
	Legal Reform		50

## Structure and Organisation

Georgia has had a parliament since the declaration of independence in 1991. The present legislature is a 150-seat, single-chamber body elected every four years. Half of MPs are elected from 75 single-seat electoral districts, while the remaining half are appointed proportionally according to a nationwide vote by party. The general principles of parliament's work are set out in the Georgian Constitution, while the more specific rules are given in the Parliamentary Rules of Procedure. The Constitution states that parliament is the country's supreme representative body, responsible for the formulation of foreign and domestic policies and oversight of the executive.

Parliament has 15 standing committees and the Bureau, a body responsible for coordinating the legislature's activities. A group of at least six MPs can form a faction: a parliamentary group that enjoys a number of powers and privileges. In practice, factions are usually formed along party lines. A faction or factions that comprise more than half of the total number of MPs can form the Parliamentary Majority, while a faction or factions that comprise more than half of MPs outside the Parliamentary Majority can form the Parliamentary Minority. The Majority and the Minority also enjoy certain privileges. There are a total of four factions in the Georgian parliament today.

Parliament is presently dominated by President Mikheil Saakashvili's United National Movement that controls some 80 percent of the seats. The Christian-Democratic Movement is the largest opposition group represented in parliament. Meanwhile, some of the influential opposition parties refused to take up their seats in the legislature after the 2008 elections in protest against alleged electoral irregularities.

## Assessment

### Resources (law)

Score: 100

To what extent are there provisions in place that provide the legislature with adequate financial, human and infrastructure resources to effectively carry out its duties?

The legal framework contains adequate provisions designed to ensure that parliament has access to the necessary financial, human and logistical resources.

The provisions concerning the legislature's financing are sound. Under Article 49 of the Constitution, parliament's allocations in the state budget for any given year cannot be smaller than the previous year's sum, unless the legislature itself consents to their reduction. It is up to parliament to decide on the distribution of

the funds allocated to the legislature in the state budget. The legislature is in control of drafting its own budget. The process is detailed in Article 237 of the Parliamentary Rules of Procedure.<sup>1</sup> The draft budget is prepared on the basis of proposals presented by committees, factions, the Staff and the Treasurers' Council<sup>2</sup>, while the speaker is to provide overall leadership and coordination of the process. The allocations to each committee and faction, as well as the minority and the majority, must be detailed in the draft. If parliament does not receive the allocated funds from the state budget, it is authorised to take a loan from the National Bank. The legislature's budgetary autonomy is reinforced by the Budget Code<sup>3</sup> which contains a number of provisions identical to those described above.<sup>4</sup>

The Parliamentary Rules of Procedure provide for the establishment of Parliamentary Staff in order to facilitate the legislature's work. Specifically, the Staff is to provide MPs and different parliamentary bodies with organisational, logistical, informational, legal, financial and other types of support.<sup>5</sup> The Regulations also allow committees to hire experts and consultants to work on specific issues.<sup>6</sup>

## Resources (practice)

Score: 50

To what extent does the legislature have adequate resources to carry out its duties in practice?

In practice, the Georgian parliament receives adequate funding from the state budget to carry out its duties. The biggest limitation to the parliament's resources is related to staff capacity...

The key informants interviewed by TI Georgia generally agreed that parliament does not face any significant problems in terms of funding. According to Khatuna Gogorishvili, chairwoman of the Parliamentary Committee on Procedural Issues and Rules and a senior MP who has worked in the parliament since the 1990s, the financial resources at parliament's disposal are enough to ensure its unhindered operation, despite the reduction in its 2010 budget as part of the wider effort to cut spending in the face of an economic slowdown.<sup>7</sup> The legislature receives generous allocations from the state budget,<sup>8</sup> which, for example, have made it possible for parliament to purchase essential equipment in recent years.<sup>9</sup>

The size of the staff is believed to be adequate, but opinion is mixed about its quality. Gogorishvili told TI Georgia that parliament has a core of highly-qualified staffers who have been around for 10-15 years. This kind of stability has contributed to the accumulation of institutional memory.<sup>10</sup> At the same time, some observers suggest that the staff is oversized, that many employees do not have

<sup>1</sup> The Parliamentary Rules of Procedure, adopted on 17 February 2004.

<sup>2</sup> A special body that aids the speaker of parliament in supervising the legislature's financial affairs.

<sup>3</sup> The Budget Code of Georgia, adopted on 18 December 2009.

<sup>4</sup> *Id.*, Article 41.

<sup>5</sup> The Parliamentary Rules of Procedure, Article 254.

<sup>6</sup> *Id.*, Article 258.

<sup>7</sup> Interview of Khatuna Gogorishvili, chairperson of the Parliamentary Committee on Procedural Issues and Rules, with the author, Tbilisi, 10 March 2010.

<sup>8</sup> Interview of Tamar Chugoshvili, parliamentary secretary of the Georgian Young Lawyers' Association, with the author, Tbilisi, 16 March 2010.

<sup>9</sup> Interview of Khatuna Gogorishvili with the author; interview of two parliamentary experts with the author, Tbilisi, 30 March 2010; interview of a parliamentary expert with the author, Tbilisi, 30 March 2010.

<sup>10</sup> Interview of Khatuna Gogorishvili with the author.

the required skills and the resulting lack of professionals has forced parliament to seek external help in certain areas, such as the creation of a voting records database.<sup>11</sup> As one key informant explained, the shortage of qualified staff has also undermined the legislature's ability to examine draft bills in terms of their compliance with Georgia's international commitments.<sup>12</sup>

It has also been suggested that, while committees receive ample funding, the resources allocated to factions (parliamentary groups usually formed along party lines) are much more limited. This provides the ruling party (which controls the committees and their resources) with a clear advantage over the parliamentary opposition in terms of access to resources.<sup>13</sup>

## Independence (law)

Score: 75

To what extent is the legislature independent and free from subordination to external actors by law?

Georgian parliament is mostly free from subordination to external actors by law. The fact that the president has the constitutional power to dissolve parliament could, at least in theory, compromise the legislature's independence.

The Constitution contains a number of provisions designed to safeguard the independence of the legislature. According to the Constitution, MPs have a "free mandate" which cannot be revoked by the constituents or the party that nominated an MP after he or she is elected. MPs enjoy certain immunity from prosecution. Namely, the legislature's permission is required in order to arrest an MP, to search an MP's property or to keep in custody an MP who is arrested on the spot of a crime. MPs are authorised to withhold information obtained during their work and cannot face any charges for opinions expressed as part of their parliamentary activity. Impeding an MP's work is a punishable offence.<sup>14</sup>

Under the law, the main decisions regarding the legislature's operation are made internally, without undue external interference. Parliament elects its own speaker and deputy speakers.<sup>15</sup> The speaker appoints the chief of the Parliamentary Staff, as well as the heads of different departments and services operating within the staff.<sup>16</sup> The general timetable of parliamentary work is outlined in the Parliamentary Rules of Procedure, although MPs can vote to amend the schedule.<sup>17</sup> The legislature determines its own agenda, which is compiled by the Parliamentary Bureau. The president and the cabinet can request changes to the agenda and the legislature is then to vote on these requests.<sup>18</sup> The power of calling an extraordinary session of parliament rests with the president. However, a group comprising at least a quarter of the MPs can request that the president call an extraordinary session and the legislature is to assemble within 48 hours from the submission of such a request regardless of whether or not the president formally calls a

<sup>11</sup> Interview of two parliamentary experts with the author.

<sup>12</sup> Interview of Tamar Chugoshvili, with the author.

<sup>13</sup> Interview of Levan Vepkhvadze, deputy speaker of Georgian parliament and a member of the opposition Christian-Democratic Movement, with the author, Tbilisi, 7 April 2010.

<sup>14</sup> The Constitution of Georgia, adopted on 24 August 1995, Article 52.

<sup>15</sup> *Id.*, Article 55.

<sup>16</sup> The Parliamentary Rules of Procedure, Article 256.

<sup>17</sup> *Id.*, Article 128.

<sup>18</sup> *Id.*, Articles 131-132.

<sup>19</sup> The Constitution, Article 61.

session.<sup>19</sup> Parliament can override the president's request to have a bill amended and pass the original draft by a three-fifth majority.<sup>20</sup>

Parliament's independence could, in theory, be compromised by the fact that the Constitution gives the president the power to dissolve the legislature in certain circumstances: if the legislature fails to approve the State Budget within three months from the submission of the bill by the government, fails to approve the composition of the cabinet and its program on three consecutive occasions or declares no confidence in the cabinet.<sup>21</sup> The Constitution imposes further restrictions on the president's power: parliament cannot be dismissed during the first six months of its term or the last six months of a presidential term, during a presidential impeachment procedure or during a state of emergency or war.<sup>22</sup>

## Independence (practice)

Score: 25

To what extent is the legislature free from subordination to external actors in practice?

While the Georgian parliament's independence is largely secure from a legal point of view, its actual independence is affected negatively by the current political composition, with an overwhelming majority of seats controlled by the president's party.

As the president's party controls some 80 percent of the seats in parliament, its composition precludes it from maintaining true independence from the executive or cabinet. Given the near-total dependence of Georgia's political parties on their leaders (which is discussed in greater detail in the Political Parties section of this report), this kind of composition has greatly reduced parliament's ability to act independently from the executive, leading Freedom House to conclude that the "ruling party's control over Parliament undermines the role of the legislative branch to check the executive branch".<sup>23</sup> According to the deputy speaker of parliament representing the opposition, as well as a leading Georgian NGO working closely with parliament, while there have been no instances of the executive's direct and open interference with the legislature's activities, this is primarily the result of parliament's voluntary submission to the government's will. In recent years, there has not been a single case of parliament passing a bill against the government's objection.<sup>24</sup> At the same time, according to a senior member of the parliamentary majority, many of the bills submitted by the executive branch are substantially revised before the adoption by the legislature. The 2011 bill on the reorganization of the Ministry of Environment was cited as an example of this.<sup>25</sup>

The majority of bills originate in the legislature. For example, 57.5 percent of the laws adopted in 2010 were initiated by parliament (either by a committee,

<sup>20</sup> *Id.*, Article 68.

<sup>21</sup> *Id.*, Articles 80, 81, 93.

<sup>22</sup> *Id.*, Article 51 (1).

<sup>23</sup> Freedom House, *Nations in Transit 2010*, <http://www.freedomhouse.eu/images/Reports/NIT-2010-Georgia-final.pdf>, (accessed on 2 May 2010).

<sup>24</sup> Interview of Tamar Chugoshvili with the author; interview of Levan Vepkhvadze with the author.

<sup>25</sup> TI Georgia correspondence with MP Chiora Taktakishvili, 9 June 2011.

a faction, or an MP), while the cabinet initiated 39 percent and the president initiated 3.5 percent of the laws.<sup>26</sup> Some interviewees suggested that the statistics are misleading since the parliamentary majority usually only submits draft laws with the implicit approval of the executive.<sup>27</sup>

Parliament is able to exercise a number of its legal powers without interference from other state or non-state bodies. The legislature elects the speaker and heads of committees and appoints its own technical staff, while also determining its own agenda and timetable.<sup>28</sup>

## Transparency (law)

Score: 75

To what extent are there provisions in place to ensure that the public can obtain relevant and timely information on the activities and decision-making processes of the legislature?

The Constitution and the Parliamentary Rules of Procedure generally contain adequate provisions for ensuring public access to information about the activities of the legislature, although there are some notable gaps with regards to the public's access to parliamentary sessions and certain types of information about parliament.

The Constitution states that parliamentary sessions are public except for special cases when MPs vote to hold a closed session. Session minutes (excluding secret matters) are to be published in the parliamentary newspaper.<sup>29</sup> Under the Parliamentary Rules of Procedure, plenary sessions are to be broadcast by radio and television. Media representatives that have obtained accreditation can attend the sessions. The president, the speaker, the prime minister, a cabinet member and a committee or a faction can propose to hold a plenary session (or its part) behind closed doors when matters requiring secrecy are to be discussed. Decision is made by a majority vote.<sup>30</sup>

The Parliamentary Rules of Procedure require that draft bills be posted on the legislature's website after the process of their discussion formally commences (though no specific deadline is given). Voting records are to be published in the parliamentary newspaper and also posted on the website. A parliamentary decision, resolution, declaration, statement or address, as well as an adopted law or a ratified international treaty or agreement, must be posted on the website. When an investigatory commission meets to discuss its findings, the event is to be broadcast via TV and radio.<sup>31</sup> Copies of asset declarations of all public officials (including MPs) must be made available to any interested individual or organization.<sup>32</sup>

The law contains numerous provisions to enable the public direct access to its representatives. Under the Parliamentary Rules of Procedure, the legislature is

<sup>26</sup> *Id.*

<sup>27</sup> Interview of Tamar Chugoshvili with the author; interview of Levan Vepkhvadze with the author; interview of two parliamentary experts with the author.

<sup>28</sup> Interview of Khatuna Gogorishvili with the author.

<sup>29</sup> The Constitution, Article 60.

<sup>30</sup> The Parliamentary Rules of Procedure, Article 136.

<sup>31</sup> *Id.*, Articles 67, 142, 148, 163.

<sup>32</sup> The Law on Conflict of Interest and Corruption in Public Service, adopted on, 17 October 1997, Article 18.

required to receive citizens and respond to their queries. Individuals and organisations have a right to address parliament, its various bodies or individual MPs. A special division – the Public Reception Room for Citizens – is set up in the main parliament building in order to deal with citizen complaints and letters. Parliamentary bodies and MPs are required to respond to citizen complaints and letters within a month. MPs and staff are required to allocate five hours every Monday for meetings with citizens. The speaker is required to meet citizens if the issues they have raised are of particular importance or if the relevant parliamentary bodies or MPs have failed to respond to their complaints/letters.<sup>33</sup>

Despite the numerous legal provisions in place to ensure parliamentary transparency, many are not sufficiently clear and straightforward. For example, under the Parliamentary Rules of Procedure, citizens and media representatives *can* be invited to attend full legislative sessions and committee sessions.<sup>34</sup> Thus, while the legal provisions allow the public and media to attend parliamentary sessions in theory, they essentially leave the matter up to the initiation of officials and there is no clear procedure in the law that would give the public guaranteed access. Also, while the Regulations require that information about the time and the agenda of a committee session be posted on the website two days in advance,<sup>35</sup> no similar provision seems to be in place for full plenary sessions. Also, as noted above, there is no specific deadline for posting draft bills on the website.

Finally, there is no legal requirement for parliament, as a whole, to produce and publicise reports on its activities. Only committees are required to present annual reports at the start of every autumn session.<sup>36</sup>

## Transparency (practice)

Score: 75

To what extent can the public obtain relevant and timely information on the activities and decision-making processes of the legislature in practice?

The public generally has free and unrestricted access to information about parliament's activities although, in some cases, parliament fails to act proactively and to provide certain types of information in a timely manner.

There was a general agreement among experts interviewed that the media and the civil society enjoy unrestricted access to parliament and can freely obtain the information about how it operates. Plenary sessions and committee sessions are broadcast by the 2<sup>nd</sup> Channel of the Public Broadcaster. Despite the vagueness of the legal provisions, in practice, journalists, NGO representatives and private citizens are able to attend plenary and committee sessions.<sup>37</sup> Parliament has a special department dealing with citizen requests for public information, as well as a system for tracking every single request received by the legislature.<sup>38</sup> As a result, Parliament normally responds to queries in due time.<sup>39</sup>

<sup>33</sup> The Parliamentary Rules of Procedure, Articles 205-209.

<sup>34</sup> *Id.*, Articles 48, 136.

<sup>35</sup> *Id.*, Article 48.

<sup>36</sup> *Id.*, Article 221.

<sup>37</sup> Interview of Khatuna Gogorishvili with the author; interview of Tamar Chugoshvili with the author; interview of Levan Vepkhvadze with the author.

Parliament's website ([www.parliament.ge](http://www.parliament.ge)) is mostly up-to-date and contains a current news section, daily and weekly bulletins, a schedule of activities (including the dates and agendas of committee sessions), a database of adopted laws and voting records, as well as comprehensive information about each committee, faction, and the Parliamentary Staff. The asset declarations of MPs are available on the website of the Public Service Bureau, along with asset declarations of other public officials.<sup>40</sup>

Nevertheless, there are some problems in terms of transparency of parliament's work. The most notable of these is the fact that draft bills are not always posted to the parliament's website in due time. GYLA's parliamentary secretary explained that they are always made available to interested parties upon official request, but as the Freedom of Information request procedure takes around 10 days, bills are often passed before the draft is provided to the requestor.<sup>41</sup> Some other types of important information, such as budgets, expenditure reports, verbatim transcripts of sessions and the latest annual reports of the committees are not available on the website either. A senior MP explained that, in the case of session transcripts and voting records, the amount of relevant data is too large and posting it on the website automatically is problematic from a purely technical point of view. However, she noted that the information is always made available to interested organizations and individuals upon request. Independent respondents confirmed this.<sup>42</sup>

As part of the field tests, a total of 16 requests for public information were sent to parliament (TI Georgia selected four parliamentary committees and sent four requests to each). Overall, parliament was highly responsive: of the 16 requests sent to parliamentary bodies, full information was provided in 14 cases, while one request was correctly referred to another state body. Only in one case was the requested information not provided (mute refusal). It should be noted that many of the responses sent to the various committees were answered by the head of the Organizational Department of Parliament, which indicates that the legislature has a well-established internal system for processing FOI requests.

## Accountability (law)

Score: 50

**To what extent are there provisions in place to ensure that the legislature has to report on and be answerable for its actions?**

The legal framework includes a number of provisions designed to hold parliament accountable for its actions. The biggest gap in this area is in the existing provisions, which require only limited consultation with the public during the legislative process.

The Constitutional Court has the authority to review the compliance of laws and other acts passed by parliament with the Constitution.<sup>43</sup> It can also review compliance with the process of adopting new laws and normative acts.<sup>44</sup>

<sup>38</sup> Interview of Khatuna Gogorishvili with the author; interview of Levan Vepkhvadze with the author.

<sup>39</sup> Interview of Tamar Chugoshvili with the author.

<sup>40</sup> <http://www.civil.ge/geo/article.php?id=12223> (accessed on 30 April 2010).

<sup>41</sup> Interview of Tamar Chugoshvili with the author.

<sup>42</sup> Interview of Khatuna Gogorishvili with the author.

<sup>43</sup> The Constitution, Article 89.

<sup>44</sup> The Law on Constitutional Court, adopted on 31 January 1996, Article 19.

The Parliamentary Rules of Procedure contain a number of provisions requiring MPs to report to their constituents. MPs are supposed to meet voters and respond to their queries, while also being required to report to the voters about their own and the legislature’s activities at least once every six months. MPs elected in single-seat districts are required to set up local offices in order to facilitate their communication with citizens. In addition, the first week of every parliamentary session is to be allocated for meetings with constituents.<sup>45</sup>

As noted earlier, MPs enjoy some degree of immunity from prosecution under the Constitution: they cannot be arrested or have their homes or property searched without parliament’s permission. The only exception is when an MP is arrested on the spot of a crime. In such cases, law enforcers need to immediately notify parliament and release the arrested MP unless the legislature’s permission to keep him/her in custody is obtained. Importantly, an MP cannot face charges because of the views or opinion expressed in parliament or outside it.<sup>46</sup> Additionally, the Parliamentary Rules of Procedure state that if parliament consents to an MP’s arrest, the MP will have his/her mandate suspended until the case is dropped or a court ruling is produced.<sup>47</sup>

There is no dedicated or special mechanism for dealing with complaints against the decisions and actions of the parliament or its individual members, but these can be challenged through the regular court system.

The legal provisions concerning public consultation on legislative issues are inadequate. Consulting with the public during legislative work is optional rather than mandatory. Under the Parliamentary Rules of Procedure, interested representatives of the public “may be invited” to attend discussion of draft bills in committees and given a chance to speak.<sup>48</sup> The Parliamentary Rules of Procedure also say that draft laws presented to parliament must contain a list of state, nongovernmental and international organizations or experts that were consulted during their preparation but only if such consultation took place, which can be interpreted as implying that consultation is not mandatory.<sup>49</sup> Only when amendments to the constitution are being discussed is the legislature expressly required to ensure general public discussion of the draft though, even in that case, the legal requirement is too ambiguous and could make it possible for parliament to evade genuine public consultation.<sup>50</sup> Every parliamentary committee is required to have an “academic and consultative council” made up of experts of the relevant field, who are appointed by the committee chairman.<sup>51</sup> However, the precise role of these councils is not defined clearly in the law.

## Accountability (practice)

Score: 50

To what extent do the legislature and its members report on and answer for their actions in practice?

The vague and limited legal provisions for the legislature to seek public consultation are also borne out in practice. While parliament and its committees sometimes seek

<sup>45</sup> *Id.*, Articles 13, 18, 128.

<sup>46</sup> *Id.*, Article 52.

<sup>47</sup> *Id.*, Article 20.

<sup>48</sup> *Id.*, Article 153.

<sup>49</sup> *Id.*, Article 147.

<sup>50</sup> The Constitution, Article 102.

<sup>51</sup> The Parliamentary Rules of Procedure, Article 53.

input from the wider public on draft legislation, this is not done regularly. MPs make some efforts to report back to their constituents but the efforts are not consistent.

A senior MP told TI Georgia that parliamentary committees usually consult with their respective councils (made up of experts and civil society representatives) and noted that the extent of consultation generally depends on the amount of public attention the bill in question has drawn.<sup>52</sup> According to another expert interviewee, while parliament allows for and occasionally even proactively seeks input from civil society, this is done neither regularly nor consistently.<sup>53</sup> The level of commitment to public consultation varies greatly across the committees. The fact that parliament often devotes very little time to the discussion of a bill before passing it also severely limits the possibility of public involvement.<sup>54</sup> At the same time, the lack of public involvement can, at least partially, be attributed to the Georgian civil society itself, as only a handful of civil society organizations follow the legislative process regularly and offer input actively.<sup>55</sup>

Parliament, as a whole, is not required by the law to report to the general public. However, as noted in the Transparency (Practice) section of this report, the legislature has generally done well in terms of informing the public about its activities, inter alia, through its website.

Majoritarian MPs, who are required by law to regularly report to their constituents, do make limited efforts in this regard but often fail to follow the accountability procedures consistently. According to a number of TI Georgia's interviews, MPs tend to communicate with constituents actively during election campaigns but they do so much less outside of the election season.<sup>56</sup> According to deputy speaker Vepkhvadze, Majoritarian MPs are generally successful in maintaining a link with the voters due to the fact that they are allowed, under the law, to use state funds to set up offices in their constituencies. The deputy speaker suggested that it would be useful to introduce a similar provision for parliamentary factions, so that MPs elected through the nationwide proportional vote would have access to the same kind of resources.<sup>57</sup>

## Integrity mechanisms (law)

Score: 75

### To what extent are there mechanisms in place to ensure the integrity of members of the legislature?

Save for some minor gaps, the existing legal framework contains adequate provisions on parliamentary integrity. There is no code of conduct for MPs, nor any provisions mandating either parliament or an independent body to deal with ethical issues within parliament. However, the Constitution and other laws contain numerous provisions designed to promote the integrity of MPs.

The Constitution prohibits MPs from holding any other position in the state service or engaging in commercial activities. MPs who violate this provision are to have their mandate revoked.<sup>58</sup>

<sup>52</sup> Interview of Khatuna Gogorishvili with the author.

<sup>53</sup> Interview of Tamar Chugoshvili with the author.

<sup>54</sup> Interview of two parliamentary experts with the author.

<sup>55</sup> Interview of Tamar Chugoshvili with the author; interview of Levan Vepkhvadze with the author.

<sup>56</sup> Interview of Tamar Chugoshvili with the author; interview of two parliamentary experts with the author.

<sup>57</sup> Interview of Levan Vepkhvadze with the author.

<sup>58</sup> The Constitution, Article 53.

The Law on Conflict of Interest and Corruption in Public Service establishes a number of rules to uphold the integrity of public officials, including MPs. The total value of the gifts received by a public official during a single year must not exceed 15 percent of his/her annual salary, while the value of a single gift should not be higher than 5 percent. A gift is defined in the law as a property or a service offered to a public official or his/her family members free of charge or at a discount price, as well as a full or partial release from property-related obligations which constitutes an exception to a general rule. There are some exceptions to the rules, such as grants, scholarships and state awards. Public officials are not allowed to own any stocks or shares in the enterprises whose activities they are supposed to oversee as part of their official duties.<sup>59</sup> Public officials are prohibited from demanding remuneration for the service that they are required to provide to citizens as part of their job. There are also restrictions in place for the families of public officials. Public officials and their close relatives cannot enter property-related deals with the public agencies where they hold positions. The relative of a public official cannot be appointed to a position subordinated to the official unless the appointment is made through an open competition.<sup>60</sup>

Under the same law, public officials are required to submit an asset declaration to the Public Service Bureau one month after their appointment; individuals running for parliament are required to submit such declarations within a week of their registration as candidates. Any individual or organization is entitled to receive a copy of a public official's asset declaration from the Public Service Bureau. Public officials who fail to submit asset declarations in due time are to be fined and will also face criminal charges if they fail to meet this legal requirement again.<sup>61</sup> According to the Parliamentary Rules of Procedure, the asset declarations of MPs are to be reviewed regularly by the Parliamentary Committee on Procedural Issues and Rules.<sup>62</sup>

On the negative side, there are no legal provisions regarding a "cooling off" period for MPs planning to enter the private sector after leaving parliament. The Law on Lobbyist Activities also has a number of loopholes that obscure the full disclosure of MP and public official's relations with lobbyists. While the Parliamentary Staff has a responsibility to keep a registry of lobbyists,<sup>63</sup> there is no requirement for individual MPs to record or disclose their contacts with them. Public officials (including MPs) are required to disclose any personal interests in entrepreneurial activities upon their appointment or election, or as soon as such interests arise. MPs who have disclosed such interests in writing are allowed (but not required) to refrain from participation in the discussion of relevant issues.<sup>64</sup>

<sup>59</sup> The Law on Conflict of Interest and Corruption in Public Service, Article 13.

<sup>60</sup> *Id.*, Articles 5, 9, 10, 13.

<sup>61</sup> *Id.*, Articles 14, 19, 20.

<sup>62</sup> The Parliamentary Rules of Procedure, Article 12.

<sup>63</sup> The Law on Lobbyist Activities, adopted on 30 September 1998, Article 5.

<sup>64</sup> *Id.*, Article 3.

## Integrity mechanisms (practice)

Score: 50

To what extent is the integrity of legislators ensured in practice?

While the legal framework is extensive and mandates MPs to follow a number of rules, there have been very few instances of legislators being punished for

these types of offences. Whether this trend is an indicator of low incidence of violations or of a lack of political will to sanction the offenders remains a subject of debate.

The most recent case of an MP being sanctioned for the breach of conflict of interest rules occurred in October 2006 when parliamentary majority member Gia Nutsubidze was expelled from the legislature (and arrested) for his attempt to bribe deputy minister of education.<sup>65</sup> Earlier the same year, opposition Republican Party member Valeri Gelashvili was stripped of his parliamentary seat after the Committee on Procedural Issues and Rules found that he was running a commercial enterprise and had thus engaged in commercial activities incompatible with his position. Opposition groups voiced allegations at the time that the evidence presented by the committee was flawed and Gelashvili was actually being punished for his affiliation with an opposition party.<sup>66</sup>

Deputy speaker of parliament from the opposition told TI Georgia that, in the current parliament, there has not been a single case of an MP having been sanctioned for violating integrity rules related to gifts, conflict of interest, etc. In his opinion, this is the result of a lack of political will rather than a lack of infringements by MPs.<sup>67</sup> Due to the lack of evidence, it is difficult to draw any definitive conclusions on this matter.

Several lobbyists have registered with parliament.<sup>68</sup> However, since individual MPs are not required by the law to record or disclose their contacts with lobbyists, this is not done in practice either.

On the positive side, MP's asset declarations are published and available for scrutiny on the website of the Public Service Bureau.<sup>69</sup> There is, however, no dedicated mechanism for their verification.

## Role: Executive Oversight (law and practice)

Score: 25

### To what extent does the legislature provide effective oversight of the executive?

The current legislation provides the Georgian parliament with a number of potent tools for exercising oversight of the executive. However, these are generally not utilised effectively in practice due to the parliamentary majority's close ties with the executive. The Constitution establishes parliament's general powers in terms of executive oversight. The same powers are set out in greater detail in the Parliamentary Rules of Procedure.

Under the Constitution, one of parliament's primary roles is to control the work of the executive. Parliamentary committees are established to facilitate over-

<sup>65</sup> Civil.ge, "Parliament Has Revoked Gia Nutsubidze's Immunity", 28 October 2006, <http://www.civil.ge/geo/article.php?id=14104>, (in Georgian) (accessed on 15 June 2011).

<sup>66</sup> Civil.ge, "Valeri Gelashvili Has Been Stripped of MP Mandate", 1 April 2006, (in Georgian) <http://www.civil.ge/geo/article.php?id=12223> (accessed on 30 April 2010).

<sup>67</sup> Interview of Levan Vepkhvadze with the author.

<sup>68</sup> Interview of Khatuna Gogorishvili with the author.

<sup>69</sup> <http://www.csb.gov.ge>

sight, and parliament can also set up ad hoc investigatory commissions. MPs have a right to send questions to members of the executive who are obliged to answer. Government members are also required to attend plenary or committee sessions whenever summoned, to answer questions of MPs and to report on their activities.<sup>70</sup>

The Parliamentary Rules of Procedure further highlight oversight as one of parliament's "constitutional prerogatives", giving it the mandate to control the activities of the government and other bodies or officials that are accountable to it. Parliament is also mandated to oversee compliance of normative acts adopted by the executive with the Constitution and other laws.<sup>71</sup>

Under the Parliamentary Rules of Procedure, both individual MPs and parliamentary bodies have rights and powers designed to facilitate their supervisory activities. Aside from having the right to send queries to executive bodies mentioned earlier, MPs must also be given access to all types of information essential to the exercise of their duties unless stipulated otherwise by the law. MPs can attend the sessions of executive bodies and draw their attention to violations of law. They must be given unhindered access to all administrative buildings unless stipulated otherwise by the law. The speaker of parliament can access all penitentiary institutions without a special permit and can also delegate this right to any MP. Parliamentary committees are to review the work of the government and other bodies accountable to the legislature, be given access to all the relevant information and are to present their findings to parliament. Government members and officials from other bodies accountable to parliament are required to present all requested materials to the committees in due time and to appear at committee sessions in person and answer MP questions whenever summoned.<sup>72</sup>

The president is required to provide annual reports about the state of affairs in the country to parliament,<sup>73</sup> while the prime minister is required to report to parliament annually on the implementation of the government programme. The legislature can also request that the prime minister submit an extraordinary report, which must be presented within 15 days.<sup>74</sup>

Parliament can establish investigatory commissions that have extensive powers under the Parliamentary Rules of Procedure. An investigatory commission can be established in order to examine alleged violations committed by public officials or to examine matters of particular importance. Parliament can also opt to establish an anti-corruption investigatory commission with the specific task of dealing with alleged instances of corruption. Representatives of the parliamentary majority must not comprise more than a half of the members of an investigatory commission. Appearing before an investigatory commission is mandatory. State bodies, public officials, private organizations and individuals are required to provide an investigatory commission with all the necessary materials and the commission must also be given access to the materials of a criminal

<sup>70</sup> The Constitution, Articles 48, 56, 59, 60.

<sup>71</sup> The Parliamentary Rules of Procedure, Articles 2-3, 202.

<sup>72</sup> *Id.*, Articles 15, 17, 42-44.

<sup>73</sup> The Constitution, Article 73.

<sup>74</sup> The Parliamentary Rules of Procedure, Articles 194, 196.

case under investigation. Whenever the inquiry reveals violations of the law, the investigatory commission is authorized to request the state bodies responsible for preventing/reacting to such violations to take appropriate measures. State bodies must report back to the commission on how they have followed up on the request. An investigatory commission can request that one of its members be allowed to enter penitentiary institutions without a special permit. The commission can recommend that parliament start the process of an official's impeachment.<sup>75</sup>

Parliament has the power to influence and scrutinise the national budget through all of its stages. Under the Parliamentary Rules of Procedure, the draft budget submitted by the cabinet is to be discussed within the parliamentary committees and factions, as well as the majority and the minority. The opinion of each of these groups is sent, via the Committee on Finance and Budget, to the speaker, who forwards the comments to the government. The government sends a revised draft back to parliament for discussion at a plenary session. The same parliamentary groups submit a second round of comments on the revised draft to the speaker via the Committee on Finance and Budget. The speaker forwards these to the government. The government then presents a final draft which is to be put to the vote at a plenary session.<sup>76</sup>

Once the budget is approved, the government is to submit quarterly implementation reports to the legislature, while the committees conduct quarterly reviews in their respective fields and are authorised to request relevant information from executive bodies. The government is to submit a final implementation report within three months from the end of the fiscal year to be approved by parliament. If not approved, the president may dismiss the cabinet. Parliament can also recommend that the president suspend spending if a violation is uncovered by an investigatory commission or parliamentary rapporteurs<sup>77</sup>. Any changes in the state budget (with some minor exceptions) require a legislative amendment and therefore parliamentary consent.<sup>78</sup>

Another means of parliamentary oversight of the executive, which is granted under the Constitution, regards the appointment of the prime minister and cabinet members. The president nominates (after consulting with parliamentary factions) the candidate for the prime minister's position, who then nominates (in agreement with president) other members of the cabinet. Parliament, thus, does not play a major role in the selection of candidates for cabinet posts although it can vote against the cabinet nominated by the president. If parliament votes against the cabinet on three consecutive occasions, the president will have the option of dissolving the legislature and unilaterally appointing the prime minister, who will then be able to appoint cabinet ministers without passing parliamentary approval.<sup>79</sup>

Parliament can declare no confidence in the government, although the president can opt to disagree with the legislature's decision. However, if parliament

<sup>75</sup> *Id.*, Articles 54- 55, 58, 63-64, 67.

<sup>76</sup> *Id.*, Articles 179-182.

<sup>77</sup> Articles 233-235 of the Parliamentary Rules of Procedure. A rapporteur is an MP appointed by Parliament, the Bureau or a committee to examine an important matter and to prepare a relevant draft decision.

<sup>78</sup> The Budget Code, Article 40.

<sup>79</sup> The Constitution, Article 80.

declares no confidence in the government again within the next 100 days, the president will have to choose between sacking the government and dissolving parliament. The legislature can also declare “unconditional no confidence” in the government. This kind of a decision requires a three-fifths majority and leaves the president with no other option but to dismiss the cabinet.<sup>80</sup>

Parliament may also call into question the appointment of an individual cabinet member outside of the nomination process, through a simple majority vote. The prime minister must then either remove the official in question or present a substantiated refusal to parliament.<sup>81</sup>

The chairman of the Chamber of Control (the supreme audit institution) is elected by parliament upon the speaker’s nomination.<sup>82</sup> The Public Defender (Ombudsman) is also elected by parliament, with the president, parliamentary factions and groups of six MPs or larger having the right to nominate candidates.<sup>83</sup> However, as a result of the December 2009 amendments to the Electoral Code, parliament has no role in the appointment of the Central Electoral Commission chairperson. (Instead, the chairperson is elected by the commission members, who are appointed by political parties upon the president’s nomination).<sup>84</sup>

The Constitution also grants parliament the power to impeach the president. The question of impeachment can be raised with a one-quarter quorum, resulting in the transfer of the case to the Supreme Court (or to the Constitutional Court, where alleged constitutional violations are concerned). Should the judiciary confirm that the president has violated the law, a simple majority is required to have the question of impeachment put to vote; actual impeachment requires a two-thirds majority. Should the legislature fail to make either a positive or a negative a decision on impeachment within 30 days, it is prohibited from bringing the same charges against the president for a one year period. The impeachment procedure cannot take place during a state of emergency or war.<sup>85</sup> Parliament can also use similar procedures to impeach the Supreme Court chairman, cabinet members, the head of the Chamber of Control and board members of the National Bank.<sup>86</sup>

Parliament cannot directly control or monitor public contracting, aside from approving the budget and reviewing budget implementation reports. The State Procurement Agency (the body in charge of coordinating and monitoring public contracting) is established by and accountable to the government. The head of the agency is appointed by the prime minister, while parliament has no role in the process.<sup>87</sup> Parliament can indirectly oversee public contracting via the supreme audit institution – the Chamber of Control – which reports to the legislature. MPs can also obtain information from the State Procurement Agency using their right to obtain information from the executive.

The Council of Europe’s Venice Commission identified a number of significant flaws in the legal provisions described above. Specifically, the Commission has

<sup>80</sup> The Constitution, Article 81.

<sup>81</sup> *Id.*, Article 59.

<sup>82</sup> The Parliamentary Rules of Procedure, Article 187.

<sup>83</sup> *Id.*, Article 188.

<sup>84</sup> The Electoral Code, adopted on 2 August 2001, Article 27.

<sup>85</sup> The Constitution, Article 63.

<sup>86</sup> *Id.*, Article 64.

<sup>87</sup> The Law on State Procurement, adopted on 20 April 2005, Article 4.

criticised the provision in Article 93 of the Constitution whereby the president can approve the state budget through a decree in the event of parliament's failure to approve it within the legal deadline, noting that the president should not be able to pass the budget without parliamentary approval. Also, as the Venice Commission has rightly pointed out, the current legislation allows the president to ignore a parliamentary vote of no confidence in the government and deprives parliament of the possibility of amending the draft budget submitted by the government. The legislature's power to influence the budget is thus unjustifiably limited to simply accepting or rejecting the government's draft.<sup>88</sup>

There are valid doubts regarding the ability of parliament and its committees to apply their broad powers in the area of executive oversight in practice. Close ties between the ruling party's representatives in parliament and its appointees in government are a major factor here.<sup>89</sup> Further, committee chairs (all of whom represent the ruling National Movement) are rarely willing to confront the ministers affiliated with their party.<sup>90</sup> A senior MP from the ruling party cited the fear of media fallout as the reason for such behaviour, noting that committees usually opt to conduct oversight in a low-profile manner (i.e. without formally summoning ministers to committee meetings) in order to avoid conveying to the public the impression of a conflict inside the party.<sup>91</sup>

In a 2008 report, Freedom House noted that parliament tends to be passive in the legislative process, often failing to ensure a detailed and substantial discussion of the bills originating from the executive.<sup>92</sup> The situation has not substantially changed since then. Ministers are occasionally summoned to parliament to answer before a commission or a plenary session but proposals submitted by the government are rarely the subject of heated debates in the legislature.<sup>93</sup> MPs do not actively use their legal power to send queries to and obtain information from the executive branch.<sup>94</sup>

A senior MP from the ruling party, however, challenged the view that parliament is a rubber stamp to the executive's initiatives, recalling that parliament did not approve the first draft of the 2010 state budget in late 2009 and sent it back to the government for adjustment. In her view, the public is simply not aware of the work that the legislature conducts in this area because the media show little interest in what they perceive as parliament's routine activities.<sup>95</sup> Another senior MP noted that the president's and the prime minister's recent appearances in parliament were followed by "intensive" debates.<sup>96</sup>

According to a deputy speaker, representing an opposition party, opposition MPs face problems in terms of access to information about the government's activities. He recalled that he was unable to obtain information from the Economic Development Ministry and the Finance Ministry until he asked a committee chairman (representing the ruling party) to intervene on his behalf.<sup>97</sup>

The legislature has never used its power to impeach executive officials or declare no-confidence in them. In 2008, parliament set up an ad hoc commission

<sup>88</sup> European Commission for Democracy Through Law, *Opinion on the Draft Amendments to the Constitution of Georgia*, adopted by the Venice Commission at its 58<sup>th</sup> plenary session (Venice, 12-13 March 2004), pp 3-6.

<sup>89</sup> Interview of Levan Vepkhvadze with the author.

<sup>90</sup> Interview of two parliamentary experts with the author.

<sup>91</sup> Interview of Khatuna Gogorishvili with the author.

<sup>92</sup> Freedom House, *Nations in Transit: Georgia (2008)*, <http://www.freedomhouse.org/template.cfm?page=47&nit=452&year=2008> (accessed on 28 April 2010)

<sup>93</sup> Interview of two parliamentary experts with the author.

<sup>94</sup> *Id.*

<sup>95</sup> Interview of Khatuna Gogorishvili with the author.

<sup>96</sup> TI Georgia correspondence with Chiora Taktakishvili.

<sup>97</sup> Interview of Levan Vepkhvadze with the author.

to examine information related to the 2008 Georgian-Russian war. A number of high-ranking officials, including the president, appeared before the commission in the course of its work. However, overall, parliament's powers with regard to commissions of inquiry are not exercised to their full extent. For example, parliament has repeatedly ignored the Public Defender's recommendation to set up commissions of inquiry over alleged human rights violations committed by executive bodies/officials.<sup>98</sup> Also, parliament has traditionally opted to set up simple ad hoc commissions instead of investigatory ad hoc commissions, as the latter type has broader powers in terms of requesting information from the executive, summoning executive officials, etc. The ruling party seems to be unwilling to provide the opposition (which appoints half of the members in both types of commissions) with this potent tool.<sup>99</sup>

Despite some gaps, the legal framework provides parliament with various tools for exercising executive oversight. However, these are not utilised effectively in practice. The weakness of opposition groups in parliament and the fact that the president's party has controlled at least two-thirds of the seats since 2004 has had a negative impact on various aspects of the legislature's oversight activities.<sup>100</sup>

#### Role: Legal reforms (law and practice)

Score: 50

#### To what extent does the legislature prioritise anti-corruption and governance as a concern in the country?

In recent years, the Georgian parliament has adopted a number of laws and legislative amendments designed to reduce corruption and improve governance. However, parliament does not actively monitor their implementation in practice and MPs do not engage in other types of anti-corruption activities either.

The Law on Corruption and Conflict of Interest in Public Service was amended multiple times every year between 2005 and 2009. Under these amendments, among other things, the list of the bodies and officials to whom this law applies was expanded, rules on accepting gifts were specified in further detail, the scope of public officials' asset declarations was expanded and the responsibility for collecting and publicizing asset declarations was assigned to the Public Service Bureau. Importantly, criminal punishment was introduced for public officials who repeatedly fail to submit asset declarations and extensive provisions on whistleblower protection were added to the law.

In 2005, parliament passed the Law on State Procurement<sup>101</sup> whereby the State Procurement Agency was established. The law details the procedures of government contracting and deals with a number of important issues, including conflict of interest, monitoring procedures and transparency of procurement. Fur-

<sup>98</sup> Interview of Tamar Chugoshvili with the author.

<sup>99</sup> Interview of Levan Vepkhvadze with the author.

<sup>100</sup> Bertelsmann Stiftung, *BTI 2010 – Georgia Country Report*, (Gutersloh: Bertelsmann Stiftung, 2009), pp 4, 10.

<sup>101</sup> The Georgian Law on State Procurement, adopted on 20 April 2005.

ther amendments were introduced in 2009 with the aim of enhancing transparency of the procurement process.

In 2008, parliament adopted a new law on the Chamber of Control which was an important part of the general policy of transforming the chamber into a modern supreme audit institution.<sup>102</sup> Unlike the old legislation, the new law defines different types of audits to be conducted by the chamber, contains detailed instructions regarding the chamber's operation and establishes a number of transparency, accountability and integrity rules for the agency's internal governance.

In 2010, parliament adopted the Law on Internal State Audit and Inspection which requires all major government agencies to set up special departments responsible for internal audit and monitoring of adherence to integrity rules.<sup>103</sup>

As for international anti-corruption agreements, in 2008, parliament ratified the United Nations Convention Against Corruption and the Council of Europe Criminal Law Convention on Corruption. However the country has neither signed nor ratified the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism.<sup>104</sup>

If implemented in practice, all of the aforementioned laws and legal amendments are likely to strengthen the integrity, transparency and accountability of the country's governance system. It has been suggested, however, that parliament does not actively monitor the implementation of the legislation it has adopted.<sup>105</sup> The weakness of parliamentary oversight in practice is the key factor here. Beyond the adoption of law, Georgian MPs do not generally get involved in anti-corruption efforts. There have been no high-profile cases of MPs establishing ad hoc commissions on anti-corruption issues or sending corruption-related queries to the executive branch in recent years. A senior member of the parliamentary majority explained this by noting that the law enforcement agencies have been very effective in combating corruption, eliminating the need for MPs to resort to these kinds of measures.<sup>106</sup>

<sup>102</sup> Chamber of Control of Georgia, *Strategic Development Plan for 2009-2011*, (Tbilisi: Policy and Management Consulting Group, 2009), 5, (in Georgian).

<sup>103</sup> The Law on Internal State Audit and Inspection, adopted on 26 March 2010.

<sup>104</sup> OECD Anti-Corruption Network for Eastern Europe and Central Asia, Istanbul Anti-Corruption Action Plan, *Second Round of Monitoring, Georgia Monitoring Report*, (Paris: OECD ACN, 2010), 17.

<sup>105</sup> Interview of Tamar Chugoshvili with the author.

<sup>106</sup> TI Georgia correspondence with MP Chiora Taktakishvili.

# 2 Executive Branch

## Summary

The executive is the strongest branch of authority in Georgia both in law and in practice and its capacity has improved considerably as a result of reforms and a general increase in government revenues since 2004. However, the executive's accountability is not ensured adequately in practice due to the weakness of other bodies such as Parliament and the judiciary. Georgia has extensive integrity rules for executive officials but lacks established and functioning mechanisms for their implementation. The executive branch has had some significant achievements in improving the public sector and reducing corruption though important challenges remain in both areas.

The table below presents the indicator scores summarising the Executive's capacity, internal governance and role within the Georgian integrity system. The remainder of this chapter presents a qualitative assessment for each indicator.

### Total Score: 69/100

Dimension	Indicator	Law	Practice
Capacity 92/100	Resources	—	75
	Independence	100	100
Governance 54/100	Transparency	50	50
	Accountability	75	25
	Integrity	75	50
Role 63/100	Public Sector Management		50
	Legal System		75

## Structure and Organisation

The executive branch of authority in Georgia consists of the president and the cabinet.<sup>1</sup> The cabinet is made up of the prime minister and 16 ministers who are in charge of respective ministries,<sup>2</sup> as well as three ministers of state who are not in charge of a ministry but are responsible for coordination of government policies in specific areas.<sup>3</sup>

Prior to 2004, the president was both the head of state and the head of executive branch under the Constitution. Following the February 2004 constitutional amendments, the position of prime minister was created and the president only retained the title of the head of state.<sup>4</sup> However, as the Council of Europe's Venice Commission noted, while the 2004 amendments aimed at replacing Georgia's presidential system of government with a semi-presidential one, the intention was not fully realised and the president retained strong powers.<sup>5</sup> The prime minister is selected by the president and appointed with parliamentary approval. The president also submits a list of cabinet members (selected by the prime minister) for parliamentary vote.<sup>6</sup> The president essentially remains the head of the executive branch: he/she can dismiss the prime minister or the entire cabinet, while also being able to dismiss some of the ministers (the ministers of defence, internal affairs and justice) directly. The prime minister requires presidential approval to appoint cabinet members,<sup>7</sup> while the president can call and lead cabinet meetings<sup>8</sup> and also has the power of suspending or cancelling the cabinet's decisions.<sup>9</sup>

## Assessment

### Resources (Practice)

Score: 75

To what extent does the executive have adequate resources to effectively carry out its duties?

The funding allocated to the agencies of Georgia's executive branch has increased dramatically over the last few years, enabling these agencies to perform their most important functions adequately. However, frequent changes in ministry staff make service in executive bodies less attractive to qualified professionals.

Major improvements in tax collection that occurred after the current leadership's accession to power in 2004 resulted in a rapid increase in state revenues, which grew from GEL 2.5 billion (USD 1.5 billion)<sup>10</sup> in 2004 to GEL 7.6 billion (USD 4.5 billion) in 2008. The recent economic slowdown caused by the global financial crisis and the 2008 Georgian-Russian war led to a decline in state revenues, although they are still amounted to GEL 6.9 billion (USD 4.1 billion) in 2010.<sup>11</sup> The resources allocated to various state agencies, including most of the bodies that make up the executive branch, have thus increased significantly in recent years. For example:<sup>12</sup>

<sup>1</sup> The official term used in the Georgian Constitution is "government". However, in order to make a distinction between the government in general and the executive branch, it will be referred to as "cabinet" throughout this chapter.

<sup>2</sup> The Ministry of Regional Development and Infrastructure, the Ministry of Finance, the Ministry of Education and Science, the Ministry of Sport and Youth Affairs, the Ministry of Environment and Natural Resources, the Ministry of Economy and Sustained Development, the Ministry of Energy, the Ministry of Defence, the Ministry of Justice, the Ministry of Culture and Protection of Historic Monuments, the Ministry of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees, the Ministry of Foreign Affairs, the Ministry of Agriculture, the Ministry of Internal Affairs, the Ministry of Labour, Health and Social Protection, the Ministry of Prisons, Probation and Legal Assistance.

<sup>3</sup> The Minister of State for Integration with European and Euro-Atlantic Structures, the Minister of State for Reintegration and the Minister of State for Diaspora Affairs.

<sup>4</sup> The Constitution of Georgia, adopted on 24 August 1995, Article 69.

<sup>5</sup> European Commission for Democracy through Law (Venice Commission), *Opinion on the Draft Amendments to the Constitution of Georgia*, adopted by the Venice Commission at its 58<sup>th</sup> Plenary Session, Venice, 12-13 March, 2.

<sup>6</sup> The Constitution of Georgia, Article 80.

<sup>7</sup> *Id.*, Article 73.

<sup>8</sup> *Id.*, Article 78.

<sup>9</sup> *Id.*, Article 73.

<sup>10</sup> Conversion rate as of 26 July 2011 throughout the report. Source: [www.oanda.com](http://www.oanda.com)

<sup>11</sup> The website of the Georgian Ministry of Finance, *Budget Revenues in 2005-2010*, <http://www.mof.ge/budget> (accessed on 9 August 2010).

<sup>12</sup> The budget figures for 2004 are taken from the Ministry of Finance website: [http://www.mof.ge/budget/by\\_year/2004/](http://www.mof.ge/budget/by_year/2004/) (accessed on 9 August 2010); The budget data for 2010 is taken from: The Law on Georgian State Budget for 2010 (Shortened Version), <http://www.mof.ge/4069> (accessed on 9 August 2010).

	2004 budget (GEL)	2010 budget (GEL)
Presidential Administration	8 million	17 million
Government Chancellery	3 million	9 million
Justice Ministry	22 million	45 million
Healthcare Ministry	400 million	1.3 billion
Education Ministry	60 million	400 million

According to an advisor to the prime minister, along with the general increase in the budget allocations, an overall staff reduction and optimization has made it possible for the ministries to offer higher salaries to their employees and to attract qualified professionals.<sup>13</sup> Another government advisor told TI Georgia that the current level of funding makes it possible for the executive branch to compete with the private sector on the labour market.<sup>14</sup> Both interviewees noted that the executive branch presently has sufficient resources to perform its functions effectively.

Ghia Nodia, head of a leading Georgian think tank – the Caucasus Institute for Peace, Democracy and Development, told TI Georgia that, while ministries still face some problems in terms of resources, the improvements in funding have enabled them to perform their primary functions adequately. However, according to Nodia, since changes in a ministry’s political leadership often result in the dismissal of civil servants employed there, the public generally views ministry jobs as an unstable type of employment, which could discourage some highly-qualified potential candidates from applying.<sup>15</sup>

## Independence (law)

Score: 100

### To what extent is the executive independent by law?

Georgia’s legal framework does not contain any provisions that would unduly restrict the executive’s activities and allow for excessive intervention by other branches of government in its operation. On the contrary, as noted in the Bertelsmann Transformation Index report on Georgia, the executive enjoys “almost unrivalled power” under the country’s current constitutional system.<sup>16</sup>

## Independence (practice)

Score: 100

### To what extent is the executive independent in practice?

In practice, as well as in the law, the Executive is the strongest branch of authority in Georgia. There have been no cases of undue interference by other actors (such as the Legislature or the military) in its activities.<sup>17</sup>

<sup>13</sup> Interview of Tamar Kovziridze, advisor to the prime minister of Georgia, with the author, Tbilisi, 29 June 2010.

<sup>14</sup> Interview of Vakhtang Lezhava, advisor to the prime minister of Georgia, with the author, Tbilisi, 12 July 2010.

<sup>15</sup> Interview of Ghia Nodia, head of the Caucasus Institute for Peace, Democracy and Development, with the author, Tbilisi, 18 August 2010.

<sup>16</sup> Bertelsmann Stiftung, *BTI 2010 – Georgia Country Report* (Gutersloh: Bertelsmann Stiftung, 2009), 8.

<sup>17</sup> Interview of Gia Nodia with the author.

## Transparency (law)

Score: 50

### To what extent are there regulations in place to ensure transparency in relevant activities of the executive?

There are robust legal mechanisms in place for ensuring the transparency of the government budget and the assets of executive officials. However, the transparency provisions concerning some aspects of the executive's operation, such as cabinet meetings, are inadequate.

While the law allows the cabinet to invite the media to a session meeting or hold an «open meeting» which members of the general public may attend,<sup>18</sup> there are no specific mechanisms in place to ensure that the content of cabinet sessions and discussions is accessible to the public.

The law does not require the cabinet to produce minutes of its meetings. Instead, according to the Government Regulations, the prime minister can choose to order the government to produce the minutes or an audio recording of a meeting.<sup>19</sup> There is no provision in the law requiring the government to publicize the minutes when they are produced. There is no legal provision requiring that the executive's activities be recorded in a single information system, although all of the government's and the president's decisions that qualify as normative acts must be entered into the official registry of normative acts.<sup>20</sup>

On the positive side, under the Law on Conflict of Interest and Corruption in Public Service, executive branch officials are required to submit asset declarations to the Civil Service Bureau within two months from accession to office. Officials must submit such declarations annually and also within a month from leaving the office. Any interested person/organisation can request and obtain a copy of an official's asset declaration from the Civil Service Bureau. Officials who fail to submit asset declarations will face fines and even criminal charges.<sup>21</sup> One significant shortcoming of the legal provisions governing asset declarations is that they do not establish a verification mechanism.

The Budget Code highlights transparency as one of the core principles of Georgia's budget system, stating that all budgets and the reports on their implementation must be made public.<sup>22</sup> The Code requires that the draft State Budget and the attached materials be made available to the public immediately after their submission to parliament.<sup>23</sup> The annual State Budget is a law and must therefore be published in the same manner as any other piece of legislation passed by parliament. In addition, the Parliamentary Rules of Procedure specifically require that the State Budget, once approved by the legislature, be made available to the public.<sup>24</sup>

<sup>18</sup> The Government Regulations, Articles 20, 23.

<sup>19</sup> *Id.*, Article 23.

<sup>20</sup> The Law on Normative Acts, Article 29.

<sup>21</sup> The Law on Conflict of Interest and Corruption in Public Service, adopted on 17 October 1997, Articles 14-20.

<sup>22</sup> The Budget Code of Georgia, adopted on 18 December 2009, Article 4.

<sup>23</sup> *Id.*, Article 38.

<sup>24</sup> The Parliamentary Rules of Procedure, adopted on 17 February 2004, Article 182.

## Transparency (practice)

Score: 50

To what extent is there transparency in relevant activities of the executive in practice?

The executive branch proactively provides some types of information for public scrutiny. For example, cabinet decrees and decisions, the government budget and the asset declarations of executive officials can be accessed online. However, both the president's website and the websites of government ministries are inadequate in terms of the information provided. During the NIS field tests, the selected ministries only fully answered half of the submitted requests for public information, and four of the total 12 requests received no response or a refusal to answer.

Some important types of information about the executive are available for public scrutiny online. The cabinet website<sup>25</sup> contains a database of government decisions and decrees adopted over the last five years.<sup>26</sup> Agendas and summaries of cabinet meetings are also available.<sup>27</sup> Detailed information about the cabinet's budget can be obtained from the Ministry of Finance website.<sup>28</sup> Executive branch officials submit their asset declarations to the Civil Service Bureau and they are accessible via a special website.<sup>29</sup> However, it has been suggested that the declarations often contain inaccurate information and misleading information about the origin and actual amounts of the assets.<sup>30</sup> There is no mechanism to verify the asset declarations and no routine checks are carried out by a designated agency.

The president's website<sup>31</sup> only provides general information about the presidential administration along with press releases regarding the president's activities. Most importantly, presidential decrees and other decisions are not posted to the website.

In 2009, the Tbilisi-based NGO Institute for Development of Freedom of Information conducted an audit of all government ministry websites. The website of the Ministry of Finance was awarded the highest score of all ministry websites in the survey, but was only assessed as 41 percent transparent. All other ministries scored below 25 percent. The analysis concluded that Georgian ministries presently do not view their websites as an important tool for disseminating information and communicating with the public. The assessment (which was based on extensive criteria, including comprehensiveness, topicality and accessibility) found that the websites carried insufficient information about the general structure of the ministries and the roles of their units, the databases kept by the ministries, the activities of the ministries, the laws and other legal acts governing the operation of the ministries, the procedures for individuals and organisations to submit requests or appeals to the ministries, the activities of the ministries in the field of public procurement, and the staffing and financial policies.<sup>32</sup>

<sup>25</sup> <http://www.government.gov.ge>

<sup>26</sup> [http://www.government.gov.ge/old/index.php?lang\\_id=GEO&sec\\_id=49](http://www.government.gov.ge/old/index.php?lang_id=GEO&sec_id=49) (accessed on 5 August 2010).

<sup>27</sup> [http://www.government.gov.ge/old/index.php?lang\\_id=GEO&sec\\_id=44](http://www.government.gov.ge/old/index.php?lang_id=GEO&sec_id=44) (accessed on 5 August 2010).

<sup>28</sup> <http://www.mof.ge/budget> (accessed on 5 August 2010).

<sup>29</sup> <http://www.declaration.ge/csb/main.seam>. (accessed on 5 August 2010).

<sup>30</sup> Global Integrity, *Global Integrity Scorecard: Georgia 2009* (Global Integrity, 2010), 72, 76.

<sup>31</sup> <http://www.president.gov.ge>

<sup>32</sup> Institute for Development of Freedom of Information, *Monthly Bulletin No 1*, July-September 2009, 23-37.

During NIS field tests conducted by TI Georgia, requests for public information were sent to three government ministries: the Ministry of Finance, the Ministry of Justice and the Ministry of Defence. Four requests (two standard and two difficult ones) were sent to each of these ministries. Overall, out of the 12 requests sent to the executive branch, full information was only provided in six cases. An incomplete answer was given in one case and another request was incorrectly transferred. The ministries refused to provide information in two cases (one justified, one unjustified), while mute refusal occurred in another two cases. Thus, while the executive branch agencies do not proactively release information through their websites, they are not particularly responsive to citizen queries either.

Pillar	Standard request 1	Standard request 2	Difficult request 1	Difficult request 2
Ministry of Finance	Information Received	Mute Refusal	Information Received	Information Received
Ministry of Justice	Information Received	Incomplete answer	Written Refusal	Transferred/ Referred
Ministry of Defence	Information Received	Mute refusal	Information Received	Mute refusal

Out of five separate Freedom of Information (FOI) requests sent as part of the NIS field tests requesting the size of bonuses given to the minister and deputy minister of five different ministries, not a single request was adequately answered. The Ministry of Finance cited the right to privacy as justification for not providing the information, the Ministry of Justice responded with a citation of the law defining public servant salaries but did not provide information on bonuses, and the Ministry of Defence did not respond at all.

### Accountability (law)

Score: 75

To what extent are there provisions in place to ensure that members of the executive have to report and be answerable for their actions?

The Constitution and a number of other laws contain adequate provisions concerning the accountability of the executive. However parliament's ability to hold the executive branch accountable is undermined by the president's power to dissolve the legislature. There is also no legal requirement for the executive to consult with the public in its activities.

The Constitution requires cabinet members to respond to questions submitted by MPs and to appear before parliament if summoned.<sup>33</sup> The Parliamentary Rules of Procedure provide MPs and different parliamentary bodies with con-

<sup>33</sup> The Constitution of Georgia, Article 59.

siderable powers in terms of executive oversight. A more detailed discussion of parliament's oversight powers vis-à-vis the executive is provided in the relevant chapter of this report.

Parliament has the constitutional power to oversee the cabinet's budget spending and to recommend that the president suspend cabinet spending if irregularities occur.<sup>34</sup> The cabinet is required to report to parliament on a quarterly basis about the implementation of the State Budget and to submit the final report within three months from the end of a budget year. If parliament votes against approving the budget implementation report, the president will have to consider the possibility of dismissing the cabinet but is not required to do so.<sup>35</sup> The prime minister is also required to report to parliament annually on the implementation of the government programme and to present an ad-hoc report within 15 days from receiving such request from the legislature.<sup>36</sup> The president is also required, under the Constitution, to present annual reports about the state of affairs in the country to parliament.<sup>37</sup> At the same time, parliament's legal power to hold the executive accountable is undermined, to some extent, by the fact that a conflict between the two branches over the approval of the state budget or cabinet appointments can lead to the dissolution of the legislature. The decision, in this case, is to be made by the president who, as noted before, essentially remains the head of the executive.

The president, the prime minister and other members of the government can be impeached by parliament if found guilty by the Supreme Court of violating the Constitution or committing a crime.<sup>38</sup>

The Chamber of Control (Georgia's supreme audit institution) has a constitutional duty to monitor the financial activities of the executive and to report to parliament on the implementation of the State Budget by the executive twice a year.<sup>39</sup> The Chamber audits executive branch agencies and can send the audit results to law enforcement bodies whenever suspicions of a crime arise.<sup>40</sup>

Ministries are required to set up internal audit units responsible for examining the effectiveness of financial management in these institutions.<sup>41</sup> However, the Ministry of Justice, the Ministry of Defence and the Ministry of Internal Affairs are not required to establish these units until 2013.<sup>42</sup>

The Constitutional Court has the power to review compliance of the laws and by-laws issued by the executive with the Constitution.<sup>43</sup>

The executive is required to give reasons for its decisions. For example, the drafts of decisions that qualify as normative acts (such as presidential decrees and the by-laws adopted by the president and the cabinet) must contain explanation as to why they are being adopted.<sup>44</sup> The Government Regulations further require that the drafts of by-laws and other legal acts presented for adoption at cabinet sessions contain an explanation.<sup>45</sup> Administrative bodies of the

<sup>34</sup> *Id.*, Article 93.

<sup>35</sup> The Parliamentary Rules of Procedure, Articles 233-234.

<sup>36</sup> *Id.*, Article 196.

<sup>37</sup> The Constitution of Georgia, Article 73.

<sup>38</sup> *Id.*, Articles 63-64.

<sup>39</sup> *Id.*, Article 97.

<sup>40</sup> The Law on Chamber of Control of Georgia, 26 December 2008, Article 24.

<sup>41</sup> The Law on Internal State Audit and Inspection (adopted on 26 March 2010), Articles 6-8.

<sup>42</sup> *Id.*, Article 32.

<sup>43</sup> The Constitution of Georgia, Article 89.

<sup>44</sup> The Law on Normative Acts, adopted on 22 October 2009, Article 17.

<sup>45</sup> The Government Regulations, Article 37.

executive are also required to provide an explanatory note in the administrative-legal acts they adopt.<sup>46</sup>

However, there are no legal provisions expressly requiring the executive to consult with the public during the decision-making process.

## Accountability (practice)

Score: 25

To what extent is there effective oversight of executive activities in practice?

The accountability provisions included in the law (some of which are robust) are not effective in practice, primarily due to the current political situation (where the legislature is dominated entirely by the president's party which is not sufficiently independent from the president).

The executive submits annual and quarterly reports to parliament as required by the law. However, since a large majority of seats in parliament (some 80 percent) are controlled by the president's party (which, as the political parties chapter shows, is a highly centralized organisation acting mostly according to its leader's will), the legislature has little incentive to hold the executive accountable.

The Chamber of Control conducts audits in the executive bodies as required by the law.<sup>47</sup> However, the thoroughness and the ultimate impact of these audits could be limited because of the Chamber's lack of qualified personnel and political independence (see the chapter on the supreme audit institution for further information). A 2007 inquiry into the Ministry of Education's activities, which resulted in the dismissal of a large number of auditors from the Chamber, is one indication that the Chamber is unlikely to gain the upper hand in any potential conflict with influential members of the executive.<sup>48</sup>

A uniform system of internal auditing was only introduced through the legal amendments adopted in March 2010 and these provisions are yet to be fully implemented in practice. Internal oversight and control has so far been exercised by the General Inspectorates within government ministries. In the absence of a unified legal framework, each ministry has been free to determine the rules governing the operation of its General Inspectorate. Also, being subordinated to the relevant ministers, the Inspectorates lack the functional independence to conduct proper inspections.<sup>49</sup> Thus, their effectiveness is "seriously undermined" by a lack of independence, resources and harmonised procedures.<sup>50</sup>

Prosecution of high-level executive officials is very rare in practice. The only exception to this trend in recent years was the 2007 arrest of former Defence Minister Irakli Okruashvili on corruption charges. However, given that the ar-

<sup>46</sup> The General Administrative Code of Georgia, adopted on 25 June 1999, Article 53.

<sup>47</sup> The list of the audits conducted by the Chamber in 2009 is available on the Chamber's website: <http://www.control.ge/files/upload-file/pdf/auditis-chamonatvali.pdf> (accessed on 6 August 2010).

<sup>48</sup> See the Supreme Audit Institution chapter of this report for a more detailed discussion of the Chamber of Control's capacity-related problems.

<sup>49</sup> OECD Anti-Corruption Network for Eastern Europe and Central Asia, Istanbul Anti-Corruption Action Plan, *Second Round of Monitoring, Georgia Monitoring Report*, (Paris: OECD ACN, 2010), 35.

<sup>50</sup> *Id.*

rest only took place after Okruashvili's decision to join the opposition, it is not clear whether the case qualifies as a proof that high-ranking officials are held accountable for corruption-related offences in Georgia. According to an expert interviewee, high-level executive officials who become implicated in corruption are likely to be quietly removed from their positions, although the president and the ruling party leadership may refrain from publicizing such cases or bringing formal charges against such officials.<sup>51</sup>

According to OECD ACN, Georgia has established a "sound system" of budget preparation, discussion, approval, implementation and reporting as all financial transactions are consolidated under a single treasury account and the Treasury is believed to exercise effective control.<sup>52</sup> At the same time, the Open Budget Index 2010 report identified a number of gaps in this area. Specifically, audits of the budget reports are not comprehensive and they are not scrutinized properly by the legislature either.<sup>53</sup>

The lack of a legal requirement for public consultation in the executive's activities has resulted in a corresponding gap in the practice. At the same time, there have been some positive exceptions: according to an advisor to the prime minister, the recent draft amendments to the tax legislation were discussed extensively with the business community.<sup>54</sup>

## Integrity (law)

Score: 75

To what extent are there mechanisms in place to ensure the integrity of members of the executive?

Georgia's legal framework contains adequate rules for ensuring integrity of executive officials and a mechanism for the implementation of these rules was also established through recent legislative changes. However, restrictions on the activities of members of the executive branch after they leave public office are weak.

Integrity rules for public officials, including the members of the executive, are laid down in the Law on Public Service<sup>55</sup> and the Law on Conflict of Interest and Corruption in Public Service.<sup>56</sup> The former establishes general rules of conduct, while the latter's provisions are more detailed.

Public officials (including those from the executive branch) are prohibited from offering or receiving any benefits that are linked to their position. They are required to prevent and/or declare any instances of conflict of interest and to notify their respective agencies annually about any of their family members or close relatives employed in the same agencies.<sup>57</sup> Public officials are prohibited from accepting any gifts or services that can prevent them from exercising their

<sup>51</sup> Interview of Ghia Nodia with the author.

<sup>52</sup> OECD Anti-Corruption Network for Eastern Europe and Central Asia, Istanbul Anti-Corruption Action Plan, *Second Round of Monitoring, Georgia Monitoring Report*, 34.

<sup>53</sup> International Budget Partnership, *Open Budget Index 2010 Georgia*, <http://internationalbudget.org/files/OBI2010-Georgia.pdf> (accessed on 22 March 2010).

<sup>54</sup> Interview of Tamar Kovziridze with the author.

<sup>55</sup> Adopted on 31 October 1997.

<sup>56</sup> Adopted on 17 October 1997.

<sup>57</sup> The Georgian Law on Public Service, adopted on 31 October 1997, Article 73 (4).

official duties and must notify their immediate superiors about any such offers. Whenever a public official obtains evidence and has suspicion of a colleague's illegal activity, he/she is required to notify a superior or the law enforcement agencies.<sup>58</sup>

The Law on Conflict of Interest and Corruption in Public Services establishes the maximum annual value of gifts that public officials can receive at 15 percent of their annual salary. A similar restriction is in place for their family members. Officials involved in decision-making in a government body have to notify their immediate superiors or other members of the same body about any cases where a decision to be made by them concerns their personal interests. Officials cannot demand payment or gifts for the services that they are required to provide for free under the law, nor are they allowed to make commercial deals with the public agencies where they hold the office. Officials are prohibited from performing any other paid work, except for academic or creative activities. Officials and their family members cannot hold positions, work or own shares in the commercial enterprises whose activities they oversee as part of their official duties. Officials who violate the provisions listed in this paragraph face disciplinary sanctions or dismissal.<sup>59</sup>

The Law on Conflict of Interest and Corruption in Public Service contains extensive provisions to protect whistleblowers. The law expressly prohibits intimidation, pressure and discrimination against a whistleblower. A whistleblower cannot be subjected to administrative or criminal punishment or investigation over the case in question until the inquiry is completed.<sup>60</sup> Whistleblowers have a right to address the judiciary and request state protection if they or their families are threatened.<sup>61</sup> The Law on Public Service requires public officials to refrain from disclosing the identity of whistleblowers, to prevent any damage to their reputation and to protect them from problems at work.<sup>62</sup>

The Law on Public Service imposes certain post-employment restrictions on public officials. Specifically, for a period of three years after leaving office, they are prohibited from joining or receiving a salary from the commercial entities that they supervised as part of their official duties.<sup>63</sup> However, this provision is unlikely to be particularly effective in the case of high-level executive branch officials since they do not exercise direct supervision of any commercial entities. Also, there are no specific restrictions on post-ministerial employment or revolving door appointments.

Until recently, Georgia had no dedicated legal mechanism for the implementation of the integrity rules described above. However, under the Law on Internal State Audit and Inspection adopted in March 2010, government agencies are required to set up internal audit units whose responsibilities include, among other things, to detect any violations of conflict of interest rules by the members of the relevant agencies.<sup>64</sup>

<sup>58</sup> *Id.*, Article 73 (5).

<sup>59</sup> The Georgian Law on Conflict of Interest and Corruption in Public Service, adopted on 17 October 1997, Articles 5, 9-11, 13, 20.

<sup>60</sup> The Georgian Law on Conflict of Interest and Corruption in Public Service, Article 20 (4).

<sup>61</sup> *Id.*, Article 20 (6).

<sup>62</sup> The Georgian Law on Public Service, Article 73(5).

<sup>63</sup> *Id.*, Article 65.

<sup>64</sup> The Law on Internal State Audit and Inspection, Article 6.

## Integrity (practice)

Score: 50

### To what extent is the integrity of members of the executive ensured in practice?

While there is little information available about the implementation of the existing integrity rules in practice, there are valid reasons to believe that they are not being applied comprehensively at present.

As Global Integrity's 2009 report rightly notes, there is no established mechanism for monitoring the implementation of the existing post-employment restrictions.<sup>65</sup> The same is true for most of the other integrity rules. As noted before, the law that provides for the establishment of internal audit units responsible for investigating conflict of interest cases was only adopted in March 2010 and the process of establishment of these units in the executive branch agencies is still far from complete: some key executive bodies (the Ministry of Internal Affairs, the Ministry of Defence and the Ministry of Justice) are not required to establish them until 2013. In the meantime, there is an effective lack of oversight since, according to an expert interviewee, neither the Chamber of Control nor the General Inspectorates focus on conflict of interest provisions when they examine the activities of government ministries.<sup>66</sup>

There have been no publicized cases of conflict of interest implicating high-ranking members of the executive recently, although it is difficult to say whether this is the result of a lack of infringements or a lack of monitoring. It is also difficult to assess the effectiveness of the existing whistleblower protection rules in practice since there have been no publicised whistle-blowing cases to date.

Revolving-door appointments are a matter of concern insofar as the law does not expressly prohibit them. Several high-ranking officials (including two former prime ministers) joined commercial entities shortly after leaving the executive branch.

## Role: Public Sector Management (Law and Practice)

Score: 50

### To what extent is the executive committed to and engaged in developing a well-governed public sector?

The executive branch has achieved some significant improvements in the public sector by increasing its overall funding and reducing low-level corruption. However, the development of an independent and effective public sector has been obstructed by excessive executive interference and the lack of comprehensive reform.

Georgia has a number of legal provisions regarding the executive's management of the public sector. While it is primarily parliament's responsibility to de-

<sup>65</sup> Global Integrity, *Global Integrity Scorecard: Georgia 2009*, 74.

<sup>66</sup> Interview of Ghia Nodia with the author.

termine state policy in the public service field, the law provides for the executive's participation both in the formulation of the policy and its implementation via the Civil Service Bureau, a body that reports to the president and is responsible for analyzing the state of affairs in the public sector and coordinating the management of human resources in public agencies.<sup>67</sup>

In practice, there have been some important positive changes in the public sector under the current government. Namely, the overall funding of the sector has increased and administrative corruption has been reduced.<sup>68</sup> However, no comprehensive reform of the sector has been implemented. As OECD ACN has noted, "while some elements of the civil service are transformed continuously, the civil service reform still lacks a clear overall approach and a coherent strategy."<sup>69</sup> According to an expert interviewee with considerable experience of working with Georgia's public sector, there is presently no political will to implement such a reform or to establish a professional public service, as the executive's leadership believes that it requires great flexibility in managing different public agencies during this transitional period and fears the prospect of being bound by rigid rules.<sup>70</sup> According to another expert, another factor behind the government's attitude is a widespread belief inside the executive leadership is that public service should generally aim to emulate the private sector and it should not be overly difficult for managers in the public service to dismiss underperforming employees.<sup>71</sup>

According to the Bertelsmann Transformation Index report on Georgia, the government's excessive reliance on the punitive component of the anti-corruption policy has often resulted in "somewhat arbitrary executive interference" in the day-to-day operation of the public service, preventing the emergence of institutional routine.<sup>72</sup> This observation was reiterated by an expert interviewee, who told TI Georgia that the executive is sometimes overly active in dealing with the civil service and ministers frequently engage in micromanagement.<sup>73</sup>

Also, considering persistent transparency-related problems in parts of the public sector (discussed in greater detail in the relevant chapter of this report), it appears that the executive branch does not provide the public sector with proper incentives to ensure its transparent operation.

### Role: Legal System (Law and Practice)

Score: 75

To what extent does the executive prioritize public accountability and the fight against corruption as a concern in the country?

Georgia's current executive leadership made the fight against corruption a top priority after 2004. Lower-level corruption was curbed dramatically and a number of legal reforms were implemented. At the same time, the potential for

<sup>67</sup> The Law on Public Service, Article 130.

<sup>68</sup> Transparency International, *Global Corruption Barometer 2009*, (Transparency International, 2009), 29, 32.

<sup>69</sup> OECD Anti-Corruption Network for Eastern Europe and Central Asia, Istanbul Anti-Corruption Action Plan, *Second Round of Monitoring, Georgia Monitoring Report*, 4.

<sup>70</sup> Interview of Larry Held, former Chief of Party at AED for the USAID-funded project, Public Administration Reform, with the author, Tbilisi, 30 June 2010.

<sup>71</sup> Interview of Ghia Nodia with the author.

<sup>72</sup> Bertelsmann Stiftung, *BTI 2010 – Georgia Country Report* (Gutersloh: Bertelsmann Stiftung, 2009), 26.

<sup>73</sup> Interview of Larry Held with the author.

high-level abuse of power and the government's lack of success in extending anti-corruption policies beyond the law enforcement efforts could undermine further progress in this area.

The Georgian government devoted considerable attention to the fight against corruption after the current president's and ruling party's accession to power in 2004. It initially showed a very "strong will" to fight corruption and officials frequently included the subject in their public speeches.<sup>74</sup> As a result, Georgia has seen a major decline in lower-level corruption: according to the 2009 edition of the Global Corruption Barometer, only two percent of the people interviewed in Georgia had paid a bribe in the preceding 12 months.<sup>75</sup> The government's current programme highlights the need for consolidating the progress achieved in this field.<sup>76</sup>

The executive branch, together with the legislature, has implemented a number of important legal changes aimed at reducing corruption risks and reinforcing public accountability. The legal reforms include the introduction of integrity rules for public servants and officials, provisions on whistleblower protection, a reform of the public procurement system and the supreme audit institution, as well as establishment of internal auditing in public agencies. The details of these reforms and the extent of their impact in practice are discussed in the relevant sections of this report.

Along with important achievements, there are some significant gaps in the government's anti-corruption policies. Many of the important legal provisions described above have not yet been fully applied in practice due to the lack of proper implementation mechanisms. While corruption has been reduced or even eradicated at the lower levels of public administration, it has been suggested that high-level corruption could still be a problem.<sup>77</sup> It is difficult to verify or substantiate these claims but, as the Bertelsmann Transformation Index report rightly emphasises, "at least the opportunities for cronyism and insider deals have grown considerably in recent time due to the concentration of power among a small and interwoven circle of individuals".<sup>78</sup> The executive branch's excessive influence over the legislature and the judiciary (discussed in the relevant chapters of this report) has undermined accountability by weakening the system of checks and balances.

The government has also mostly failed to involve the larger public in its anti-corruption efforts. As OECD ACN notes, the government's communication with the public on anti-corruption issues has mostly been limited to news conferences held by prosecutors, while other officials working in this field (such as the members of the Anti-Corruption Coordination Council) hardly make any public appearances to inform citizens about their activities.<sup>79</sup>

<sup>74</sup> OECD Anti-Corruption Network for Eastern Europe and Central Asia, Istanbul Anti-Corruption Action Plan, *Second Round of Monitoring*, 10.

<sup>75</sup> Transparency International, *Global Corruption Barometer 2009*, 29, 32.

<sup>76</sup> Georgian Parliament's Resolution on Declaring Confidence in Government Members and Government Programme, 2 July 2010, [http://www.government.gov.ge/old/index.php?lang\\_id=GEO&sec\\_id=68](http://www.government.gov.ge/old/index.php?lang_id=GEO&sec_id=68) (accessed on 4 August 2010).

<sup>77</sup> OECD Anti-Corruption Network for Eastern Europe and Central Asia, Istanbul Anti-Corruption Action Plan, *Second Round of Monitoring, Georgia Monitoring Report*, 10; Freedom House, *Nations in Transit 2010, Georgia*, (Freedom House, 2010), 228-229.

<sup>78</sup> Bertelsmann Stiftung, *BTI 2010 – Georgia Country Report*, 26.

<sup>79</sup> OECD Anti-Corruption Network for Eastern Europe and Central Asia, Istanbul Anti-Corruption Action Plan, *Second Round of Monitoring, Georgia Monitoring Report*, 11.

## Summary

Georgia has a number of legal provisions designed to ensure the judiciary's independence. However, in practice, the judiciary suffers from undue influence exerted by the Prosecutor's Office and the executive authority during the adjudication of criminal cases, as well as the cases where the political leadership's interests are at stake. The judiciary's inadequate level of independence has also undermined its ability to exercise oversight vis-a-vis the executive branch. On the positive side, the budget funding allocated to the judiciary has increased dramatically in recent years, resulting in major improvements in terms of salaries, infrastructure, equipment and staff. Bribery in courts has been eradicated and judges are believed to be independent in their handling of the majority of civil cases.

The table below presents the indicator scores which summarize the assessment of the judiciary in terms of its capacity, its internal governance and its role within the Georgian integrity system. The remainder of this section presents the qualitative assessment for each indicator.

### Total Score: 43/100

Dimension	Indicator	Law	Practice
Capacity 56/100	Resources	75	50
	Independence	75	25
Governance 50/100	Transparency	50	25
	Accountability	75	25
	Integrity	75	50
Role 25/100	Executive Oversight		25

## Structure and Organisation

Under the Georgian Constitution, the country's judiciary is made up of the Constitutional Court and the general courts.<sup>1</sup>

The Constitutional Court is the “supreme judicial body of constitutional control”, responsible for ensuring compliance of laws, international agreements and the by-laws issued by different government bodies with the Constitution and adjudicating disputes between different state bodies over their competencies. There are nine judges in the Constitutional court: the president, parliament and the Supreme Court each appoint three judges.<sup>2</sup>

General courts include district or city courts, the Court of Appeals and the Supreme Court.<sup>3</sup> The chairperson and judges of the Supreme Court are appointed by parliament upon the president's nomination.<sup>4</sup> Judges of the district and city courts and the Court of Appeals are appointed by the High Council of Justice - a body responsible for appointment and dismissal of judges, organising qualifying examinations of judges and developing proposals for the reform of the judiciary. The High Council of Justice is led by the chairperson of the Supreme Court and has 15 members appointed by the judiciary, the president and parliament.<sup>5</sup> The Conference of Judges is a self-governing body of judges that appoints the judiciary's representatives in the High Council of Justice.<sup>6</sup>

## Assessment

### Resources (law)

Score: 75

To what extent are there laws seeking to ensure appropriate tenure policies, salaries and working conditions of the judiciary?

The legal provisions regulating the judiciary's access to different types of resources are robust. The biggest constraint is that the law does not guarantee the involvement of lower-level courts in the drafting of the judiciary's budget.

The salaries of the Constitutional Court judges and the judges of general courts are determined by dedicated laws: the Law on Remuneration of Constitutional Court Judges and the Law on Remuneration of General Court Judges.<sup>7</sup> The two laws establish salary rates for all judges, safeguarding them against arbitrary reduction of their income. There is a further legal provision prohibiting reduction of a judge's salary during the tenure.<sup>8</sup> At the same time, the laws establishing salary rates do not provide for automatic adjustment of salary rates to reflect inflation.

The legal framework provides for the participation of the judiciary in the process of determining annual allocations from the State Budget. The draft budget

<sup>1</sup> The Constitution of Georgia, adopted on 24 August 1995, Article 83.

<sup>2</sup> *Id.*, Articles 83, 88, 89.

<sup>3</sup> The Organic Law of Georgia on General Courts, adopted on 4 December 2009, Article 2.

<sup>4</sup> The Constitution of Georgia, Article 90.

<sup>5</sup> The Organic Law of Georgia on General Courts, Article 47.

<sup>6</sup> *Id.*, Article 63.

<sup>7</sup> The Georgian Law on Remuneration of Georgian Constitutional Court Judges, adopted on 4 July 2007; the Georgian Law on Remuneration of Georgian General Court Judges, adopted on 23 December 2005.

<sup>8</sup> The Organic Law of Georgia on General Courts, Article 69.

of general courts (excluding the Supreme Court) is to be presented to the government by the High Council of Justice and the draft budget of the Supreme Court is to be submitted by its chairperson.<sup>9</sup> The draft budget of the Constitutional Court is presented to the Ministry of Finance by the court chairperson.<sup>10</sup> The Constitutional Court cannot be allocated a smaller funding than it received the year before,<sup>11</sup> while the funding apportioned to general courts can only be reduced (compared to the preceding year) with the consent of the High Council of Justice.<sup>12</sup>

On the negative side, the law does not guarantee the participation of general courts (except for the Supreme Court) in the apportioning of their budgets. The draft budget for general courts is prepared by the Department of General Courts at the High Council of Justice<sup>13</sup> and the law does not expressly require it to consult with the courts during the process.

## Resources (practice)

Score: 50

**To what extent does the judiciary have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?**

The amount of resources available to the Georgian judiciary has increased considerably in recent years as a result of a dramatic growth in the budget since 2004. Judges' salaries are presently adequate and courts have proper infrastructure, equipment and numbers of support staff. At the same time, according to some sources, lower-level courts do not always receive enough funding because of their limited role in drafting their own budgets. Also, courts appear to be overburdened due to an insufficient number of judicial positions, suggesting that there might be a lack of qualified candidates.

The judiciary's overall budget grew every single year between 2003 and 2009 and almost quadrupled from GEL 11 million to 44 million (USD 6.6 million to USD 26.5 million). In 2010, the funding was reduced to GEL 39 million (USD 23.5 million) although the share of salaries in the budget increased from 60 to 73 percent.<sup>14</sup> Similar reductions in the budgets of multiple ministries and other state institutions occurred in 2010 as a result of an overall tighter fiscal policy. Also, the higher budgets in preceding years reflected the cost of infrastructure renovation that was largely completed by 2010.<sup>15</sup>

The increase in budget funds has produced a number of improvements in terms of the judiciary's access to various resources. Specifically, according to the American Bar Association (ABA), Georgian judges have an adequate number of secretaries, assistants and interns aiding them in performing their duties. The number of computers, photocopiers and fax machines has increased and judges and staff members have internet access. Legislation is indexed and available

<sup>9</sup> *Id.*, Article 67.

<sup>10</sup> *Id.*, Article 3.

<sup>11</sup> The Organic Law of Georgia on Constitutional Court, Article 3.

<sup>12</sup> The Organic Law of Georgia on General Courts, Article 67.

<sup>13</sup> *Id.*, Article 67.

<sup>14</sup> Data from the Georgian Supreme Court's website: [http://www.supremecourt.ge/default.aspx?sec\\_id=855&lang=1](http://www.supremecourt.ge/default.aspx?sec_id=855&lang=1) (accessed on 15 October 2010).

<sup>15</sup> Interview of Lasha Maghradze, chief of the Supreme Court Chairman's Bureau, with the author, Tbilisi, 21 October 2010.

through an electronic database to all judges. Existing courthouses are being renovated and new ones are built, providing a “respectable environment and adequate infrastructure” for the judiciary.<sup>16</sup>

Judicial salaries have increased significantly in recent years. According to ABA, salaries are sufficient for judges to support their families without seeking additional sources of income.<sup>17</sup> While judicial salaries may be well below the earnings of the best-paid practicing lawyers,<sup>18</sup> they are certainly sufficient for maintaining a normal standard of living and compare favourably to the salaries of senior civil servants.

Candidates for a judge’s position have to complete a mandatory training course at the High School of Justice, which also provides continued legal education for incumbent judges. According to the school’s chief, almost all of the 300 incumbent judges have at least five days of training per year.<sup>19</sup> The pre-appointment training includes a mandatory course in judicial ethics and similar training is also provided to incumbent judges.<sup>20</sup>

The Supreme Court and the Constitutional Court draft their own budgets and reportedly lobby parliament during the budgetary process.<sup>21</sup> However, the same expert suggested that the budgetary process is overly centralized and lower-level courts have little say.<sup>22</sup> ABA has also noted that the Department of General Courts of the High Council of Justice (which is in charge of drafting the budgets of district and city courts and the courts of appeal) does not normally consult with these courts. As a result, they do not always receive adequate funding. Moreover, the process of procurement is also centralized. District and City courts have to submit requests to the relevant department of the High Council (rather than making purchases on their own) and, consequently, do not always have all the necessary supplies.<sup>23</sup> These assertions were challenged by the judiciary representatives interviewed by TI Georgia, who said the Department of General Courts always consults with the general courts and reviews their requirements in detail.<sup>24</sup>

Another problem facing the judiciary is the fact that, as noted by ABA, the current number of judicial positions appears to be inadequate and courts face a heavy caseload.<sup>25</sup> The representatives of the judiciary interviewed by TI Georgia said, however, that the situation has been changing for the better in recent years. They emphasized that new judges cannot be employed by the judiciary until they complete the course at the High School of Justice. They noted that the Tbilisi City Court is presently the only Georgian court that can be described as overburdened.<sup>26</sup>

## Independence (law)

Score: 75

### To what extent is the judiciary independent by law?

The Constitution and a number of other laws contain provisions designed to safeguard the independence of judges. However, provisions regarding the ten-

<sup>16</sup> American Bar Association, *Judicial Reform Index for Georgia, Volume II*, (American Bar Association, 2008), 2, 30-34, 55-56.

<sup>17</sup> American Bar Association, *Judicial Reform Index for Georgia, Volume II*, 2.

<sup>18</sup> Interview of Giorgi Paitchadze, legal expert at German Technical Cooperation, with the author, Tbilisi, 8 October 2010.

<sup>19</sup> Cited in: Transparency International Georgia, *European Neighbourhood Policy: Monitoring Georgia’s Anti-Corruption Commitments* (Tbilisi: Transparency International Georgia, 2010), 18.

<sup>20</sup> American Bar Association, *Judicial Reform Index for Georgia, Volume II*, 49.

<sup>21</sup> *Id.*, 30.

<sup>22</sup> Interview of Giorgi Paitchadze with the author.

<sup>23</sup> American Bar Association, *Judicial Reform Index for Georgia, Volume II*, 30-31.

<sup>24</sup> Interview of Lasha Kalandadze, chairman of the Chamber of Civil Cases at the Tbilisi Court of Appeal, Giorgi Mirotdadze, head of the Department of Judicial Ethics and Disciplinary Proceedings at the High Council of Justice, and Lasha Maghradze, head of the Supreme Court Chairperson’s Bureau, with the author, Tbilisi, 3 June 2011.

<sup>25</sup> *Id.*, 57.

<sup>26</sup> Interview of Lasha Kalandadze, chairman of the Chamber of Civil Cases at the Tbilisi Court of Appeal, Giorgi Mirotdadze, head of the Department of Judicial Ethics and Disciplinary Proceedings at the High Council of Justice, and Lasha Maghradze, head of the Supreme Court Chairperson’s Bureau, with the author.

ure of judges and the composition of the High Council of Justice do not ensure full independence and several laws contain loopholes that erode the original intent of increasing judicial independence.

Independence of the Georgian judiciary is guaranteed by the Constitution which states that judges must remain independent in their activities and only be guided by the law. Pressure on judges and interference with their work are prohibited and are punishable offences.<sup>27</sup>

The powers of both the Supreme Court and the Constitutional Court are anchored in the Constitution and can only be changed through a constitutional amendment, which requires a two-thirds majority in parliament.<sup>28</sup>

Judges enjoy immunity from criminal prosecution under the Constitution and can only be arrested if caught on the spot of a crime. In order to prosecute a judge or to keep an arrested judge in custody, the permission of the Supreme Court chairperson is required (the permission of the Constitutional Court in the case of a Constitutional Court judge or chairperson; and the permission of parliament in the case of a Supreme Court judge or chairperson).<sup>29</sup>

Judges are prohibited by the Constitution from joining political parties or becoming involved in political activities. Nor can they hold any parallel positions or perform any paid work, except for teaching and academic activities.<sup>30</sup> At the same time, judges are not prohibited from forming professional associations. Moreover, the law requires the establishment of a self-government body of the general court judges – the Conference of Georgian Judges – in order to reinforce the independence of the judiciary. The powers of the Conference include election of the secretary and the majority of members of the High Council of Justice.<sup>31</sup>

Both politicians and professionals are involved in the appointment of judges. Politicians only play a leading role in the appointment of the Supreme Court Judges (all of whom are appointed by parliament) and the Constitutional Court judges (where two-thirds of members are appointed by parliament and president). The judges of other courts are appointed by the High Council of Justice: a body led by the chairperson of the Supreme Court. The law requires that a majority of the High Council's members be appointed by the Conference of Judges, thus granting judicial professionals control over the appointments process.<sup>32</sup> However, as noted by the Georgian Young Lawyers Association (GYLA), the effectiveness of this safeguard is undermined by the legal provision that stipulates that the representatives of all three branches (legislature, executive and judiciary) in the High Council must consent to a judge's appointment and thus makes it possible for the presidential and parliamentary representatives to veto judicial appointments. GYLA has also criticized the fact that, while the majority of the High Council members are elected by the Conference of Judges, only the Supreme Court Chairman has the right to nominate candidates. The

<sup>27</sup> The Constitution of Georgia, Article 84.

<sup>28</sup> *Id.*, Articles 88, 90, 102.

<sup>29</sup> *Id.*, Articles 87-88, 90.

<sup>30</sup> *Id.*, Article 86.

<sup>31</sup> The Organic Law of Georgia on General Courts, Articles 63, 65.

<sup>32</sup> *Id.*, Article 47.

independence of the High Council may also be undermined by the provision allowing the president to recall his appointees at any time.<sup>33</sup>

The law requires that candidates for judicial positions be selected through a competitive process and sets out professional criteria for candidates, who are required to have higher legal education and at least five years of relevant work experience.<sup>34</sup>

The existing legal provisions protect judges from arbitrary dismissal. The chairperson of the Supreme Court can only be removed from the office by parliament through the impeachment procedure for violating the Constitution or committing a crime, while the judges of the Supreme Court and other general courts can be removed by the High Council of Justice. The law lists legitimate grounds for the dismissal of a judge, thus limiting the scope of discretion in this area.<sup>35</sup> A member of the Constitutional Court can only be dismissed by the Court itself and only for one of the specific reasons listed in the relevant law.<sup>36</sup>

Judges are presently not appointed for life in Georgia. Judges at all levels are appointed for a 10-year term.<sup>37</sup> As noted by the Venice Commission, life tenure (or tenure until retirement age) would be preferable in terms of ensuring independence of judges.<sup>38</sup> Life tenure was introduced through a 2010 Constitutional amendment but the change will not take effect until 2013.

There are legal provisions designed to protect judges from undue influence. For the entire duration of court proceedings, interested persons, public servants and political officials are prohibited from engaging in any communication with general court judges that aims to influence the outcome of the process and undermine the independence and impartiality of a judge.<sup>39</sup>

## Independence (practice) Score: 25

### To what extent does the judiciary operate without interference from the government or other actors?

The judiciary is not independent in its handling of criminal cases (due to the influence exerted by the Prosecutor's Office), as well as other types of cases where the government's political interests are at stake (such as electoral disputes). On the positive side, it appears that the majority of civil and administrative cases are adjudicated by courts independently and according to the law.

The independence of Georgian judiciary has been repeatedly called into question in recent years. Most recently, the Public Defender said in a newspaper interview published in September in 2010 that "it is obvious that the judiciary is not independent."<sup>40</sup> In a 2010 survey by the Caucasus Research Resources

<sup>33</sup> The Georgian Young Lawyers Association, *Justice in Georgia* (Tbilisi: GYLA, 2010), 7-10 (in Georgian).

<sup>34</sup> The Organic Law of Georgia on General Courts, Articles 34-35.

<sup>35</sup> *Id.*, Articles 42-43.

<sup>36</sup> *Id.*, Article 16.

<sup>37</sup> The Constitution of Georgia, Articles 88, 90; and The Organic Law of Georgia on General Courts, Article 36.

<sup>38</sup> European Commission for Democracy Through Law, *Opinion on Draft Constitutional Amendments Relating to the Reform of the Judiciary in Georgia*, adopted by the Venice Commission at its 62<sup>nd</sup> Plenary Session (Venice, 11-12 March 2005), 4.

<sup>39</sup> The Law of Georgia on Rules for Communication with General Court Judges, adopted on 11 July 2007, Article 3.

<sup>40</sup> The Ombudsman's interview with the Rezonansi newspaper, 30 September 2010. (in Georgian)

Centres, only 21 percent of the respondents said that the Georgian judiciary is impartial (compared to the 47 percent who said it was not). In the same survey, 43 percent of the respondents “agreed” or “somewhat agreed” with the statement that Georgian courts are under the government’s influence (compared to a mere 18 percent who “disagreed” or “somewhat disagreed”).<sup>41</sup>

According to the 2009 Global Corruption Barometer, the judiciary is one of the least trusted institutions in Georgia.<sup>42</sup> It has been suggested that such public perception might stem from the judiciary’s handling of some high-profile cases wherein defendants associated with the government appear to receive more favourable treatment than those linked with the opposition, as well as the extremely low acquittal rate in criminal cases (Out of the nearly 17,000 criminal cases received by the courts in 2010, only seven ended in a full acquittal).<sup>43</sup> Indeed, it is widely believed that the Prosecutor’s Office and the executive branch exert undue influence over the judiciary in criminal cases.<sup>44</sup> In addition, courts have demonstrated a notable pro-government bias in adjudicating electoral disputes in recent years.<sup>45</sup>

The European Court of Human Rights noted, in its recent ruling on an appeal concerning the 2006 murder of a banker by law enforcement officers in Tbilisi, that the Georgian judiciary did not adjudicate the case in an impartial and independent manner and, instead, acted in concert with the law enforcement agencies and the executive branch to ensure that the perpetrators of the crime were not punished adequately.<sup>46</sup>

The judiciary’s treatment of some disputes between the government and private businesses has raised further doubts regarding its independence. An expert interviewee told TI Georgia that whenever a tax-related dispute involves a very large amount of money and the government has a strong interest in winning the case, courts act jointly with the tax authorities and prosecutors to ensure the outcome desired by the government. The lawyer noted that courts are only allowed to act independently when no direct government interest is at stake, which is inconsistent with the concept of rule of law.<sup>47</sup>

According to one expert, the process of judicial appointments is not transparent and it is therefore difficult to determine whether it is based on clear professional criteria as required by the law.<sup>48</sup> It has also been suggested that subjective criteria may be applied during appointments.<sup>49</sup> Moreover, the process of reorganization of courts whereby some judges are transferred or placed on a reserve list may further undermine the institution’s independence. A GYLA representative noted that transfer to remote courts is used as a means of punishing judges who have passed decisions unfavourable to the government,<sup>50</sup> while ABA noted concerns that some judges are not reappointed after the end of their term for similar reasons.<sup>51</sup> The lack of a formal process for promotion also leaves room for subjective decisions.<sup>52</sup> The judiciary’s representatives have responded to these criticisms by emphasizing that the process of examination for

<sup>41</sup> Caucasus Research Resources Centers, *Caucasus Barometer 2010, Georgia, Online Data Analysis*, <http://www.crrc.ge/oda/> (accessed on 17 June 2011).

<sup>42</sup> Transparency International Georgia, “Transparency International Releases Results of 2009 Global Corruption Barometer”, <http://transparency.ge/en/node/881> (accessed on 15 October 2010).

<sup>43</sup> OECD Anti-Corruption Network for Eastern Europe and Central Asia, Istanbul Anti-Corruption Action Plan, *Second Round of Monitoring, Georgia Monitoring Report*, (Paris: OECD ACN, 2010), 44-45; the figure concerning acquittal rate is taken from the Supreme Court website: <http://www.supremecourt.ge/files/upload-file/pdf/3-sisxli.pdf> (accessed on 7 March 2011).

<sup>44</sup> American Bar Association, *Judicial Reform Index for Georgia, Volume II*, 45.

<sup>45</sup> See, for example: OSCE/ODIHR *Georgia: Parliamentary Elections 21 May 2008*, OSCE/ODIHR Election Observation Mission Final Report, 19; OSCE/ODIHR *Georgia: Municipal Elections 30 May 2010*, OSCE/ODIHR Election Observation Mission Report, (Warsaw: OSCE/ODIHR, 2010), p 24.

<sup>46</sup> European Court of Human Rights, “Georgian Authorities Did Not Investigate Effectively the Kidnapping and Killing of 28-Year-Old Man”, Press Release, 26 April 2011.

<sup>47</sup> Interview of a Tbilisi-based business lawyer with the author, Tbilisi, 13 January 2011.

<sup>48</sup> Interview of Giorgi Patchadze with the author.

<sup>49</sup> OECD Anti-Corruption Network for Eastern Europe and Central Asia, Istanbul Anti-Corruption Action Plan, *Second Round of Monitoring, Georgia Monitoring Report*, 44.

<sup>50</sup> Cited in: Transparency International Georgia, *European Neighbourhood Policy: Monitoring Georgia’s Anti-Corruption Commitments*, 14.

<sup>51</sup> American Bar Association, *Judicial Reform Index for Georgia, Volume II*, 3.

<sup>52</sup> *Id.*, 36-37.

prospective judges is public and NGOs are encouraged to attend. They also noted that judicial transfers are done in order to assist the courts that face a large caseload.<sup>53</sup>

There are a number of legal provisions prohibiting parties, prosecutors and political officials from communicating with judges during trials that are designed to protect judges from undue influence but the effectiveness of these legal provisions is questionable in practice. Only a handful of individuals (none of them public officials) have been sanctioned on the basis of this law since its adoption in 2007. Further, GYLA suggests that improper influence is often exerted by the chairpersons of the respective courts, as they are not bound by the restrictions established by this law.<sup>54</sup>

It is not clear whether there is an effective professional association of judges in Georgia at present. The Georgian Association of Judges was founded in 1999 but has become defunct in recent years. The Conference of Judges is the official self-governing body of judges but its activities appear to be limited to annual meetings.<sup>55</sup>

On the positive side, Courts are usually independent in their handling of civil cases.<sup>56</sup> A 2010 survey of court users showed that the majority of them were satisfied with the judiciary's operation.<sup>57</sup> Judicial immunity is respected in practice,<sup>58</sup> and early dismissal of judges has become rare in recent years.<sup>59</sup>

## Transparency (law)

Score: 50

**To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the judiciary?**

The legal framework contains a number of requirements designed to ensure transparency of court proceedings but, in some cases, creates unnecessary obstacles to access that are susceptible to abuse.

The Constitution states that court sessions are to be open, while closed sessions can only be held in cases where it is specifically permitted by the law.<sup>60</sup> Court rulings must also be announced publicly.<sup>61</sup> Courts are required to produce either detailed minutes or audio recordings of sessions and make them available to parties upon request.<sup>62</sup> Judges are required to submit annual asset declarations to the Civil Service Bureau.<sup>63</sup>

At the same time, the legal framework does not contain any provisions requiring the courts or the High Council of Justice to proactively inform the public about some important aspects of their activities (judicial statistics, court hear-

<sup>53</sup> Interview of Lasha Kalandadze, chairman of the Chamber of Civil Cases at the Tbilisi Court of Appeal, Giorgi Mirotdadze, head of the Department of Judicial Ethics and Disciplinary Proceedings at the High Council of Justice, and Lasha Maghradze, head of the Supreme Court Chairperson's Bureau, with the author.

<sup>54</sup> The Georgian Young Lawyers Association, *Justice in Georgia*, 16-17.

<sup>55</sup> American Bar Association, *Judicial Reform Index for Georgia, Volume II*, 44.

<sup>56</sup> *Id.*, 3.

<sup>57</sup> DPK CONSULTING, *USAID-funded Georgia Judicial Administration and Management Reform (JAMR) Project*, Court Users Survey (Tbilisi: 2010), 5.

<sup>58</sup> *Id.*, 37.

<sup>59</sup> Interview of Giorgi Patchadze with the author.

<sup>60</sup> The Constitution of Georgia, Article 85

<sup>61</sup> *Id.*, Article 85.

<sup>62</sup> The Code of Civil Proceedings, adopted on 14 November 1997, Articles 287-290; The Code of Criminal Proceedings, adopted on 9 October 2009, Article 195.

<sup>63</sup> The Law of Georgia on Conflict of Interest and Corruption in Public Service, Article 14.

ing records/transcripts, etc). The High Council of Justice is required to announce judicial vacancies through an official newspaper<sup>64</sup> but there is no similar requirement for publicizing the information regarding appointments and dismissals. While the provisions whereby it is prohibited to take photos or to make video recordings in courtrooms or to broadcast sessions on television can be justified by the need to protect judges and witnesses, the fact even audio recordings or transcripts cannot be made without a judge's permission limits the ability of journalists to cover court proceedings.

### Transparency (practice)

Score: 25

#### To what extent does the public have access to judicial information and activities in practice?

Access to court sessions is ensured in practice but the lack of proper equipment in courtrooms and interference of court staff often makes it difficult for attendants to follow the proceedings and take notes. Judicial decisions are not always made available in a timely manner.

Courtroom proceedings are generally open to the public and the media and there is usually enough space to accommodate all interested individuals.<sup>65</sup> In TI Georgia's experience, local and district court proceedings across Georgia have always been open and accessible to observation by external actors, although on two occasions TI Georgia's representatives were requested by the court staff to stop taking notes and were only allowed to continue when it was clear that the notes were not transcripts. It is also frequently difficult to hear the proceedings due to the distance between the audience and the judge and a lack of microphones – a small but significant problem that undermines the value of open proceedings.

The prohibition of filming in courtrooms that was introduced in 2007 has drawn some criticism,<sup>66</sup> although this mechanism also protects the identity of defendants. The position of spokespersons (so-called "speaker judges") has been introduced to facilitate communication with the media. According to ABA, there are some problems with the operation of this mechanism in practice and it is yet to become a source of readily understandable information for journalists.<sup>67</sup>

The Supreme Court and some other courts make audio records of trials but the majority of courts do not have the necessary equipment and instead produce handwritten or typed minutes summarizing the proceedings. It is not clear whether these are accessible to the public and it is likely that the practice varies from court to court.<sup>68</sup>

There is mixed evidence regarding availability of court decisions. The Supreme Court, the Constitutional Court and some of the lower-level courts have websites

<sup>64</sup> The Organic Law of Georgia on General Courts, Article 35.

<sup>65</sup> OECD Anti-Corruption Network for Eastern Europe and Central Asia, Istanbul Anti-Corruption Action Plan, *Second Round of Monitoring, Georgia Monitoring Report*, 43.

<sup>66</sup> Cited in: Transparency International Georgia, *European Neighbourhood Policy: Monitoring Georgia's Anti-Corruption Commitments*, 23.

<sup>67</sup> American Bar Association, *Judicial Reform Index for Georgia, Volume II*, 51.

<sup>68</sup> *Id.*, 53-54.

where they publish their decisions (though this is sometimes done with significant delays).<sup>69</sup> In other courts, according to ABA, decisions are usually made available upon request.<sup>70</sup> At the same time, TI Georgia has found it difficult to obtain copies of court decisions in a number of cases (see below).

Information regarding the judiciary's budget and judicial statistics is accessible to the public through the Supreme Court website.<sup>71</sup> In addition, the website of the High Council of Justice carries disciplinary statistics and information on the qualification examinations for judicial candidates.<sup>72</sup> However, information on spending and judicial appointments, dismissals and transfers is missing.

Out of four Freedom of Information (FOI) requests sent to the Supreme Court as part of the NIS field tests, information was provided in all four cases, although one of the responses did not fully answer the question that was asked. The two complex questions requested data for 2009 on the number of people assigned to pre-trial detention who paid bail (515) versus those who did not (8,195); and data on the number of prosecutions (18,392) and acquittals (18). However, in other FOI requests sent by TI Georgia to the judiciary in 2010 outside of the NIS field tests, the response rate was dismal. Five FOI requests to courts in the capital – the Tbilisi City Court, the Tbilisi Appellate Court and even the Supreme Court of Georgia – received exactly the same answer: the courts did not have sufficient administrative resources to respond and did not deem the mobilization of those resources essential to fulfilling its obligations as prescribed under the law. Some of these requests were for the decisions in a large number of cases, but other requests were for the results of no more than 20 or 25 cases.<sup>73</sup>

## Accountability (law)

Score: 75

To what extent are there provisions in place to ensure that the judiciary has to report and be answerable for its actions?

The legal framework contains extensive provisions regarding complaints and disciplinary sanctions against judges. Judges are required by the law to give reasons for their decisions. On the negative side, judges enjoy an excessively high level of immunity from prosecution that extends to all types of crimes.

There is a detailed formal procedure for complaints and disciplinary action against judges. Any individual has the legal right to submit a complaint against a judge. Such complaints can be submitted to the chairpersons of the Supreme Court or the Court of Appeals, as well as the secretary or a member of the High Council of Justice. Following a preliminary inquiry, the chairperson of the relevant court or the secretary of the High Council of Justice is to decide whether to terminate proceedings or bring disciplinary charges against a judge and

<sup>69</sup> Urushadze, Irine. *Freedom of information regulation not binding for courts?* Transparency International Georgia blog, 22 October 2010, <http://www.transparency.ge/en/blog/pfreedom-information-regulation-not-binding-courtsp>.

<sup>70</sup> *Id.*, 52-53.

<sup>71</sup> [www.supremecourt.ge](http://www.supremecourt.ge)

<sup>72</sup> [www.hcoj.gov.ge](http://www.hcoj.gov.ge)

<sup>73</sup> Urushadze, Irine. *Freedom of information regulation not binding for courts?* Transparency International Georgia blog, 22 October 2010, <http://www.transparency.ge/en/blog/pfreedom-information-regulation-not-binding-courtsp>.

forward the case to the special adjudicating body: the Disciplinary Panel of Georgian General Court Judges. Judges found guilty of disciplinary violations may face various sanctions, including reprimand, severe reprimand and dismissal.<sup>74</sup> The independence of the Disciplinary Panel could, to some extent, be undermined by the fact that half of its members are appointed by the High Council of Justice. As rightly noted by the Venice Commission, a body initiating a disciplinary procedure should have no influence on the composition of the adjudicating body.<sup>75</sup>

The law requires judges to give reasons for their decisions in different types of cases. For example, the Code of Criminal Proceedings expressly states that both provisional and final decisions in criminal cases must be “substantiated”.<sup>76</sup> The Code of Administrative Proceedings also requires courts to provide reasons for their decisions.<sup>77</sup> The Code of Civil Proceedings only allows judges to not give reasons for their decisions if the decision is not subject to an appeal or if the parties declare that they have no intention of challenging the decision in a higher court.<sup>78</sup>

The accountability of judges can potentially be undermined by the fact that, as noted by the Venice Commission, they enjoy “near-total immunity from prosecution”<sup>79</sup> which extends to all types of criminal offences, including corruption.

### Accountability (practice)

Score: 25

**To what extent do members of the judiciary have to report and be answerable for their actions in practice?**

The accountability of judges is not ensured adequately in practice as they frequently fail to give reasons for their decisions during court proceedings. The high number of complaints concerning judges’ work suggests that they can be submitted easily in practice, though they are not always handled in a transparent manner.

Judges frequently fail to give reasons for their decisions in practice. The Public Defender has noted in his 2009 report to parliament that the failure of judges to substantiate their provisional and final decisions during court proceedings is “one of the most problematic issues in the judicial system”.<sup>80</sup> According to the Public Defender, judges often place suspects in pre-trial detention and reject requests submitted by defence lawyers without giving proper reasons and cite specific articles of the law without explaining how they apply to the case in question.<sup>81</sup> Final decisions passed during court proceedings also often lack references to the evidence that they are based on. Moreover, the Public Defender has suggested that judges tend to use a single template of decision for different cases, simply replacing the names of the individuals involved.<sup>82</sup>

<sup>74</sup> The Law of Georgia on Disciplinary Responsibility of Georgian General Court Judges and Disciplinary Proceedings Against Them, Articles, 4, 6, 8, 15.

<sup>75</sup> European Commission for Democracy Through Law (Venice Commission), *Opinion On the Law on Disciplinary Responsibility and Disciplinary Prosecution of Judges of Common Courts of Georgia*, adopted by the Venice Commission at its 70<sup>th</sup> Plenary Session (Venice, 16-17 March 2007), 7.

<sup>76</sup> The Code of Criminal Proceedings of Georgia, adopted on 9 October 2009, Articles 194, 259.

<sup>77</sup> The Code of Administrative Proceedings of Georgia, adopted on 23 July 1999, Articles 13 (2), 21 (3), 21 (13), 21 (20), 26.

<sup>78</sup> The Code of Civil Proceedings of Georgia, adopted on, Articles 250, 257 (1).

<sup>79</sup> European Commission for Democracy Through Law, *Opinion on Draft Constitutional Amendments Relating to the Reform of the Judiciary in Georgia*, 8.

<sup>80</sup> The Public Defender’s Office, *the Georgian Public Defender’s Report on Situation in Georgia in Terms of Protection of Human Rights and Freedoms*, 2009/II, 168. (in Georgian)

<sup>81</sup> *Id.*, 168-170.

<sup>82</sup> *Id.*, 173-176.

As noted in the section on accountability provisions in the law, complaints can be submitted either to courts or to the High Council of Justice and may subsequently be forwarded to the Disciplinary Panel for adjudication. In practice, the High Council of Justice has been the main recipient of complaints. In 2009, only 22 of the 1,175 complaints (less than two percent) received by the Council resulted in the commencement of disciplinary proceedings against a judge in the Disciplinary Panel. These figures could be interpreted in various ways. Perhaps the High Council fails to properly discipline its judges, or perhaps the relative ease of submitting a complaint against a judge results in a high number of unjustified complaints. According to ABA, the disciplinary process lacks transparency and the grounds for sanctioning judges are sometimes ambiguous or subjective.<sup>83</sup>

No information is available regarding any efforts made to protect the complainants. Since the law does not provide for such measures, it is unlikely that they take place in practice. At the same time, as there have been no reports about instances of harassment, it is safe to assume that safety of complainants is not a serious issue in Georgia at present.

## Integrity Mechanisms (law)

Score: 75

**To what extent are there mechanisms in place to ensure the integrity of members of the judiciary?**

Georgia has extensive rules concerning the integrity of judges, although some of these rules are not specific enough and there are no regulations that would restrict judges from entering the private sector after resignation.

Parties can challenge impartiality of judges both in criminal and civil cases<sup>84</sup> and judges are required to recuse themselves if a conflict of interest arises.<sup>85</sup>

The Law on Public Service and the Law on Conflict of Interest and Corruption in Public Service (and consequently the integrity rules provided in these laws) apply to judges. They are thus required to submit annual asset declarations to the Public Service Bureau. Judges are prohibited from holding a position in any enterprise or engaging in any kind of paid activity except for scientific, pedagogic or creative work. The law establishes a cap on the total value of gifts that judges can receive within a single year (15 percent of their annual remuneration), as well as the maximum value of a single gift (5 percent of annual remuneration).<sup>86</sup>

In addition to these laws, there are the Rules of Judicial Ethics adopted by the Conference of Georgian Judges. The document requires the judges, among other things, to remain impartial and to ensure that their decisions are not influenced by political interests or public opinion. Judges are forbidden to engage in any activities that could cast doubts over the independence and impartiality of courts and judges.<sup>87</sup>

<sup>83</sup> American Bar Association, *Judicial Reform Index for Georgia, Volume II*, 42.

<sup>84</sup> The Code of Criminal Proceedings of Georgia, Articles 59, 63; The Code of Civil Proceedings of Georgia, Articles 31, 33-34.

<sup>85</sup> The Code of Criminal Proceedings of Georgia, Article 59; The Code of Civil Proceedings of Georgia, Articles 29, 31.

<sup>86</sup> The Georgian Law on Conflict of Interest and Corruption in Public Service, adopted on 17 October 1997, Article 4, 13, 14.

<sup>87</sup> The Georgian Rules of Judicial Ethics, the official website of the Supreme Court of Georgia, [http://www.supremecourt.ge/default.aspx?sec\\_id=599&lang=1](http://www.supremecourt.ge/default.aspx?sec_id=599&lang=1) (accessed on 6 October 2010).

While the adoption of these rules is certainly commendable, they are somewhat ambiguous and do not stipulate which specific types of behaviour are prohibited. Also, there are no meaningful post-employment restrictions for judges...

### Integrity Mechanisms (practice)

Score: 50

#### To what extent is the integrity of members of the judiciary ensured in practice?

Judges are aware of the existing integrity and ethics rules and bribery has been virtually eliminated in the judiciary in recent years. However, executive branch's excessive influence over the judiciary (discussed in greater detail in the section on judicial independence) could, at times, undermine the ability of judges to adhere to the integrity requirements.

According to one expert, judges receive training in the existing ethics/integrity rules and, as a result, all judges are aware of them. However, the expert noted that it is not clear whether or not adherence to these rules is monitored.<sup>88</sup> ABA has also expressed doubt over whether the ethics rules are effective in practice.<sup>89</sup>

The fact that corruption in the judiciary has become "extremely rare"<sup>90</sup> in recent years could point to the success of the existing integrity rules. The government's general crackdown on corruption in 2004-05 (which included arrests of judges and significant publicity) has made it very uncommon for judges to accept bribes from private citizens. However the judiciary's overall lack of independence (discussed in the section on judicial independence) raises concerns regarding the ability of judges to retain integrity vis-à-vis the Prosecutor's Office and the executive branch in general. An expert interviewee suggested in the interview with TI Georgia that, whenever the government has a strong interest in the outcome of court proceedings, judges are forced to make decisions that run against the law, which corrupts the entire judicial system.<sup>91</sup>

Judges submit asset declarations as required by the law and they can be accessed through a special website established by the Civil Service Bureau.<sup>92</sup> However, as is the case with other public officials, there is no dedicated mechanism for scrutinizing the content of the declarations and sanctioning violations.

### Role: Executive oversight (law and practice)

Score: 25

#### To what extent does the judiciary provide effective oversight of the executive?

The judiciary has considerable legal powers to oversee the activities of the executive. However, these are not applied effectively in practice due to the government's strong influence over the judiciary.

<sup>88</sup> Interview of Giorgi Paitchadze with the author.

<sup>89</sup> American Bar Association, *Judicial Reform Index for Georgia, Volume II*, 49.

<sup>90</sup> *Id.*, 46.

<sup>91</sup> Interview of a Tbilisi-based business lawyer with the author.

<sup>92</sup> [www.declaration.ge](http://www.declaration.ge)

The legal framework provides the judiciary with adequate powers in terms of executive oversight. The Constitutional Court can review the compliance of the president's and the cabinet's decisions with the Constitution.<sup>93</sup> Furthermore, the Constitution guarantees the right of citizens to seek judicial remedy for the damages incurred through unlawful actions of government bodies, while the General Administrative Code grants every citizen the right to challenge the decisions of government bodies in court.<sup>94</sup>

In practice, the judiciary's ability to effectively oversee the operation of the executive branch is undermined by its lack of independence.<sup>95</sup> As noted by Freedom House, the judiciary continues to suffer pressure from the Prosecutor's Office in criminal and administrative cases.<sup>96</sup> The virtual absence of acquittals in criminal cases in particular (see the section of this chapter of judicial independence) raises major doubts regarding the judiciary ability to stand up to the powerful Prosecutor's Office when necessary. The judiciary has also failed to address the violations committed during elections in recent years and to hold the perpetrators accountable.<sup>97</sup> An expert interviewee told TI Georgia that businessmen involved in legal disputes with the state enjoy no protection from the judiciary.<sup>98</sup> All of this reinforces another expert interviewee's suggestion that private parties are only likely to win their cases against the state when no powerful government agency or powerful political interest is involved.<sup>99</sup>

Even when courts produce decisions against government bodies, their enforcement can be problematic, as noted by ABA.<sup>100</sup> TI Georgia's own experience confirms this: the organization's appeal against the refusal by the Tbilisi Mayor's Office to provide public information was upheld by a court but the Mayor's Office is yet to issue the information in question a year on from the ruling.

There are valid doubts regarding the Georgian leadership's present commitment to strengthening the judiciary's supervisory role. A senior member of the government recently told the Economist that the executive branch is currently better equipped to administer justice than the courts since the tradition of an independent judiciary has not become entrenched in Georgian society yet.<sup>101</sup>

<sup>93</sup> The Constitution of Georgia, Article 89.

<sup>94</sup> *Id.*, Article 42; The General Administrative Code of Georgia, adopted on 25 June 1999, Article 178.

<sup>95</sup> See the section on judicial independence in practice.

<sup>96</sup> Freedom House, *Nations in Transit 2010*, <http://www.freedomhouse.eu/images/Reports/NIT-2010-Georgia-final.pdf> (accessed on 23 February 2011).

<sup>97</sup> See, for example: OSCE/ODIHR *Georgia: Municipal Elections 30 May 2010*, OSCE/ODIHR Election Observation Mission Report, 24.

<sup>98</sup> Interview of a Tbilisi-based business lawyer with the author.

<sup>99</sup> Interview of Giorgi Paitchadze with the author.

<sup>100</sup> American Bar Association, *Judicial Reform Index for Georgia, Volume II*, 23.

<sup>101</sup> The Economist, *Georgia's Mental Revolution: Seven years after the Rose Revolution, Georgia has come a long way*, 19 August 2010, <http://www.economist.com/node/16847798>

# Public Administration 4.

## Summary

The amount of resources allocated to Georgia's public sector has increased considerably in recent years and the efforts aimed at the eradication of bribery have been very successful. At the same time, independence of public sector employees is not protected adequately, while the robust legal provisions concerning transparency are not applied consistently in practice. The public sector does not presently engage in any significant efforts towards educating the general public on corruption and does not collaborate actively with either civil society or the private sector in this area. The existing system of public procurement contains important anti-corruption safeguards but these are not always implemented effectively in practice.

The table below presents indicator scores summarizing the assessment of the Public Sector in terms of its capacity, its internal governance and its role within the Georgian integrity system. The remainder of this section presents a qualitative assessment for each indicator.

### Total Score: 50/100

Dimension	Indicator	Law	Practice
<b>Capacity</b> 42/100	Resources	—	50
	Independence	50	25
<b>Governance</b> 67/100	Transparency	75	50
	Accountability	75	75
	Integrity	75	50
<b>Role</b> 42/100	Public Education	—	25
	Cooperate with public institutions, CSOs and private agencies in preventing/addressing corruption	—	50
	Reduce Corruption Risks by Safeguarding Integrity in Public Procurement		50

## Structure and Organisation

Georgian law defines “public service” as the work in central and local government agencies that are financed by the state. The law lists a number of bodies that comprise the public service,<sup>1</sup> and separate pieces of legislation on other bodies also identify them as a part of the public service. This chapter also examines, the Legal Entities of Public Law (semi-independent bodies performing various public functions under the general supervision of the state), most of which are not covered by the Law on Public Service but nevertheless play important roles on behalf of the state. Furthermore, as some of the Legal Entities of Public Law perform a number of important public service roles delegated to them by government ministries and departments, they are required to follow the provisions of the Law on State Procurement and are monitored by Georgia’s supreme audit institution, the Chamber of Control (see the relevant chapter for further information). The difficulty in defining Georgia’s public service is a result of disjointed legislation caused by years of amendments, resulting in a body of law with many parts that are not in harmony with others.

The Civil Service Bureau is a body responsible for facilitating the development of a uniform state policy on public service and coordinating the relevant activities. The Bureau is also responsible for coordinating the management of human resources in public agencies, collecting asset declarations of public officials, analyzing the state of affairs in public service and presenting relevant recommendations to the legislature.

The assessment of the public administration in this chapter does not include the public institutions that are covered in other chapters as separate pillars (such as the Legislature, the Executive Branch, the Law Enforcement Agencies and the Electoral Administration).

## Assessment

### Resources (Practice)

Score: 50

**To what extent does the public sector have adequate resources to effectively carry out its duties?**

The amount of resources available to Georgia’s public sector has increased significantly in recent years. At the same time, effective delivery of public services is hampered by the fact many agencies still receive inadequate financing.

<sup>1</sup> The Georgian Law on Public Service, adopted on 31 October 1997. The law lists the following institutions as comprising the public service: Parliament, the President’s Administration, government chancellery, ministries and sub-agencies, Council of Justice and courts, National Bank, Chamber of Control, Public Defenders Office, regional governor’s offices, government bodies of the autonomous republics and administrative bodies of municipal government

The availability of resources for the public sector improved considerably following the substantial increase in state revenues after the new government came to power in 2004. The problem of salary arrears, a major issue in the public sector under the previous government, has been resolved. In a 2009 survey of public servants, 99 percent of respondents said that their salaries had been paid on time during the preceding year.<sup>2</sup> A senior government official told TI Georgia that, along with the increase in state funding, the financial situation in the public sector has been improved through the transformation of many public agencies into Legal Entities of Public Law: semi-autonomous bodies delivering a range of services to citizens. Examples include the Civil Registry and the Public Registry, both under the Ministry of Justice. These entities are allowed to retain the revenues they generate and are thus more financially self-sufficient than most other state bodies that rely solely on government transfers.<sup>3</sup>

Despite these improvements, it appears that funding is still inadequate and uneven across the public sector. Nearly half of the respondents in the survey cited above said that their salaries are inadequate in meeting their living costs.<sup>4</sup> It is likely that inadequate pay levels often deter qualified individuals from entering public service. TI Georgia was told by a senior government official that public agencies often find it difficult to fill vacancies because of the lack of applicants possessing the necessary qualifications.<sup>5</sup> According to one expert, while some government agencies receive an adequate amount of resources, the financing of many central agencies and all local government bodies is inadequate. The flexible hiring and firing system and the absence of a common remuneration scale for different public institutions make it possible for some “priority” agencies to retain qualified employees through generous bonuses and to offer attractive remuneration to contractors and consultants.<sup>6</sup> The downside to hiring qualified external consultants at a higher salary is that institutional memory is not built or retained.

The low level of independence of civil servants and especially the insecurity in job tenure are also a drain on institutional knowledge and prevent some public bodies from building expertise (see the independence law/practice sections below for more detail).

## Independence (law)

Score: 50

### To what extent is the independence of civil servants safeguarded by law?

The legal framework contains a number of provisions designed to ensure the independence of public servants but some important safeguards are missing.

The law highlights impartiality as one of the main principles of public service in Georgia<sup>7</sup> and prohibits public servants from using their position for political

<sup>2</sup> GORBI, *Perception of Corruption in Georgia: Survey of Public Officials*, prepared within the framework of the GEPAC Project funded by the Ministry for Development and Cooperation of the Netherlands and implemented by the Council of Europe (Tbilisi: 2009), 11.

<sup>3</sup> Interview of Deputy Minister of Justice Jaba Ebanoidze with the author, Tbilisi, 13 July 2010.

<sup>4</sup> GORBI, *Perception of Corruption in Georgia: Survey of Public Officials*, 10.

<sup>5</sup> Interview of Deputy Minister of Justice Jaba Ebanoidze with the author, Tbilisi, 13 July 2010.

<sup>6</sup> Interview of Larry Held, former Chief of Party at AED for the USAID-funded project, Public Administration Reform, with the author, Tbilisi, 30 June 2010.

<sup>7</sup> The Law on Public Service, Article 13.

party-related activities.<sup>8</sup> Public sector employees can challenge dismissals and other work-related orders and decisions in court.<sup>9</sup> The law lists the legitimate reasons for dismissal of public servants,<sup>10</sup> which should limit the scope for arbitrary decisions. The grounds for dismissal listed in the law are generally reasonable, such as an employee's lack of required skills, his/her failure to pass an examination or conviction for a crime.

However, there are no provisions expressly prohibiting partisan interference in the appointment and promotion of public servants and there is no institution tasked with protecting public sector employees from arbitrary treatment and political interference. As pointed out by the OECD's Anti-Corruption Network for Eastern Europe and Central Asia (OECD ACN), the existing rules give "large discretion" to the senior management of public agencies and make it possible for them to exert "undue influence" on the professional decisions on public servants.<sup>11</sup>

## Independence (practice)

Score: 25

To what extent are civil servants free from external interference in their activities?

The lack of effective legal mechanisms for ensuring the independence of public servants has led to a situation where their tenure and job security are often directly tied to the tenure of political appointees. In practice, the situation varies by agency but, in general, civil servants enjoy few protections.

The independence of the public sector has been undermined by the wide discretion that the heads of individual agencies enjoy in the appointment and dismissal of public servants in practice. According to OECD ACN, while the heads of agencies should be able to manage human resources based on the needs of their institutions, the wide scope of discretion they have in Georgia can lead to the "politicization of public administration".<sup>12</sup> This fear is borne out in practice and the neutrality of the public service has been called into question during recent elections. The OSCE/ODIHR, for example, noted in its report on the 2010 elections that the "distinction between the state and the ruling party was sometimes blurred".<sup>13</sup> TI Georgia's report on the use of administrative resources during the elections also highlighted the fact that the public service was effectively involved in the ruling party's campaign in a number of cases.<sup>14</sup>

A senior parliamentary official confirmed that, in practice, public servants are easily forced out of their jobs by their superiors and enjoy very little protection.<sup>15</sup> Consequently, as noted by another expert interviewee, there is high turnover in the staff of public agencies. Given the lack of established professional service standards, loyalty to immediate supervisors often becomes a central

<sup>8</sup> *Id.*, Article 62.

<sup>9</sup> The Law on Public Service, Article 127.

<sup>10</sup> *Id.*, Articles 93-107.

<sup>11</sup> OECD Anti-Corruption Network for Eastern Europe and Central Asia, Istanbul Anti-Corruption Action Plan, *Second Round of Monitoring, Georgia Monitoring Report*, (Paris: OECD ACN, 2010), 28.

<sup>12</sup> OECD Anti-Corruption Network for Eastern Europe and Central Asia, Istanbul Anti-Corruption Action Plan, *Second Round of Monitoring, Georgia Monitoring Report*, 28.

<sup>13</sup> OSCE/ODIHR *Georgia: Parliamentary Elections 21 May 2008*, OSCE/ODIHR Election Observation Mission Final Report, p 2.

<sup>14</sup> Transparency International Georgia, *The Use of Administrative Resources for Election Campaign: 2010 Local Self-Government Elections Final Report*, (Tbilisi: Transparency International Georgia, 2010).

<sup>15</sup> Khatuna Gogorishvili, chairwoman of the Parliamentary Commission on Procedural Issues and Rules, cited in Transparency International Georgia, *European Neighbourhood Policy: Monitoring Georgia's Anti-Corruption Commitments* (Tbilisi: Transparency International Georgia, 2010), 30.

factor determining whether or not an employee retains a job. The Civil Service Bureau, the body charged with coordinating the management of human resources, does little to reinforce the independence of public servants as each agency determines its staff-related policies on its own.<sup>16</sup>

On the other hand, a 2009 survey of public servants produced a somewhat different picture: 67 percent of the respondents said that they enjoy job security and 68 percent stated that decisions on human resources are not based on political affiliation. However, the authors of the survey noted that almost a quarter of the respondents did not answer the latter question.<sup>17</sup>

The Civil Service Bureau has recognized the fact that the chiefs of public agencies presently enjoy excessive autonomy in terms of human resources policy. The Bureau is currently working on a common set of rules and standards to address the issue.<sup>18</sup>

## Transparency (law)

Score: 75

To what extent are there provisions in place to ensure transparency in financial, human resource and information management of the public service?

The legal provisions concerning transparency in the management of the public sector are mostly adequate. The legal framework is generally progressive but does not always require public agencies to publicize certain types of information proactively.

The rules for the management of public information are set out in the General Administrative Code, which states that everyone is entitled to access public information stored in administrative bodies unless it contains a state, a commercial or a personal secret. Public agencies are required to submit the public information they have to a special internal registry and to appoint officials responsible for ensuring access to public information. Public agencies are required to report to the president and parliament annually on matters concerning public information management.<sup>19</sup>

Individuals seeking access to public information must submit a written request and the relevant public agency is required to provide the information immediately or, if the information requires some additional work to gather, within 10 days – a period to be envied by citizens of most countries. Importantly, it is not necessary to justify the reason for a request.<sup>20</sup> In addition to the provisions of the General Administrative Code, the Law on Public Service requires heads of public agencies to ensure proper operation of the public information access mechanism.<sup>21</sup>

<sup>16</sup> Interview of Larry Held, with the author.

<sup>17</sup> GORBI, *Perception of Corruption in Georgia: Survey of Public Officials*, 9-11.

<sup>18</sup> TI Georgia correspondence with Irakli Kotetishvili, head of the Civil Service Bureau, 6 June 2011.

<sup>19</sup> The General Administrative Code of Georgia, adopted on 25 June 1999, Articles 10, 35-36, 49.

<sup>20</sup> *Id.*, Articles 37, 40.

<sup>21</sup> The Law on Public Service, Article 73 (3).

The rules governing appointments to positions in the public sector are generally adequate in terms of transparency. Hiring is to be conducted through an open competition and vacancies must be advertised publicly at least 10 days in advance. Successful candidates are selected by a special commission that is required to inform all applicants about its decision within five days from adopting it.<sup>22</sup>

The legal framework contains a number of provisions regarding the transparency of public procurement. The State Procurement Agency has a legal responsibility to create a single database of public procurement records and to issue normative acts designed to ensure transparency of procurement. The law directly requires the Agency to monitor procurements in order to ensure that the principles of transparency and accountability are followed. Procuring bodies must submit procurement reports to the State Procurement Agency within a legal deadline. These reports must be made available to any interested individual, while the procuring bodies are also required to publish brief summaries of the reports in the media. Under the latest legislative amendments, all bidding is to be conducted electronically and documents must be publicly accessible via a unified online system.<sup>23</sup> This represents an important step forward in the transparency and accountability of public procurement.

The Law on Public Service requires lower-level public service employees (public servants) and their family members to submit annual income and property declarations to the Ministry of Finance.<sup>24</sup> These are used primarily for tax purposes. Higher-level members of the public service (public officials) are required to submit more extensive asset declarations to the Civil Service Bureau.<sup>25</sup> However, the latter requirement does not apply to a number of important members of local government (for example, the members of the Tbilisi City Council).

The law does not contain any mechanisms to verify the declarations. The Civil Service Bureau has stated that the need for such mechanisms is debatable since the declarations are publicly available and all interested individuals and organizations can review their content.<sup>26</sup>

Also on the negative side, the fact that Georgian legislation does not contain a list of information that public agencies must publish proactively is a notable shortcoming. OECD ACN has recommended that such a list should include, among other things, information regarding the structure and authority of public agencies, their budgets and financial reports, as well as adopted or draft decisions.<sup>27</sup>

<sup>22</sup> *Id.*, Articles 29-34.

<sup>23</sup> The Law on State Procurement, Article 4, 12 (1), 22.

<sup>24</sup> The Law on Public Service, Article 18.

<sup>25</sup> The Law on Conflict of Interest and Corruption in Public Service, adopted on 17 October 1997, Article 14.

<sup>26</sup> TI Georgia correspondence with Irakli Kotetishvili, head of the Civil Service Bureau, 6 June 2011.

<sup>27</sup> OECD Anti-Corruption Network for Eastern Europe and Central Asia, Istanbul Anti-Corruption Action Plan, *Second Round of Monitoring, Georgia Monitoring Report*, 39.

## Transparency (practice)

Score: 50

To what extent are the provisions on transparency in financial, human resource and information management in the public sector effectively implemented?

Legal provisions regarding the access to public information are implemented unevenly across the public sector. Government agencies do not always pro-

vide public information within the legal deadlines and withhold certain types of public information, such as the bonuses of public officials. At the same time, notable progress was made in recent months in terms of transparency of public procurement and public sector vacancies.

According to OECD ACN, Georgia's extensive provisions on freedom of information are not always implemented thoroughly. Public agencies often fail to provide information within the legal deadline and sometimes fail to provide a response at all.<sup>28</sup> As a possible reason for these shortcomings, OECD ACN highlighted the fact that Georgia has no central body responsible for monitoring the application of freedom of information regulations and providing training to the relevant public officials.<sup>29</sup> In TI Georgia's own experience with FOI requests, public agencies often wait for the maximum 10 days even if the information requested is readily available; they frequently provide incomplete answers when the requests are detailed and specific; and they ask for further clarification before providing the information, or ask requestors for a justification, which is a direct violation of the law.<sup>30</sup> These conclusions were also borne out by the field tests conducted for this study: 52 questions sent to public agencies by the representatives of other civil society organizations, media, ethnic minorities and non-affiliated citizens. The field tests revealed considerable differences in how different public agencies treat FOI requests, with some of them being much less responsive than others (see the chapter on the field test results for further details).

The declaration of assets takes place in practice as required by the law and these are posted on a special website.<sup>31</sup> At the same time, there is no agency responsible for reviewing the declarations or verifying the information.<sup>32</sup> While it would not be possible to verify the information in every declaration, TI Georgia has suggested that a random spot-check of some asset declarations would be an effective enforcement mechanism.<sup>33</sup>

Information regarding the salaries of public officials is publicly available, but the system of bonuses (which are believed to make up a substantial portion of some public officials' income) is not transparent. There is no defined system of bonus rates or criteria for awarding them. Public agencies have turned down TI Georgia's requests for information regarding the bonuses received by individual public officials.<sup>34</sup>

Transparency in hiring is achieved only inconsistently within the public sector. The legal provision requiring that government jobs be publicly advertised is applied unevenly, as some agencies regularly advertise all positions, while others never do.<sup>35</sup> At the same time, as an important step forward, the Civil Service Bureau started posting public service vacancies centrally on its website ([www.csb.gov.ge](http://www.csb.gov.ge)) in late 2010.

Transparency of public procurement has been problematic in recent years but progress has been made lately. While bidding announcements used to be pub-

<sup>28</sup> *Id.*, 38-39.

<sup>29</sup> *Id.*, 39.

<sup>30</sup> Transparency International Georgia, *European Neighbourhood Policy: Monitoring Georgia's Anti-Corruption Commitments*, 38.

<sup>31</sup> [www.declaration.ge](http://www.declaration.ge); declarations submitted before 1 February 2010 are available on the website of the Civil Service Bureau: [www.csb.gov.ge](http://www.csb.gov.ge).

<sup>32</sup> Transparency International Georgia, *European Neighbourhood Policy: Monitoring Georgia's Anti-Corruption Commitments* (2010), 29.

<sup>33</sup> Ryan, Caitlin and Rusudan Khotivari, Transparency International Georgia, *Tracking top-level ministry officials' income and bonuses* (blog article), 01 February 2011, <http://www.transparency.ge/en/blog/ptracking-top-level-ministry-officials%E2%80%99-income-and-bonusesp>.

<sup>34</sup> See the chapter on Field Test results.

lished in a newspaper and posted on the State Procurement Agency's website, it was difficult to obtain information about conducted tenders. The Georgian Young Lawyers Association, for example, has often found it difficult to obtain procurement-related information, especially from local government bodies, and the information it received is often incomplete.<sup>36</sup> The problem was addressed through the introduction of electronic procurement since the relevant information is now posted on a dedicated website ([tenders.procurement.gov.ge](http://tenders.procurement.gov.ge)).

## Accountability (law)

Score: 75

To what extent are there provisions in place to ensure that public sector employees have to report and be answerable for their actions?

The legal framework is generally adequate in terms of accountability procedures as there are various mechanisms for challenging the decisions made by public agencies or officials.

The legal framework on whistle blowing, introduced in 2009, is strong. Whistle-blowing is defined in the law as informing the relevant internal unit (audit or internal control) of a public agency about a violation that was committed by a public agency or a public servant and which caused damage to public interests or to a public agency's reputation. The law prohibits intimidation, pressure or discrimination against whistle-blowers, who are also entitled to seek protection in a court if they or their family members are threatened. If civil, administrative or criminal proceedings are launched against a whistle-blower, the relevant agency is required to prove that the charges are not linked to the fact of whistle blowing. A whistle-blowing complaint cannot be adjudicated by an official against whom it is directed or an official who has a direct or indirect interest in the outcome and whose impartiality is therefore questionable. The complaint must be investigated and adjudicated by the relevant internal body within the shortest reasonable timeframe. If the internal inquiry finds grounds for criminal or administrative sanction, then the body must notify the relevant law enforcement authorities.<sup>37</sup>

There is also a mechanism in place for citizens to file complaints regarding the decisions of administrative bodies (public agencies). They may petition a higher-level official or unit inside the same body or a higher-level body, or appeal to a court.<sup>38</sup> Administrative bodies are required to allow all interested parties to present their opinion during the adjudication of a complaint.<sup>39</sup>

The Chamber of Control (Georgia's supreme audit institution) has the authority to audit public agencies.<sup>40</sup> The auditors are authorized to access all relevant materials and must inform law enforcement bodies of any suspected crimes.<sup>41</sup> In addition, under a new law adopted in March 2010, public agencies are re-

<sup>35</sup> Interview of Larry Held with the author.

<sup>36</sup> Interview of Tatuli Todua, Georgian Young Lawyers Association, with the author. 6 July 2010.

<sup>37</sup> The Law on Conflict of Interest and Corruption in Public Service, Article 20 (1), 20 (3), 20 (4), 20 (5), 20 (8).

<sup>38</sup> The General Administrative Code, Articles 177-178.

<sup>39</sup> *Id.*, Article 194.

<sup>40</sup> The Law on Chamber of Control, adopted on 26 December 2006, Article 6.

<sup>41</sup> *Id.*, Articles 23-24.

quired to set up internal audit units responsible for examining the effectiveness of financial management in these institutions. Internal audit units report to a special body inside the Ministry of Finance. Moreover, the new law requires public agencies to set up financial management and control systems and to the Ministry of Finance on their operation. On the negative side, the Ministry of Internal Affairs, the Ministry of Defence and the Ministry of Justice, as well as local government bodies and the Legal Entities of Public Law funded by the state, are not required to set up internal audit units until 2013.<sup>42</sup>

The Georgian Criminal Code contains a dedicated chapter on crimes committed by public officials and civil servants in their official capacity. Punishable offences include bribery, abuse of authority, excess of power, and forgery.<sup>43</sup>

Georgian law includes provisions designed to ensure accountability of Legal Entities of Public Law. This type of an agency is required to submit annual reports to a special supervisory body designated by the president. The supervisory body is authorized to request information from the entity and commission an independent audit of the entity's finance reports.<sup>44</sup> Georgia's supreme audit institution, the Chamber of Control, also has the authority to examine the activities of these entities.<sup>45</sup> On the negative side, as noted by the Chamber of Control, the legal framework lacks any clear criteria for determining which Legal Entities of Public Law are accountable to the Ministry of Finance in the same manner as other bodies that receive state funding.<sup>46</sup>

Parliament can require public sector agencies to present information/reports regarding their activities at any time.<sup>47</sup>

## Accountability (practice)

Score: 75

**To what extent do public sector employees have to report and be answerable for their actions in practice?**

Accountability of the public service agencies and employees is generally ensured effectively through the activities of the Prosecutor's Office, the judiciary and the supreme audit institution. At the same time, internal audit mechanisms were only introduced a short while ago and do not cover the entire public sector yet.

Official statistics suggest that offences committed by public servants are being investigated actively. The Prosecutor's Office recorded 791 crimes of this type in 2009, including 94 cases of abuse of power and 79 cases of bribery.<sup>48</sup> The judiciary appears to provide a meaningful mechanism for private parties to seek redress. For example, in 2009, private parties won half of their appeals against public agencies in court (2,673 out of 5,342).<sup>49</sup>

<sup>42</sup> The Law on Internal State Audit and Inspection (adopted on 26 March 2010), Articles 2, 6-8, 17, 25, 29, 31, 32.

<sup>43</sup> The Georgian Criminal Code, adopted on 22 July 1999, Chapter XXXIX.

<sup>44</sup> The Law on Legal Entity of Public Law, Articles 11, 14.

<sup>45</sup> The Law on Chamber of Control, Article 6.

<sup>46</sup> The Chamber of Control of Georgia, *Report on Activities of Chamber of Control of Georgia: 2009* (Tbilisi: Chamber of Control, 2010), 32 (in Georgian).

<sup>47</sup> The Parliamentary Rules of Procedure, adopted on 17 February 2004, Sections II, VIII.

<sup>48</sup> The Chief Prosecutor's Office of Georgia, *Report on Crime Situation in 2009* (Tbilisi: The Chief Prosecutor's Office, 2010), 68-71 (in Georgian).

<sup>49</sup> Data taken from the Supreme Court's official website: [www.supremecourt.ge](http://www.supremecourt.ge) (accessed on 2 March 2010).

Public agencies are audited by the Chamber of Control as required by the law. The activities of the Chamber of Control are limited to inspection of compliance with the relevant laws and budgets, while the audit of financial systems and of internal control and internal audit functions is not carried out.<sup>50</sup> At the same time, there have been some encouraging developments in recent months as the Chamber of Control has identified and publicized serious violations in a number of public agencies.<sup>51</sup> It is difficult to assess the effectiveness of the internal audit units of public agencies since they operated for less than a year in some agencies and are yet to be established in others.

According to Deputy Justice Minister Jaba Ebanoidze, the Legal Entities of Public Law that were established by government ministries are supervised by the same ministries.<sup>52</sup> All Legal Entities of Public Law that receive state funding are audited by the Chamber of Control.<sup>53</sup>

Although Georgia recently introduced some robust rules on whistleblower protection, doubts have been voiced as to whether the government is taking any steps to raise the awareness of these new provisions among civil servants.<sup>54</sup>

## Integrity Mechanisms (law)

Score: 75

To what extent are there provisions in place to ensure the integrity of public sector employees?

Georgia has robust integrity rules for the public sector. These are primarily set out in the Law on Public Service and the Law on Conflict of Interest and Corruption in Public Service. Many provisions of the latter only apply to higher-level public servants.

The Law on Public Service was amended in 2009 to incorporate a whole new chapter on “general rules of conduct for public servants”. Under this amendment, public servants are required to perform their duties in an impartial and honest manner and must refrain from misusing official funds or using official authority for personal purposes. Public servants are prohibited from accepting gifts or services that could influence the exercise of their duties and must inform their supervisors of any such offers. Public servants are required to prevent any instances of conflict of interest and to declare such instances whenever they occur. They are also required to file a notice if they have relatives who work in the same institution.<sup>55</sup>

For three years after leaving the service, former public sector employees are prohibited from joining organisations or enterprises that they supervised as part of their office duties and from receiving income from such entities.<sup>56</sup> Public servants cannot, in their official capacity, enter commercial deals with their family

<sup>50</sup> OECD Anti-Corruption Network for Eastern Europe and Central Asia, Istanbul Anti-Corruption Action Plan, Second Round of Monitoring, Georgia Monitoring Report, 35.

<sup>51</sup> Transparency International Georgia, A More Independent and Effective Chamber of Control, 01 October 2010, <http://www.transparency.ge/en/blog/pa-more-independent-and-effective-chamber-controlp> (accessed on 7 March 2011).

<sup>52</sup> Interview of Deputy Minister of Justice Jaba Ebanoidze with the author.

<sup>53</sup> A number of Legal Entities of Public Law were audited by the Chamber of Control in 2009. A list of the audited agencies is available on the Chamber’s website: <http://www.control.ge/reports/annual-reports/> (accessed on 28 July 2010).

<sup>54</sup> OECD Anti-Corruption Network for Eastern Europe and Central Asia, Istanbul Anti-Corruption Action Plan, Second Round of Monitoring, Georgia Monitoring Report, 32.

<sup>55</sup> The Law on Public Service, Articles 73 (1) – 73 (5).

<sup>56</sup> Id., Article 65.

members or close relatives, as well as the institutions where they work, commercial entities or political parties. When a public servant holds shares in a commercial enterprise, s/he is required to hand them over to another person for temporary management for the duration of public employment.<sup>57</sup>

OECD ACN has praised Georgia's rules on gifts, describing them as "very detailed".<sup>58</sup> The Law on Conflict of Interest and Corruption in Public Service establishes a ceiling value of gifts that a public servant is allowed to accept in a single year (15 percent of the annual salary). A similar restriction is in place for the family members of public servants.<sup>59</sup>

Public officials are prohibited to perform any other paid work, while their family members are also barred from working or owning shares in commercial entities that the officials are supposed to supervise. A public official's close relative cannot be appointed to a position directly subordinated to this official, unless the appointment is made through an open contest.<sup>60</sup>

Bribery of or by public servants is a criminal offence under the Georgian law.<sup>61</sup>

On the negative side, the extensive integrity provisions discussed above are vague or ambiguous in terms of their application to the Legal Entities of Public Law. Also, there is no legal requirement for public procurement contracts to contain integrity/anti-corruption clauses (though there are provisions dealing with conflict of interest during the bidding and selection process; see the section on the public sector's role in reducing corruption in public procurement for more detail).

## Integrity Mechanisms (practice)

Score: 50

### To what extent is the integrity of civil servants ensured in practice?

The government has been very successful in reducing bribery in the public service. Beyond that, however, Georgia's extensive integrity rules for public servants are not always applied effectively in practice, mainly because of the lack of an effective institution responsible for enforcing the rules and providing public servants with appropriate training.

The Georgian government has achieved considerable progress in reducing petty corruption in the public sector since 2003. According to the 2009 Global Corruption Barometer, a mere two percent of those interviewed in Georgia had paid a bribe during the previous year. At the same time, respondents still did not seem to have high levels of trust in public officials, giving an average score of 3.2 out of five when asked to rate public officials from "not corrupt" (one) to "extremely corrupt" (five).<sup>62</sup>

<sup>57</sup> *Id.*, Article 66.

<sup>58</sup> OECD Anti-Corruption Network for Eastern Europe and Central Asia, Istanbul Anti-Corruption Action Plan, *Second Round of Monitoring, Georgia Monitoring Report*, 33.

<sup>59</sup> The Law on Conflict of Interest and Corruption in Public Service, Article 5.

<sup>60</sup> The Law on Public Service, Article 13.

<sup>61</sup> The Georgian Criminal Code, Articles 338-339.

<sup>62</sup> Transparency International, *Global Corruption Barometer 2009*, (Transparency International, 2009), 29, 32.

Beyond the prosecution of bribery, it appears that integrity rules are not enforced in a consistent manner. According to the OECD ACN, “it cannot be concluded that the [Public Service] Bureau upholds professional and legal standards in the civil service in general.”<sup>63</sup> The Bureau does not have authority to discipline breaches of integrity rules, it does not conduct regular trainings for public servants, especially at the local municipal level, and it lacks the capacity to enforce conflict of interest provisions and post-employment restrictions.<sup>64</sup>

The Civil Service Bureau has prepared a legislative proposal whereby public agencies would be required to provide their employees with training on integrity rules and issues.<sup>65</sup>

### Role: Public Education (practice)

Score: 25

To what extent does the public sector inform and educate the public on its role in fighting corruption?

The public sector does not presently engage in any significant activities designed to inform the public about corruption-related matters.

The government does not presently carry out any awareness-raising or educational activities in the field of anti-corruption, limiting its efforts to press conferences held by prosecutors when corruption-related crimes are solved. Thus the public only receives information about the repressive aspects of anti-corruption policies but it does not hear about pre-emptive measures, such as the development and implementation of anti-corruption strategies and action plans.<sup>66</sup> One plausible explanation is that the government defines corruption rather narrowly as bribery and focuses entirely on combating it through arrests and deregulation. TI Georgia’s interview with a senior government official seemed to confirm that the public service does not prioritize education of the general public about anti-corruption efforts. The official noted that, given the progress achieved in terms of reducing corruption in recent years, citizens no longer consider corruption to be a major problem in the public sector.<sup>67</sup>

On the positive side, a number of agencies involved in anti-corruption efforts (such as the Prosecutor’s Office and the Chamber of Control) have publicly advertised hotlines that citizens can use to submit corruption-related complaints. The Civil Service Bureau is planning to start a wide information campaign in order to raise public awareness of the most recent changes in the public service (including anti-corruption measures). According to the Bureau, the campaign will focus on public sector accountability and transparency.<sup>68</sup>

<sup>63</sup> OECD Anti-Corruption Network for Eastern Europe and Central Asia, Istanbul Anti-Corruption Action Plan, *Second Round of Monitoring, Georgia Monitoring Report*, 30.

<sup>64</sup> *Id.*, 29, 30, 33.

<sup>65</sup> TI Georgia correspondence with Irakli Kotetishvili, head of the Civil Service Bureau, 6 June 2011.

<sup>66</sup> OECD Anti-Corruption Network for Eastern Europe and Central Asia, Istanbul Anti-Corruption Action Plan, *Second Round of Monitoring, Georgia Monitoring Report*, 11-12.

<sup>67</sup> Interview of Deputy Minister of Justice Jaba Ebanoidze with the author.

<sup>68</sup> TI Georgia correspondence with Irakli Kotetishvili, head of the Civil Service Bureau, 6 June 2011.

## Role: Cooperate with public institutions, CSOs and private agencies in preventing/ addressing corruption (practice)

Score: 50

To what extent does the public sector work with public watchdog agencies, business and civil society on anti-corruption initiatives?

There has been limited cooperation between the public sector, civil society and business on anti-corruption issues.

TI Georgia is one of four CSO members of the Anti-Corruption Coordination Council set up in 2009 by the Ministry of Justice. However, when the Council elaborated the National Anti-Corruption Strategy and its implementation action plan in 2010, the participation of NGOs was limited due to the short-term notification typically provided to NGOs to comment on draft versions of these documents.

OECD ACN noted that civil society's involvement in assessing the implementation of the National Anti-Corruption Strategy has been complicated by the lack of assessment criteria, while the private sector has not been included in the anti-corruption activities at all. It also emphasized that there are no formalized mechanisms for anti-corruption cooperation between different agencies inside the public sector.<sup>69</sup>

On the other hand, in some cases, the government recognizes the value of involving civil society in its reform efforts. For example, CSOs are represented in the Board and the Disputes Council of the State Procurement Agency and in the Chamber of Control's Council of Disputes. Also, several NGOs including TI Georgia were members of a working group with the Central Election Commission that developed a memorandum to prevent abuse of administrative resources in the pre-election period in the run-up to the May 2010 elections, and also in 2008 parliamentary and presidential elections. There are numerous examples of a core group of civil society organizations involved in policy processes, although the general rule of thumb is that very little time is provided to comment on draft legislation.

## Role: Reduce Corruption Risks by Safeguarding Integrity in Public Procurement (Law and Practice)

Score: 50

To what extent is there an effective framework in place to safeguard integrity in public procurement procedures, including meaningful sanctions for improper conduct by both suppliers and public officials, and review and complaint mechanisms?

Georgia's legal framework for public procurement is extensive and contains a number of detailed provisions designed to ensure objectivity of the process and

<sup>69</sup> OECD Anti-Corruption Network for Eastern Europe and Central Asia, Istanbul Anti-Corruption Action Plan, *Second Round of Monitoring, Georgia Monitoring Report*, 11, 45.

reduce the risk of corruption. Recent amendments to the law in 2009 provide for the introduction of further safeguards, such as an electronic procurement system and an independent panel for the review of complaints. However, according to experts, the existing procedures are not always followed thoroughly in practice and the agency responsible for supervising the procurement system lacks the capacity to conduct effective oversight. Some of the safeguards were only introduced a short while ago and it is difficult to assess their effectiveness in practice yet.

The general rules for state procurement are set out in the Law on State Procurement,<sup>70</sup> while the Charter on State Procurement Rules<sup>71</sup> contains a more detailed description of the relevant procedures. Procurement is handled by individual public agencies, with general supervision from the State Procurement Agency (SPA). The SPA is an independent institution responsible for the coordination and monitoring of procurement-related activities. The agency is accountable to the executive branch and its chairperson is appointed by the prime minister. The agency is required to continuously examine and analyze the situation in the field of state procurement on the basis of reports supplied by procuring organisations and present relevant recommendations to the government, while ensuring that the procurement procedures are carried out according to the law.<sup>72</sup> The legal requirements discussed below extend to Legal Entities of Public Law.<sup>73</sup>

The law establishes open bidding (tendering) as a general method of public procurement, with some exceptions. Georgia recently adopted legal amendments that changed the procurement setup considerably. Electronic procurement conducted through a centralised online system was introduced and presently there are three types of procedures that public institutions can use for procurement: 1) electronic tender (for purchases worth GEL 200,000 (USD 120,500) and above); 2) simplified electronic tender (for purchases under GEL 200,000); 3) simplified procurement (for purchases under GEL 5,000 (USD 3,000)).<sup>74</sup> The main difference between the electronic tender and the simplified electronic tender is the number of days allocated for the entire procedure, while the method of simplified procurement allows for direct purchase of goods and services.

Introduction of the GEL 5,000 cap for exceptions to open bidding is an important step forward, particularly as the same cap previously ranged from GEL 50,000 to GEL 100,000 (USD 30,000-60,000). At the same time, the entire law and its requirements concerning open bidding do not apply to a whole range of purchases made by public agencies. While it is commendable that a comprehensive list of these exceptions is provided in the law, some items on the list are potentially problematic. For example, the law does not apply to procurement conducted under the special funds (“reserve funds”) of the president, the government and the Tbilisi Mayor’s Office.<sup>75</sup>

The law contains a number of provisions designed to ensure objectivity of the contractor selection process by addressing potential cases of conflict of inter-

<sup>70</sup> The Georgian Law on State Procurement, adopted on 20 April 2005.

<sup>71</sup> The Charter on State Procurement Rules, approved by the chairman of the State Procurement Agency on 3 January 2006.

<sup>72</sup> The Law on State Procurement, Article 4.

<sup>73</sup> *Id.*, Article 3.

<sup>74</sup> *Id.*

<sup>75</sup> The Law on State Procurement, Article 3 (1).

est. These rules are highly detailed and “adequately elaborated”.<sup>76</sup> Bidding is conducted by a tendering commission comprised of officials from the procuring organisation. Once bidders are identified, the public officials and civil servants involved in the evaluation and selection of offers are required to confirm in writing that their participation in the process does not involve a conflict of interest. All individuals who do have a conflict of interest are required to withdraw from the process.<sup>77</sup> The law leaves little room for subjective decisions since it requires the commission to select the lowest-price offer that meets the criteria announced by the commission in advance.<sup>78</sup>

The law establishes standard content of the tender announcements posted in the electronic procurement system. Procuring agencies are further required to use the European Union’s Common Procurement Vocabulary.<sup>79</sup> Any changes to the tender documents must be posted in the same unified electronic system no later than five days before the end of bidding (two days, in case of a simplified electronic tender).<sup>80</sup>

The law describes the process by which contract implementation should be supervised. The procuring organization must appoint a coordinator or form a special inspection group. The law contains a list of the supervisory activities to be conducted by the coordinator and/or the inspection group (such as drawing up a plan and a schedule of supervision, overseeing the compliance of the quality of provided goods or services with the procurement contract). The procuring organisation must regularly inform the State Procurement Agency about the findings of the inspection group (though the exact frequency of reporting is not defined).<sup>81</sup>

The SPA is also responsible for creating and maintaining a unified database of contracts,<sup>82</sup> as well as an electronic database of dishonest bidders.<sup>83</sup> All procuring organisations have a duty to submit procurement reports to the agency.<sup>84</sup> Procuring organisations are required to store all documents and materials concerning the bidding process for a period of three years from the signing of a contract.<sup>85</sup> The agency is authorized to ask procuring organisations and bidders to present any relevant documents at any stage of the procurement process.<sup>86</sup> The agency can also demand that procuring organisations correct their unlawful actions and can recommend suspension of their funding in the event of gross and systematic irregularities.<sup>87</sup> The Chamber of Control (Georgia’s supreme audit institution) also examines public contracting through the audit of procuring organisations.<sup>88</sup>

Bidders can file complaints against the actions by the procuring organisation or the tendering commission either with the organisation itself, with the SPA or with the judiciary. If a complaint is filed with the agency and the agency finds that the claims are valid, it is authorised to order the procuring organisation to revise its decision. The agency can also raise the question of responsibility of the offenders with the relevant authorities. The procuring institution is required

<sup>76</sup> Lina Ghvinianidze, GYLA, cited in Transparency International Georgia, *European Neighbourhood Policy: Monitoring Georgia’s Anti-Corruption Commitments*, 35.

<sup>77</sup> The Law on State Procurement, Article 8.

<sup>78</sup> Order No 9 of State Procurement Agency Chairperson on Approving Temporary Rules for Conducting State Procurement by Electronic Means, Tbilisi, 22 October 2010, Article 10.

<sup>79</sup> *Id.*, Article 6.

<sup>80</sup> *Id.*, Article 7.

<sup>81</sup> The Charter on State Procurement Rules, Article 26.

<sup>82</sup> The Law on State Procurement, Article 4.

<sup>83</sup> The Charter on State Procurement Rules, Article 24 (1).

<sup>84</sup> The Law on State Procurement, Article 22.

<sup>85</sup> The Charter on State Procurement Rules, Article 28.

<sup>86</sup> The Law on State Procurement, Article 22.

<sup>87</sup> The Charter on State Procurement Rules, Article 28.

<sup>88</sup> The Law on State Procurement, Article 22 (1).

to suspend the procurement process during the adjudication of a complaint. The decisions adopted by procuring organisations and the agency regarding complaints can be challenged in court.<sup>89</sup> Under the recent amendments to the law, the SPA is required to set up a special panel for the adjudication of complaints that will include an equal number of representatives from the agency itself and from civil society organizations.<sup>90</sup>

In terms of civic control of public contracting, the law provides for the establishment of the State Procurement Agency's Supervisory Board in order to ensure "transparency of the state procurement system, publicity and democratic governance of the agency's work". The seven-member board is to be comprised of civil society and media representatives along with government officials. The board is authorised to retrieve and examine any procurement-related information from the procuring organisations. The law requires the board sessions to be public.<sup>91</sup> There are two civil society representatives and one media representative on the SPA board at present.<sup>92</sup>

There are a number of weaknesses in the law. Specifically, the law does not expressly require people involved in different stages of the procurement process to have any special qualifications. There is also no provision that would stipulate a clear separation of responsibilities during the tendering process, for example requiring that those responsible for offering evaluations must be different from those tasked with elaborating bidding documents and from those in charge of oversight activities. There are no administrative sanctions (such as prohibition from holding public office) for individuals who have committed procurement-related criminal offences. In addition, OECD ACN notes that the law should provide for debarment of companies convicted of corruption-related offences from public procurement, and it should allow appeals to be filed regarding the type of procurement chosen by a procuring agency (e.g. whether a procuring agency should have used open bidding instead of single-source procurement).<sup>93</sup>

The current system, whereby winners in tenders are determined on price alone, while limiting the possibility of biased decisions on the part of procuring agencies, creates a dangerous incentive among bidders to be dishonest about actual costs and pays inadequate attention to the value of quality in goods and services. In order for this system to be effective, there must be substantial resources invested into drawing up bid documents and overseeing implementation and delivery of services and goods tendered. It is not clear whether such expertise exists within the SPA currently.

Assessment of the current practice of public procurement is complicated by the fact that Georgia introduced a new system of electronic procurement less than a year ago and there is still not enough evidence for drawing any definite conclusions regarding its effectiveness in practice.

Open bidding seems to be the predominant practice. According to the SPA only three percent of the money allocated to different procurement organisations in

<sup>89</sup> *Id.*, Article 23.

<sup>90</sup> The Georgian Law on Amendments and Additions to the Law on State Procurement, adopted on 20 November 2009, Article 1.

<sup>91</sup> The Law on State Procurement, Article 6.

<sup>92</sup> The Georgian Government Order No 977, 15 December 2009, <http://spa.ge/index.php?m=138> (accessed on 7 March 2011).

<sup>93</sup> OECD Anti-Corruption Network for Eastern Europe and Central Asia, Istanbul Anti-Corruption Action Plan, *Second Round of Monitoring, Georgia Monitoring Report*, 37.

2009 was spent through single-source procurement, while 75 percent was spent through open bidding.<sup>94</sup> No comparable data is available yet for the period of time since the introduction of electronic procurement. However, the percentage of single-source procurement is likely to have become even smaller due to the sharp reduction in the maximum permissible sum of such purchases.

According to GYLA, the tender procedures are not always applied thoroughly. Selection criteria are sometimes altered after the applications have been received and, in some cases, no clear selection criteria are released at all. Tendering commissions frequently fail to provide justification of their decisions.<sup>95</sup> According to an expert interviewee, the supervision of procurement contracts is not always adequate in practice. For example, weaknesses in the supervision of the construction of homes for people displaced after the 2008 Georgian-Russian war affected the quality of work carried out by the contractors.<sup>96</sup> A monitoring report comparing the capacity of different public bodies to supervise construction showed that Mtskheta municipality was far less equipped to ensure construction quality and prevent corruption than the Municipal Development Fund (MDF), a legal entity of public law that was originally established by the World Bank to oversee large construction projects. Even the MDF's supervisory processes were problematic, as it is virtually impossible to ensure the independence of supervisory engineers with such a small pool of qualified experts in the country and the monitoring efforts of these supervisors were not consistent.<sup>97</sup> It has been suggested that, in practice, the SPA is still institutionally weak and lacks the resources needed for an adequate discharge of its supervisory role.<sup>98</sup>

The Chamber of Control's recent findings regarding procurement-related corruption in a number of public agencies seem to confirm the above observations concerning the weakness of selection procedures and supervision mechanisms in practice.<sup>99</sup> Furthermore, the Chamber has highlighted multiple problems at the municipal level relating to the terms of procurement, prices, terms of contracts, and contract oversight mechanisms.<sup>100</sup>

Previously, there was a certain lack of public trust in the ability of the SPA to handle procurement-related complaints. In 2009, for example, only nine complaints were filed with the SPA.<sup>101</sup> However, the situation appears to have changed lately. The Council of Adjudication of Disputes comprising an equal number of representatives from the government and the civil society was established in 2010. The Council received 13 complaints in the first two months of 2011 alone (of which two were upheld, one was upheld partially and 10 were rejected).<sup>102</sup>

Some Legal Entities of Public Law (LEPLs) are considered by Georgian law to be a part of the public service, while others are not. Additionally, some government bodies, such as the Central Election Commission, are not mentioned in the Law on Public Service but the legislation concerning this body does define it as a part of the public service.

<sup>94</sup> Transparency International Georgia, *European Neighbourhood Policy: Monitoring Georgia's Anti-Corruption Commitments*, 34.

<sup>95</sup> Lina Ghvinianidze, GYLA, cited in Transparency International Georgia, *European Neighbourhood Policy: Monitoring Georgia's Anti-Corruption Commitments*, 35.

<sup>96</sup> Interview of Tatuli Todua, Georgian Young Lawyers Association, with the author, Tbilisi, 6 July 2010.

<sup>97</sup> Transparency International Georgia, *Cottage Settlements for Georgia's New IDPs: Accountability in Aid and Construction*, April 2010, <http://www.transparency.ge/en/post/report/cottage-settlements-georgias-new-idps-accountability-aid-and-construction>.

<sup>98</sup> Interview of Tatuli Todua, Georgian Young Lawyers Association, with the author,

<sup>99</sup> Transparency International Georgia, *A More Independent and Effective Chamber of Control*, 01 October 2010, <http://www.transparency.ge/en/blog/pa-more-independent-and-effective-chamber-controlp> (accessed on 7 March 2011).

<sup>100</sup> The Chamber of Control of Georgia, *Report on Activities of Chamber of Control in 2010* (Tbilisi: Chamber of Control, 2010), 15.

<sup>101</sup> Transparency International Georgia, *European Neighbourhood Policy: Monitoring Georgia's Anti-Corruption Commitments*, 36.

<sup>102</sup> Copies of the Council's rulings on each of these complaints are posted on the SPA website: [http://procurement.gov.ge/index.php?lang\\_id=GEO&sec\\_id=12](http://procurement.gov.ge/index.php?lang_id=GEO&sec_id=12) (accessed on 7 March 2011).

# 5. Law Enforcement Agencies

## Summary

Georgia’s law enforcement agencies receive ample funding from the state budget, which has made it possible for them to improve their material and human resources considerably in recent years. The Ministry of Internal Affairs and the Prosecutor’s Office are among the country’s most powerful and influential agencies, although they are still occasionally used for promoting the partisan interests of political leadership. The anti-corruption activities of the law enforcement agencies have resulted in a virtual eradication of bribery in the public administration. At the same time, problems remain in terms of the transparency and accountability of these agencies.

The table below presents the indicator scores which summarize the assessment of the Law Enforcement Agencies in terms of their capacity, internal governance and role within the Georgian integrity system. The remainder of this section presents the qualitative assessment for each indicator.

### Total Score: 68/100

Dimension	Indicator	Law	Practice
Capacity 75/100	Resources	—	100
	Independence	75	50
Governance 54/100	Transparency	50	25
	Accountability	75	25
	Integrity	100	50
Role 75/100	Corruption Prosecution		75

## Structure and Organisation

The Ministry of Internal Affairs and the Prosecutor’s Office are Georgia’s main law enforcement agencies. The primary legal provisions governing their op-

eration are included in the Law on Police, the Charter of the Ministry of Internal Affairs and the Law on Prosecutor's Office.<sup>1</sup>

The Ministry of Internal Affairs, in its current form, was established through the merger of the Ministry of Security and the Ministry of Internal Affairs in 2004, so it is involved in security/counterintelligence activities along with the more conventional types of law enforcement. The Ministry of Internal Affairs directs the activities of a very centralized police system comprising both structural sub-units performing specific roles (such as the patrol police and the crime police) and territorial bodies tasked with exercising law enforcement in specific parts of the country (the Main Directorates operating in the capital and all of the provinces). The Border Police is also part of the Ministry of Internal Affairs system.<sup>2</sup> The Ministry is responsible for providing security of the state and public order, as well as protecting human rights and freedoms.<sup>3</sup>

The Prosecutor's Office is part of the Ministry of Justice. The Prosecutor's Office system consists of the Main Prosecutor's Office and the city, district and regional prosecutor's offices, as well as those of the Abkhazia and Ajaria autonomous republics. Prosecution and preliminary investigation are the primary responsibilities of the Prosecutor's Office.<sup>4</sup> The minister of justice is in charge of the entire system of the Prosecutor's Office and has the exclusive authority to conduct prosecution against a number of high-level officials, including the president, the chairpersons of the Supreme Court and the Constitutional Court, members of parliament, the Public Defender (Ombudsman) and the head of the Chamber of Control (the supreme audit institution).<sup>5</sup> The minister of justice proposes a candidate for the position of the chief prosecutor, who is appointed by the president. The chief prosecutor appoints and dismisses lower-level prosecutors and investigators and also has the exclusive authority to prosecute the minister of justice and other prosecutors.<sup>6</sup>

## Assessment

### Resources (practice)

Score: 100

To what extent do law enforcement agencies have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?

The generous funding apportioned to the law enforcement bodies in the state budget has made it possible, in recent years, to increase the salaries of their employees substantially and to achieve major improvements in terms of equipment and infrastructure.

The Ministry of Internal Affairs has been one of the largest recipients of state funding in recent years. Only two other ministries (the Ministry of Labour, Health

<sup>1</sup> The Georgian Law on Police, adopted on 27 July 1993; the Decree of President of Georgia No 614 on the Approval of the Charter of the Georgian Ministry of Internal Affairs, 27 December 2004; the Georgian Law on Prosecutor's Office, adopted on 21 October 2008.

<sup>2</sup> Charter of the Georgian Ministry of Internal Affairs, approved by the president of Georgia on 27 December 2004, Articles 17-19.

<sup>3</sup> *Id.*, Article 1.

<sup>4</sup> The Law on Prosecutor's Office, Articles 14-15.

<sup>5</sup> *Id.*, Article 8.

<sup>6</sup> *Id.*, Article 9.

and Social Protection and the Ministry of Defence) received more generous allocations in 2010. The Ministry's present annual budget is GEL 566 million (USD 341 million) compared to just 156 million (USD 94 million) in 2004. The budget of the Prosecutor's Office has increased from GEL 12 million in 2004 to GEL 18 million in 2011 (USD 7.2 million and USD 10.8 million respectively).<sup>7</sup>

According to the Ministry of Internal Affairs, the merger with the Ministry of Security was followed by a reduction of the total staff from 70,000 to 27,000 employees, which made it possible to raise the salaries and devote more resources to the improvement of the infrastructure.<sup>8</sup> Salaries have, on average, increased twelvefold since 2003.<sup>9</sup> Police buildings have been renovated or rebuilt and police officers have been provided with new transport.<sup>10</sup> According to Shota Utiashvili, head of the Ministry of Internal Affairs Information and Analysis Department, the number of computers in the ministry has increased from 150 to 7,000 over the past six years.<sup>11</sup>

The Constitutional Security Department of the Ministry of Internal Affairs was established in 2004 and is responsible for investigating corruption related offences.<sup>12</sup>

According to Deputy Chief Prosecutor Davit Saqvelidze, the Prosecutor's Office has sufficient financial, material and human resources to perform its duties. Salary levels are adequate and employees also receive bonuses, various benefits and allowances. The agency has good IT equipment and is scheduled to move a fully electronic system of case management in 2011.<sup>13</sup>

## Independence (law)

Score: 75

### To what extent are law enforcement agencies independent by law?

The legal framework contains some robust provisions designed to ensure the independence of law enforcement bodies. There are, however, concerns regarding the legal provisions designed to ensure the independence of the Prosecutor's Office.

The Law on Police prohibits establishment of political organizations in police agencies.<sup>14</sup> The law establishes some general rules for recruitment and states that the recruits must undergo special training either before or after joining the police. Police officers are prohibited from combining their work with employment in another government agency or a commercial entity. Interference with a police officer's work is expressly prohibited except for the case where it is specifically allowed by the law and police officers can address courts to seek the protection of their rights and freedoms. The law also lists legitimate grounds for dismissal of police officers.<sup>15</sup> While most of these are reasonable (for example, gross violation of discipline or involvement in corruption), the fact that

<sup>8</sup> The data on budget allocations for different years taken from the Ministry of Finance website: [http://www.mof.gov.ge/budget/by\\_year](http://www.mof.gov.ge/budget/by_year) (accessed on 24 March 2011).

<sup>9</sup> The Ministry of Internal Affairs of Georgia, "Short Overview of the Reforms in the Ministry of Internal Affairs of Georgia", 1. The document was provided to TI Georgia by the Ministry of Internal Affairs.

<sup>10</sup> The Ministry of Internal Affairs of Georgia, "Progress Report of the Implementation of the Ministry of Internal Affairs Component of 2005 Criminal Justice Reform Strategy", 15. The document was provided to TI Georgia by the Ministry of Internal Affairs.

<sup>11</sup> The Ministry of Internal Affairs of Georgia, "Short Overview of the Reforms in the Ministry of Internal Affairs of Georgia", 2.

<sup>12</sup> Interview with the author, 21 July 2010.

<sup>13</sup> Charter of the Georgian Ministry of Internal Affairs, Article 21.

<sup>14</sup> Interview of Deputy Chief Prosecutor Davit Saqvelidze with the author, Tbilisi, 18 November 2010.

<sup>15</sup> The Law on Police, Article 4.

<sup>16</sup> *Id.*, Article 19-25.

the law allows for the dismissal of a police officer due to “reorganization and/or staff reduction” could undermine police independence.

The Law on Prosecutor’s Office contains a number of provisions designed to reinforce the independence of the agency. The law expressly prohibits ordering the Prosecutor’s Office to carry out any tasks that are not stipulated in the relevant legislative provisions and highlights “political neutrality” as one of the primary principles of operation of the Prosecutor’s Office.<sup>16</sup> Employees of the Prosecutor’s Office cannot join political parties or are forbidden to engage in political or commercial activities. Obstruction of a prosecutor’s work or any types of violence, intimidation or pressure against a prosecutor or his/her family are punishable offences and government bodies are required to react to any such incidents. The law further states that employees of the Prosecutor’s Office are to be independent in their work and cannot be dismissed except for the cases stipulated in the law.<sup>17</sup> The formal grounds for dismissal are mostly reasonable though, as in the case of police, the provision allowing for dismissal during staff reductions could be abused in practice.

The law expressly prohibits public officials, as well as political and civil groups from interfering with a prosecutor’s activities.<sup>18</sup> Prosecutors cannot be legally instructed by another authority not to prosecute a specific case.<sup>19</sup>

The Law on Prosecutor’s Office requires that appointments in the Office be made on the basis of professional criteria. Specifically, the law states that individuals need to complete at least six months of internship and pass examinations in a number of legal disciplines before they can be appointed as prosecutors or investigators. Employees of the Office are to undergo accreditation every three years.<sup>20</sup> On the negative side, the criteria for the promotion of prosecutors are not set out in the law.

A major concern with the law in terms of independence of the law enforcers, as pointed out by the Venice Commission, is the fact that the justice minister (a political official) has direct prosecutorial powers and some of the legal provisions are open to possible interpretation that the minister can override decisions of prosecutors on individual cases.<sup>21</sup> As noted by the OECD ACN, this could undermine operational independence of the Prosecutor’s Office in terms of investigating corruption cases, especially when high-level officials are concerned.<sup>22</sup>

## Independence (practice)

Score: 50

### To what extent are law enforcement agencies independent in practice?

The law enforcement agencies are generally considered to be among the most powerful state institutions in Georgia at present. There is little evidence to sug-

<sup>16</sup> The Law on Prosecutor’s Office, Articles 3-4.

<sup>17</sup> *Id.*, Articles 31, 35.

<sup>18</sup> *Id.*, Article 36.

<sup>19</sup> *Id.*, Articles 8-9.

<sup>20</sup> *Id.*, Article 31.

<sup>21</sup> European Commission for Democracy Through Law, *Opinion on Four Constitutional Laws Amending the Constitution of Georgia*, adopted by the Venice Commission at its 78<sup>th</sup> Plenary Session (Venice, 13-14 March 2009), 8-9.

<sup>22</sup> OECD Anti-Corruption Network for Eastern Europe and Central Asia, *Second Round of Monitoring: Georgia Monitoring Report*, adopted at the 8<sup>th</sup> Monitoring Meeting of the Anti-Corruption Network for Eastern Europe and Central Asia Istanbul Anti-Corruption Action Plan on 31 March 2010 at the OECD Headquarters in Paris, 14-15.

gest that other bodies are exerting undue influence over the law enforcers. On the contrary, for example, the Prosecutor's Office has been accused of interfering with the operation of the judiciary.<sup>23</sup> At the same time, the law enforcers do not always act independently and according to the law when the interests of the country's political leadership are at stake.

According to the Ministry of Internal Affairs, a modern personnel management system is in place in order to ensure that employees are hired exclusively on the basis of professional criteria. The system includes detailed procedures for recruitment, promotion, evaluation and dismissal. Job descriptions have been developed for all positions in the police. Employees are recruited criteria through an open competition and a special training course before assuming office.<sup>24</sup> A similar system is in place in the Prosecutor's Office.<sup>25</sup>

Nevertheless, it appears that the law enforcement agencies are, in some cases, used for promoting the interests of the country's political leadership. For example, the BTI 2010 report notes that anti-corruption investigations have been used by the ruling elite as a political weapon.<sup>26</sup> There is evidence suggesting that law enforcers (police in particular) aided the ruling party by pressuring opposition activists during the 2008 elections.<sup>27</sup> Before the 2010 local elections, there were credible allegations of police involvement in the intimidation of opposition candidates.<sup>28</sup>

## Transparency (law)

Score: 50

To what extent are there provisions in place to ensure that the public can access the relevant information on law enforcement agency activities?

Transparency provisions in the legal framework of Georgia's law enforcement agencies are limited.

The Law on Police contains a brief reference to the transparency of police activities. The law requires the police to provide state bodies, civil organizations, the media and the citizens with information about its own activities.<sup>29</sup> However, there are no specific and detailed provisions on disclosure and the question is essentially left to discretion of law enforcement officials. The laws regulating activities of the Ministry of Internal Affairs/Police and the Prosecutor's Office do not expressly require them to publicly disclose any specific aspects of their work though, under the General Administrative Code,<sup>30</sup> all public information is to be disclosed upon request unless stipulated otherwise by the law. The legal framework requires the law enforcement bodies to ensure secrecy of certain types of data. Specifically, the Law on Operational Investigative Activities,<sup>31</sup> states that these types of activities are to remain "strictly secret" and establishes criminal responsibility for the disclosure of related information.<sup>32</sup> Further-

<sup>23</sup> See the chapter on the Judiciary.

<sup>24</sup> The Ministry of Internal Affairs of Georgia, "Progress Report of the Implementation of the Ministry of Internal Affairs Component of the 2005 Criminal Justice Reform Strategy", 11.

<sup>25</sup> Interview of Davit Saqvaridze with the author.

<sup>26</sup> Bertelsmann Stiftung, *BTI 2010 – Georgia Country Report* (Gutersloh: Bertelsmann Stiftung, 2009), 9.

<sup>27</sup> OSCE/ODIHR *Georgia: Parliamentary Elections 21 May 2008*, OSCE/ODIHR Election Observation Mission Final Report, (Warsaw: OSCE/ODIHR, 2008), 12.

<sup>28</sup> Nina Khatiskatsi and Caitlin Ryan, *Questions Remain After Incidents Involving Opposition Activists*, 15 October 2010 <http://www.transparency.ge/en/blog/pmestia-questions-remain-after-incidents-involving-opposition-activistsp>; (accessed on 24 March 2010).

<sup>29</sup> The Law on Police, Article 5.

<sup>30</sup> General Administrative Code of Georgia, adopted on 25 June 1999.

<sup>31</sup> Georgian Law on Operational and Investigative Activities, adopted on 30 April 1999.

<sup>32</sup> The Law on Operational Investigative Activities, Article 5.

more, the Code of Criminal Procedure directly requires prosecutors to prevent information about ongoing investigations from becoming public.<sup>33</sup> The Law on Police prohibits police officers from publicizing preliminary investigation materials and other types of professional information.<sup>34</sup> Given the provision of the General Administrative Code cited above, it can be assumed that other aspects of law enforcement work can be made public, although the lack of clearer transparency requirements leaves ample room for interpretation.

The Code of Criminal Procedure<sup>35</sup> previously guaranteed the right of victims to access all the materials of the case and the relevant evidence once the case was forwarded to the court (Article 69). However, the provision was removed from the new version of the Code which came into force on 1 October 2010.

On the positive side, the Ministry of Internal Affairs officials, as well as the officials of the Prosecutor's Office, are among those who are required to regularly disclose their assets under the Law on Conflict of Interest and Corruption in Public Service.<sup>36</sup>

## Transparency (practice)

Score: 25

To what extent is there transparency in the activities and decision-making processes of law enforcement agencies in practice?

While the Ministry of Internal Affairs and the Prosecutor's Office have websites and the assets of law enforcement officials are made available to the public, these agencies have not been successful in their handling of requests for public information.

The fact that the legal provisions regarding the transparency of law enforcement activities are quite ambiguous is also reflected in the actual operation of these agencies. Since the law does not require the law enforcers to proactively release different types of information, FOI requests are the primary means for interested individuals and organizations to acquire such materials. However, the NIS field tests demonstrated that the law enforcement agencies are not particularly responsive to these requests.

As part of the field tests, TI Georgia sent a total of eight requests to the law enforcement agencies. Four of these were sent to the Main Prosecutor's Office and another four to the Ministry of Internal Affairs. Each agency received two standard and two difficult requests. The Prosecutor's Office only provided the requested information in one of the four cases, while the remaining three requests encountered mute refusal. The Ministry of Internal Affairs provided the requested information in two of the four cases. The other two attempts resulted in an oral refusal and a mute refusal. The cases where no information was pro-

<sup>33</sup> The Code of Criminal Procedure, Article 104.

<sup>34</sup> The Law on Police, Article 5.

<sup>35</sup> Georgian Code of Criminal Procedure, adopted on 20 February 1998.

<sup>36</sup> The Law on Conflict of Interest and Corruption in Public Service, Articles 2, 14.

vided included requests for information concerning the bonuses of top officials and the investigations conducted by the Ministry of Internal Affairs Constitutional Security Department during the preceding year.

On the positive side, assets of law enforcement officials are disclosed as required by the law. Asset declarations are made available for public scrutiny through a dedicated website run by the Public Service Bureau.<sup>37</sup> The Ministry of Internal Affairs and the Prosecutor's Office have websites that carry some useful information about these agencies and their activities.<sup>38</sup>

## Accountability (law)

Score: 75

To what extent are there provisions in place to ensure that law enforcement agencies have to report and be answerable for their actions?

The legal framework contains extensive accountability provisions for the law enforcement agencies.

Both the Internal Affairs Ministry and the Prosecutor's Office are subject to parliamentary, executive and judicial control. Both agencies require judicial approval for the activities that involve restriction of the civil rights and freedoms established by the Constitution. The Chamber of Control oversees the financial activities of the law enforcement agencies.<sup>39</sup>

The Police Law contains a number of mechanisms for holding police officers and Ministry of Internal Affairs officials accountable. The operational and investigative activities are supervised by the minister of justice and the Prosecutor's Office.<sup>40</sup> Citizens can file appeals against the actions of police officers to their immediate supervisors, a prosecutor or a court. The police are required to consider all complaints and appeals within a month. A complaint concerning a crime or an administrative offense must be considered immediately. A variety of disciplinary sanctions can be imposed on police officers, ranging from warning and reprimand to demotion and dismissal. Police officers who commit crimes or administrative offenses do not enjoy immunity and can be charged according to the general rules.<sup>41</sup> The Ministry of Internal Affairs has a special unit, the General Inspection, responsible for investigating offences committed by the ministry officials and employees and examining the ministry's financial affairs.<sup>42</sup>

Similarly, under the Law on Prosecutor's Office, employees of the Prosecutor's Office do not enjoy immunity and can be held responsible according to the general rules, the only difference being that only the chief prosecutor can bring charges against prosecutors. Prosecutors can also face a number of disciplinary sanctions for misconduct.<sup>43</sup> The activities of the Prosecutor's Office are also supervised by the General Inspection of the Ministry of Justice which is respon-

<sup>37</sup> The Unified System of Asset Declaration of the Public Service Bureau, [www.declaration.ge](http://www.declaration.ge) (accessed on 25 November 2010).

<sup>38</sup> The Ministry of Internal Affairs, [www.police.ge](http://www.police.ge); the Chief Prosecutor's Office, [http://www.justice.gov.ge/index.php?lang\\_id=&sec\\_id=106](http://www.justice.gov.ge/index.php?lang_id=&sec_id=106) (accessed on 25 November 2010).

<sup>39</sup> The Law on Prosecutor's Office, Articles 49-52; the Law on Police, Articles 36-39.

<sup>40</sup> The Law on Police, Article 40.

<sup>41</sup> *Id.*, Articles 30-34.

<sup>42</sup> Regulation of the Georgian Ministry of Internal Affairs, approved by the president of Georgia on 27 December 2004, Article 21.

<sup>43</sup> The Law on Prosecutor's Office, Article 38.

sible for conducting preliminary investigation on alleged instances of abuse of power and corruption-related offenses committed by prosecutors.<sup>44</sup>

Complaints against the operational and investigative activities conducted by the police or the Prosecutor's Office can be filed with the higher-level state agencies, prosecutors or courts (Article 6 of the Law on Operational and Investigative Activities).

Prosecutors are required, under the Code of Criminal Proceedings, to notify stakeholders (such as victims) about their decision to cease prosecution. However, the law does not expressly require them to provide reasons for these decisions.<sup>45</sup>

There are some weaknesses in the legal provisions concerning the financial accountability of law enforcement agencies. For example, unlike other state bodies, they are not required to set up internal audit departments until 2013.<sup>46</sup> Also, all agencies operating within the Ministry of Internal Affairs system can use simpler procedures of procurement compared to other state bodies.<sup>47</sup>

## Accountability (practice)

Score: 25

To what extent do law enforcement agencies have to report and be answerable for their actions in practice?

Accountability of law enforcement officers is not ensured adequately in practice, particularly when high-level officers are involved or political interests are at stake. Accountability is further undermined by the lack of a strong and independent judiciary. On the positive side, a number of measures have been implemented in recent years to improve accountability of law enforcement officers (including arrests and disciplinary penalties). As a result, the incidence of human rights abuses by law enforcers has decreased.

It has been suggested that the Ministry of Internal Affairs remains a powerful body lacking external control and that neither the ministry nor individual police officers are held sufficiently accountable for their actions. Abuses of power persist given the lack of adequate oversight.<sup>48</sup> This observation was reinforced by the 2011 findings of the European Court of Human Rights regarding the 2006 murder of a banker in Tbilisi. The court concluded that evidence implicating high-level officials of the Ministry of Internal Affairs was never examined properly, while the lower-level officers who were ultimately charged for the crime did not receive adequate punishment. The court emphasized that different branches of power – the Ministry of Internal Affairs, the Prosecutor's Office, the judiciary and the president - worked together to prevent justice from being done.<sup>49</sup>

<sup>44</sup> [http://www.justice.gov.ge/index.php?lang\\_id=GEO&sec\\_id=69](http://www.justice.gov.ge/index.php?lang_id=GEO&sec_id=69)

<sup>45</sup> The Code of Criminal Proceedings, Article 106.

<sup>46</sup> The Law on Internal State Audit and Inspection, adopted on 26 March 2010, Article 32.

<sup>47</sup> Amendments to the Law on State Procurement, adopted on 25 February 2011, Article 1.

<sup>48</sup> Lilli di Pippo, *Police Reform in Georgia: Cracks in an Anti-Corruption Success Story*, (Chr. Michelsen Institute, 2010), 4.

<sup>49</sup> European Court of Human Rights, "Georgian Authorities Did Not Investigate Effectively the Kidnapping and Killing of 28-Year-Old Man", Press Release, 26 April 2011, [http://portal.coe.ge/downloads/Chamber\\_judgment\\_Enukidze\\_and\\_Girgvlani\\_v\\_Georgia\\_26\\_04\\_111.pdf](http://portal.coe.ge/downloads/Chamber_judgment_Enukidze_and_Girgvlani_v_Georgia_26_04_111.pdf) (accessed on 10 May 2011).

Another area of concern is the lack of police accountability for its actions against opposition politicians and activists.<sup>50</sup> For example, as noted by Human Rights Watch, the authorities did not conduct a meaningful investigation of the police actions during the dispersal of an opposition rally in Tbilisi on 15 June 2009.<sup>51</sup> Similarly, no action has been taken against police officers who were involved in harassing opposition candidates in the town of Mestia before the 2010 local elections.<sup>52</sup> According to the Public Defender, the violations committed by police officers during the dispersal of an anti-government rally in Tbilisi on 26 May 2011 were not addressed properly either.<sup>53</sup>

The accountability of law enforcement agencies is further undermined by the fact that the judiciary continues to operate under strong influence from the Prosecutor's Office.<sup>54</sup>

On the positive side, it appears that law enforcers are usually held accountable for violations when no political interests are at stake. According to the Ministry of Internal Affairs, the General Inspection conducts internal investigations and reviews citizen complaints, as well as the information received from the Public Defender and the media.<sup>55</sup> The General Inspection operates a 24-hour hotline where citizens can file complaints. According to the General Inspection website, 29 employees of the ministry were arrested for various crimes in 2009 (25 in 2008, 37 in 2007, 43 in 2006 and 44 in 2005).<sup>56</sup> Similarly, the General Inspection of the Ministry of Justice initiated disciplinary proceedings against 55 prosecutors in 2009 and disciplinary punishment was imposed on 42 prosecutors.<sup>57</sup> The Prosecutor's Office also conducts investigations of alleged instances of abuse by police officers. For example, in 2008, there were 39 investigations into claims of torture or degrading treatment by the Ministry of Internal Affairs personnel and five officers received prison sentences.<sup>58</sup>

As a result of these measures, the incidence of abuse in police stations has become low and violations in preliminary detention centres have been practically eliminated.<sup>59</sup> At the same time, according to the Public Defender, instances of abuse of power, excessive use of force and violation of human rights by police officers still occur, particularly in Western Georgia.<sup>60</sup> The Public Defender has noted that such incidents are not investigated effectively by the Prosecutor's Office even when the relevant information is supplied to prosecutors in a timely manner.<sup>61</sup> Investigations are delayed and eventually terminated or the charges brought by prosecutors against police officers are less serious than the actual offence (for example, police officers are charged with abuse of authority rather than torture).<sup>62</sup>

## Integrity Mechanisms (law)

Score: 100

To what extent is the integrity of law enforcement agencies ensured by law?

The legal framework is strong as far as integrity mechanisms for law enforcement agencies are concerned. The Police Law and the Law on Prosecutor's Of-

<sup>50</sup> US Department of State, *2009 Human Rights Report: Georgia*, 11 March 2010, <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136032.htm> (accessed on 26 November 2010).

<sup>51</sup> Human Rights Watch, *Georgia: Events of 2009*, <http://www.hrw.org/en/node/87536> (accessed on 2 November 2010).

<sup>52</sup> Civil.ge, "International Observers Release Second Interim Election Report", 24 May 2010, <http://www.civil.ge/eng/article.php?id=22329> <http://www.civil.ge/eng/article.php?id=22329> (accessed on 25 November 2010).

<sup>53</sup> The Public Defender's Office, *The Public Defender Responds to Statement by Ministry of Internal Affairs*, 15 July 2011, <http://ombudsman.ge/index.php?page=1001&lang=0&id=1397> (accessed on 23 July 2011).

<sup>54</sup> See the chapter of this report on the judiciary for a more detailed discussion of the problem.

<sup>55</sup> The Ministry of Internal Affairs of Georgia, "Progress Report of the Implementation of the Ministry of Internal Affairs Component of 2005 Criminal Justice Reform Strategy", 8.

<sup>56</sup> The website of the General Inspection, [http://geninspeqcia.security.gov.ge/index.php?option=com\\_content&task=view&id=27&Itemid=42](http://geninspeqcia.security.gov.ge/index.php?option=com_content&task=view&id=27&Itemid=42) (accessed on 26 October 2010).

<sup>57</sup> US Department of State, *2009 Human Rights Report: Georgia*, 11 March 2010, <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136032.htm> (accessed on 26 November 2010).

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> The Public Defender's Office, *the Georgian Public Defender's Report on Situation in Georgia in Terms of Protection of Human Rights and Freedoms*, 2009/II, 202-203 (in Georgian).

<sup>61</sup> *Id.*, pp 210-211.

<sup>62</sup> *Id.*, 2009/I, p 49.

face establish some general rules, while more detailed provisions appear in the Law on Conflict of Interest and Corruption in Public Service.

The Police Law states that police officers must “strictly follow the norms of professional ethics”.<sup>63</sup> Police officers are prohibited to do paid work in any other state agency or a commercial enterprise.<sup>64</sup> The law lists “corruption-related offenses” among the formal reasons for a police officer’s dismissal.<sup>65</sup> In addition to the Law, the Police Code of Ethics covers a number of important issues, including respect for the rights, freedoms, dignity and privacy of individuals; treatment of detainees; unbiased and non-discriminatory discharge of duties; restrictions on political activities of police officers; and relations with the media.<sup>66</sup>

The Code of Ethics of the Georgian Prosecutor’s Office requires the prosecutors to conduct their work in an independent, impartial and fair manner, prohibits them from using their office for personal benefit or illegal pressure on any individual or engaging in any activities that could cast a shadow upon their independence. The Code states that prosecutors must follow the conflict of interest rules set out in the Law on Conflict of Interest and Corruption in Public Service and also refrain from accepting illegal gifts.<sup>67</sup>

The Law on Conflict of Interest and Corruption in Public Service establishes the maximum annual value of gifts that public servants (including prosecutors, Ministry of Internal Affairs employees and police officers) can receive: 15 percent of their annual salary. A similar restriction is in place for their family members. Public officials (including those from the law enforcement agencies) cannot demand payment or gifts for the services that they are required to provide for free under the law, neither are they allowed to make commercial deals with the public agencies where they hold the office. Officials and their family members cannot hold positions, work or own shares in the commercial enterprises whose activities they are to control as part of their official duties. Under the same law, officials (including those from the law enforcement agencies) are to be fined if they fail to submit their asset declarations within the legal deadline. An official will face criminal charges if he/she fails to submit an asset declaration again within two weeks from being fined.<sup>68</sup>

## Integrity Mechanisms (practice)

Score: 50

To what extent is the integrity of members of law enforcement agencies ensured in practice?

The government has made considerable progress in recent years in terms of ensuring integrity of law enforcers but the success is, to an extent, undermined by the fact that law enforcers are still being used for attaining the political leadership’s partisan objectives.

<sup>63</sup> The Law on Police, Article 8.

<sup>64</sup> *Id.*, Article 21.

<sup>65</sup> *Id.*, Article 22.

<sup>66</sup> The Police Code of Ethics, approved by the minister of internal affairs on 26 January 2007.

<sup>67</sup> The Chief Prosecutor’s Office of Georgia, *The Code of Ethics of the Prosecutor’s Office of Georgia*, [http://www.justice.gov.ge/index.php?sec\\_id=261&lang\\_id=GEO](http://www.justice.gov.ge/index.php?sec_id=261&lang_id=GEO) (accessed on 26 November 2010).

<sup>68</sup> | The Law on Conflict of Interest and Corruption in Public Service, Articles 5, 9, 10, 13 20.

Efforts are being made in practice to ensure the integrity of law enforcers. The General Inspection of the Ministry of Internal Affairs has the mandate to deal with the violations of ethics and disciplinary norms, inappropriate performance of service duties and perpetration of specific illegal acts.<sup>69</sup> Similar safeguards are implemented in the Prosecutor's Office.<sup>70</sup> In recent months, there were at least two publicized cases where police officers were fired for the violation of the Code of Ethics.<sup>71</sup>

These measures have resulted in notable improvements in recent years and it has been suggested that the reforms were "enormously effective" in reducing street-level corruption among law enforcers.<sup>72</sup> While some 70 percent of the participants in a 2003 survey believed that all or almost all police officers were involved in corruption,<sup>73</sup> a 2009 opinion poll showed that 82 percent of the respondents had a favourable opinion about the work of police.<sup>74</sup> According to the 2010 Global Corruption Barometer, police ranked among the top three least corruption institutions in Georgia.<sup>75</sup>

At the same time, only 46 percent of the respondents in the 2009 survey cited above held a favourable opinion about the Prosecutor's office.<sup>76</sup> Also, the efforts to reinforce integrity among law enforcers are undermined by the fact that, as noted in the section on accountability, they are still, at times, being used for promoting partisan interests of the country's political leadership.<sup>77</sup>

## Role: Corruption Prosecution (law and practice)

Score: 75

To what extent do law enforcement agencies detect and investigate corruption cases in the country?

The law enforcement agencies have been a leading force in Georgia's fight against corruption since 2004 and have succeeded in eliminating bribery at the lower levels of public administration. There are, however, valid doubts regarding their ability to address corruption at higher tiers of government.

The legal framework provides the law enforcement agencies with adequate powers in terms of investigating different types of crime, including alleged cases of corruption. Law enforcers can use investigative techniques, such as search and seizure of evidence, as well as secret investigative activities, including audio and video surveillance.<sup>78</sup> The investigators require judicial warrants for some types of activities, such as secret video and audio surveillance, but they can conduct them without a warrant when the investigation requires so, provided they obtain it subsequently.<sup>79</sup> The same rules apply to warrants for search and seizure of evidence. A prosecutor can request freezing of the assets of individuals (including public officials) suspected of corruption, as well as the suspension of an official charged with a crime (whenever there is a possibility that

<sup>69</sup> The Ministry of Internal Affairs of Georgia, "Short Overview of the Reforms in the Ministry of Internal Affairs of Georgia".

<sup>70</sup> Interview of Davit Saqvarelidze with the author.

<sup>71</sup> The Statement of the Ministry of Internal Affairs, 5 January 2011, <http://police.ge/index.php?m=8&newsid=1945> (accessed on 24 March 2011); Liberali, "Lutidze Brothers Released From Penalty by Court", 17 February 2011, <http://www.liberali.ge/dzmebi-lutidzeebi-sasamartlom-sasjelisgan-gaatavisupla> (accessed on 24 March 2011).

<sup>72</sup> Lilli di Puppo, *Police Reform in Georgia: Cracks in an Anti-Corruption Success Story*, 2.

<sup>73</sup> Lilli di Puppo, *Police Reform in Georgia: Cracks in an Anti-Corruption Success Story*, 1

<sup>74</sup> International Republican Institute, Baltic Surveys Ltd/The Gallup Organization, The Institute of Polling and Marketing, *Georgian National Study: September 29 – October 5 2009*, 47.

<sup>75</sup> Transparency International, *Global Corruption Barometer 2010 Report*, [http://www.transparency.org/policy\\_research/surveys\\_indices/gcb/2010/results](http://www.transparency.org/policy_research/surveys_indices/gcb/2010/results) (accessed on 24 March 2010).

<sup>76</sup> International Republican Institute, Baltic Surveys Ltd/The Gallup Organization, The Institute of Polling and Marketing, *Georgian National Study: September 29 – October 5 2009*, 47.

<sup>77</sup> Lilli di Puppo, *Police Reform in Georgia: Cracks in an Anti-Corruption Success Story*, 3.

<sup>78</sup> The Law on Operational and Investigative Activities, Article 7; the Code of Criminal Procedure, Articles 111, 136.

<sup>79</sup> The Law on Operational and Investigative Activities, Articles 2-4; the Code of Criminal Procedure, Articles 136-137.

the official would obstruct the investigation or continue criminal activity). A prosecutor can request that a court issue an arrest warrant and law enforcers can also detain suspects without a warrant in a number of cases.<sup>80</sup> A prosecutor can review an organization's or an institution's financial activities and is entitled to receive the relevant information within 10 days from submitting a request.<sup>81</sup> The law also provides for a variety of mechanisms for the protection of individuals who assist the law enforcers in their investigation of crimes.<sup>82</sup>

In practice, the law enforcement agencies have played a leading role in the government's crackdown on corruption since 2003 and have had significant achievements in this respect as demonstrated by the virtual elimination of bribery at the lower levels of public administration. In the 2010 edition of the Global Corruption Barometer study, only 3 percent of Georgian respondents reported paying a bribe during the preceding 12 months.<sup>83</sup> According to the Chief Prosecutor's Office, 565 crimes committed by officials<sup>84</sup> were recorded in 2009, including 136 cases of bribery and four cases of trade in influence.<sup>85</sup>

There are, nevertheless, concerns regarding the ability of Georgia's law enforcers to prosecute possible cases of corruption at the higher tiers of government. The law enforcement agencies have made some progress in this area in 2010 as, for example, former deputy ministers of healthcare and education (along with a number of other officials from the same ministries) were arrested and charged for violations committed during procurement.<sup>86</sup> However, the lack of plurality in the political system, the subsequent concentration of control over all branches of power within a relatively small group of politicians<sup>87</sup> and the relatively low level of independence could make it difficult for the law enforcers to tackle possible instances of corruption at the highest level of authority.

<sup>80</sup> The Code of Criminal Proceedings, Articles 119-120, 151, 159-160, 171.

<sup>81</sup> The Law on Prosecutor's Office, Article 22.

<sup>82</sup> The Law on Operational and Investigative Activities, Article 17.

<sup>83</sup> Transparency International, *Global Corruption Barometer 2010*, (Transparency International, 2010), 46.

<sup>84</sup> This category used by the Prosecutor's Office in its official statistical reports includes different types of corruption related offences, such as bribery and trade in influence.

<sup>85</sup> The Chief Prosecutor's Office of Georgia, *Report on Crime Situation in 2009*, (The Chief Prosecutor's Office: Tbilisi, 2010), 48.

<sup>86</sup> Financial.ge, "Former Deputy Minister of Education Aleksandre Chikvaidze Arrested", 12 October 2010, [www.financial.ge](http://www.financial.ge) (accessed on 26 November 2010); Medianews, "Prosecutor's Office Has Arrested Former Deputy Minister of Healthcare Nikoloz Pruidze", 16 September 2010 (accessed on 26 November 2010).

<sup>87</sup> See the chapters on the executive branch and the legislature for a more detailed discussion of this issue.

# 6. Electoral Management Body

## Summary

The electoral administration is an important actor in the Georgian governance system due to its role in overseeing elections and election campaigns. The assessment finds that the administration's performance is somewhat unsatisfactory, with its lack of political will to investigate violations being cited as the main impediment. This underperformance seems to be related to a lack of independence of the body from the ruling party/government and by the absence of serious efforts by the court system to hold electoral officials accountable for alleged misbehaviour. On the positive side, the electoral management body operates in a transparent manner and is assessed as rather well-resourced. Also, the electoral administration's performance during the 2010 local elections was assessed more positively by the observers than its work during the 2008 parliamentary elections.

The table below presents the indicator scores which summarize the assessment of the Electoral Commission in terms of its capacity, its internal governance and its role within the Georgian integrity system. The remainder of this section presents the qualitative assessment for each indicator.

### Total Score: 47/100

Dimension	Indicator	Law	Practice
Capacity 50/100	Resources	—	50
	Independence	75	25
Governance 54/100	Transparency	75	75
	Accountability	50	25
	Integrity	50	50
Role 38/100	Campaign Regulation		25
	Election Administration		50

## Structure and Organisation

Georgia has a three-tier electoral administration consisting of the Central Electoral Commission (CEC), District Electoral Commissions (DECs) and Precinct Electoral Commissions (PECs). The formation rules, powers and responsibilities of the administration are detailed in the Electoral Code. Parliament appoints five members of the CEC upon the president's nomination. The president is to select the candidates through an open selection process administered by a special commission.<sup>1</sup> The CEC subsequently appoints five members of each DEC through a similar selection process, while DECs appoint six members of each PEC within the corresponding district.<sup>2</sup> In addition, the country's leading political parties have a right to appoint one member of the CEC and one member of each DEC and PEC.<sup>3</sup>

## Assessment

### Resources (Practice)

Score: 50

**To what extent does the electoral management body (EMB) have adequate resources to achieve its goals in practice?**

The amount of funding allocated to Georgia's electoral management body has grown considerably in recent years and efforts have been made to improve the skills of electoral officials. However, recent elections have demonstrated that members of the electoral administration require further training.

According to a former CEC chairman, the funding allocated to the electoral administration in the state budget is generally adequate and is always transferred in a timely manner. The amount of funding has increased steadily in recent years. One area of concern highlighted by the former chairman is the fact that salaries offered to the heads of district electoral commissions are not competitive (especially in Tbilisi and other, relatively large cities), which makes it difficult to recruit the most qualified and experienced individuals for these positions. The chairman emphasised that every department of the CEC received training at least on one occasion in 2009.<sup>4</sup>

An independent expert who has been following the work of Georgia's electoral administration closely for many years confirmed most of the information provided by the former CEC chairman. The expert said that the funding allocated to the electoral administration is sufficient for the proper conduct of elections and the administration has a proper amount of equipment at its disposal, though the staff is not always qualified to use it. Nonetheless, the expert also noted that, in recent years, the administration has demonstrated a far greater commitment to improving the skills of its members and employees (through various training programs) than was the case before.<sup>5</sup>

<sup>1</sup> The Electoral Code of Georgia, adopted on 2 August 2001, Article 28.

<sup>2</sup> *Id.*, Articles 33, 37.

<sup>3</sup> *Id.*, Articles 31 (1), 36.

<sup>4</sup> Interview of former CEC Chairman Levan Tarkhnishvili with the author, 2 November 2009.

<sup>5</sup> Interview of a Tbilisi-based electoral expert with the author, 10 November 2009.

While the efforts that the CEC has directed towards training commission members and staff is a positive sign, the findings of international observers who monitored the 2008 elections in Georgia revealed a considerable lack of knowledge of important procedures among the administration's officers and employees. International observers noted that PECs had problems in terms of filling out the vote count protocols,<sup>6</sup> while DEC's had problems with the aggregation of results.<sup>7</sup> According to the OSCE/ODIHR, the problems highlighted a need for further training in these areas.<sup>8</sup> The organization made a similar observation during the 2010 municipal elections, noting that, despite the trainings conducted by the CEC, the election day showed that electoral administration members still did not have sufficient knowledge of the procedures for vote count and completion of protocols. The problem was probably aggravated by the fact that many PEC members were replaced after the trainings were held.<sup>9</sup>

## Independence (Law)

Score: 75

### To what extent is the electoral management body independent by law?

Georgia has a number of important legal provisions designed to ensure independence of the electoral management body though some parts of the legislation are potentially problematic.

The Electoral Code contains a number of important provisions designed to reinforce the independence of electoral commissions. It says that the electoral administration is "independent from other state bodies within the framework of its powers".<sup>10</sup> Members and employees of electoral commissions have the status of "electoral officials" and are prohibited from combining their duties with party membership, though this restriction does not apply to the commission members appointed by political parties. The law emphasizes that the members of electoral commissions do not represent the bodies/organizations that have appointed them, are independent in their activities and are to be guided solely by the Constitution and the Code. Any kind of pressure on commission members or interference with their work is prohibited and punishable.<sup>11</sup>

In order to safeguard the independence of the CEC chairperson from the government/ruling party, the Code stipulates that the candidate nominated by the president must be approved by the members of the CEC appointed by the opposition political parties. Similarly, only a PEC member appointed by an opposition party can serve as the PEC secretary.<sup>12</sup>

In order to protect electoral officials from arbitrary dismissal, Article 21 of the Code establishes the procedures and valid reasons for a commission chairperson's or a member's dismissal (these are generally limited to various violations of the law). Early removal of the CEC chairperson or a member from

<sup>6</sup> OSCE/ODIHR *Georgia: Parliamentary Elections 21 May 2008*, OSCE/ODIHR Election Observation Mission Final Report, (Warsaw: OSCE/ODIHR, 2008), 24.

<sup>7</sup> *Id.*, 7.

<sup>8</sup> *Id.*, 7.

<sup>9</sup> OSCE/ODIHR *Georgia: Municipal Elections 30 May 2010*, OSCE/ODIHR Election Observation Mission Report, (Warsaw: OSCE/ODIHR, 2010), 7-8.

<sup>10</sup> The Electoral Code of Georgia, Article 17.

<sup>11</sup> *Id.*, Articles 18-19.

<sup>12</sup> *Id.*, Articles 22, 27.

the office requires a parliamentary decision. Electoral administration members appointed by political parties can be recalled by their respective parties or dismissed by courts.

At the same time, there are some points of concern in the Code. As noted by the Council of Europe's Venice Commission and the OSCE/ODIHR, parliament's power to dismiss CEC members on a discretionary basis and the power of political parties to recall the commission members they have appointed could undermine the electoral administration's independence.<sup>13</sup>

Similarly, an independent electoral expert interviewed by TI Georgia suggested that the current legislative provisions do not sufficiently guarantee the independence of electoral administration, noting that Georgia's electoral officials generally try to avoid angering the government bodies or political parties that appointed them as they fear the prospect of losing their jobs.<sup>14</sup>

## Independence (Practice)

Score: 25

To what extent does the electoral management body function independently practice?

Independence of Georgia's electoral management body was called into question during the last national election though the findings of the observers were less critical during the most recent local elections.

Independence and impartiality of the electoral administration remain a major concern in Georgia. There have been no recorded instances of public and direct government interference in the activities of the electoral administration (at least at the central level) but the ruling National Movement had a de facto majority in all electoral commissions during the recent elections (the 2008 presidential and parliamentary elections, as well as the 2010 local elections). As a result, as the OSCE/ODIHR Election Observation Mission (EOM) noted in its report on the 2008 parliamentary elections, the CEC members "failed to act independently" on contentious issues and "decisions were voted on along political lines"<sup>15</sup>, while the electoral administration in general demonstrated an "apparent bias"<sup>16</sup> in favour of the ruling party and public officials during the adjudication of campaign-related complaints and appeals. The Mission emphasized that DEC members appointed by the opposition were sometimes excluded from the work of the commissions and there were at least 25 cases when PEC members were "intimidated and pressured to resign".<sup>17</sup>

A leading domestic observer organization, the International Society of Fair Elections and Democracy, also highlighted a lack of impartiality and neutrality at every level of the electoral administration, noting that commissions were often used by their members as a platform for political statements.<sup>18</sup>

<sup>13</sup> European Commission for Democracy Through Law (Venice Commission) and the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), *Joint Opinion on the Election Code of Georgia as amended through March 2010* (Strasbourg/Warsaw: 9 June 2010), 9.

<sup>14</sup> Interview of a Tbilisi-based electoral expert with the author, 10 November 2009.

<sup>15</sup> OSCE/ODIHR *Georgia: Parliamentary Elections 21 May 2008*, OSCE/ODIHR Election Observation Mission Final Report, 1-2.

<sup>16</sup> *Id.*, 19.

<sup>17</sup> *Id.*, 1-2, 8, 12, 19.

<sup>18</sup> International Society for Fair Elections and Democracy, *Report on Monitoring the 21 May 2008 Parliamentary Elections*, 35.

The situation appears to have improved somewhat during the 2010 municipal elections as the observer organizations did not question the administration's independence in the same manner as in 2008. The OSCE/ODIHR Election Observation Mission noted that the administration managed the process in an "inclusive" manner and the CEC chairman made efforts to reach "consensus" among the commission members, including those representing the opposition. However, the Mission emphasized that the low level of public confidence in the administration noted during previous elections remained a problem.<sup>19</sup> In the 2010 Caucasus Barometer survey, 39 percent of the respondents "completely agreed" or "somewhat agreed" with the statement that electoral administration is politically biased (compared to the 24 percent that "completely disagreed" or "somewhat disagreed").<sup>20</sup>

## Transparency (Law)

Score: 75

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the EMB?

The Georgian Electoral Code includes extensive provisions regarding the transparency of the electoral administration's activities, although some of these provisions need to be rendered more specific.

The Electoral Code contains a special chapter on transparency, emphasizing that the "process of preparation and conduct of elections in Georgia is public."<sup>21</sup> Electoral commissions are required to disclose election-related documents and information to any interested individuals within two days from receiving such request. The meetings of electoral commissions are public and representatives of the media, election contestants and local and international observer organizations are authorized to attend. They are also authorized to enter polling stations on the election day.<sup>22</sup> The CEC Public and International Relations Department is responsible for issuing copies of CEC decisions to the media and the interested organizations/individuals. The Code also requires the CEC to publicize the information regarding donations received by political parties and candidates for their campaign funds.<sup>23</sup> Election commissions have a duty to post voter lists and vote count protocols for public scrutiny.<sup>24</sup>

The law details the rights of observers and party/candidate proxies, as well as the procedures for their registration. Electoral commissions are prohibited from denying them registration provided they present all the required documents. Observers and proxies are authorized to monitor various stages of the electoral process, including voter registration, polling and vote count. Similar provisions are in place for the media.<sup>25</sup>

The Venice Commission and the OSCE/ODIHR have highlighted several transparency-related provisions in the Electoral Code that require clarification. Namely, they have noted that the provision in Article 69 requiring domestic

<sup>19</sup> OSCE/ODIHR *Georgia: Municipal Elections 30 May 2010*, OSCE/ODIHR Election Observation Mission Report, p. 1.

<sup>20</sup> The Caucasus Research Resource Centers, *Caucasus Barometer 2010*, <http://www.crrc.ge/oda/?dataset=4&row=107> (accessed on 30 June 2011).

<sup>21</sup> The Electoral Code of Georgia, Article 65.

<sup>22</sup> *Id.*, Articles 66-67.

<sup>23</sup> *Id.*, Article 48.

<sup>24</sup> *Id.*, Articles 9, 63.

<sup>25</sup> *Id.*, Articles 68-72.

observers to report in advance about the districts/precincts where they will monitor the elections “could be applied in a restrictive manner and might hinder efficient observation”.<sup>26</sup> The two organizations have also called for clearer provisions endorsing the right of observers to monitor vote count at PECs and vote consolidation at DEC’s.<sup>27</sup>

## Transparency (Practice)

Score: 75

To what extent are reports and decisions of the electoral management body made public in practice?

The elections held in Georgia in recent years have been mostly transparent but some aspects of the process require improvement.

The observers’ feedback regarding the transparency of the electoral administration’s operation during the 2008 parliamentary and the 2010 municipal elections was mostly positive. According to the OSCE/ODIHR Election Observation Mission, the CEC operated in a transparent manner and its sessions were open to observers, party proxies and the media.<sup>28</sup> According to the Mission, the process of candidate registration “was overall inclusive and transparent”.<sup>29</sup> Voter lists were available for scrutiny in PECs and citizens could also check their names via internet, a CEC hotline or text messages.<sup>30</sup> Observers and party proxies were present during the vote count in a majority of polling stations.<sup>31</sup> The CEC website was updated regularly and was described by the observers as “quite informative”.<sup>32</sup> The CEC promptly posted election results and protocols on the website.<sup>33</sup> The website presently carries different types of election-related information included the campaign financing reports of parties and blocs. During the 2010 local elections, the CEC created an online database of complaints and appeals, providing the general public with an access to the relevant documents.<sup>34</sup>

At the same time, a number of problems were identified. According to the OSCE/ODIHR Mission, there was a lack of transparency during the process of tabulation in some DEC’s and there were cases when domestic observers were forced to leave polling stations. PEC’s often failed to post the vote count protocols for public scrutiny.<sup>35</sup> Agendas of CEC sessions were only finalized shortly before the start of these sessions and draft materials were not made available to all observers.<sup>36</sup>

## Accountability (Law)

Score: 50

To what extent are there provisions in place to ensure that the EMB has to report and be answerable for its actions?

The legal framework contains adequate provisions regarding the electoral administration’s political and financial accountability. However, the procedures for challenging the decisions of electoral commissions are problematic.

<sup>26</sup> European Commission for Democracy Through Law (Venice Commission) and the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), *Joint Opinion on the Election Code of Georgia as amended through March 2010*, 11.

<sup>27</sup> *Id.*, 12.

<sup>28</sup> OSCE/ODIHR *Georgia: Parliamentary Elections 21 May 2008*, OSCE/ODIHR Election Observation Mission Final Report, 1, 2.; OSCE/ODIHR *Georgia: Municipal Elections 30 May 2010*, OSCE/ODIHR Election Observation Mission Report, 6.

<sup>29</sup> OSCE/ODIHR *Georgia: Parliamentary Elections 21 May 2008*, OSCE/ODIHR Election Observation Mission Final Report, 2, *Id.*, 9.

<sup>30</sup> *Id.*, 24; OSCE/ODIHR *Georgia: Municipal Elections 30 May 2010*, OSCE/ODIHR Election Observation Mission Report, 3.

<sup>31</sup> OSCE/ODIHR *Georgia: Parliamentary Elections 21 May 2008*, OSCE/ODIHR Election Observation Mission Final Report, 7; OSCE/ODIHR *Georgia: Municipal Elections 30 May 2010*, OSCE/ODIHR Election Observation Mission Report, 7.

<sup>32</sup> OSCE/ODIHR *Georgia: Parliamentary Elections 21 May 2008*, OSCE/ODIHR Election Observation Mission Final Report, 3; OSCE/ODIHR *Georgia: Municipal Elections 30 May 2010*, OSCE/ODIHR Election Observation Mission Report, 3.

<sup>33</sup> The database can be accessed at: <http://sachivrebi.cec.gov.ge/>

<sup>34</sup> OSCE/ODIHR *Georgia: Parliamentary Elections 21 May 2008*, OSCE/ODIHR Election Observation Mission Final Report, 3, 19; OSCE/ODIHR *Georgia: Municipal Elections 30 May 2010*, OSCE/ODIHR Election Observation Mission Report, 22.

<sup>35</sup> *Id.*, 6.

The Georgian Electoral Code states that the CEC is accountable to parliament and has a duty to submit a report to the legislature within 60 days from the end of an election. The report must contain information about violations of electoral law recorded during the election, public servants who have committed violations, the cases transferred to the Prosecutor's Office by the CEC and the DEC, the cases filed by these commissions with courts, as well as the relevant court decisions.<sup>37</sup> The CEC is also required to present a post-election financial report to the Ministry of Finance, while the Chamber of Control (Georgia's supreme audit institution) must examine electoral spending.<sup>38</sup>

The Code also establishes procedures and time frames for appealing against the decisions of electoral commissions. An electoral commission's decision must first be challenged in a higher commission and then in a court.<sup>39</sup> However, as the Venice Commission has rightly noted, the appeals procedures are unnecessarily complex and the time frames are too short.<sup>40</sup> The Venice Commission has also highlighted the fact that the right of individuals to lodge complaints is limited to cases concerning the accuracy of voter lists.<sup>41</sup>

## Accountability (Practice)

Score: 25

To what extent does the EMB have to report and be answerable for its actions in practice?

Although the electoral administration reports to parliament as required by the law, the accountability of its individual members for committed violations is not ensured adequately in practice.

Addressing electoral irregularities and holding electoral officials responsible for violations has proved problematic during the recent elections in Georgia. The commissions of higher level generally failed to ensure accountability of the commissions at the lower level, while courts did not prove to be an effective mechanism for holding the administration accountable either since, according to the OSCE/ODIHR Election Observation Mission, there was a "general lack of will on the part of the election administration and courts to deal with complaints and appeals in a serious and impartial manner" during the 2008 parliamentary poll<sup>42</sup> and there were "widespread and significant irregularities" in the handling of complaints by the PECs and DEC.<sup>43</sup> Specifically, the Mission noted that the courts "refused to hear witnesses or view documented evidence, failed to address all relevant facts, applied unsound interpretations of the law, ignored the spirit of the law, or failed to provide complete or clear factual-legal reasoning."<sup>44</sup>

Furthermore, the Mission noted that there were "widespread and credible reports of local observers and proxies being obstructed by PEC members from

<sup>37</sup> The Electoral Code of Georgia, Article 17.

<sup>38</sup> *Id.*, Article 45.

<sup>39</sup> The Electoral Code of Georgia, Article 77.

<sup>40</sup> European Commission for Democracy Through Law, *Joint Opinion on the Election Code of Georgia, as revised up to July 2008*, 26-27.

<sup>41</sup> *Id.*, 26-29.

<sup>42</sup> OSCE/ODIHR *Georgia: Parliamentary Elections 21 May 2008*, OSCE/ODIHR Election Observation Mission Final Report, 19.

<sup>43</sup> *Id.*, 3.

<sup>44</sup> *Id.*, 19.

filing complaints.”<sup>45</sup> According to the Mission, almost all of the pre-election complaints filed by domestic observers and political parties against decisions and actions of election commissions were unsuccessful. A large majority of post-election complaints were also left unconsidered by the CEC, often without adequate investigation or sound factual-legal reasoning.<sup>46</sup> The International Society of Fair Elections and Democracy noted that, while the DEC members imposed fines on PEC members in a number of cases, it is not clear whether or not such penalties were executed in practice.<sup>47</sup>

The problem persisted during the 2010 municipal elections as, according to the OSCE/ODIHR, DEC members were reluctant to impose sanctions on PEC members even in the cases where violations had been proven and complaints had been upheld.<sup>48</sup> The CEC “made an effort to review complaints in a timely manner” but failed to adjudicate all the complaints it received prior to the election day.<sup>49</sup>

On the positive side, the CEC submitted a report to parliament after the 2008 parliamentary election as required by the law and it was also posted to the commission’s website. The report provides an extensive account of the electoral administration’s activities during the election period. A similar report was published after the 2010 local elections.

The post-election financial reports and the results of the Chamber of Control’s inspection, however, have not been published (the law does not expressly require that these documents be publicized).

## Integrity (Law)

Score: 50

**To what extent are there mechanisms in place to ensure the integrity of the electoral management body?**

Georgia lacks a formal Code of Conduct for electoral officials though the Law on Public Service contains a number of integrity mechanisms that apply to many members of the electoral administration.

Article 18 of the Electoral Code states that the CEC members and a majority of its staff, as well as the DEC members, are “public servants” and therefore required to follow the provisions of the Law on Public Service.<sup>50</sup> The latter establishes “general rules of conduct” and requires public servants to perform their duties in an “unbiased and honest manner”, to refrain from misusing public funds and to be guided by the “principles of transparency and lawfulness” in decision-making.<sup>51</sup> The Law provides general rules regarding conflict of interest and states that public servants have no right to offer or receive any kind of benefit related to their position in the public service. Public servants are required to announce a conflict of interest as soon as they learn about it and to

<sup>45</sup> *Id.*, 26, 27.

<sup>46</sup> *Id.*, 28.

<sup>47</sup> International Society for Fair Elections and Democracy *Report on Monitoring the 21 May 2008 Parliamentary Elections*, 30.

<sup>48</sup> OSCE/ODIHR *Georgia: Municipal Elections 30 May 2010*, OSCE/ODIHR Election Observation Mission Report, 24.

<sup>49</sup> *Id.*, p 19.

<sup>50</sup> The Law of Georgia on Public Service, adopted on 31 October 1997

<sup>51</sup> *Id.*, Article 73 (2).

make annual declarations about family members or close relatives who work in the same agency.<sup>52</sup> The Law also establishes general rules of conduct regarding the prevention of corruption-related offences, prohibiting public servants from receiving any gift or service that could influence their work. If in doubt, they are required to declare such gifts. Public servants must inform their superiors about any such gifts within three days.<sup>53</sup>

While the Law on Public Service does contain important integrity rules, Georgia would still benefit from having a dedicated Code of Conduct for electoral officials, particularly as the Law on Public Service does not apply to PEC members (who are not public servants)

## Integrity (Practice)

Score: 50

To what extent is the integrity of the electoral management body ensured in practice?

Integrity of electoral administration members and staff is ensured adequately at the CEC level though it is difficult to evaluate the situation at the lower tiers of administration due to the lack of relevant information.

According to the former CEC chairman, while there is no Code of Ethics for the administration's staff, heads of all departments and units evaluate the work of their subordinates according to a standard performance evaluation form every three months and the results of this evaluation subsequently form the basis for promotion/reward or punishment of employees. The former chairman said that the CEC also conducts inquiries into violations and breaches committed by the staff. Whenever suspicions of a possible violation of rules arise, a formal report is written and an investigation is launched by the CEC Legal Department (except for the cases when the investigation concerns an employee of the Legal Department). According to the former chairman, violations are not common as he could only recall a few incidents of this kind.<sup>54</sup>

The above statements were confirmed by an independent expert who said that CEC does conduct these kinds of inquiries, emphasizing that the commission's Legal Department has been quite effective in detecting violations committed by the staff and there have been instances of employees receiving a formal warning and even being sacked. Overall, the expert believes that the CEC has been quite successful in promoting integrity among its staff in recent years.<sup>55</sup>

TI Georgia found it difficult to assess the level of integrity at DEC and PECs due to a lack of relevant information. The PECs, in particular, are a matter of concern since, as noted above, the existing integrity rules do not apply to their members.

<sup>52</sup> *Id.*, Article, 73 (4).

<sup>53</sup> *Id.* Article 73 (5).

<sup>54</sup> Interview of Levan Tarkhishvili with the author, 2 November 2009.

<sup>55</sup> Interview of a Tbilisi-based electoral expert with the author, 10 November 2009.

## Campaign Regulation (Law and Practice)

Score: 25

### Does the electoral management body effectively regulate candidate and political party finance?

The law provides the electoral administration with a number of campaign regulation mechanisms but these have not proved to be effective in practice.

Under the Electoral Code (Articles 46-48), the electoral administration is responsible for regulating campaign financing of contestants who are required to report to the relevant electoral commission on a monthly basis about the donations received. They must also submit a post-election campaign finance report along with an audit report. If the electoral administration discovers violations in a party's campaign finance report and believes that the violations could have affected the outcome of the poll, it is authorized to appeal to a court and request that the party's votes be excluded from the final election results.<sup>56</sup>

The Code requires the CEC to set up a financial monitoring group that will examine the information submitted by the contestants during the campaign and present its findings to the administration.<sup>57</sup> However, although contestants usually submit the required documents to the CEC within the legal deadlines, this has not proved to be an effective mechanism of control in practice since the monitoring group lacks a clear mandate and the instruments at its disposal are limited. For example, the group cannot effectively examine the content of the finance reports submitted by election contestants because it has no access to their accounting records and must instead rely on the audit documents supplied by the contestants themselves.<sup>58</sup>

The law also gives the CEC certain powers in terms of the allocation of media coverage to political parties and candidates. During the campaign, the electronic and printed media that run political advertising are required to supply relevant information (the amount of advertising, the price charged, etc) to the electoral administration on a weekly basis. The Code requires the CEC to conduct media monitoring in order to ensure the implementation of the relevant rules.<sup>59</sup> The Venice Commission has stated that the Code lacks specific provisions regarding the types of prompt corrective action to be taken by the CEC if the monitoring reveals violations, noting that the CEC monitoring of the media during the 2008 parliamentary elections did not sufficiently identify unfairness in the media coverage.<sup>60</sup>

## Election Administration (Law and Practice)

Score: 50

### Does the EMB effectively oversee and administer free and fair elections and ensure the integrity of the electoral process?

The electoral administration's work during the last national and local elections has been assessed positively as far as the pre-election activities and the voting

<sup>56</sup> The Electoral Code of Georgia, Articles 46-48.

<sup>57</sup> *Id.*, Article 48.

<sup>58</sup> OSCE/ODIHR *Georgia: Parliamentary Elections 21 May 2008*, OSCE/ODIHR Election Observation Mission Final Report, 14; OSCE/ODIHR *Georgia: Municipal Elections 30 May 2010*, OSCE/ODIHR Election Observation Mission Report, 13.

<sup>59</sup> The Electoral Code of Georgia, Articles 73-73 (1).

<sup>60</sup> European Commission for Democracy Through Law, *Joint Opinion on the Election Code of Georgia*, as revised up to July 2008, 19.

process are concerned. However, the administration's performance in terms of the vote count/tabulation and adjudication of post-election complaints has drawn significant criticism.

The CEC and its subordinate commissions are responsible for administering and overseeing different stages of the electoral process including the registration of voters and contestants, voting and vote count/tabulation.

The CEC took a number of steps before the 2008 parliamentary elections to ensure the integrity of the electoral process. It conducted voter information campaigns on a number of key election-related issues, made sure citizens had a chance to examine the accuracy of voter lists through several different mechanisms and also produced different types of electoral material in minority languages. The voting process was generally assessed positively by the observers, although some organizational and procedural shortcomings were noted, particularly with regard to inking safeguards and mobile voting.<sup>61</sup> The number of voters who were denied the right to vote because of their absence from voter lists was insignificant.<sup>62</sup>

At the same time, the vote count and tabulation was assessed less positively as the observers reported "significant procedural errors and omissions".<sup>63</sup> While party proxies and observers attended a large majority of vote counts, there were cases of domestic observers being forced to leave polling stations or DEC's during the count and tabulation.<sup>64</sup> The OSCE/ODIHR Election Observation Mission was also very critical of the manner in which the administration handled the alleged violations of election law both before and after the election day, noting that the administration "did not, on its own initiative, undertake to examine the legitimacy of decisions and actions of election commissions or to investigate and address campaign breaches".<sup>65</sup>

A similar general picture was observed during the 2010 municipal elections. The administration's work in pre-election period and the process of voting on election day were assessed positively by the OSCE/ODIHR. The Mission noted that the administration made "clear efforts to pro-actively address" the existing problems and managed the elections in a "professional, transparent and inclusive manner."<sup>66</sup> Efforts were made to improve the voter lists and the process of candidate/party registration was inclusive, while the CEC also implemented a number of voter information programmes.<sup>67</sup> The voting process was described as "well-managed" and was assessed positively by the Mission's observers in 96 percent of cases.<sup>68</sup> However, there were, once again, significant problems with the process of vote count and tabulation and the handling of post-election complaints and appeals by the commissions. Significant procedural errors were reported in a quarter of vote counts at PECs, while vote tabulation was also assessed negatively in a quarter of DEC's observed by the Mission.<sup>69</sup> The adjudication of complaints in some DEC's was described as "chaotic" and it was noted that many DEC decisions rejecting complaints lack legal reasoning.<sup>70</sup>

<sup>61</sup> OSCE/ODIHR *Georgia: Parliamentary Elections 21 May 2008*, OSCE/ODIHR Election Observation Mission Final Report, 3, 23.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*, 24.

<sup>64</sup> *Id.*, 19.

<sup>65</sup> *Id.*, 20.

<sup>66</sup> OSCE/ODIHR *Georgia: Municipal Elections 30 May 2010*, OSCE/ODIHR Election Observation Mission Report, 1.

<sup>67</sup> *Id.*, 1, 7.

<sup>68</sup> *Id.*, 3.

<sup>69</sup> *Id.*, 21, 22.

<sup>70</sup> *Id.*, 23, 24.

## Summary

Georgia's Public Defender is independent both in law and in practice. The Public Defender reports to parliament and operates in a transparent manner. The Public Defender has adequate powers and generally applies these effectively in practice. At the same time, the Public Defender's Office has to rely on foreign donor aid to compensate for insufficient state funding, which can affect some aspects of the Public Defender's work.

The table below presents the indicator scores which summarize the assessment of the Public Defender's office in terms of its capacity, its internal governance and its role within the Georgian integrity system. The remainder of this section presents the qualitative assessment for each indicator.

### Total Score: 63/100

Dimension	Indicator	Law	Practice
Capacity 67/100	Resources	—	50
	Independence	75	75
Governance 75/100	Transparency	75	75
	Accountability	75	75
	Integrity	75	No Score
Role 50/100	Investigation		50
	Promoting Good Practice		50

## Structure and Organisation

Under the Constitution, the Public Defender is elected by parliament on the basis of nominations from MPs. He is authorised to investigate violations of human

rights and inform the relevant bodies/officials about the findings.<sup>1</sup> The powers and responsibilities of the Public Defender are detailed in the Organic Law on the Public Defender.<sup>2</sup> According to the Law, the Public Defender oversees the respect of human rights and freedoms by the central and local government bodies, public agencies and officials.<sup>3</sup> The Public Defender's Office is established in order to facilitate the Public Defender's work.<sup>4</sup>

## Assessment

### Resources (practice)

Score: 50

To what extent does the public defender have adequate resources to achieve its goals in practice?

The Public Defender's Office receives state funding without any delays and the quality of staff has improved in recent years. At the same time, the size of state funding is inadequate and the Office relies on foreign aid to properly fulfil its responsibilities.

State funding has remained relatively stable in recent years. The Office received GEL 1.9 million (USD 1.1 million) in 2009, GEL 2.2 million (USD 1.3 million) in 2010, and GEL 2.1 million (USD 1.2 million) in 2011.<sup>5</sup> Given the sweeping budget cuts in 2011 across most government agencies, the 2011 allocation is a positive indication of the government's commitment to the institution. However, according to the Public Defender, while the money allocated in the State Budget is always transferred in a timely manner, the overall size of funding is not sufficient to cover the all operational expenses of the office. The Public Defender thus relies on foreign donor support for approximately 30 percent of the operational expenses. The Office recently used donor aid to move into a new building, to purchase office equipment and transport and to train its employees.<sup>6</sup>

The Public Defender also told TI Georgia that the overall quality of human resources is good. He noted that the recent growth of salaries made it possible to attract qualified professionals, resulting in a notable improvement in the quality of reports produced by the office. However, the Public Defender suggested that the office could find it difficult to retain the current employees in the future unless the funding grows.<sup>7</sup>

According to an expert interviewee, the current number of staff is not always adequate for handling the large number of cases submitted to the Public Defender. The expert noted that the state should increase the funding apportioned to the Public Defender's Office, given the complexity and importance of its tasks and responsibilities.<sup>8</sup>

<sup>1</sup> The Constitution of Georgia, adopted on 24 August 1995, Article 43.

<sup>2</sup> The Organic Law of Georgia on the Public Defender of Georgia, adopted on 16 May 1996.

<sup>3</sup> *Id.*, Article 3.

<sup>4</sup> *Id.*, Article 26.

<sup>5</sup> Data taken from the Ministry of Finance website: [www.mof.gov.ge](http://www.mof.gov.ge)

<sup>6</sup> Interview of Public Defender Giorgi Tughushi with the author, Tbilisi, 9 February 2011.

<sup>7</sup> Interview of Giorgi Tughushi with the author.

<sup>8</sup> Interview of Manana Kobakhidze, head of the Article 42 of the Constitution NGO, with the author, Tbilisi, 3 December 2010.

## Independence (law)

Score: 75

### To what extent is the public defender independent by law?

The legal provisions designed to ensure the Public Defender's independence are mostly strong, although the law does not fully guarantee the Public Defender's financial independence.

The status of Georgia's public defender is anchored in the Constitution, which emphasises that obstruction of the Public Defender's work is a punishable offence. In addition, the Law on the Public Defender prohibits any kind of pressure on the Public Defender or interference with its work. Information regarding any kind of obstruction of the Public Defender's activities must be included in the Public Defender's annual report and discussed in parliament.<sup>9</sup>

The Public Defender enjoys immunity under the law and cannot be arrested or charged with a crime without parliament's consent. The Public Defender must be provided with the necessary conditions for an unhindered discharge of its duties and the state must provide protection for the Public Defender's family if requested. Importantly, the Public Defender's work cannot be suspended or restricted during the state of emergency or the state of war.<sup>10</sup>

The Public Defender is elected by parliament for a period of five years and may serve for no more than two consecutive terms. A candidate for the Public Defender's position can be nominated by the president, a parliamentary faction or a group of at least six MPs who are affiliated with any faction. The law's list of legitimate reasons for early dismissal of the Public Defender is short, specific and reasonable. Dismissal is only possible through a parliamentary decision (through a simple majority vote). In order to ensure the Public Defender's impartiality, the law prohibits the Public Defender from engaging in commercial or political activities and from holding another public office.<sup>11</sup>

The Public Defender has the power to determine the structure and the operational rules of his/her staff.<sup>12</sup> As a further independence safeguard, the budget allocations for the salaries of the Public Defender's Office cannot be reduced (compared to the preceding year's allocations) unless the Public Defender consents to the reduction.<sup>13</sup> However, the Public Defender described the latter provision as inadequate in an interview with TI Georgia, noting that it should apply to the entire budget, rather than just the salary fund.<sup>14</sup>

## Independence (practice)

Score: 75

### To what extent is the public defender independent in practice?

The Public Defender's Office generally operates without undue interference and influence from the authorities.

<sup>9</sup> The Law on Public Defender, Articles 4, 25, 43.

<sup>10</sup> *Id.*, Articles 5, 11.

<sup>11</sup> *Id.*, Articles 6-8, 10.

<sup>12</sup> *Id.*, Article

<sup>13</sup> *Id.*, Article 25.

<sup>14</sup> Interview of Giorgi Tughushi with the author.

According to an expert interviewee, the current Public Defender has been independent in his activities and has worked in a professional and non-partisan manner. The expert could not recall any instances of political interference with the Public Defender's activities and noted that the ruling National Movement party's dominance in parliament (which appoints the Public Defender) has had no bearing on his work so far.<sup>15</sup>

None of Georgia's previous Public Defenders were removed from the position before the end of their term, although none of them were reappointed either. There have been no instances of a Public Defender engaging in the kind of activities that are restricted by the law and that could undermine his/her independence.

On the negative side, individuals are not always able to file complaints with the Public Defender without fear of retaliation. The expert interviewee noted, for example, that inmates of Georgian prisons often refrain from discussing alleged cases of mistreatment with the Public Defender's representatives out of fear of recrimination. She noted, however, that the blame for this lies with the prison authorities, not the Public Defender.<sup>16</sup>

## Transparency (law)

Score: 75

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the public defender?

Information regarding the Public Defender's activities is open under the law, although there are no provisions that would require the Office to release different types of information proactively in between the annual reports.

Information regarding the Public Defender's activities (including the findings and recommendations of investigations) is public and must be included in the Public Defender's annual report to parliament, which the legislature is required to publish in its official newspaper.<sup>17</sup> The report must include a list of state bodies and officials that have violated human rights and ignored the Public Defender's recommendations.<sup>18</sup> In addition, the Public Defender must notify complainants about the results of the inquiries carried out in response to their appeals.<sup>19</sup>

The Public Defender is required to file a detailed asset declaration in the same manner as other high-level officials do. The declaration is a public document.<sup>20</sup>

On the negative side, there is no legal obligation for the Public Defender to proactively publicize these types of information more frequently. The law

<sup>15</sup> Interview of Manana Kobakhidze with the author.

<sup>16</sup> *Id.*

<sup>17</sup> The Law on Public Defender, Articles 21-22.

<sup>18</sup> *Id.*, Article 22.

<sup>19</sup> *Id.*, Article 17.

<sup>20</sup> The Law on Conflict of Interest and Corruption in the Public Service, adopted on 17 October 1997, Articles 2, 14-19.

authorises (but does not require) the Public Defender to inform the public about the results the conducted inquiries through the media.<sup>21</sup> Also, there are no legal provisions regarding the involvement of the public in the Public Defender's activities (for example, through public consultations or the establishment of public councils and advisory committees).

## Transparency (practice)

Score: 75

### To what extent is there transparency in the activities and decision-making processes of the public defender in practice?

The Public Defender's Office generally operates in a transparent manner and the relevant information is available to interested individuals and organizations, although its record in responding to Freedom of Information requests and its ability to communicate via annual reports could be improved.

Detailed information regarding the activities of the Public Defender's Office (including the violations recorded and the recommendations made by the Office) is provided in the Public Defender's annual report to parliament. The report is a public document and can be accessed through the Public Defender's official website.<sup>22</sup> The report is informative but does not present statistics concerning the Public Defender's activities in a coherent manner.

The Public Defender's website contains an up-to-date news section (detailing the Office's ongoing activities), as well as the Public Defender's multiple public statements and special reports. The Public Defender's asset declaration is available online through a dedicated website where the asset declarations of all public officials are posted.<sup>23</sup>

According to an expert interviewee from a human rights NGO, the Public Defender always provides requested information in a timely manner and the organization has never encountered transparency-related problems in its dealings with the Office.<sup>24</sup> At the same time, the Public Defender's Office only responded positively to two of the four requests for public information submitted as part of the NIS field tests. In the two cases where no information was provided, lists of cases forwarded by the Public Defender's Office to the Prosecutor's Office and of the recommendations sent by the Public Defender's Office to various government bodies had been requested. The Public Defender's Office cited the lack of relevant databases as the reason for the refusal, noting that it could only provide information about specific cases.

The Public Defender told TI Georgia that the Office collaborates actively with a number of NGOs and has signed memorandums of cooperation with several organizations. He noted that the Office implements joint projects with some

<sup>21</sup> The Law on Public Defender, Article 21.

<sup>22</sup> [www.ombudsman.ge](http://www.ombudsman.ge)

<sup>23</sup> [www.declaration.ge](http://www.declaration.ge)

<sup>24</sup> Interview of Manana Kobakhidze with the author.

NGOs based in the capital and also tries to identify organizations are active in different parts of the country, in order to build partnerships with them.<sup>25</sup> TI Georgia's expert interviewee confirmed this, noting that her NGO has been specifically asked by the Public Defender to collaborate with his Office on appeals submitted to the Constitutional Court.<sup>26</sup>

## Accountability (law)

Score: 75

**To what extent are there provisions in place to ensure that the public defender has to report and be answerable for its actions?**

The legal provisions regarding the Public Defender's accountability are strong. One gap, however, is that the regulations only require the Public Defender to produce reports on its activities on an annual basis.

The Public Defender is accountable to parliament and is required to submit annual reports to the legislature, describing the general situation in the country in terms of the protection of human rights. The report must also list the government bodies and officials that have violated human rights and have ignored the Public Defender's recommendations. The Public Defender must provide its general opinion, findings and recommendations regarding the situation in the field of human rights. The annual report is a public document and responsibility for releasing it lies with parliament.<sup>27</sup>

According to TI Georgia's expert interviewee, annual reporting may not be adequate and it would be better to require the Public Defender to report more frequently if the resources of the Office permitted this.<sup>28</sup>

However, beyond this annual reporting, accountability provisions are limited. As noted in the section on transparency, the law authorises (but does not require) the Public Defender to inform the media about the results of investigations.<sup>29</sup>

The activities of the Public Defender and the Public Defender's Office are subject to judicial review in the same manner as those of other public bodies and officials. Since the Public Defender's office is part of the public service, the general accountability mechanisms discussed in the chapter on Public Administration (including whistle-blowing provisions), which are quite robust, also apply to the employees of the Public Defender's Office.

## Accountability (practice)

Score: 75

**To what extent does the ombudsman have to report and be answerable for its actions in practice?**

The Public Defender reports to the legislature annually as required by law, although the quality of reporting could be improved.

<sup>25</sup> Interview of Giorgi Tughushi with the author.

<sup>26</sup> Interview of Manana Kobakhidze with the author.

<sup>27</sup> The Law on Public Defender, Article 22.

<sup>28</sup> Interview of Manana Kobakhidze with the author.

<sup>29</sup> The Law on Public Defender, Article 21.

The Public Defender submits annual reports to parliament as required by the law and the reports provide a detailed account of the Office's activities throughout the year. The reports are discussed at parliamentary sessions and are also posted to the Public Defender's website.<sup>30</sup> As mentioned in the transparency section, the report is informative but does not present statistics concerning the Public Defender's activities in a coherent manner.

Judicial review mechanisms (such as lawsuits) have not been applied to the Public Defender's activities in recent years, nor have there been any cases of whistleblowing in the office. It is therefore impossible to assess the effectiveness of the relevant legal provisions in practice at this point.

### Integrity Mechanisms (law)

Score: 75

To what extent are there provisions in place to ensure the integrity of the public defender?

While there is no dedicated code of conduct for the Public Defender and the employees of the Public Defender's Office, the various integrity rules provided in different laws are adequate.

As noted in the section on independence, the Public Defender is prohibited from joining political parties and engaging in political activities<sup>31</sup> and is required to file annual asset declarations along with other high-level state officials.<sup>32</sup> The Public Defender has a legal obligation to follow the general conflict of interest rules for public officials (including restrictions on gifts) discussed in the chapters on the Public Administration, the Executive Branch and the Legislature. The Rules of Conduct for public servants discussed in the Public Administration chapter apply to the employees of the Public Defender's Office.

The law requires the Public Defender to refrain from disclosing confidential information received from alleged victims of torture and inhumane or degrading treatment unless they specifically consent to its release.<sup>33</sup> However, there seems to be no similar requirement for other types of complaints – a gap in the legislation.

### Integrity Mechanisms (practice)

Score: not able to score

To what extent is the integrity of the ombudsman ensured in practice?

According to the Public Defender, the Office has a human resources section and a dedicated officer in charge of conducting performance reviews, assessing compliance with the relevant rules and organizing trainings. No cases of

<sup>30</sup> [www.ombudsman.ge](http://www.ombudsman.ge)

<sup>31</sup> The Law on Public Defender, Article 8.

<sup>32</sup> The Law on Conflict of Interest and Corruption in Public Service, adopted on 17 October 1997, Articles 2, 14.

<sup>33</sup> The Law on Public Defender, Article 20.

gross misconduct have been recorded in recent years but several employees received a warning for the violation of the Office's internal rules.

TI Georgia was unable to independently verify this information and has therefore decided not to score this indicator.

## Role: Investigation (law and practice)

Score: 50

### To what extent is the ombudsman active and effective in dealing with complaints from the public?

The legal framework contains robust provisions regarding the Public Defender's investigatory powers and the Public Defender has generally been effective in this respect. At the same time, some government agencies have failed to assist the Public Defender's inquiries as required by the law.

The Public Defender has broad legal powers in terms of investigation of alleged violations of human rights. Under the law, the Public Defender is responsible for uncovering violations of human rights and freedoms and also serves as the National Preventive Mechanism of the UN Convention Against Torture. The Public Defender independently monitors the situation in the country in terms of the protection of human rights and can launch inquiries into alleged violations both proactively and in response to complaints. The Public Defender is required to consider complaints and appeals of individuals, legal entities and political and religious groups concerning the actions of government bodies and officials. The appeals sent to the Public Defender by individuals held in prisons and other detention facilities are confidential and cannot be opened or censored prior to their delivery to the Public Defender. The Public Defender is required to notify any complainant about the results of the inquiry.<sup>34</sup>

During the inquiries, the Public Defender is entitled to unhindered access to all government and public institutions, including prisons and military units and it can require any official to provide a written explanation regarding the matter in question. All government/public bodies and officials must provide the Public Defender with requested documents and materials immediately or within a maximum of 10 days.<sup>35</sup> If suspicions of a crime arise, the Public Defender can request that the law enforcement bodies launch criminal proceedings. Otherwise, the Public Defender can recommend that the agencies in question apply disciplinary sanctions against the violators. In special cases, the Public Defender can recommend the establishment of an ad hoc investigatory commission in parliament to handle the alleged violation of human rights. However, in recent years, parliament has ignored the Ombudsman's recommendation to set up such commissions over alleged human rights violations committed by executive branch bodies/officials.<sup>36</sup> The Public Defender can also address the president if the means at its disposal are inadequate for dealing with the case in question.<sup>37</sup>

<sup>34</sup> *Id.*, Articles 3, 3(3), 12, 13, 15 17.

<sup>35</sup> *Id.*, Article 18.

<sup>36</sup> Interview of Tamar Chugoshvili with the author.

<sup>37</sup> The Law on Public Defender, Article 21.

According to an expert interviewee, the procedure for filing complaints with the Public Defender is simple both in law and in practice and individuals rarely face problems in this respect.<sup>38</sup> In addition to the central office located in the capital, the Public Defender has six regional centres that help facilitate public outreach.<sup>39</sup>

The Public Defender has conducted proactive investigations on multiple occasions. The most recent high-profile examples of such activity include the Public Defender's inquiries into the police dispersal of a protest in central Tbilisi and the eviction of internally displaced persons from disputed buildings. The Public Defender's findings regarding these cases were posted on the website and, in the former case, a police officer was dismissed following the Public Defender's recommendation.<sup>40</sup> In addition, according to TI Georgia's expert interviewee, the Public Defender's Office, acting in its capacity as the National Preventive Mechanism of the UN Convention Against Torture, has identified violations in prisons, submitted relevant recommendations and highlighted these cases in its reports.<sup>41</sup> In the last six months of 2009 alone, the Public Defender's representatives carried out a total of 146 visits to prisons.<sup>42</sup>

In 2009 the Public Defender appealed to the Constitutional Court on five occasions, challenging the compliance of different legal acts with the Constitution.<sup>43</sup>

At the same time, according to the Public Defender, while the general experience of the Office's interaction with different government institutions has been positive, there are still cases when government agencies do not submit the information requested by the Office in a timely manner. Government agencies do not always provide comprehensive and substantiated answers to the Public Defender's proposals and recommendations concerning recorded violations.<sup>44</sup> In his last report to parliament, the Public Defender criticised the Ministry of Internal Affairs, the Chief of the Prosecutor's Office and the Ministry of Refugees and Accommodation for their failure to assist the Public Defender's investigations on a number of occasions.<sup>45</sup> According to the expert interviewee, the effectiveness of the Public Defender's investigations is undermined by the unwillingness of some government bodies to act upon his recommendations.<sup>46</sup>

### Role: Promoting good practice (law and practice)

Score: 50

To what extent is the ombudsman active and effective in raising awareness within government and the public about standards of ethical behaviour?

The Public Defender has sufficient legal powers to promote good practice but these powers are not always exercised effectively because of a lack of resources.

<sup>38</sup> Interview of Manana Kobakhidze with the author.

<sup>39</sup> Interview of Giorgi Tughushi with the author.

<sup>40</sup> The Public Defender's Office, "The Public Defender's Statement About the Dispersal of the Protest of War Veterans", 4 January 2011, <http://www.ombudsman.ge/index.php?page=1001&lang=1&n=0&id=1355> (accessed on 18 February 2011) (in Georgian); the Public Defender's Office, "The Statement of the Public Defender", 21 January 2011, <http://www.ombudsman.ge/index.php?page=1001&lang=1&n=0&id=1358> (accessed on 18 February 2011) (in Georgian); the Public Defender's Office, "The Statement of the Public Defender", 6 January 2011, <http://www.ombudsman.ge/index.php?page=1001&lang=1&n=0&id=1356> (accessed on 18 February 2011) (in Georgian).

<sup>41</sup> Interview of Manana Kobakhidze with the author.

<sup>42</sup> The Public Defender's Office, *The Public Defender's Report on Situation in Georgia in Terms of Protection of Human Rights and Freedoms: Second Half of 2009* (Tbilisi: The Public Defender's Office, 2010), 14 (in Georgian).

<sup>43</sup> The Public Defender's Office, *The Public Defender's Report on Situation in Georgia in Terms of Protection of Human Rights and Freedoms: Second Half of 2009*, 156.

<sup>44</sup> Interview of Giorgi Tughushi with the author.

<sup>45</sup> The Public Defender's Office, *The Public Defender's Report on Situation in Georgia in Terms of Protection of Human Rights and Freedoms: Second Half of 2009*, 13.

<sup>46</sup> Interview of Manana Kobakhidze with the author.

Under the law, the Public Defender's jurisdiction extends to all government bodies and officials (both central and local) and public institutions operating on Georgian territory.<sup>47</sup> The Public Defender has a number of legal powers and obligations concerning promotion of good practice. For example, the Public Defender can submit recommendations and proposals regarding the legislation in the field of human rights to parliament. As noted in the previous section, the Public Defender can submit proposals to state bodies regarding disciplinary or administrative action against persons who have violated human rights and freedoms.<sup>48</sup> States bodies and officials that receive recommendations or proposals from the Public Defender are required to discuss them and notify the Public Defender about the results of the discussion within 20 days.<sup>49</sup> The Public Defender's legal responsibilities include educational activities in the field of human rights and freedoms.<sup>50</sup>

In practice, the Public Defender promotes good practice primarily through recommendations. Its annual report includes a list of proposals to resolve the existing problems and improvement practice in the performance of different government agencies.<sup>51</sup> In between the annual reports, the Public Defender communicates with different government institutions regularly and provides them advice and information. However, according to the Public Defender, the plans for broader campaigns, such as training for public officials, have been undermined by the lack of resources.<sup>52</sup>

<sup>47</sup> The Law on Public Defender, Articles 3, 23.

<sup>48</sup> *Id.*, Article 21.

<sup>49</sup> *Id.*, Article 24.

<sup>50</sup> *Id.*, Article 3.

<sup>51</sup> The Public Defender's Office, *The Public Defender's Report on Situation in Georgia in Terms of Protection of Human Rights and Freedoms: Second Half of 2009*.

<sup>52</sup> Interview of Giorgi Tughushi with the author.

## Summary

The Chamber of Control, Georgia's supreme audit institution, is charged with overseeing the spending of state funds. This assessment finds that the Chamber's overall performance has improved considerably as a result of reforms in recent years, although the institution still faces important capacity-related challenges. The legal framework governing the Chamber's activities is generally sound but the Chamber's independence and its ability to perform its role in the governance system can be affected negatively by the general political environment in which the agency operates. The Chamber works in a transparent manner and makes the relevant information available to interested parties.

The table below presents the indicator scores which summarise the assessment of the supreme audit institution in terms of its capacity, its internal governance and its role within the Georgian integrity system. The remainder of this section presents the qualitative assessment for each indicator.

### Total Score: 63/100

Dimension	Indicator	Law	Practice
Capacity 58/100	Resources		50
	Independence	75	50
Governance 80/100	Transparency	75	75
	Accountability	75	75
	Integrity	100	No Score
Role 50/100	Effective Financial Audits		50
	Detecting and Sanctioning Misbehaviour		50
	Improving Financial Management		50

## Structure and Organisation

The Chamber of Control is Georgia's supreme audit institution. According to the Constitution, the Chamber is to supervise the use of state funds and other resources of the state. It is also authorised to inspect the activities of other state bodies that are responsible for financial and administrative control and to present proposals regarding the improvement of tax legislation to parliament. The Chamber is accountable to parliament, which also appoints its chairperson. As part of the ongoing reform of the Chamber, the new Law on the Chamber of Control of Georgia was adopted in December 2008. The law defines the status of the agency as the "supreme body of state financial and economic control, which conducts audits".<sup>1</sup> The reform is primarily aimed at transforming the chamber from a Soviet-style financial inspection body into a modern supreme audit institution.

## Assessment

### Resources (law and practice)

Score: 50

To what extent does the audit institution have adequate resources to achieve its goals in practice?

The funding allocated to the Georgian Chamber of Control in the State Budget has grown steadily in recent years and the financial resources available to the agency are generally adequate. At the same time, the chamber still faces significant challenges in terms of human resources, especially in terms of recruiting staff capable of conducting modern audits.

The Georgian Law on the Chamber of Control (adopted on 26 December 2008) contains a number of important provisions designed to ensure that the Chamber receives proper funding. Specifically, the amount of financing allocated to the Chamber in the state budget in any given year cannot be smaller than the previous year's funding. A reduction of the Chamber's funding is only possible if the chamber itself consents to the change.<sup>2</sup> The Chamber drafts its own annual budget, which is presented to parliament by the head of the Chamber.<sup>3</sup>

In practice, the Chamber of Control's allocations in the state budget have grown steadily in recent years, increasing more than sevenfold between 2003 and 2008. The total allocations for the salaries of the Chamber's employees increased fivefold during the same period of time (a trend that also took place in many other government agencies over the same period).<sup>4</sup> According to the Chamber of Control, parliament recently slashed its own budget in order to provide the agency with additional funds.<sup>5</sup>

High turnover of employees and low quality of internal infrastructure used to affect the Chamber's work in previous years.<sup>6</sup> However, these problems ap-

<sup>1</sup> The Law on the Chamber of Control of Georgia, adopted on 26 December 2008, Article 3.

<sup>2</sup> *Id.*, Article 34.

<sup>3</sup> Parliamentary Rules of Procedure, adopted on 17 February 2004, Article 237.

<sup>4</sup> Chamber of Control of Georgia, *Report on Activities of Chamber of Control of Georgia in 2008* (Tbilisi: Chamber of Control of Georgia, 2008), 30. (in Georgian)

<sup>5</sup> TI Georgia's correspondence with Giorgi Alasania, head of Social Sector Audit Department at the Chamber of Control of Georgia, February 2010.

<sup>6</sup> Chamber of Control of Georgia, *Strategic Development Plan for 2009-2011*, (Tbilisi: Policy and Management Consulting Group, 2009), 9-10. (in Georgian)

pear to have largely been addressed. No auditors have left the office since 2009 and the infrastructure has improved significantly. The Chamber presently has three modern and fully-equipped offices in different parts of the country,<sup>7</sup>

The Chamber still faces considerable challenges in terms of the professionalism of staff. A 2009 study concluded that, while the Chamber's employees are qualified enough to conduct "fairly rudimentary" investigations into bookkeeping within state agencies, they lack the skills that are necessary for more complex audit tasks.<sup>8</sup> The same problem is highlighted in the Chamber's own 2010-2011 Capacity Development Plan which states that "only a minority [of auditors] have the theoretical and practical knowledge in the field of modern audit".<sup>9</sup> According to the Plan, the Chamber needs at least 160 "experienced" auditors to conduct a comprehensive financial audit of the State Budget but only had 105 in 2010.<sup>10</sup>

## Independence (law)

Score: 75

To what extent is there formal operational independence of the audit institution?

The legal framework contains important provisions that reinforce the independence of the Chamber of Control. At the same time, the law does not provide the Chamber's staff with sufficient protection against arbitrary dismissal.

The status of the Chamber of Control is anchored in the country's Constitution, which contains general provisions about the mission and the role of the agency, the nature of its relations with parliament and the rules for the appointment of the chairperson. Importantly, the Constitution states that the Chamber of Control is to be independent in its activities and the chairperson is to be appointed for a five-year term.<sup>11</sup> The Law on Chamber of Control reinforces the principle of the agency's independence, expressly prohibiting any form of interference with or control of its activities, as well as political pressure.<sup>12</sup>

The head of the Chamber of Control is appointed for a five-year term by a majority of parliament members upon nomination by parliament's speaker. Under the Law on Chamber of Control, the chairperson and deputy chairmen are prohibited from being members of political parties, engaging in political activities, holding additional positions or conducting any paid work except for teaching and academic or creative work. The chairperson can only be dismissed by parliament through an impeachment procedure set out in the Constitution. There is no restriction on re-election of the chairperson. Under the law, the chairperson enjoys immunity from criminal prosecution since parliamentary approval is required in order to arrest or charge the chairperson. If the chairperson is caught in the act of committing a crime, he or she must be released within 48 hours unless parliamentary permission to keep the chairperson in custody is obtained.<sup>13</sup>

<sup>7</sup> TI Georgia correspondence with Giorgi Alasania, head of Social Sector Audit Department at the Chamber of Control of Georgia, 6 July 2011.

<sup>8</sup> George Welton, "The Role of the International Community in Facilitating Financial Reform in Georgia: Budgetary Planning and Audit", an unpublished report written for International Budget Partnership and Transparency International Georgia, March 2009 (cited with permission from the author), 22.

<sup>9</sup> Chamber of Control of Georgia, *Capacity Development Plan 2010-2011* (Tbilisi: Chamber of Control of Georgia, 2010), 5. <sup>10</sup> *Id.*, 4.

<sup>11</sup> The Constitution of Georgia, adopted on 24 August 1995, Article 97

<sup>12</sup> The Law on Chamber of Control, Article 3

<sup>13</sup> *Id.*, 3, 9, 11, 12..

The Chamber of Control generally carries out audits according to a self-determined agenda, as the annual and quarterly audit plans are approved by the chairperson. The chairperson also approves the Chamber's Rules of Procedure, a document that determines the time frame and the rules for conducting audits. At the same time, the president and parliament do have a degree of influence over the Chamber of Control's agenda. The law states that the decisions of the president and parliament concerning auditing of various state bodies must be incorporated into the Chamber's audit plans.<sup>14</sup> Also, a number of state agencies and officials, as well as the parliamentary opposition, have a right to request that the Chamber conduct an unscheduled audit.<sup>15</sup>

On the negative side, while the law on Chamber of Control contains important safeguards against undue dismissal and prosecution of the chairperson, it does not offer similar protection to other employees of the Chamber. Although the Chamber of Control employees are public servants and covered by the safeguards of the Law on Public Service, these safeguards have at times proved to be inadequate in other agencies (see the chapter on Public Administration for more detail). It is therefore debatable whether they are sufficient to ensure the independence of the Chamber's auditors.

## Independence (practice)

Score: 50

To what extent is the audit institution free from external interference in the performance of its work in practice?

The Chamber of Control is independent in its day-to-day activities, although the nature of the political system in which it operates can undermine its independence and ability to deal with politically sensitive cases.

There are no recent examples of political influence on staff appointment or political interference with the Chamber of Control's routine activities. Neither have there been any documented cases of the Chamber of Control's chairperson or staff engaging in political or other types of activities prohibited by the law or holding positions that could compromise their independence.

At the same time, as rightly noted in a 2009 study, in Georgia's current political environment (where one party has total control of all branches of government and all major institutions of authority), the ruling party can effectively prevent the Chamber from conducting investigations and block the release of the Chamber's reports if it does not like the findings. Specifically, the executive can exert pressure during investigations and the chief prosecutor can choose not to publicize the investigations, while the parliamentary majority can block investigations in parliament. The same report suggests that the ruling party has done this on more than one occasion, noting that the chairperson lacks an independent power base

<sup>14</sup> *Id.*, Article 17.

<sup>15</sup> *Id.*, Article 18.

and will therefore find it hard to push forward any investigations that are unpopular with the ruling party.<sup>16</sup> A notable case took place in 2007 when the Chamber's inquiry into the Education and Science Ministry's activities was halted and the employee who conducted the investigation was dismissed.<sup>17</sup>

Two recent investigations by the Chamber implicating high-level officials are positive signs. In September 2010, the Chamber released the results of an audit of the Ministry of Health revealing major procurement violations. The Prosecutor's Office brought criminal charges against the deputy health minister based on the audit. A week later, the Chamber published findings regarding procurement violations in the Finance Ministry which implicated, once again, a deputy minister.<sup>18</sup> These two cases are a marked improvement over the aforementioned 2007 inquiry into the Education Ministry, although they do not yet amount to a definite signal that the Chamber is fully independent since no influential officials were involved and no powerful political interests were at stake in either case.

## Transparency (law)

Score: 75

To what extent are there provisions in place to ensure that the public can obtain relevant information on the relevant activities and decisions by the SAI?

The legal framework contains a number of provisions regarding the transparency of the Chamber of Control's work but these provisions are often ambiguous and leave some room for interpretation. Significantly, while the Chamber's reports are by law public information, the information can only be obtained by request and there is no legal requirement for their proactive publication.

According to the Constitution and the Law on Chamber of Control, the Chamber is required to submit a number of documents to parliament, including biannual findings on the government's budget implementation reports, the Chamber's opinion on the draft state budget, as well as an annual report on its own activities. The reports submitted by the Chamber of Control to parliament must be published in parliament's official newspaper, though no deadlines are set.<sup>19</sup> However the law does not require that the audit results of the Chamber of Control's own activities (which is carried out by an ad-hoc parliamentary commission) be made public.

In addition to these reports, the Chamber of Control produces a number of different documents (audit acts, reports and recommendations) after each audit. The legal provisions regarding the transparency of these documents are somewhat ambiguous. Namely, under the Law on Chamber of Control the Chamber is authorised, but not required, to publish these documents.<sup>20</sup> At the same time, these documents are administrative acts and have to be disclosed upon request as required by the General Administrative Code.<sup>21</sup>

<sup>16</sup> George Welton, "The Role of the International Community", 25,29.

<sup>17</sup> *Id.*, 24.

<sup>18</sup> Expressnews, "Chamber of Control Accuses Deputy Finance Minister of Misspending", <http://epn.ge/?p=25262> (accessed on 12 July 2011) (in Georgian).

<sup>19</sup> The Law on Chamber of Control, Article 32.

<sup>20</sup> *Id.*, Article 6.

<sup>21</sup> General Administrative Code of Georgia, adopted on 25 June 1999, Chapter 3.

The Chamber of Control has a special council for the adjudication of disputes concerning the results of audits carried out by the agency. The law states that the sessions of the council are open to the public “except for the cases when the materials of the case contain state or other types of secrets.”<sup>22</sup>

## Transparency (practice)

Score: 75

To what extent is there transparency in the activities and decisions of the audit institution in practice?

A number of steps have been taken in practice to ensure transparent operation of the Chamber of Control, including the creation of a website that carries some important information about the institution’s activities. The Chamber is very responsive to Freedom of Information requests, although a full list of all the audits conducted is not publicly available, so it is possible that much information will never be requested or publicly released.

The Chamber of Control has an up-to-date website ([www.control.ge](http://www.control.ge)) that offers general information about the agency, contains a current events section and carries a number of important documents, including a schedule of upcoming audits. However, the website lacks a comprehensive archive of the Chamber’s past reports, carrying only the most recent documents published by the agency such as the Chamber’s annual report on its own activities and the report on the state budget implementation. The decision to post these reports on the website is a positive development, especially since the law does not directly require the Chamber to do so, but it would be useful to have a full archive of reports. The Chamber’s annual activity report available on the website provides an overview of different aspects of the Chamber’s activities during the reporting period and its future plans. In a positive development, the Chamber recently posted a full list of its recommendations sent to different public agencies over the past year on the website.

However, neither individual audit reports nor the Chamber’s detailed budget are available online. A section on audits was recently added to the website, which could be an indication of the Chamber’s intention to start posting individual audit results online, although the section remains empty at present.

At the same time, an independent analyst familiar with the activities of the Georgian Chamber of Control mentioned that the findings of the Chamber’s audits are usually made available upon request.<sup>23</sup> TI Georgia’s own experience requesting information from the Chamber of Control further confirms this statement. All four Freedom of Information (FOI) requests sent to the Chamber of Control as part of the NIS field tests were answered in full. In addition, other TI Georgia FOI requests to the Chamber have likewise received full answers in response.

<sup>22</sup> The Law on Chamber of Control., Article 29

<sup>23</sup> Interview of George Welton with the author, 9 November 2009.

## Accountability (law)

Score: 75

To what extent are there provisions in place to ensure that the SAI has to report and be answerable for its actions?

There are some important legal provisions designed to ensure that the Chamber of Control is answerable for its actions, such as the requirement of annual reporting and the establishment of a special council for adjudication of appeals against the Chamber's decisions. On the negative side, the law does not provide for independent auditing of the Chamber of Control.

Under the Constitution<sup>24</sup> and the Law on Chamber of Control,<sup>25</sup> the Chamber is accountable to parliament and is required to present a report on the previous year's activities to the legislature by 1 June of every year. The law does not contain detailed requirements regarding the content of these reports (though some general guidance is provided in Article 25 of the chamber's internal Rules of Procedure).

The law states that the audit of the Chamber of Control's financial and economic activities is to be carried out annually by a special commission established by parliament.<sup>26</sup> The law presently does not require independent auditing of the Chamber of Control by an external professional entity. The Chamber has its own Internal Audit Department that can examine the agency's activities on the chairperson's order, although there is no legal provision stipulating that these audits must be conducted regularly.

Public agencies audited by the Chamber can appeal to the Chamber's own Council for Adjudication of Disputes to challenge audit results. Public enterprises audited by the Chamber can also challenge its decisions in court. The Council for Adjudication of Disputes is led by the Chamber's chairperson, who also appoints the members of the council. The law allows (but does not expressly require) the inclusion of independent experts in the council. NGOs can also nominate candidates for council membership. Parliament can appoint two members of the council and one of these must represent the parliamentary opposition.<sup>27</sup>

## Accountability (practice)

Score: 75

To what extent does the SAI have to report and be answerable for its actions in practice?

The legal provisions designed to ensure accountability of the Chamber of Control are generally implemented effectively in practice, although no independent audit of the Chamber's finances has been conducted to date.

<sup>24</sup> The Constitution of Georgia, Article 97

<sup>25</sup> The Law of Chamber of Control, Article 32.

<sup>26</sup> *Id.*, Article 32; Parliamentary Rules of Procedure, Article 216.

<sup>27</sup> The Law on Chamber of Control, Article 28.

The Chamber of Control presents an annual report on its activities to parliament which is also posted to the Chamber's website. The last such report submitted to the legislature contains fairly detailed information about the audits conducted during the reporting period, measures taken on the basis of the audit results, description of ongoing reforms in the Chamber, as well as information about the agency's financial affairs.<sup>28</sup>

Financial inspection of the Chamber of Control is conducted annually by an ad hoc parliamentary commission.<sup>29</sup> There are plans to introduce annual independent auditing of the Chamber's finances by an authoritative international audit firm, but no such audits are carried out at present.<sup>30</sup> At the same time, unlike many other public agencies, the Chamber of Control has already established an internal audit department and has conducted internal audit.<sup>31</sup>

It is difficult to assess the work of the Chamber's new Council for Adjudication of Disputes at this point, as it was established recently and has not yet received any appeals.

## Integrity Mechanisms (law)

Score: 100

To what extent are there mechanisms in place to ensure the integrity of the audit institution?

Georgia has strong legal mechanisms for ensuring the integrity of the Chamber of Control.

The Code of Ethics of the Employees of the Georgian Chamber of Control was adopted in late 2009. According to the Chamber, the code was drafted on the basis of the principles endorsed by the International Organisation of Supreme Audit Institutions.<sup>32</sup>

The code covers the following areas: integrity, independence and objectivity, impartiality, conflict of interest, responsibility, professional secrets, professionalism and communications ethics. The relevant sections of the code are detailed and provide proper guidelines for the employees.

The code requires the Chamber of Control's employees to ensure that their audits are not influenced by any external factors such as public opinion, media reports or personal interests and are based solely on the relevant legislative provisions. According to the code, the auditors must conduct their work in an impartial manner and should not use their powers for their own benefit or the benefit of other individuals. They are further required to consider all collected information in an impartial manner and base all their findings exclusively on the information obtained according to the existing legal procedures.<sup>33</sup> The employ-

<sup>28</sup> The Chamber of Control of Georgia, *Report on Activities of Chamber of Control of Georgia in 2010* (Tbilisi: Chamber of Control, 2011), [http://www.control.ge/files/upload-file/pdf/annual\\_report\\_2010.pdf](http://www.control.ge/files/upload-file/pdf/annual_report_2010.pdf) (accessed on 12 July 2011) (in Georgian).

<sup>29</sup> The Georgian Parliament Ad-Hoc Commission for Auditing Chamber of Control's Financial and Economic Activities in 2010, [http://www.parliament.ge/index.php?sec\\_id=705&lang\\_id=GEO](http://www.parliament.ge/index.php?sec_id=705&lang_id=GEO) (accessed on 15 March 2010).

<sup>30</sup> TI Georgia's e-mail correspondence with Giorgi Alasania, head of Social Sphere Department, Chamber of Control, February 2010.

<sup>31</sup> The Chamber of Control of Georgia, *Report on Activities of Chamber of Control of Georgia: 2009* (Tbilisi: Chamber of Control, 2010), 44.

<sup>32</sup> TI Georgia's e-mail correspondence with Giorgi Alasania, February 2010.

<sup>33</sup> Code of Ethics of Georgian Chamber of Control Employees, Article 5, supplied to TI Georgia by the Georgian Chamber of Control on 1 March 2010.

ees must not use their powers for political activities and should remain free from political influence.<sup>34</sup>

The Code expressly requires the employees to follow the provisions of the Law on Conflict of Interest and Corruption in Public Service and to refrain from accepting any gifts that could influence their work and cast a doubt upon their independence and integrity. The employees must discuss all possible cases of conflict of interest with their immediate supervisors.<sup>35</sup>

Post-employment restrictions for the Chamber of Control's staff are established by the Law on Public Service. Specifically, as public servants, they are prohibited from joining private entities that they supervised/inspected in their official capacity for a period of three years after leaving public service.<sup>36</sup>

### Integrity Mechanisms (practice)

**No Score**

**To what extent is the integrity of the audit institution ensured in practice?**

As the Code of Ethics was only adopted recently, there presently is not sufficient information to assess whether or not it is applied effectively in practice.

### Role: Effective Financial Audits

**Score: 50**

**To what extent does the audit institution provide effective audits of public expenditure?**

The Chamber of Control's ability to conduct financial audits has improved considerably in recent years but important capacity-related challenges remain.

The current law (adopted in late 2008) lists three types of audit that the Chamber of Control is to conduct: financial audits, compliance audits and efficiency audits.<sup>37</sup> In practice, the Chamber audits different types of public spending: expenditures of public agencies, as well as commercial enterprises with state participation and semi-autonomous bodies that receive state funding.<sup>38</sup>

A 2009 study concluded that the scope of the audits conducted by the Chamber of Control was very limited, and that the auditors rarely checked whether the money going out of ministries was buying the goods and services that it claimed to be buying. The same report noted that, when examining purchases, the auditors did not check their efficiency (whether the goods/services purchased were the cheapest available for a given level of quality) or effectiveness (whether the items purchased were utilised to provide the greatest level of

<sup>34</sup> *Id.*, Article 6.

<sup>35</sup> *Id.*, Article 7.

<sup>36</sup> The Law on Public Service, adopted on 31 October 1997, Article 65.

<sup>37</sup> Law on Chamber of Control, Article 2.

<sup>38</sup> The Chamber of Control of Georgia, *Report on Activities of Chamber of Control of Georgia: 2009*, 23-38.

value).<sup>39</sup> A 2010 OECD ACN report also noted that the Chamber's activities were limited to "inspections of compliance with relevant legislation and budgets."<sup>40</sup>

The situation has been improving gradually over the past two years. The Chamber adopted an up-to-date Financial Audit Manual in 2010<sup>41</sup> and efforts have been made to improve the overall capacity of the institution. Yet, as noted in the section on resources, the Chamber requires additional number of qualified auditors in order to conduct a comprehensive financial audit of the State Budget.

The Chamber of Control is only scheduled to start conducting regular and full performance audits in 2012<sup>42</sup>, although it did conduct several pilot audits of this type in 2010.<sup>43</sup> The Chamber cannot presently conduct a full assessment of the effectiveness of internal audits in the public sector since the system of internal audit units was only introduced in public agencies in 2010 and is not fully functional yet.<sup>44</sup>

## Role: Detecting and Sanctioning Misbehaviour (law and practice)

Score: 50

### Does the audit institution detect and investigate misbehaviour of public officeholders?

The Chamber of Control has both the legal mandate and the practical tools for spotting and investigating irregularities. The Chamber has recorded numerous violations in recent years, although there are some valid doubts as to whether or not the Chamber has sufficient independence to confront the most powerful elements of the government.

The general idea behind the ongoing reform of the Chamber of Control is to transform it from a "body exercising control" into the one that provides expertise and promotes effective management of state resources.<sup>45</sup> Nevertheless, while the new Law on Chamber of Control has shifted the emphasis away from the Chamber's role as a punitive and investigatory body, it still contains provisions concerning the Chamber's role in detecting and sanctioning misbehaviour. Under the law, whenever an audit uncovers a possible crime, the audit materials are to be sent to the law enforcement bodies.<sup>46</sup> The law enforcement bodies are required to inform the Chamber of Control as to how they have acted upon the materials that the Chamber provided.

In practice, the recent improvements in the Chamber's capacity have enhanced its ability to detect irregularities. In 2010 alone, the Chamber's auditors recorded a total of 869 violations of law.<sup>47</sup> According to the Chamber of Control, its auditors have unhindered access to the necessary documents at the audited agencies.<sup>48</sup>

<sup>39</sup> George Welton, "The Role of the International Community," 23.

<sup>40</sup> OECD Anti-Corruption Network for Eastern Europe and Central Asia, Istanbul Anti-Corruption Action Plan, *Second Round of Monitoring, Georgia Monitoring Report*, (Paris: OECD ACN, 2010), 35.

<sup>41</sup> TI Georgia correspondence with Giorgi Alasania, 6 July 2011.

<sup>42</sup> TI Georgia's e-mail correspondence with Giorgi Alasania, 26 February 2010.

<sup>43</sup> TI Georgia's correspondence with Giorgi Alasania, 6 July 2011.

<sup>44</sup> TI Georgia's e-mail correspondence with Giorgi Alasania, 26 February 2010.

<sup>45</sup> Chamber of Control of Georgia, *Strategic Development Plan for 2009-2011*, 5.

<sup>46</sup> *Id.*, Article 24.

<sup>47</sup> The Chamber of Control of Georgia, *Report on Activities of Chamber of Control of Georgia in 2010*, 8.  
The Chamber of Control of Georgia, *Report on Activities of Chamber of Control of Georgia: 2009*, 23.

<sup>48</sup> TI Georgia's correspondence with Giorgi Alasania, February 2010.

On the negative side, as discussed in the section on independence (practice), it is not clear whether the Chamber of Control can confront the most influential agencies and officials in the current political environment. The case of the 2007 inquiry into the Ministry of Education's activities (cited in the section on independence) raises doubts in this respect, although the more recent cases of the Ministry of Healthcare and the Ministry of Finance (also discussed above) were positive signs.

Also, it is not clear whether the law enforcement agencies always react to the Chamber's findings adequately. According to the Chamber's own annual report for 2008, of the 44 cases forwarded to the Prosecutor's Office during the year, 28 were still being investigated at the time when the annual report was compiled. Investigation had been suspended in two cases and the Chamber had received no information on another 14 cases. The figures show that charges had, most likely, not been brought in any of the cases forwarded by the Chamber to the Prosecutor's Office in 2008 (at least by the time the report was compiled).<sup>49</sup> No comparable data was included in the Chamber's annual reports for 2009 or 2010.<sup>50</sup>

### Role: Improving Financial Management (law and practice) Score: 50

#### To what extent is the SAI effective in improving the financial management of government?

The Chamber of Control has the mandate to provide advice regarding the government's financial affairs and it does offer recommendations to individual state agencies. Its ability to contribute to the improvement of the government's overall financial management has improved since 2009, although some important challenges remain.

The Chamber of Control has a legal responsibility to contribute to the improvement of financial management. The Law on Chamber of Control states that one of the Chamber's goals is to promote efficient use of state money and other resources.<sup>51</sup> According to the law, one of the types of audits conducted by the Chamber is "efficiency audit," which involves analysis and evaluation of the expediency and cost effectiveness of state programmes, resource use and management behaviour.<sup>52</sup> The law stipulates that the Chamber of Control can present proposals to parliament and other relevant bodies regarding the adoption and improvement of tax legislation and other laws.<sup>53</sup> The Chamber is authorised to send information about audit results and recommendations to the president, parliament and government.<sup>54</sup>

According to an independent analyst who examined the activities of the Georgian Chamber of Control in 2009, the Chamber did very little in terms of pro-

<sup>49</sup> Chamber of Control of Georgia, *Report on Activities of Chamber of Control of Georgia in 2008*, p22.

<sup>50</sup> The Chamber of Control of Georgia, *Report on Activities of Chamber of Control of Georgia: 2009*, 29.

<sup>51</sup> Law on Chamber of Control, Article 4.

<sup>52</sup> *Id.*, Article 2.

<sup>53</sup> *Id.*, Article 6.

<sup>54</sup> *Id.*, Article 24.

viding recommendations towards the improvement of the government's overall financial management in 2004-2008. The analyst suggested that the Ministry of Finance assumed the role of the body responsible for reforming and improving the management of state resources in 2004, while the Chamber of Control was not particularly active in that respect.<sup>55</sup>

The situation improved after the commencement of the Chamber's reform in 2008-2009 and the agency identified financial management of the public sector as one of its top priorities for 2010.<sup>56</sup> According to the Chamber, the results of its audits prompted the adoption of a new law on public procurement, as well as the legal amendments that limited the discretion of semi-independent bodies in spending state money.<sup>57</sup> The total sum of the government's savings and additional revenues resulting from the Chamber of Control's audits amounted to GEL 44 million (USD 26.5 million) 2010.<sup>58</sup> In its report on the implementation of the 2010 State Budget by the government, the Chamber of Control highlighted a number of important problems related to the public sector's financial management. These included, among others, a disorderly system of financial accounting, misspending of budget allocations, inadequate planning and management, and accountability of the Legal Entities of Public Law. The Chamber offered relevant recommendations in the report.<sup>59</sup>

The Chamber of Control reports that it normally gives audited agencies a reasonable time frame for applying its recommendations and that it requires the audited agencies to report back after the specified period of time. The Chamber also stated that government agencies usually comply with its recommendations and try to improve their financial management accordingly.<sup>60</sup>

At the same time, a number of problems discussed in the preceding sections affect the Chamber's ability to contribute to the improvement of the public sector's financial management. As noted, the Chamber needs an additional number of qualified auditors to conduct a comprehensive financial audit of the state budget. Also, the Chamber will be able to present more comprehensive recommendations to the public sector once it starts conducting full performance audits and internal audit reviews.

<sup>55</sup> Interview of George Welton with the author, 9 November 2009.

<sup>56</sup> The Chamber of Control of Georgia, *Report on Activities of Chamber of Control of Georgia: 2009*, 22.

<sup>57</sup> *Id.*, 31-33.

<sup>58</sup> The Chamber of Control of Georgia, *Report on Activities of Chamber of Control of Georgia in 2010*, 18.

<sup>59</sup> The Chamber of Control of Georgia, *Report on Georgian Government's Report Regarding Implementation of 2010 Georgian State Budget* (Tbilisi: Chamber of Control, 2011).

<sup>60</sup> TI Georgia's correspondence with Giorgi Alasania, 26 February 2010.

# Political Parties 9.

## Summary

Georgian legislation provides for a free establishment and operation of political parties and contains safeguards against state interference with the activities of political groups. This assessment finds, however, that, in practice, an extremely uneven distribution of resources between the ruling party and the opposition undermines effective political competition. While parties normally operate without government pressure, there have been cases of intimidation and violence against opposition activists which have not been addressed properly by the law enforcers. Political parties also lack effective procedures for internal democratic governance and their ability to aggregate and represent social interests is very limited.

The table below presents the indicator scores which summarize the assessment of political parties in terms of their capacity, their internal governance and their role within the Georgian integrity system. The remainder of this section presents a qualitative assessment for each indicator.

### Total Score: 48/100

Dimension	Indicator	Law	Practice
Capacity 69/100	Resources	100	25
	Independence	100	50
Governance 50/100	Transparency	75	50
	Accountability	50	50
	Integrity	50	25
Role 25/100	Interest Aggregation and Representation	—	25
	Anti-Corruption Commitment	—	25

## Structure and Organisation

There are some 190 registered political parties in Georgia, although only about a dozen of these have been more or less actively involved in the country's political life in recent years. A number of Georgia's leading opposition parties are currently not represented in parliament as they gave up their seats in the legislature in protest against alleged irregularities during the May 2008 elections, and currently only one opposition party, the Christian Democrats, holds a more or less significant number of Parliamentary seats (several small parties hold one parliamentary seat each). A dominant ruling party and a fragmented opposition that has been unable to come together have been continuous features of Georgia's political system since the 1990's.

### Assessment

#### Resources (Law)

Score: 100

**To what extent does the legal framework provide a conducive environment for the formation and operation of political parties?**

The existing legal framework does not establish any significant hurdles to the formation and operation of parties. The right of Georgian citizens to "form political parties and participate in their activities" is guaranteed under the Constitution.<sup>1</sup> Specific rules for the establishment and operation of parties are set out in the Organic Law of Georgia on Political Associations of Citizens (hereinafter referred to as the political parties law).<sup>2</sup>

The existing legal provisions do not create any serious obstacles to the formation of political parties. No permission is required from the authorities in order to establish a political party, although at least 300 citizens must take part in the founding convention in order for it to be considered valid.<sup>3</sup> A party must apply for registration with the Ministry of Justice within a week of the party's founding convention and present a number of documents, including a list of at least 1,000 members.<sup>4</sup> The ministry can only deny a party registration if its documents are not compliant with the law or the Constitution. The ministry is required to notify the party in question of a negative decision in writing and provide a valid reason for the refusal. Should the ministry fail to issue a written refusal within the deadline provided by the law, the party will automatically obtain registration, provided its documents are compliant with the legal requirements. A party can challenge the ministry's refusal to register it in court.<sup>5</sup>

Both the Constitution<sup>6</sup> and the political parties law<sup>7</sup> impose some restrictions on party ideology. Namely, they prohibit the establishment of a party that: aims to destroy or violently change the constitutional order or violate the country's in-

<sup>1</sup> The Constitution of Georgia, adopted on 24 August 1995, Article 26.

<sup>2</sup> Adopted on 31 October 1997

<sup>3</sup> The Law on Political Unions of Citizens, adopted on 31 October 1997, Article 12.

<sup>4</sup> *Id.*, Article 22.

<sup>5</sup> *Id.*, Article 23.

<sup>6</sup> The Constitution of Georgia, Article 26.

dependence or territorial integrity; advocates war and violence; or, incites ethnic, communal, religious or social hatred. The political parties law also prohibits the formation of a regional party, i.e. one that does not operate in different parts of the country.<sup>8</sup> While most of these restrictions can be considered legitimate in a democratic society, Freedom House has voiced concern over the prohibition of regional parties, noting that it limits the capacity of ethnic minorities, sometimes concentrated in specific regions, to bring their grievances to the attention of the country's leadership.<sup>9</sup>

## Resources (Practice)

Score: 25

To what extent do the financial resources available to political parties allow for effective political competition?

Although Georgian political parties may legally obtain funding from a variety of sources, financial resources are unevenly distributed between the ruling party and opposition groups, primarily because of the difficulties that the opposition faces in terms of access to private donations. This has undermined effective political competition.

The country's main political parties have access to state funding and can also receive private donations. While there is a base sum<sup>10</sup> allocated to all parties that qualify for state funding, the total amount of state financing depends on a party's electoral performance.

The political parties law requires that funding must be allocated in the annual state budget in order to "provide financial support for the activities of political parties and promote the formation of a healthy and competitive political system".<sup>11</sup> There are two ways for parties to receive funding from the state: direct financing from the state budget and the Electoral Systems Development, Reform and Training Centre, which allocates money to political parties and NGOs exclusively for training, conferences, regional projects and other activities that promote the development of political parties in Georgia. Direct state funding is allocated to the political parties that received at least four percent of the vote in the last parliamentary election, or at least three percent of the vote in the last local election. Direct funding consists of a fixed base sum and an additional amount corresponding to the party's most recent electoral performance. The money transferred to the Electoral Systems Development, Reform and Training Centre from the budget should equal 50 percent of the amount allocated directly to political parties and must be divided between the parties in proportion with the direct funding they receive.

As for private donations, there is no cap on the total amount of money a party can accept within any given period of time. However, an individual can donate

<sup>7</sup> The Law on Political Unions of Citizens, Article 5.

<sup>8</sup> *Id.*, Article 6.

<sup>9</sup> Freedom House, *Nations in Transit 2009* (Freedom House, 2009), 225.

<sup>10</sup> The base sum is 150,000 GEL (USD 90,000) a year (300,000 GEL (USD 180,000) for the parties that receive over 8 percent of the vote in the parliamentary elections or 6 percent of the nationwide vote in the local elections.

<sup>11</sup> The Law on Political Unions of Citizens, Article 29(1).

a maximum of GEL 30,000 (USD 18,000) per annum, while a legal entity can contribute a maximum of GEL 100,000 (USD 60,000).<sup>12</sup> Similar provisions are in place for campaign donations. Also, political parties that have a faction in parliament or received at least four percent of the vote in the last general election are entitled to receive free airtime during the campaign period.<sup>13</sup>

The 2008 parliamentary elections showed the considerable disparity in resources between the ruling party and the opposition groups. According to public campaign finance reports submitted to the Central Election Commission, the ruling National Movement spent around GEL 12 million (USD 7.2 million) on its campaign, 25 times more than the amount spent by the largest coalition of opposition parties: the United Opposition block (GEL 480,000; USD 289,000).<sup>14</sup> Opposition groups allege that the authorities forced private businesses and enterprises to make donations to the ruling party's campaign fund while also discouraging them from providing any support to the opposition.<sup>15</sup> In addition, opposition parties have found themselves in a disadvantageous position due to the ruling party's exclusive access to administrative resources, which are also drawn upon during pre-election campaign periods,<sup>16</sup> and its greater access to the media.<sup>17</sup>

A review of the 2008 finance reports of Georgia's leading political parties conducted by TI Georgia for this report showed that the ruling National Movement had a far greater sum of donations, while opposition groups tended to rely more on state funding. For example, state funding only amounted to seven percent of the National Movement's total income in 2008, while the same figures were 53 percent for the opposition Labour Party and 33 percent for the opposition Republican Party.<sup>18</sup> Interestingly, while the ruling party received donations from dozens of businesses, opposition parties received little to no donations of this type (the bulk of their donations coming from individuals rather than companies).

Party	Total income (GEL million)	State funding	Non-Electoral donations	Electoral donations	share of state funding in total income
National Movement	27.4	1.8	12.4	13.09	6.56 %
Labour Party	0.656	0.352	0.0007	0.283	53 %
Conservative Party	0.286	0.284	0.0016	n/a	99.3%
Republican Party	0.872	0.284	0.0006	0.583	32.5 %

Businesses are likely discouraged from donating to opposition political parties because opposition parties do not carry influence in parliament or any other elected government bodies. Thus the ability of opposition parties to raise funds is also directly linked with imbalances in the electoral system, which heavily favors the ruling party. In particular, Georgia's tax regulations concerning the use of administrative resources during elections blur the lines between the state and the ruling party, giving the latter considerable advantage over all other contestants. The existing rules for the allocation of seats in parliament also heavily favour the ruling party, which won 59% of the vote in 2008 but received around

<sup>12</sup> *Id.*, Article 26.

<sup>13</sup> The Electoral Code of Georgia, adopted on 2 August 2001, Article 73(1).

<sup>14</sup> OSCE/ODIHR *Georgia: Parliamentary Elections 21 May 2008*, OSCE/ODIHR Election Observation Mission Final Report, (Warsaw: OSCE/ODIHR, 2008), 14.

<sup>15</sup> Transparency International Georgia, *Georgia's Electoral System: Recurrent Challenges*, Transparency International Georgia, 2009, 10.

<sup>16</sup> OSCE/ODIHR *Georgia: Parliamentary Elections 21 May 2008*, OSCE/ODIHR Election Observation Mission Final Report, 1.

<sup>17</sup> *Id.*, p 16.

<sup>18</sup> The political parties listed above kindly provided their annual finance reports on TI Georgia's request.

80 percent of seats in the legislature (a constitutional majority requires two thirds of the vote). Opposition parties thus have a rather small chance of obtaining a significant number of seats in the legislature, eliminating any incentive from businesses to invest in their campaigns.

### Independence (Law)

Score: 100

**To what extent are there legal safeguards to prevent unwarranted external interference in the activities of political parties?**

There are no significant gaps or loopholes in the legislation that would clearly compromise the ability of a political party to function free of external influence. The political parties law emphasizes that the state must ensure the protection of a party's rights and "legitimate interests", while state bodies and officials are prohibited from interfering with a party's activities except where the law expressly allows it, as described in the *Resources (Law)* section above.<sup>19</sup>

The political parties law contains safeguards against arbitrary dissolution of parties by the government. According to Article 36, a political party can only be banned or dissolved through a Constitutional Court ruling and the Court can only ban a party that violates one of the restrictions on party ideology or activities listed in Article 26 of the Constitution, or if it forms an armed group.

### Independence (Practice)

Score: 50

**To what extent are political parties free from unwarranted external interference in their activities in practice?**

Political parties generally appear to be protected from direct state interference in their activities and there have been no cases of the state dissolving or prohibiting the activities of political parties in recent years. However, there have been allegations of party activists being subjected to intimidation and harassment by the authorities.

In its report on the 2008 parliamentary elections, the OSCE/ODIHR Election Observation Mission said that while all parties were generally able to campaign throughout the country, the campaign was "marred" by allegations of intimidation of opposition candidates and party activists during the campaign, "several" of which the Mission found "credible". The Mission noted that obstruction of opposition campaign activities was more prevalent in rural areas.<sup>20</sup> The Mission also noted that the "post-election environment was marred by a series of violent attacks by unknown assailants on opposition activists."<sup>21</sup>

<sup>19</sup> The Law on Political Unions of Citizens, Article 7.

<sup>20</sup> OSCE/ODIHR *Georgia: Parliamentary Elections 21 May 2008*, OSCE/ODIHR Election Observation Mission Final Report, 11-12.

<sup>21</sup> *Id.*, p 13.

This mixed picture persisted into 2009. Opposition parties were allowed to hold protest rallies in central Tbilisi and to keep the capital's central street blocked for several months in the spring and summer without any direct interference by the authorities, but there were numerous cases of assault on opposition activists by unidentified individuals.<sup>22</sup> Opposition parties also claim that a number of their activists have been arrested on political grounds and describe them as political prisoners. There are continuous allegations of intimidation of opposition activists in the regions. An expert interviewee told TI that these allegations are "consistent enough to warrant examination".<sup>23</sup> Further intimidation of opposition activists was observed before the 2010 local elections.<sup>24</sup> The Public Defender has criticized the law-enforcers for "turning a blind eye" to the acts of violence against opposition supporters.<sup>25</sup>

## Transparency (Law)

Score: 75

To what extent are there regulations in place that require parties to make their financial information publicly available?

Georgian legislation devotes considerable attention to ensuring transparent operation of political parties. According to the law, "publicity of the formation and the activities of a party" is one of the fundamental principles of the establishment and operation of political parties in Georgia.<sup>26</sup>

Under the law, the information about donations received by parties is open and the CEC is required to ensure public access to this information.<sup>27</sup> Anonymous donations are prohibited. Moreover, the law stipulates that, by 1 February each year, a political party is required to publish in printed media the previous year's financial declaration, along with an auditor's report, and to submit copies of these two documents to the CEC.<sup>28</sup> The declaration must contain information about different types of party revenues and expenses, as well as a list of assets. Electoral incomes and expenses must be indicated separately.

Information about campaign donations is also public. The Electoral Code requires the CEC to provide all interested individuals with information on party campaign finances and also to post the data on its website within two days of receiving it.<sup>29</sup> One loophole in the law is that it does not require the CEC to post annual finance reports of political parties on its website (only campaign finance reports are required to be posted to the CEC's website, covering the previous month's worth of activity).

## Transparency (Practice)

Score: 50

To what extent do political parties make their financial information publicly available?

Political parties do meet most of the legal obligations regarding the transparency of their finances. They publish annual finance and audit reports in the

<sup>22</sup> *Civil Georgia*, "Opposition Says May Resort to 'Self-Defence'," 17 April 2009, <http://civil.ge/eng/article.php?id=20749&search=> (accessed on 24 November 2009).

<sup>23</sup> Interview of a Tbilisi-based expert with the author, Tbilisi, 4 November 2009.

<sup>24</sup> Nina Khatiskatsi and Caitlin Ryan, *Questions Remain After Incidents Involving Opposition Activists*, 15 October 2010

<http://www.transparency.ge/en/blog/pmestia-questions-remain-after-incidents-involving-opposition-activistsp>; (accessed on 24 March 2010).

<sup>25</sup> *Civil Georgia*, "Opposition Says May Resort to 'Self-Defence'".

<sup>26</sup> The Law on Political Unions of Citizens, Article 3.

<sup>27</sup> *Id.*, Article 26.

<sup>28</sup> *Id.*, Article 32.

<sup>29</sup> The Electoral Code, Article 48.

press and also submit copies of these documents to the Central Electoral Commission and tax authorities. Thus individuals interested in information about party finances can obtain it in two ways: directly from the press in which it was published or by submitting a Freedom of Information request to the Central Electoral Commission, which has a legal duty to provide citizens with information about donations received by political parties.

It is not common for Georgian political parties to post finance reports or information about donations on their own websites. While the law does not require them to do so, it would be a demonstration of their commitment to the principle of transparency and would also facilitate interested citizens in tracking the relevant data. The CEC website carries copies of the campaign finance reports submitted by parties after the 2008 parliamentary elections but not the annual finance reports, meaning that the latter type of information is not readily accessible to citizens and it is necessary to send a FOI request in order to obtain it.

### Accountability (Law)

Score: 50

**To what extent are there provisions governing financial oversight of political parties?**

The political parties law contains a number of provisions designed to uphold the accountability of political party finances. However, there are no proper legal mechanisms for the verification of information submitted by parties.

Under the law, all donations received by political parties must be made via bank transfers, except for donations made by individuals of less than GEL 300 (GEL 180). As mentioned earlier, all political parties are required to publish an annual finance report and an audit report in the press. The political parties law specifies the types of information that must be included in the report. Parties must also submit copies of the published declaration and audit report to the CEC and the tax authorities within 10 days from its publication.<sup>30</sup> A party that fails to publish these documents will have the state funding suspended for a period of one year.<sup>31</sup> Political parties that receive money from the state's Electoral Systems Development, Reform and Training Centre are required to submit annual reports to the fund detailing how the money has been used. Failure to do so will result in the suspension of this type of funding for a period of one year.<sup>32</sup>

Similar regulations are in place for campaign financing.<sup>33</sup> A political party or bloc participating in an election is required to set up a campaign fund and to transfer all of its campaign money to a single bank account. Anonymous donations are prohibited. The manager of a party's campaign fund is to submit monthly reports on donations to the electoral administration. Parties and blocks are required to submit campaign finance reports and audit reports to the electoral

<sup>30</sup> The Law on Political Unions of Citizens, Article 33.

<sup>31</sup> *Id.*, Article 34.

<sup>32</sup> *Id.*, Article 30.

<sup>33</sup> The Electoral Code, Articles 46-48.

administration after the elections. Campaign spending is overseen by the Financial Monitoring Group, which is set up by the Central Election Commission before every election.

A number of loopholes have been identified in the legal provisions dealing with the accountability of political parties for their campaign finances. As the Venice Commission noted, the requirement of monthly reporting in the Electoral Code is inadequate since the registration deadline for parties is only slightly more than one month before the election. This means that parties are, in fact, only required to submit one campaign finance report during the campaign. The Commission recommended that this provision should be amended to ensure that finance reports are submitted some time in advance of election day. The Commission also suggested that the law should require parties to include expenditures and not only donations in their pre-election finance reports – a suggestion which would make it possible to monitor campaign finance in a more meaningful way.<sup>34</sup>

OECD ACN has also highlighted some weaknesses in the accountability provisions, noting that independent audit reports that parties are required to file annually together with their finance reports are a form of internal control and cannot substitute state supervision of party finances. OECD ACN noted that the entire system is incomplete due to the lack of legal mechanisms for state monitoring of party compliance with the existing regulations. The CEC presently has no mandate to perform this role.<sup>35</sup>

## Accountability (Practice)

Score: 50

To what extent is there effective financial oversight of political parties in practice?

The current system, whereby financial oversight of political parties is exercised primarily by the CEC, is partially effective but its operation is undermined by the weakness of the audit and verification mechanisms.

Georgia's main political parties do publish annual finance and audit reports in the press and send copies of these documents to the CEC as required by law. They also submit campaign finance reports to the CEC during elections. Yet there is no functioning mechanism to ensure accuracy and credibility of the submitted reports.

Levan Tarkhishvili, who served as the chairman of the CEC in 2007-2009, identified the inadequacy of the existing mechanisms to monitor parties' financial affairs in the period between elections as a matter of concern. Specifically, although Tarkhishvili confirmed that parties submit their annual finance reports and audit reports to the CEC in a timely manner, he emphasized that the commission has very limited tools to examine their accuracy. He noted, for example, that it is virtually impossible for the CEC to verify whether the donations received by a party were actually made by the individuals listed in the party's

<sup>34</sup> European Commission for Democracy Through Law, *Joint Opinion on the Election Code of Georgia, as revised up to July 2008*, adopted by the Council for Democratic Elections at its 26<sup>th</sup> meeting (Venice, 18 October 2008), 21.

<sup>35</sup> OECD Anti-Corruption Network for Eastern Europe and Central Asia, *Istanbul Anti-Corruption Action Plan, Second Round of Monitoring, Georgia Monitoring Report*, (Paris: OECD ACN, 2010), 42.

finance report. He also noted that Georgia has extremely liberal laws regulating the activities of auditors and it is very easy for any individual to set up an audit firm, which raises questions regarding the quality and credibility of the audit reports submitted by political parties.<sup>36</sup> A 2011 journalist investigation suggested that the ruling party may have provided inaccurate information regarding the sources of donations in its annual report.<sup>37</sup>

The OSCE/ODIHR Election Observation Mission identified another problem with the current system that is meant to ensure accountability of political parties during election campaigns. For a significant portion of the funds raised for a campaign, parties did not reveal the names of original donors, reporting instead that the money had come from inside the party.<sup>38</sup>

## Integrity (Law)

Score: 50

To what extent are there regulations on the democratic governance of political parties?

The existing regulations governing the democratic governance of political parties are limited in scope. Under Article 17 of the political parties law, all parties are required to hold a general convention of their members at least once every four years. Depending on the party's charter, either all party members or a minimum of 200 representatives elected by party members must attend the convention. It is the convention's prerogative to elect party leadership, as well as the party's executive and supervisory bodies.

However, neither the political parties law nor the Electoral Code includes any regulations regarding the selection of candidates by political parties. Article 96 of the Electoral Code says that the parties and blocs taking part in the parliamentary elections are to establish their own rules for drawing up the list of candidates for the nationwide proportional vote. Selection of candidates through a process of democratic participation is thus not guaranteed by the law.

The political parties law<sup>39</sup> says that the party charter is to be adopted by the general convention of party members and can be amended at further conventions. There are, however, no regulations regarding the adoption of electoral platforms.

## Integrity (Practice)

Score: 25

To what extent is there effective internal democratic governance of political parties in practice?

Georgian political parties lack effective mechanisms for internal democratic governance. Instead, they tend to be "personality-centred",<sup>40</sup> i.e. they emerge

<sup>36</sup> Interview of CEC Chairman Levan Tarkhishvili with the author, Tbilisi, 3 November 2009.

<sup>37</sup> Maia Tsiklauri, Tamar Paradashvili, "National Levy", *Liberali*, 26 February 2011, <http://www.liberali.ge/natsionalurikharki> (accessed on 25 March 2011) (in Georgian).

<sup>38</sup> OSCE/ODIHR *Georgia: Parliamentary Elections 21 May 2008*, OSCE/ODIHR Election Observation Mission Final Report, 14, 30.

<sup>39</sup> The Law on Political Unions of Citizens, Article 17.

<sup>40</sup> Transparency International Georgia, *Political Parties in Georgia: Issues of Party Financing*, Transparency International Georgia, 2007, 1.

and develop around prominent individual leaders. This has had a profound impact on their internal governance, and on the sustainability of parties beyond their individual leaders.

A 2006 study of Georgia's leading political groups concluded that parties do not consider the question of internal democratic governance to be particularly important. All parties have democratic procedures for the election of their leaders but, in practice, the process is rarely based on the principles of inclusiveness and participation, as internal elections simply serve to provide pre-existing leaders with a degree of external legitimacy. The degree to which party members and activists can influence the selection of top leaders is insignificant, while their role in shaping the party's platform, agenda and policies is equally limited. Nor are party members involved in the selection of candidates for national elections.<sup>41</sup> An expert interviewee told TI Georgia that a majority of Georgian parties are "authoritarian" by nature and the internal elections they hold are a mere PR exercise and a formality designed to lend a degree of legitimacy to their leaders. He noted that Georgian parties tend to be founded on the principle of personal loyalty towards their leaders and genuine internal democracy is therefore viewed as a threat, as it would allow unreliable individuals to infiltrate the party.<sup>42</sup>

One notable result of this lack of internal democracy is the fact that leadership change is rare in Georgian political parties, even after major electoral defeats.

On the positive side, party members and activists appear to have a greater say in the election of the heads of local party branches, as well as the selection of candidates for local elections<sup>43</sup>.

## Role: Interest Aggregation and Representation (Practice) Score: 25

To what extent do political parties aggregate and represent relevant social interests in the political sphere?

Georgian political parties are notoriously weak in their ability to articulate a clear platform that speaks to the interests of a constituency. In 2008, the Bertelsmann Transformation Index report found that "there is no party system in place capable of articulating and aggregating social interests" in Georgia and "the Georgian party system still fails to serve as a reliable mediator between state and society".<sup>44</sup> The same report emphasizes that even the dominant ruling party lacks a full-fledged structure covering all districts of the country.<sup>45</sup> According to Freedom House, as far as Georgia's party system is concerned, the "main challenge is the lack of strong, stable parties that can articulate distinct platforms. Most influential parties are machines for ensuring support for their individual leaders."<sup>46</sup>

An expert interviewee told TI Georgia that the inability of Georgian political parties to aggregate and represent interests can, to some extent, be attributed

<sup>41</sup> Ghia Nodia and Alvaro Pinto Scholtbach, *The Political Landscape of Georgia*, (Delft, the Netherlands: Eburon Academic Publishers, 2006), 153-165 (in Georgian).

<sup>42</sup> Interview of Ghia Nodia, head of the Caucasus Institute for Peace, Democracy and Development, with the author, Tbilisi, 30 October 2009.

<sup>43</sup> Nodia and Scholtbach, *The Political Landscape of Georgia*, 158-160.

<sup>44</sup> Bertelsmann Stiftung, *BTI 2008 – Georgia Country Report*, Gutersloh: Bertelsmann Stiftung, 2007, 2, 10.

<sup>45</sup> *Id.*, 19.

<sup>46</sup> Freedom House, *Nations in Transit – Georgia (2008)*, <http://www.freedomhouse.org/template.cfm?page=47&nit=452&year=2008> (accessed on 8 July 2011).

to the weakness of the mechanisms for the articulation of interests. He explained that the existence of stronger citizen associations, professional unions and other civil society groups would make it easier for Georgian parties to identify the interests that they would subsequently endorse. As a result, Georgia's political parties tend to promote the interests of their individual leaders or small groups of leaders. Parties sometimes collaborate with civil society groups, usually in order to confront the government jointly on specific issues. However, this cooperation adds little to the ability of the parties to aggregate and represent social interests since Georgian NGOs themselves lack a broad social base.<sup>47</sup>

Recent studies have shown that the legitimacy of political parties among the general public is quite low. For example, in a 2011 survey by the International Republican Institute, only 34 percent of respondents had a favourable opinion about parties, while 49 percent described their opinion as unfavourable. Of 17 different institutions included in the study, political parties ranked 16<sup>th</sup> in terms of public approval, with a mere 38 percent of the respondents holding a favourable opinion about them<sup>48</sup> Consequently, Georgian politicians often view affiliation with a political party as a liability, and some prominent opposition leaders (including the opposition's top candidate in the 2008 presidential election) are unaffiliated.

## Role: Anti-Corruption Commitment (Practice)

Score: 25

*To what extent do political parties give due attention to public accountability and the fight against corruption?*

The fight against corruption did not feature prominently in the campaigns of Georgia's leading political parties during the last parliamentary elections.

The ruling National Movement's electoral platform briefly mentioned corruption, saying that the party would "continue to combat corruption and build a public service founded upon professionalism and merit".<sup>49</sup> The campaign commitments of the Labour Party and Christian-Democratic Movement did not contain any references to corruption. Only the Republican Party's electoral platform paid substantial attention to corruption, highlighting privatization of state-owned enterprises as an area of concern.<sup>50</sup>

The lack of attention to corruption in the campaign platforms of Georgia's main political groups may stem from the fact that corruption is no longer considered to be one of the most pressing problems facing the country or a matter of common concern. As daily acts of corruption associated with the police and different public agencies have been largely eliminated, the issue is not high on the radar of average citizens, and civil society, journalists and political parties alike have failed to convince the population that corruption is still a pressing problem. An expert interviewee emphasized that, while opposition parties and their leaders sometimes speak about the issue of "elite corruption", they rarely go into detail or devote much time to the subject since this type of corruption is quite difficult to trace and document.<sup>51</sup>

<sup>47</sup> Interview of Ghia Nodia with the author. The NGOs' lack of a social base is discussed in greater detail in the Civil Society chapter of this report.

<sup>48</sup> International Republican Institute, *Georgian National Study, April 26 – May 4 2011*, (International Republican Institute, Baltic Surveys Ltd./The Gallup Organization, The Institute of Polling and Marketing with funding from the United States Agency for International Development), 57.

<sup>49</sup> United National Movement, "Action Instead of Words: United National Movement's Platform", 4, <http://cec.gov.ge/uploads/saparlamento2008/partiebisprogramebi/N5.pdf> (accessed on 26 November 2009).

<sup>50</sup> Campaign platforms of political parties for the 2008 parliamentary elections are available on the Central Electoral Commission's website: <http://cec.gov.ge/?que=geo/archive/elections-2008&info=3792> (accessed on 5 November 2009).

<sup>51</sup> Interview of Ghia Nodia with the author.

# 10. Civil Society

## Summary

The assessment finds that the existing legal framework does not put up any hurdles for the registration and operation of CSOs. In practice, however, Georgian Civil Society Organizations (CSOs) rely almost entirely on foreign donors, lacking financial support from the government, local businesses or a membership base. The mechanisms for ensuring accountability of CSOs and their transparent operation are weak, and integrity mechanisms (such as a sector-wide code of conduct) are virtually nonexistent. The ability of CSOs to hold the government accountable and to influence the formulation of its policies is constrained by internal weaknesses, including a shortage of capable professionals and lack of a broad social base, as well as the general political environment in which they operate.

The table below presents the indicator scores which summarize the assessment of the civil society in terms of its capacity, its internal governance and its role within the Georgian integrity system. The remainder of this section presents the qualitative assessment for each indicator.

### Total Score: 40/100

Dimension	Indicator	Law	Practice
Capacity	Resources	75	25
	Independence	75	75
Governance	Transparency	—	50
	Accountability	—	25
	Integrity	25	
Role	Hold Government Accountable	—	25
	Policy Reform	—	25

## Structure and Organisation

There are some 10,000 registered CSOs in Georgia, although fewer than one in ten are functional.<sup>1</sup> There are 62 registered charities that are able to accept tax-deductible donations, and most of these are active.<sup>2</sup> CSOs fall under the category of “non-commercial legal entities”, although the law also provides for the operation of unregistered unions.<sup>3</sup> Registration is managed by the Public Registry under the Ministry of Justice, while registration for charity status is managed by the Ministry of Finance. Most grants are exempt from taxation, although CSOs pay taxes on salaries at the same rate as businesses – 20 percent.

The largest and most active organisations are concentrated in Tbilisi, while the strength of CSOs in the regions is far weaker.

## Assessment

### Resources (law)

Score: 75

#### To what extent does the legal framework provide a conducive environment for civil society?

Georgia’s legal framework does not contain any significant hurdles for the operation of CSOs. In some areas, it is quite progressive: there are simple registration and operation procedures<sup>4</sup> and a “sound legal basis for exercising the freedom of association”, which is free of restrictions on advocacy and criticism of the government.<sup>5</sup> However, while the law does not hinder the resources of CSOs, it does not go far enough towards encouraging philanthropic donations, especially from individuals.

The Constitution guarantees the right to form and join public associations,<sup>6</sup> while the Civil Code lays down the specific rules for establishing and registering such organisations.

According to the Civil Code, CSOs fall into the category of non-commercial legal entities. Their registration is handled by the Public Registry. Once an organisation applies for registration, the Public Registry is required to make a decision within the same day as to whether or not they can be registered. The registration fee is GEL 100 (USD 60). A refusal to register an organisation must be substantiated and can be challenged in court.<sup>7</sup> The Code also allows for the operation of unregistered CSOs.<sup>8</sup> Georgia’s CSO registration process has been described as “rather user-friendly and cost effective”.<sup>9</sup>

CSOs are eligible for a number of tax exemptions under the existing law. While profit earned through commercial activities is subject to general taxation rules,

<sup>1</sup> Caucasus Institute for Peace, Democracy and Development, *An Assessment of Georgia Civil Society: Report of the CIVICUS Civil Society Index (2010)*, Tbilisi, Georgia, 22.

<sup>2</sup> Website of the Ministry of Finance of Georgia, Registry of Charitable Organizations, <http://mof.ge/2328> (Georgian only, accessed 7 April 2011).

<sup>3</sup> The The Georgian Civil Code, adopted on 26 June 1997, Article. 39.

<sup>4</sup> USAID, *2008 NGO Sustainability Index for Central and Eastern Europe and Eurasia* (Washington: U.S. Agency for International Development, Bureau for Europe and Eurasia, Office of Democracy, Governance and Social Transition, 2009), 108; also, Freedom House, *Nations in Transit: Georgia (2008)*, <http://www.freedomhouse.org/template.cfm?page=47&nit=452&year=2008> (accessed on 8 December 2009)

<sup>5</sup> Centre for Training and Consultancy, *An Assessment of Georgian Civil Society (2005)*, CIVICUS Civil Society Index Shortened Assessment Tool Report for Georgia (Tbilisi: Centre for Training and Consultancy, 2005), 43.

<sup>6</sup> The Constitution of Georgia, (adopted on 24 August 1995), Article 26.

<sup>7</sup> The The Georgian Civil Code, Articles 27-31.

<sup>8</sup> The The Georgian Civil Code, Article 39.

<sup>9</sup> Centre for Training and Consultancy, *An Assessment of Georgian Civil Society (2005)*, CIVICUS Civil Society Index Shortened Assessment Tool Report for Georgia, 47.

funds obtained through non-commercial activities including grants, donations and membership fees are exempt from profit tax (although salaries paid through these funds are taxed), and goods imported within the scope of a grant agreement are exempt from VAT. CSOs are also exempt from property tax unless property is used for economic activities.<sup>10</sup>

The tax code adopted in September 2010 does not prolong the positive-discrimination income tax rates that CSOs previously enjoyed, whereby businesses were subject to a 20 percent tax rate on salaries and CSOs to a 12 percent rate. From 2011, CSOs must also pay a 20 percent tax on salaries. This move to higher rates was envisioned in the 1997 tax code and should not be seen as a move to put undue pressure on access to resources. Between 2011-2014, this rate is forecast to gradually decrease until it hits 15 percent. CSOs are expected to retain their VAT exemption and grants will not be taxed as income, as before.<sup>11</sup>

Provisions for businesses or private philanthropic individuals to make tax deductible donations to CSOs are not comprehensive. A CSO must be a registered charity to accept tax-deductible donations, and businesses making such donations may claim a deduction of up to ten percent of their total income – a two percent increase over the previous tax code.<sup>12</sup> Significantly, there are no provisions in place to allow individuals to make tax deductible donations.

While the legal framework does not set up any significant hurdles to the financial operation of CSOs, it also does not provide special assistance to enable the third sector to make progress towards financial independence, especially in regard to tax-related exemptions. Incentives to encourage domestic philanthropy are weak, even though funding from foreign sources has preferential treatment when it comes to taxation. The International Centre for Non-Profit Law (ICNL) noted that, “Despite the income tax deduction provision, there appear to be a number of legal obstacles that make charity an expensive and risky activity for businesses, thus limiting the availability of private philanthropy as a source of sustainable funding for NGOs.” There are also no legislative regulations that would promote the operation of social enterprises or community interest companies – those that operate in the public interest at low profit margins. ICNL’s preliminary research also found that Georgian NGOs wishing to conduct fee-for-service activities may be subject to less favourable tax rules than small businesses, and that the legislative framework covering this area of NGO activity is not entirely clear.<sup>13</sup>

## Resources (practice)

Score: 25

To what extent do CSOs have adequate financial and human resources to function and operate effectively?

Georgian CSOs lack diverse sources of funding. They rely almost exclusively on foreign donor assistance because there is almost no public money available,

<sup>10</sup> Tax Code of Georgia, adopted on 17 September 2010, Article 99.

<sup>11</sup> *Id.*, Article 63.

<sup>12</sup> *Id.*, 117.

<sup>13</sup> East West Management Institute, 31 March 2011. *Assessing the Sustainability of Georgian NGOs*. Accessed 8 April 2011, <http://www.ewmi-gpac.org/en/news/1-news/150-2011-04-07-13-24-38>.

and philanthropy – both corporate and individual – is not yet a significant potential source of income for most CSOs. Contributions from a constituency or membership base are likewise rare. Because of inadequate funding, many CSOs find it difficult to retain and train professional staff or to set their own priorities. There is also a considerable gap between regional CSOs and those based in the capital in terms of their access to funding and human resources.

CSOs are largely dependent on foreign donors for funding. According to USAID's 2009 report, 95 percent of NGO funding comes from foreign donors. However several more recent studies suggest that, while NGOs are far from self-sustaining, many have made progress in diversifying their funding sources. For example, one study of 100 CSOs in Georgia found that 55 percent of those interviewed received 70 percent or more of their funding via foreign donors; but 41 percent of those surveyed earned half or more of their annual budgets from other sources.<sup>14</sup> Another 2010 survey of 287 CSOs found that the financial resources of CSOs increased over 2005 levels, with larger increases among the regional-based CSOs compared with those based in Tbilisi.<sup>15</sup> However, Tbilisi-based NGOs still implemented 2.5 times more projects than did regional-based NGOs during the same five-year period.<sup>16</sup> The heavy reliance on donor financing makes it difficult for CSOs to pursue their own priorities, sometimes even operating in fields outside their area of competence in order to maintain staff and operational financing.<sup>17</sup>

The evidence on CSO income from other (non-foreign donor) sources paints a mixed picture. Government grants and private philanthropy are reported to be “nearly nonexistent” in the country.<sup>18</sup> While a 2010 study suggests that CSO income from the state (grants and service contracts) increased slightly between 2005-2010, another study found that only three of the 101 organizations interviewed had received state funding, and only 13 had received some kind of income through state procurements.<sup>19</sup>

Membership fees appear to be decreasing as a proportion of CSO budgets from 2005-2010.<sup>20</sup> In 2005 about one third of the CSOs surveyed had membership fees, but revenues from this type of source did not exceed five percent of the total income in a majority of organisations.<sup>21</sup> Of those organizations that are able to generate income from entrepreneurial activities, such funding makes up just 12 percent of their annual budget, although the majority of CSOs that are able to do so are Tbilisi-based.<sup>22</sup>

Donations from private businesses are the most rare type of alternative income source (non-foreign donor) for CSOs – only five percent of CSOs interviewed in 2010 had ever received a donation from a business.<sup>23</sup>

Georgian CSOs are not prohibited from engaging in economic activities – in one study, the number of CSOs engaging in entrepreneurial activities “noticeably increased” between 2005-2008 and one-fifth of CSOs engaged in some

<sup>14</sup> Caucasus Institute for Peace, Democracy and Development, *An Assessment of Georgia Civil Society: Report of the CIVICUS Civil Society Index (2010)*.

<sup>15</sup> Center for Strategic Research and Development, *Civil Society Organizations in Georgia – Dynamics and Trends of Development – 2010* [in Georgian with English summary], 14.

<sup>16</sup> *Id.*, 8.

<sup>17</sup> Caucasus Institute for Peace, Democracy and Development, *An Assessment of Georgia Civil Society: Report of the CIVICUS Civil Society Index (2010)*, 30

<sup>18</sup> USAID, *2008 NGO Sustainability Index for Central and Eastern Europe and Eurasia*, 110.

<sup>19</sup> Civil Society Institute, *Georgian Not for Profit Legislation: Challenges and Perspectives* (2007), 13.

<sup>20</sup> Center for Strategic Research and Development, *Civil Society Organizations in Georgia – Dynamics and Trends of Development – 2010* [in Georgian with English summary], 14.

<sup>21</sup> Centre for Training and Consultancy, *An Assessment of Georgian Civil Society (2005)*, CIVICUS Civil Society Index Shortened Assessment Tool Report for Georgia, 31.

<sup>22</sup> Center for Strategic Research and Development, *Civil Society Organizations in Georgia – Dynamics and Trends of Development – 2010* [in Georgian with English summary], 14.

<sup>23</sup> Caucasus Institute for Peace, Democracy and Development, *An Assessment of Georgia Civil Society: Report of the CIVICUS Civil Society Index*, 31.

kind of entrepreneurial activity<sup>24</sup> – but the scale of such activities and size of revenues is still very limited. Georgia’s larger CSOs find it difficult to conduct economic activities with the aim of raising revenue due to the lack of tax exemptions and, while CSOs in the regions are gradually realizing that they can raise revenues through direct service provision, this new mode of operation is unlikely to be a significant source of income for most CSOs due to low incomes among the population and a common public perception that CSOs should deliver services for free.<sup>25</sup> When CSOs do have commercial operations, they are largely underground because tax reporting is dramatically complicated by the issue of whether to attribute indirect costs to entrepreneurial or non-entrepreneurial activities.<sup>26</sup>

In terms of human resources, CSOs have not fully recovered from the brain drain that took place after 2004, when many civil society leaders took government positions in the post-revolution administration (nine of 11 new ministers in the new cabinet were from CSOs), and donors shifted their financing away from the CSO sector and towards direct support to the state<sup>27</sup>. In addition, CSOs are no longer as attractive to qualified professionals due to competition from increased salaries among public employees and more opportunities for private sector employment.<sup>28</sup> There is a growing gap between large and more professional organisations and many small and institutionally weak CSOs. It has been noted that a majority of organisations find it increasingly difficult to retain “qualified, professional employees”,<sup>29</sup> indeed, one study found that a third of the organisations interviewed did not have a single permanently paid staff member.<sup>30</sup> CSOs operating outside Tbilisi are considerably weaker than those based in the capital,<sup>31</sup> due both to more limited access to donor funding and the brain drain of capable staff from the regions to Tbilisi.

The volunteer and membership base of CSOs is weak. According to the 2008 edition of the *Nations in Transit* report, “volunteerism is weakly developed and successful community-based organisations are few.”<sup>32</sup> As a result, there are few membership- or constituency-based CSOs in Georgia.<sup>33</sup> One study reported that 33 percent of CSOs have no volunteers at all, and this figure is likely an under-estimation, as “the term ‘volunteering’ is not always properly understood by CSOs, and most often ‘volunteers’ are actually project beneficiaries.”<sup>34</sup>

## Independence (law)

Score: 75

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of CSOs?

The legal framework that regulates the activities of CSOs in Georgia generally provides an adequate level of protection against unwarranted intervention. The Constitution guarantees the right of citizens to form associations, while the Civil

<sup>24</sup> Center for Strategic Research and Development, *Civil Society Organizations in Georgia – Dynamics and Trends of Development – 2010* [in Georgian with English summary], 15.

<sup>25</sup> USAID, *2008 NGO Sustainability Index for Central and Eastern Europe and Eurasia*, 110.

<sup>26</sup> Civil Society Institute, *Georgian Not for Profit Legislation: Challenges and Perspectives*, 25.

<sup>27</sup> FRIDE, *Assessing Democracy Assistance: Georgia* (2010), 2, <http://www.fride.org/publication/779/georgia>.

<sup>28</sup> Caucasus Institute for Peace, Democracy and Development, *An Assessment of Georgia Civil Society: Report of the CIVICUS Civil Society Index*, 30 (footnote).

<sup>29</sup> USAID, *2008 NGO Sustainability Index for Central and Eastern Europe and Eurasia*, 109.

<sup>30</sup> Center for Strategic Research and Development, *Civil Society Organizations in Georgia – Dynamics and Trends of Development – 2010* [in Georgian with English summary], 13.

<sup>31</sup> Freedom House, *Nations in Transit: Georgia (2008)*.

<sup>32</sup> Freedom House, *Nations in Transit: Georgia (2008)*.

<sup>33</sup> Centre for Training and Consultancy, *An Assessment of Georgian Civil Society (2005)*, CIVICUS Civil Society Index Shortened Assessment Tool Report for Georgia, 26.

<sup>34</sup> Caucasus Institute for Peace, Democracy and Development, *An Assessment of Georgia Civil Society: Report of the CIVICUS Civil Society Index*, 29.

Code contains some additional safeguards. Georgian CSOs can operate free of state control or the threat of political or arbitrary dissolution.<sup>35</sup> Freedom of association is effectively protected by the Civil Code.<sup>36</sup> Yet, while there are no significant legal hurdles to the operation of CSOs in the law, there are also no specific protections for the sector.

With some legitimate exceptions, citizens are generally allowed to form and join groups promoting good governance and anti-corruption activities regardless of political ideology, religion or objectives. There are restrictions on the ideology and objectives of CSOs, but they are limited to legitimate state interests.<sup>37</sup> Specifically, the Constitution prohibits the formation and operation of associations that aim to bring down or violently change the constitutional order, destroy the country's independence or violate its territorial integrity, as well as associations that advocate war and violence or incite national, regional, religious or social hatred. The same article of the Constitution states that an association can only be banned through a court decision and only in the cases envisaged by the law. The Civil Code says that a CSO can be denied registration if its objectives contradict the existing legislation, the universal moral norms or the principles of Georgia's constitutional law.<sup>38</sup>

State control of CSO operations is limited to the suspension or prohibition of activities and only possible through a court decision.<sup>39</sup> Since CSOs have the legal status of a non-profit legal entity, the Civil Code specifies that the court can rule to prohibit or suspend the operation of such an organisation if its activities become "essentially commercial". There are no regulations requiring state membership on CSO boards or allowing for mandatory state attendance at CSO meetings. At the same time, the constitutional right to privacy does not extend to CSOs.

## Independence (practice)

Score: 75

### To what extent can civil society exist and function without undue external interference?

Georgian CSOs are generally able to operate without undue interference by the authorities. Instances of direct government pressure, such as suspension of CSOs or arrest of CSO activists because of their work, are extremely uncommon. At the same time, there are numerous reports that some NGOs, especially those operating outside the capital and working on advocacy issues, experience pressure from the authorities. There have also been cases of intimidation and violence against NGO observers during elections.

Pursuant to the laws on the subject, the government does not impose restrictions on CSO's activities or interfere with their work.<sup>40</sup> Georgian civil society is said

<sup>35</sup> USAID, *2008 NGO Sustainability Index for Central and Eastern Europe and Eurasia*, 108.

<sup>36</sup> Centre for Training and Consultancy, *An Assessment of Georgian Civil Society (2005)*, CIVICUS Civil Society Index Shortened Assessment Tool Report for Georgia, 44.

<sup>37</sup> The Constitution of Georgia, Article 26.

<sup>38</sup> The The Georgian Civil Code, Article 32.

<sup>39</sup> *Id.*, Article 33.

<sup>40</sup> USAID, *2007 NGO Sustainability Index for Central and Eastern Europe and Eurasia*, 11<sup>th</sup> Edition – June 2008 (Washington: U.S. Agency for International Development, Bureau for Europe and Eurasia, Office of Democracy, Governance and Social Transition, 2008), 107.

to be “rather vocal in criticizing government”.<sup>41</sup> Still, while the authorities do not try to openly interfere in the internal affairs of CSOs, they have been criticized for attempting to influence CSO’s activities through a “discriminatory” policy: while some CSOs enjoy free access to and close cooperation with the government, others are denied such opportunities.<sup>42</sup> It is not possible to distinguish cause from effect, but the polarization of civil society, with almost all organizations classified as either pro- or anti-government, reflects the same in political circles.

According to Freedom House, while the CSO community is independent overall,<sup>43</sup> some of the small NGOs operating in the provinces have been subjected to “illegal pressure and harassment” by local officials.<sup>44</sup> The OSCE/ODIHR Election Observation Mission also reported cases when election observers representing Georgian CSOs were pressured and intimidated.<sup>45</sup> The authorities generally fail to investigate these incidents of intimidation.

## Transparency (practice)

Score: 50

### To what extent is there transparency in CSOs?

The overall level of transparency of Georgian CSOs is inadequate. According to a number of studies conducted in recent years, as well as interviews conducted by TI Georgia, only a minority of CSOs make important information about their activities available to the general public on a regular basis.

The 2005 CIVICUS report for Georgia noted a low level of financial transparency among Georgian CSOs.<sup>46</sup> While there have been some improvements in this area and a group of leading CSOs have undertaken to introduce higher standards of transparency and to make core financial information available to the public, the number of CSOs making their financial report publicly available remains small.<sup>47</sup> Even charity organisations that are required by the law to publish their annual activity reports and financial statements do this in a mere 45 percent of cases.<sup>48</sup>

Several respondents interviewed for this report also spoke of a generally insufficient degree of transparency among CSOs. An expert interviewee noted that a majority of Georgian NGOs fail to make their work transparent due to their organisational weakness and often refrain from publicizing their activity reports and financial documents.<sup>49</sup> One explanation is that there is a widespread belief among CSOs that the public is uninterested in this kind of information. Another expert interviewee recalled a donor organisation’s attempt to obtain information from the CSOs involved in election monitoring in 2008. The expert said that a considerable portion of the CSOs that were contacted opted not to disclose information about their funding sources. The expert also noted that

<sup>41</sup> Centre for Training and Consultancy, *An Assessment of Georgian Civil Society (2005)*, CIVICUS Civil Society Index Shortened Assessment Tool Report for Georgia, 43.

<sup>42</sup> *Id.*, 44.

<sup>43</sup> Freedom House, *Nations in Transit: Georgia (2008)*.

<sup>44</sup> Freedom House, *Nations in Transit 2009* (Freedom House, 2009), 213.

<sup>45</sup> OSCE/ODIHR *Georgia: Parliamentary Elections 21 May 2008*, OSCE/ODIHR Election Observation Mission Final Report, (Warsaw: OSCE/ODIHR, 2008), 23.

<sup>46</sup> Centre for Training and Consultancy, *An Assessment of Georgian Civil Society (2005)*, CIVICUS Civil Society Index Shortened Assessment Tool Report for Georgia, 51.

<sup>47</sup> *Id.*

<sup>48</sup> Civil Society Institute, *Legislative Environment Regulating Charity Activities in Georgia* (Tbilisi: Civil Society Institute, 2007), 8.

<sup>49</sup> Interview of Ketevan Vashakidze, Country Director, Eurasia Partnership Foundation, with the author, Tbilisi, 24 December 2009.

there are only five or six CSOs in Georgia that publish their annual reports and financial documents regularly and in a consistent manner.<sup>50</sup>

### Accountability (practice)

Score: 25

#### To what extent are CSOs answerable to their constituencies?

Most CSOs in Georgia do not have strong memberships or constituencies. Coupled with ad hoc and inconsistent internal governance systems, CSOs are insufficiently accountable to those they claim to represent. As a result, the only effective accountability mechanisms are imposed by donors and do not represent downwards (to citizens or members) or horizontal (to other CSOs) accountability.

Accountability inside Georgian CSOs is, to some extent, undermined by the structure of these organisations. Few Georgian CSOs are constituency-based organisations, and their founders usually try to limit the number of members in order to make it easier to run the organisation, suggesting that most CSOs are run in a more “authoritarian” fashion.<sup>51</sup> Most CSOs rarely, if ever, invite new members onto their governing boards.<sup>52</sup>

Given the weakness of internal accountability mechanisms of Georgian CSOs, it is primarily up to the donors to ensure accountability of these organisations. According to the experts interviewed by the research team, donors are generally successful in performing this function and the CSOs usually report to them and provide them with the relevant documents because they would otherwise face the prospect of being denied funding in the future. An expert interviewee said that the country’s leading CSOs based in the capital usually provide accurate and comprehensive information, while smaller organisations operating in the regions often find it hard to cope with the reporting duties.<sup>53</sup> Despite these efforts by the donors, the CIVICUS report for Georgia suggests that problems like double accounting (provision of different financial documents to the tax authorities and to donors) may exist, and that some organisations could be getting funding from different donors for the same activity.<sup>54</sup>

### Integrity (law and practice)

Score: 25

#### To what extent are there mechanisms in place to ensure the integrity of CSOs? To what extent is the integrity of CSOs ensured in practice?

In the absence of a sector-wide code of conduct or any other self-regulatory mechanisms, there are hardly any means for ensuring the integrity of CSOs in Georgia at present.

<sup>50</sup> Interview of Tinatin Bolkvadze, Human Rights and Rule of Law Programme coordinator, Open Society – Georgia Foundation, with the author, Tbilisi, 28 December 2009.

<sup>51</sup> Caucasus Institute for Peace, Democracy and Development, *An Assessment of Georgia Civil Society: Report of the CIVICUS Civil Society Index*, 33.

<sup>52</sup> *Id.*, 26, 49-50.

<sup>53</sup> Interview of Tinatin Bolkvadze with the author.

<sup>54</sup> Centre for Training and Consultancy, *An Assessment of Georgian Civil Society (2005)*, CIVICUS Civil Society Index Shortened Assessment Tool Report for Georgia, 49-50.

A civil society code of ethics was drawn up by a coalition of CSOs and signed by some 30 organisations in 2004.<sup>55</sup> The document covered areas such as the civil society's relations with the government, political parties, donors and the general public, as well as internal governance and finance management in CSOs. However, the initiative's impact was weak, since only a limited number of organisations were involved and the code lacked effective mechanisms for monitoring, assessment and enforcement.<sup>56</sup> The implementation of the code was limited to issuing annual awards to the organisations that adhere to the principles listed in the document. Two separate experts confirmed that this particular self-regulation has generally failed to make a significant impact and has largely become defunct.<sup>57</sup> Currently, the code is not available online.

A number of organisations have their own internal codes of conduct, but there have been no other significant self-regulation initiatives in recent years.

## Role: Hold government accountable (practice)

Score: 25

### To what extent is civil society active and successful in holding government accountable for its actions?

There are many CSOs in Georgia that monitor the government's activities. However, the overall ability of the sector to hold authorities accountable is severely limited. This is the result of both the internal weaknesses of CSOs and the political environment in which they operate.

Georgian civil society's ability to serve as a "check and stabilizing influence on the state" has diminished,<sup>58</sup> and the capacity of CSOs to successfully advocate is low due to their failure to establish "productive working relationships" with the government.<sup>59</sup> While Georgian CSOs are fairly active in monitoring state performance, the impact of these monitoring activities on decision-making is limited.<sup>60</sup>

This limited impact is the result of a combination of internal and external factors. Internally, the shortage of highly qualified professionals and the lack of diverse and sustainable sources of funding have created a situation in which there is "little civil society power and expertise to demand government reform and accountability".<sup>61</sup> The ability of CSOs to pressure the government is further reduced by their weak links to the general public, which to some extent undermines the legitimacy of CSOs. Since the number of membership-based CSOs is small in Georgia, most cannot claim to speak on behalf of large social groups when negotiating their positions with political actors.<sup>62</sup> This aspect of the civil society landscape is noted by almost every major study on the sector: the ability of Georgian CSOs to act as mediators between the state and society is said to be "severely constrained by their lack of social roots" due to "loose" bonds with the interests of those they claim to represent;<sup>63</sup> CSOs are "somewhat insu-

<sup>55</sup> <http://www.civil.ge/geo/article.php?id=7707>

<sup>56</sup> Centre for Training and Consultancy, *An Assessment of Georgian Civil Society (2005)*, CIVICUS Civil Society Index Shortened Assessment Tool Report for Georgia, 29.

<sup>57</sup> Interviews of Ketevan Vashakidze and Tinatin Bolkvadze with the author.

<sup>58</sup> USAID, *2008 NGO Sustainability Index for Central and Eastern Europe and Eurasia*, 108.

<sup>59</sup> USAID, *2007 NGO Sustainability Index for Central and Eastern Europe and Eurasia*, 11<sup>th</sup> Edition – June 2008, 106.

<sup>60</sup> Centre for Training and Consultancy, *An Assessment of Georgian Civil Society (2005)*, CIVICUS Civil Society Index Shortened Assessment Tool Report for Georgia, 60.

<sup>61</sup> USAID, *2008 NGO Sustainability Index for Central and Eastern Europe and Eurasia*, 110.

<sup>62</sup> Freedom House, *Nations in Transit: Georgia (2008)*.

<sup>63</sup> Bertelsmann Stiftung, *BTI 2008 – Georgia Country Report*, (Gutersloh: Bertelsmann Stiftung), 2007, 10, 11..

lated from society at large”<sup>64</sup> and are often seen to pursue an agenda that does not quite reflect the concerns of the majority of citizens.<sup>65</sup>

Externally, the government’s dismissive attitude towards CSO’s work also reduces the impact of their monitoring and advocacy. In particular, government sees engagement of civil society in the policy process as a drag that hinders quick action. NGOs that engage in public affairs find it very difficult to remain neutral because of the highly polarized environment.<sup>66</sup> The government frequently dismisses critical statements by watchdog CSOs as politically motivated attacks by opposition-controlled groups, while the failure of some NGOs to remain constructive and unbiased in their criticism undermines the entire sector’s efforts to exercise its advocacy and watchdog functions.<sup>67</sup> Very few CSO’s are able to walk the line between criticizing government and simultaneously working with government on issues when there is an opportunity for constructive engagement.

The lack of pluralism in Parliament and lack of independent television media also limit the ability of CSOs to operate effectively. CSOs have fewer credible partners in influential media and opposition parties since the Rose Revolution. Whereas before 2004, CSOs stood frequently with the opposition and major television outlets, today they are discredited if they do so. Major television stations do not report on issues the government regards as sensitive, severely limiting the space for CSOs to access the public. For example, none of the major television stations covered the August 2010 evictions of IDPs from Tbilisi, an issue that received major attention from CSOs and alternative media outlets. Prior to 2004, the government and media were themselves divided as power was held by actors both within and outside the state, allowing space for CSOs and media to operate without the polarized and stigmatized classification of “pro-government” or “pro-opposition” that exists today.

Nevertheless, Georgian CSOs have had some achievements in terms of holding the government accountable. Freedom House cites the case of a network of CSOs funded by the Soros Foundation that helped spur change of leadership at the Millennium Challenge Georgia Fund due to its lack of transparency as a successful example of watchdog activities.<sup>68</sup> The CSO campaigns against torture in preliminary detention facilities and an independent investigation, which eventually resulted in the resignation of an MP who had allegedly engaged in prohibited economic activities, have also been highlighted as noteworthy achievements.<sup>69</sup>

### Role: Policy reform (practice)

Score: 25

To what extent is civil society actively engaged in policy reform initiatives on anti-corruption?

Georgia has a number of CSOs that have worked actively and continuously on corruption-related issues in recent years. However, the ability of Georgian CSOs

<sup>64</sup> Centre for Training and Consultancy, *An Assessment of Georgian Civil Society (2005)*, CIVICUS Civil Society Index Shortened Assessment Tool Report for Georgia, 72.

<sup>65</sup> *Id.*, 73.

<sup>66</sup> USAID, *2008 NGO Sustainability Index for Central and Eastern Europe and Eurasia*, 110.

<sup>67</sup> *Id.*

<sup>68</sup> Freedom House, *Nations in Transit: Georgia (2008)*.

<sup>69</sup> Centre for Training and Consultancy, *An Assessment of Georgian Civil Society (2005)*, CIVICUS Civil Society Index Shortened Assessment Tool Report for Georgia, 61.

to participate in the formulation of government policies (including anti-corruption policies) is constrained by the same general factors that limit the capacity of CSOs to hold the government accountable, as described in the section above.

First, the ability of CSOs to influence government policies is undermined by the internal weaknesses of these organisations. Due to inadequate funding and the resulting shortage of professional staff, the majority of CSOs are only able to offer political advice and policy analysis on a limited scale.<sup>70</sup>To influence policy, which often occurs at lightning pace, CSOs need highly professional staff who are able to respond immediately when opportunities to be involved in policy reform arise. Yet, tight budgets mean that most CSOs have limited human resources with which to react to new political developments. Also, given the lack of connection between civil society and the general public as discussed in the section above, it is more difficult for CSOs to legitimise their involvement in public decision-making.<sup>71</sup>

Second, the possibility of civil society's involvement in the development and reform of government policies is affected negatively by the political environment. NGO recommendations generally have little impact on policy decisions since the ruling party's total dominance of parliament and its considerable influence over the media makes it easy to ignore NGO criticism of draft legislation.<sup>72</sup>Also, as mentioned in the chapter on the legislature, draft bills are not always made public in a timely manner, which limits the possibility of NGO input. The dialogue between the government and CSOs is not institutionalised and the organisations that are more critical of the authorities tend to be excluded from this dialogue.<sup>73</sup>

The Bertelsmann Transformation Index 2008 country report for Georgia notes that the failure to include broader segments of society, such as watchdog NGOs, is one missing link in the government's anti-corruption policy.<sup>74</sup> Since late 2008, the situation has slightly improved: several CSOs (including TI Georgia) participate in the work of Georgia's Anti-Corruption Coordination Council. This is a positive step, but as the chapter on the Anti-Corruption Coordination Council describes, the opportunities and mechanisms for contributing to the Council's work are ad hoc and fairly superficial.

<sup>70</sup> USAID, *2008 NGO Sustainability Index for Central and Eastern Europe and Eurasia*, 110.

<sup>71</sup> Centre for Training and Consultancy, *An Assessment of Georgian Civil Society (2005)*, CIVICUS Civil Society Index Shortened Assessment Tool Report for Georgia, 62.

<sup>72</sup> Freedom House, *Nations in Transit 2009*, 220.

<sup>73</sup> Centre for Training and Consultancy, *An Assessment of Georgian Civil Society (2005)*, CIVICUS Civil Society Index Shortened Assessment Tool Report for Georgia, 45.

<sup>74</sup> Bertelsmann Stiftung, *BTI 2008 – Georgia Country Report*, 22.

## Summary

This assessment finds that, while Georgia has mostly progressive and liberal laws governing the establishment and operation of media entities, in practice the media remains less transparent, accountable and independent. The degree of independence varies across different types of media, as well as between those based in the capital and those in the regions. Print media, radio and online outlets generally operate freely in Georgia. The government has not resorted to censorship but is generally understood to have established control over the country's most influential TV stations through their acquisition by government-friendly businessmen, forcing journalists employed by these stations to practice self-censorship. Transparency of television ownership remains a major area of concern, while the lack of effective self-regulatory mechanisms has produced problems in terms of accountability and integrity of the media. Georgian media have not been particularly successful in exposing cases of corruption as very few mainstream outlets have engaged in investigative journalism. Those that do are only able to reach small audiences. The media, as a whole, provides the public with a variety of views but its ability to provide unbiased coverage of political developments is undermined by the deep polarisation of the political and therefore media landscape.

### Total Score: 45 / 100

Dimension	Indicator	Law	Practice
<b>Capacity</b> 63/100	Resources	100	50
	Independence	75	25
<b>Governance</b> 50/100	Transparency	100	25
	Accountability	75	25
	Integrity	50	25
<b>Role</b> 25/100	Investigate and expose cases of corruption	—	25
	Inform public on corruption and its impact	—	25
	Inform public on governance issues	—	25

## Structure and Organisation

Television is by far the most popular and influential type of media in Georgia. There are only three main stations that provide news coverage on a national level: Rustavi-2, Imedi and the Georgian Public Broadcaster's (GPB) Channel 1. GPB's Channel 2 televises political parties' press conferences and parliamentary sessions. Two more stations with original news reports, Kavkasia and Maestro TV, reach a significant audience in Tbilisi but cannot be received in other parts of the country. Ajaria TV, a state-run channel operated by the Autonomous Republic of Ajaria, is broadcast in large parts of the country. There are 26 other regional TV stations but, with only a few exceptions, they do not play a significant role in reporting original news. There are a host of radio stations, newspapers, magazines and news agencies, although their impact is less significant than that of the TV channels. The same applies to the nascent internet media.

## Assessment

### Resources (law)

Score: 100

To what extent does the legal framework provide an environment conducive to a diverse, independent media?

Georgia's legal framework does not establish any significant hurdles to achieving a diverse and independent media sector.

Entry into the journalistic profession is not restricted by law, nor are there any restrictions on setting up print media entities. Print media outlets do not need to obtain a license are exempt from paying value added tax, and there are no special legal provisions governing their activities.

The Public Broadcaster's funding comes from the state budget, set at an equivalent of 0.12 percent of GDP.<sup>1</sup> The law does not permit it to air advertising during prime time hours, weekends and holidays.<sup>2</sup>

The rules for the establishment and operation of broadcast media are outlined in the Georgian Law on Broadcasting. Under the law, all broadcast media entities (except for the Georgian Public Broadcaster Ajaria TV) need to obtain a license from the Georgian National Communications Commission (GNCC): the law directly states that unlicensed activities in the broadcasting sphere are a punishable offence.<sup>3</sup> The GNCC can issue "general licenses" (requiring the license holder to air news and current affairs programs during prime-time) or "specialized licenses" (defining specific content requirements) for either national or local terrestrial broadcasting.<sup>4</sup> The GNCC must make a decision on

<sup>1</sup> The Georgian Law on Broadcasting, adopted on 23 December 2004, Article 33:2-5.

<sup>2</sup> *Id.*, Article 64.

<sup>3</sup> The Georgian Law on Broadcasting, Article 36.

<sup>4</sup> *Id.*, Articles 40, 59.

whether to grant a license within 30 business days from receiving an application.<sup>5</sup> If the application is denied, the Commission's decision may be challenged in court.<sup>6</sup> Importantly, the law stipulates that the GNCC is the only body authorized to issue broadcasting licences and it is prohibited for any other body to require broadcast entities to obtain any additional licences or permits.<sup>7</sup> The law allows the establishment of public, community and commercial broadcast entities.

The Georgian Constitution states that neither the state nor any individual can monopolise information or the media.<sup>8</sup> The Law on Broadcasting also contains provisions designed to promote competition by prohibiting concentration of media ownership.

## Resources (practice)

Score: 50

**To what extent is there a diverse, independent media providing a variety of perspectives?**

Georgia has a large number of different types of media entities operating both in the capital and the regions. Newspapers, radio stations and news agencies provide a variety of views to their audience throughout the country, but access to diverse TV content is problematic outside the capital. There also seems to be a significant gap between the central and the regional media in terms of their access to resources.

While the print and radio sectors are usually described as diverse and pluralistic,<sup>9</sup> a 2009 report by TI Georgia found that the current regulatory framework is inadequate for the establishment of a "competitive and pluralistic television market".<sup>10</sup> In its Media Sustainability Index, the International Research and Exchange Board (IREX) has also suggested that current regulation has not effectively prevented concentration of media ownership.<sup>11</sup> For several years, the GNCC has not issued new terrestrial broadcasting licenses, creating a barrier to market entry for new players.

IREX reports that the content of the main TV channels has become "increasingly homogenous" in recent years.<sup>12</sup> The content offered by the two leading, privately owned TV stations with a nationwide audience is predominantly favourable to the government. The reporting of the Public Broadcaster's Channel 1 has become less politicized.

Maestro TV, a station highly critical of the government that is associated with a political opposition group, does not broadcast outside the capital.<sup>13</sup> This is due to a lack of funding to pay for satellite transmission and reluctance from cable providers to carry the station.

<sup>5</sup> *Id.*, Article 41.

<sup>6</sup> *Id.*, Article 44.

<sup>7</sup> *Id.*, Article 41.

<sup>8</sup> The Constitution of Georgia, adopted on 24 August 1995, Article 24.

<sup>9</sup> Freedom House, *Freedom of the Press 2009*, <http://www.freedomhouse.org/template.cfm?page=251&country=7612&year=2009> (accessed on 29 January 2010); Caucasus Research Resource Centers, *Georgia Comprehensive Media Research: Summary Findings* (Tbilisi: CRRC, 2009), 3.

<sup>10</sup> Transparency International Georgia, *Television in Georgia – Ownership, Control and Regulation* (Tbilisi: Transparency International Georgia, 2009), 17.

<sup>11</sup> International Research and Exchange Board, *Media Sustainability Index 2009* (Washington: IREX, 2009), 145.

<sup>12</sup> *Id.*, 143.

The national private TV companies based in Tbilisi offer competitive salaries but pay levels are very low outside the capital, resulting in a drain of qualified reporters from the regions to Tbilisi-based media entities or other sectors. Similarly, Imedi and Rustavi-2 are said to have “state-of-the-art gear”, while regional broadcasters and newspapers have to get by with low-quality and obsolete equipment.<sup>14</sup>

Georgian media entities face considerable financial challenges. Recent studies have concluded that profitable media are a “rare commodity”<sup>15</sup> and the main TV stations have a “history of operating in the red”.<sup>16</sup> The top TV stations based in the capital receive financial injections from the government or private owners, while the cash-strapped regional media survive mainly through donor aid. Georgia’s small advertising market is a major factor preventing media outlets from becoming self-sufficient.<sup>17</sup> In addition, there are also concerns about a monopolization of the advertising sector by companies that are associated with the national channels.<sup>18</sup>

In April 2010 Parliament passed a tax amnesty for television stations worth GEL 36 million (USD 21.6 million). Lawmakers declined to publicly disclose the beneficiaries of this amnesty. Media market observers found that although amnesty also forgave tax debt of the independent Channel 25 in Batumi, it mostly benefitted the pro-government stations Imedi TV and Rustavi-2 as well as the GPB, while other independent stations like Maestro and Kavkasia claimed they had paid all their taxes.<sup>19</sup> TI Georgia concluded that the tax amnesty distorted the market in favour of government-friendly stations.<sup>20</sup>

There are considerable problems in terms of professionalism of media employees. A study by the Caucasus Research Resource Centres found that the lack of professionalism “was readily apparent” among the main TV stations which aired unbalanced reports, presented opinion as facts and provided misleading and confusing information.<sup>21</sup> The level of professionalism is very low in print media, as well.<sup>22</sup> After graduating and joining media outlets, journalists devote little time and attention to professional development and improvement of their skills.<sup>23</sup> University journalism departments have not adapted their curricula to the demands of the media sector and only offer limited practical training. Without high quality staff, a critical resource to any successful media business, all other areas of integrity are jeopardized, including accountability, independence and the media’s role as a watchdog.

## Independence (law)

Score: 75

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of the media?

Overall, Georgia’s legislation is generally robust as far as freedom of media is concerned. The legal framework has been described as “liberal and progres-

<sup>13</sup> Caucasus Research Resource Centers, *Georgia Comprehensive Media Research: Summary Findings*, 4.

<sup>14</sup> *Id.*, 143.

<sup>15</sup> International Research and Exchange Board, *Media Sustainability Index 2009*, 145.

<sup>16</sup> Transparency International Georgia, *Television in Georgia – Ownership, Control and Regulation*, 7.

<sup>17</sup> Transparency International Georgia, *Television in Georgia – Ownership, Control and Regulation*, 6.

<sup>18</sup> International Research and Exchange Board, *Media Sustainability Index 2011*, 151.

<sup>19</sup> Civil Georgia, *Tax Amnesty for TV Stations Approved*, 2 July 2010, <http://civil.ge/eng/article.php?id=22479> (accessed 29 March 2011).

<sup>20</sup> Transparency International Georgia, *Tax Amnesty for Georgian TV Channels: A Subsidy for Pro-Government Reporting?* 8 April 2010, <http://www.transparency.ge/en/blog/ptax-amnesty-georgian-tv-channels-subsidy-pro-government-reportingp> (accessed on 4 April, 2011).

<sup>21</sup> Caucasus Research Resource Centers, *Georgia Comprehensive Media Research: Summary Findings*, (Tbilisi: CRRC, 2009), 9.

<sup>22</sup> Interview of media analyst Nino Danelia with the author, Tbilisi, 19 February 2010.

<sup>23</sup> Interview of media analyst Davit Paichadze with the author, Tbilisi, 19 February 2010.

sive”<sup>24</sup> and contains extensive safeguards designed to prevent unwarranted interference with the operation of the media. Freedom of expression is protected by the Constitution and The Law on Freedom of Speech and Expression and there are legal provisions guaranteeing editorial independence and access to public information. The provisions on libel are very favourable for journalists. On the negative side, certain flaws in the licensing law could undermine media independence, and the rules for the formation of the Georgian Public Broadcaster’s board allow for political appointments.

Freedom of expression is guaranteed by the Georgian Constitution, which states that “every individual has a right to freely receive and disseminate information and to express and disseminate his or her opinion whether verbally, in writing or by other means”. The Constitution also emphasises that the media are free and censorship is prohibited.<sup>25</sup> The above principles are reinforced by the Georgian Law on Freedom of Speech and Expression<sup>26</sup>, whereby citizens have the right to trace, obtain, create, store and disseminate any type of information or ideas; the media’s editorial independence and pluralism is upheld; and the right of journalists not to disclose the sources of their information and to make editorial decisions according to their conscience is protected. The law also forbids censorship.<sup>27</sup> Violations of freedom of speech and illegal obstruction of a journalist’s work are criminal offences under Georgian law.<sup>28</sup>

The Law on Broadcasting states that an individual or legal entity can only hold one TV broadcasting license and one radio broadcasting license (Article 60). Political parties and their officers, administrative bodies and their employees, and legal entities linked with administrative bodies are prohibited from holding broadcast licenses (Article 62). The law requires the GNCC to take measures in order to promote diversity of views in the media and prevent concentration of ownership.<sup>29</sup>

There are a number of provisions on editorial independence in broadcast media. The Law on Broadcasting requires the state-funded Georgian Public Broadcaster to ensure editorial independence,<sup>30</sup> while the Broadcasters’ Code of Conduct, a mandatory legal document adopted by the GNCC on 12 March 2009, requires private broadcast entities to protect editorial independence and professional liberty from different types of pressure.<sup>31</sup> The Law on Broadcasting contains a number of provisions designed to ensure independence of the GPB, as it expressly forbids government bodies from exerting pressure on the GPB.<sup>32</sup> However, there are valid concerns over the manner in which the GPB’s board is formed. The law essentially allows the ruling party to appoint the candidates of its choice – candidates are nominated by political parties, pre-selected by the President and appointed by Parliament.<sup>33</sup>

Access to information is regulated by the General Administrative Code, which states that all information kept in public agencies is open unless stipulated otherwise by the law (Article 28).<sup>34</sup>

<sup>24</sup> International Research and Exchange Board, *Media Sustainability Index 2009*, 139; Freedom House, *Nations in Transit: Georgia (2008)*, <http://www.freedomhouse.org/template.cfm?page=47&nit=452&year=2008> (accessed on 8 December 2009);

Transparency International Georgia, *Television in Georgia – Ownership, Control and Regulation*, 10.

<sup>25</sup> The Constitution of Georgia, Article 24.

<sup>26</sup> Adopted on 24 June 2004

<sup>27</sup> Georgian Law on Freedom of Speech and Expression, Article 2.

<sup>28</sup> Article 154 of the Georgian Criminal Code, adopted on 22 July 1999.

<sup>29</sup> The Law on Broadcasting, Article 62.

<sup>30</sup> *Id.*, Article 16.

<sup>31</sup> Broadcasters Code of Conduct, adopted by the GNCC on 12 March 2009.

<sup>32</sup> *Id.*, Article 18.

<sup>33</sup> Transparency International Georgia, *Television in Georgia – Ownership, Control and Regulation*, 12; Caucasus Research Resource Centers, *Georgia Comprehensive Media Research: Summary Findings*, 18.

<sup>34</sup> General Administrative Code of Georgia, Georgia (adopted on 25 June 1999)

There are no legal prohibitions on the establishment and operation of private and community media (such as print, broadcast, internet, etc) though private and community broadcast entities do need to apply for a license under the procedure described above.

The rules for licensing of broadcast media do not contain any specific or direct mechanisms by which the authorities may exercise political control of the process. Broadcast licences are issued by the GNCC, which, according to the Law on Broadcasting, is an independent regulatory body and is not subordinated to any state agency.<sup>35</sup> The law explicitly prohibits interference with the activities of commission members.<sup>36</sup> However, since the members of the commission are selected by the president and approved by parliament by a simple majority, the potential for politically-motivated appointments is especially strong whenever the president's party dominates the legislature, as has been the case for most of Georgia's recent history. Another potential problem stems from the fact that licensing goes beyond the technical aspects of broadcasting and regulates some aspects of programming as well. The GNCC issues content-specific broadcasting permits (e.g. political programming and entertainment) rather than general ones. As IREX's 2009 report suggests, the licensing powers of the GNCC are too broad and enable the agency to influence a broadcaster's editorial content.<sup>37</sup>

The Georgian Law on State of Emergency<sup>38</sup> grants the executive branch the power to establish control over media entities during a state of emergency.<sup>39</sup> The Georgian Law on State of War<sup>40</sup> contains a similar provision applicable during the state of war.<sup>41</sup> The existing legislation does not allow the government to exercise this kind of control at other times.

Under the Georgian legislation, there are no criminal penalties for libel. The Law on Freedom of Speech and Expression states that lawsuits over alleged libel can be filed against media owners but not against journalists.<sup>42</sup> Compared to private citizens, public figures are required to provide stronger evidence when filing libel-related lawsuits against a media outlet.<sup>43</sup> Furthermore, the law says that an individual cannot be held responsible for libel if he/she did not know and could not have known that he/she was disseminating a libellous statement.<sup>44</sup>

<sup>35</sup> Law on Broadcasting, Article 2.

<sup>36</sup> *Id.*, Article 6.

<sup>37</sup> International Research and Exchange Board, *Media Sustainability Index 2009*, 139.

<sup>38</sup> Adopted on 17 October 1997.

<sup>39</sup> *Id.*, Article 4.

<sup>40</sup> Adopted on 31 October 1997.

<sup>41</sup> *Id.*, Article 4.

<sup>42</sup> Law on Freedom of Speech and Expression, Article 6.

<sup>43</sup> *Id.*, Article 14.

<sup>44</sup> *Id.*, Article 16.

## Independence (practice)

Score: 25

To what extent is the media free from unwarranted external interference in its work in practice?

While the Georgian legislation governing the freedom of speech and expression is generally considered to be progressive and liberal, there is a mixed

picture in the implementation of these legal provisions among different media types and between Tbilisi and the regions.

The print media, radio stations and news agencies, as well as some TV stations, generally operate without direct government interference. However, media professionals have blamed government interference as well as a lack of market transparency and cronyism for distortions in advertising spending.<sup>45</sup> According to Freedom House, the authorities have sought to suppress independent TV stations that broadcast nationwide, while tolerating those with a limited audience.<sup>46</sup>

Ownership of leading television stations remains opaque. The government is believed to have established control over the country's most influential broadcast entities through their acquisition by businessmen loyal to the authorities.<sup>47</sup> TV station owners tend to promote their political agendas at the expense of editorial independence.<sup>48</sup> Consequently, a 2008 report by the Public Defender highlighted the lack of editorial independence as a major issue.<sup>49</sup>

There are no documented cases of the government resorting to direct censorship. However, self-censorship is believed to be a widespread phenomenon in television media.<sup>50</sup> Journalists rarely enjoy any protection under labour contracts<sup>51</sup>, the fear of losing one's job prompting many of them to practice self-censorship and to accept editorial limitations from their editors and managers. In spring 2009 several dozen employees of Imedi TV signed a petition protesting against internal censorship and restrictions imposed by the station's management. Consequently two media workers were fired, four left the station in protest and several other signatories were pressured to withdraw their support for the statement.<sup>52</sup>

The GNCC is often reluctant to enforce provisions of the Law on Broadcasting and the Law on Advertising. In particular, provisions that ban government entities or officials from holding broadcasting licenses are not enforced and, in fact, are systematically violated. Many local stations receive funding from regional governments in violation of the law.<sup>53</sup>

The 2011 budget envisages GEL 25 million (USD 15 million) for the Public Broadcaster.<sup>54</sup> In addition, approximately GEL 17 million was allocated from the Presidential reserve fund for the operation of the Russian language news channel "PIK".<sup>55</sup>

There is no systematic intimidation and harassment of journalists, although there have been a number of notable cases of this sort in recent years. In November 2007, the Imedi TV station, a pro-opposition channel at the time, was raided by the police and taken off the air, allegedly for inciting anti-government riots. IREX documented reports, mostly from outside the capital, of pressure on journalists during the 2008 presidential and parliamentary elections.<sup>56</sup> During the

<sup>45</sup> International Research and Exchange Board, *Media Sustainability Index 2011*, 151.

<sup>46</sup> Freedom House, *Nations in Transit 2009*, 221.

<sup>47</sup> Human Rights Ombudsman, *Georgian Human Rights Ombudsman's Report on Situation in Georgia in Terms of Protection of Human Rights and Freedoms: Second Half of 2008* (Tbilisi: Human Rights Ombudsman's Office, 2008), 170.

<sup>48</sup> Freedom House, *Nations in Transit: Georgia (2008)*, <http://www.freedomhouse.org/template.cfm?page=47&nit=452&year=2008> (accessed on 8 December 2009)

<sup>49</sup> The Public Defender's Office, *Georgian Public Defender's Report on Situation in Georgia in Terms of Protection of Human Rights and Freedoms: Second Half of 2008*, 151 (in Georgian).

<sup>50</sup> International Research and Exchange Board, *Media Sustainability Index 2009*, 142

<sup>51</sup> Transparency International Georgia, *Television in Georgia – Ownership, Control and Regulation*, 12; Caucasus Research Resource Centers, *Georgia Comprehensive Media Research: Summary Findings*, 10.

<sup>52</sup> Media.ge, *Imedi TV Journalists and Cameramen Demand Professional Freedom, 5 May 2009*, <http://www.media.ge/en/node/35382> (accessed on 29 March 2011), Freedom House, *Freedom of the Media 2010 Georgia*, <http://www.freedomhouse.org/template.cfm?page=251&year=2010> (accessed on 2 April 2011).

<sup>53</sup> Transparency International Georgia, *Use of Administrative Resources for Election Campaign – Local Elections 2010, 2nd Report*, 17.

<sup>54</sup> Civil Georgia, *Parliament Approves 2011 State Budget*, 17 December 2010, <http://civil.ge/eng/article.php?id=22972> (accessed on 29 March 2012).

<sup>55</sup> Radio Free Europe/Radio Liberty, *Georgia Offers Russian-Language Alternative To Kremlin TV*, 25 January 2011, [http://www.rferl.org/content/georgian\\_russian\\_tv/2286802.html](http://www.rferl.org/content/georgian_russian_tv/2286802.html) (accessed on 3 April 2011).

<sup>56</sup> International Research and Exchange Board, *Media Sustainability Index 2009*, 139.

spring 2009 street protests in Tbilisi, journalists were harassed by both the law enforcement and opposition supporters.<sup>57</sup> In May 2009, an unidentified individual threw a hand-grenade towards the entrance door of Maestro TV.<sup>58</sup> The Ministry of Internal Affairs forces attempted to blackmail a leading reporter of the independent weekly Batumelebi paper into cooperation.<sup>59</sup> Riot police assaulted journalists during the dispersal of an anti-government rally in Tbilisi on 26 May 2011.<sup>60</sup> Most of these cases were not fully investigated.

Aside from government interference, a number of studies have highlighted deep polarisation and partisanship of the media as a major problem that hinders the development of independent journalism. The agendas of journalists are frequently influenced by the government or the opposition, as a majority of the media are generally understood to be on one side or the other. IREX's 2009 Media Sustainability Index asserted that "political agendas permeate the media, turning them into tools in partisan political toolkits."<sup>61</sup> According to Bertelsmann Stiftung, practically all TV channels side with either the government or the opposition at the expense of professional journalism.<sup>62</sup> Media monitoring conducted as part of a study by CRRC showed that the channels that are considered pro-government or pro-opposition frequently broadcast misleading, inaccurate and highly partisan information.<sup>63</sup>

IREX reports that some media entities that are commonly perceived as pro-opposition are finding it difficult to attract advertising due to businessmen's unwillingness to be associated with this kind of media.<sup>64</sup> Government-friendly outlets, however, are most likely to be receiving subsidies either directly from the government or from government loyalists.<sup>65</sup>

Allocation of licenses by the GNCC is another area of concern. According to Freedom House, the GNCC panel remains subject to government influence.<sup>66</sup> The Public Defender has urged parliament to investigate the commission's "arbitrary" decisions, suggesting that the allocation (or lack of allocation) of licenses had become a tool for political pressure.<sup>67</sup>

The state of affairs in terms of media independence is also different in the capital and the regions, as journalists appear to be facing more serious challenges outside Tbilisi, especially in terms of journalist freedom.<sup>68</sup> The majority of the violations against journalists recorded by the Public Defender took place in the regions. According to the Public Defender, local government bodies that buy airtime on regional TV stations to place public service announcements often believe that they are entitled to interfere with editorial policies. Local government officials often view normal journalistic behaviour, such as obtaining comments from local residents about their problems, as a hostile activity. Mirroring the situation in the capital, there is a considerable difference between the print and the broadcast media in the regions in terms of editorial independence, the former being much more independent and critical of the government while the latter tending to be more "lenient"<sup>69</sup> towards the local authorities.

<sup>57</sup> *Id.*

<sup>58</sup> Civil Georgia, *Blast at Maestro TV*, <http://www.civil.ge/eng/article.php?id=20978> (accessed 1 April 2011).

<sup>59</sup> U.S. State Department, *2009 Human Rights Report: Georgia*, <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136032.htm> (accessed 1 April 2011).

<sup>60</sup> Civil Georgia, *Watchdogs Say Excessive Force Used by Police*, 26 May 2011, <http://www.civil.ge/eng/article.php?id=23528> (accessed on 23 July 2011).

<sup>61</sup> International Research and Exchange Board, *Media Sustainability Index 2009*, 142.

<sup>62</sup> Bertelsmann Stiftung, *BTI 2010 – Georgia Country Report*, (Gutersloh: Bertelsmann Stiftung, 2009), 7.

<sup>63</sup> Caucasus Research Resource Centers, *Georgia Comprehensive Media Research: Summary Findings*, 9.

<sup>64</sup> International Research and Exchange Board, *Media Sustainability Index 2009*, 146; Transparency International Georgia, *Television in Georgia – Ownership, Control and Regulation*, 15.

<sup>65</sup> International Research and Exchange Board, *Media Sustainability Index 2009*, 146.

<sup>66</sup> Freedom House, *Freedom of the Press (2009) – Georgia (2009)*, <http://www.freedomhouse.org/template.cfm?page=251&country=7612&year=2009> (accessed on 29 January 2010)

<sup>67</sup> Human Rights Ombudsman, *Georgian Human Rights Ombudsman's Report on Situation in Georgia in Terms of Protection of Human Rights and Freedoms: Second Half of 2008* (Tbilisi: Human Rights Ombudsman's Office, 2008), 160.

<sup>68</sup> Freedom House, *Nations in Transit 2009*, 221.

<sup>69</sup> The Public Defender, *The Public Defender's Report on Situation in Georgia in Terms of Protection of Human Rights and Freedoms: Second Half of 2008*, 152, 163-165.

## Transparency (law)

Score: 100

### To what extent are there provisions to ensure transparency in the activities of the media?

Georgian legislation contains a number of important provisions designed to ensure transparent operation of media entities. In particular, amendments passed by Parliament in April 2011 to the Law on Broadcasting improved rules for transparency of broadcast media ownership and ban any ownership from entities located in offshore zones. These rules are not in force, but are set to take effect in 2012 before the next election cycle.

The Law on Broadcasting requires the enterprises that hold broadcast licenses to annually submit to the GNCC information about the station's management and about owners who hold at least five percent of the entity's shares. If the license holder is a non-profit entity, it must provide information about its founders, members, sponsors and board. License holders also have to provide information about any other broadcast licenses they hold or any shares they hold in another entity that has a broadcast license. Moreover, license holders are required to supply information about any newspapers or news agencies they possess, or their ownership shares in newspapers and news agencies, as well as information about ownership of another enterprise or its shares. As an additional safeguard, license holders are also to provide similar information about the assets of their founders, shareholders, sponsors and family members.<sup>70</sup> License holders have 10 days to inform the GNCC about any changes in the ownership of shares.<sup>71</sup>

From 2012, broadcast license holders will be required to report to the GNCC on the identity of their management staff and beneficiary owners, and provide a breakdown of financing sources, including revenue from advertising, sponsors and donations. In addition, information on the management and beneficiary owners must be published on the media outlets' websites.<sup>72</sup>

A further change in 2012 establishes a ban on ownership of media by entities based in "offshore zones", defined as "a state or territory where the property, sphere of activity and data on ownership/shareholders of a legal entity is confidential."<sup>73</sup> (Relaxed regulation before the new amendments resulted in the frequent use of offshore shell companies to conceal the ownership structure of several major TV channels.)<sup>74</sup> This reference to offshore ownership is a unique approach to media regulation that is rarely, if ever, seen in other countries and its passing reflects the particularly severe problems in practice.

Since Georgia has no special legislation governing the establishment, licensing and operation of print media, these types of media entities are not required to meet any specific transparency provisions.

<sup>70</sup> Law on Broadcasting, Article 61.

<sup>71</sup> *Id.*, Article 62.

<sup>72</sup> *Id.*, Article 70.

The question of how to improve broadcast media regulation was subject of intense debate in fall 2010. The speaker of Parliament announced a reform to ban offshore ownership in broadcast media. A group of media activists drafted an alternative package of legal amendments calling for full disclosure of media ownership, transparency of financial flows to broadcast media outlets and their owners, and improved access to public information. These proposals were introduced to Parliament by the opposition Christian Democratic party,<sup>75</sup> but the amendments passed by the Parliamentary majority in April 2011 did not include most of the civil society activists' reform proposals.<sup>76</sup>

## Transparency (practice)

Score: 25

### To what extent is there transparency in the media in practice?

Georgia's media landscape lacks transparency in several key areas, including ownership of TV stations and in operational areas such as availability of business statistics and ethical codes.

Freedom House describes media ownership in Georgia as "opaque"<sup>77</sup> and IREX suggests that "Ownership of the leading Georgian broadcasters remains obscure due to complicated corporate ownership structures and chronic changes in majority control".<sup>78</sup> The lack of transparency of television ownership has prompted various allegations about who the real owners of different TV stations are. High-ranking government officials, government ministries and the leaders of both the ruling party and the opposition groups are suspected of controlling the country's top media outlets. Due to the lack of information about the real owners of media organisations and the broadcast entities in particular, it has become impossible to prevent "high degrees of concentrated ownership".<sup>79</sup>

For example, there has been a great deal of confusion regarding the ownership of Imedi and Rustavi-2 TV stations. The latter is partly owned by Davit Bezhuashvili, an influential businessman and MP for the ruling party, whose brother heads Georgia's secret service. In 2009, these two stations that are widely regarded as government mouthpieces, had a combined TV audience market share of more than 60 percent.<sup>80</sup>

Moreover, the opaque ownership structure is used to conceal the subsidies that media entities receive from the government or government-friendly businessmen. By comparing estimated television advertisement spending with officially reported turnover reported to the GNCC, TI Georgia found that private TV stations received millions of Lari from unknown sources.<sup>81</sup> This has had a considerable negative impact on the independence of these media outlets<sup>82</sup> and has made it easier for the authorities to exert pressure on them.<sup>83</sup>

<sup>73</sup> *Id.*, Article 2.

<sup>74</sup> Transparency International Georgia, *Television in Georgia – Ownership, Control and Regulation*, 9.

<sup>75</sup> International Research and Exchange Board, *Media Sustainability Index 2011*, 146.

<sup>76</sup> Civil Georgia, *Broadcast Media Ownership Transparency Bill Passed*, <http://civil.ge/eng/article.php?id=23324> (accessed 12 May 2011).

<sup>77</sup> Freedom House, *Freedom of the Press (2009) – Georgia (2009)*, <http://www.freedomhouse.org/template.cfm?page=251&country=7612&year=2009> (accessed 29 January 2010)

<sup>78</sup> International Research and Exchange Board, *Media Sustainability Index 2009*, 144.

<sup>79</sup> Transparency International Georgia, *Television in Georgia – Ownership, Control and Regulation*, 10-11

<sup>80</sup> *Id.*, 5, 11.

<sup>81</sup> *Id.*, 7.

<sup>82</sup> International Research and Exchange Board, *Media Sustainability Index 2009*, 144., 146.

<sup>83</sup> Caucasus Research Resource Centers, *Georgia Comprehensive Media Research: Summary Findings*, 6.

The situation is somewhat different in the print media and smaller TV stations operating exclusively in the capital. While the ownership of these media outlets is quite transparent, it is rather difficult to track their funding, especially in the case of newspapers.<sup>84</sup>

According to IREX, it is uncommon for the Georgian media entities to make information about staff, reporting and editing policies publicly available. Newspapers rarely disclose circulation or sales numbers – if they do, these numbers are often inflated to lure potential advertisers.<sup>85</sup> The lack of independent market data in many areas poses a burden to the sector’s professionalization and development.

## Accountability (law)

Score: 75

**To what extent are there legal provisions to ensure that media outlets are answerable for their activities?**

While there are extensive legal provisions establishing accountability mechanisms for broadcast media, there are no such provisions to regulate the work of print and Internet media. Broadcast media are required to submit annual reports to the regulatory body and to set up self-regulation mechanisms in order to deal with appeals relating to their content.

According to the Law on Broadcasting, the GNCC is charged with supervising the operation of broadcast media. Broadcast license holders are required to present to the commission annual reports containing information about their compliance with the license terms and their sources of funding, as well as the next year’s plan and an audit report. From 2012, license holders will have to report to the GNCC information about the sources of their financing, and account separately for revenue from advertising, sponsorship, TV-shopping and donations. Similarly, media outlets will have to publish systematically updated information on their management and beneficiary owners on their own and the regulator’s website from next year.

The commission is authorised to request additional information and to impose sanctions in case of a breach of license terms. Broadcast entities must provide the requested information within 15 days.<sup>86</sup> In the event of a breach of Georgian legislation or licensing terms by a broadcast license holder, any “interested party” can file an appeal either with the GNCC, which has the authority to impose fines, or a court. Moreover, the law says that a broadcast entity is required to “set up an effective mechanism of self-regulation that will ensure consideration of appeals and provide a timely and substantiated reaction to them.”<sup>87</sup>

Additional accountability rules are provided in the Broadcasters Code of Conduct, which was adopted by the GNCC in March 2009. According to the Code,

<sup>84</sup> Interview of Davit Paichadze with the author.

<sup>85</sup> International Research and Exchange Board, *Media Sustainability Index 2009*, 146.

<sup>86</sup> Law on Broadcasting, Article 70.

<sup>87</sup> *Id.*, Article 14.

a broadcast entity has the right to set up a “self-regulation mechanism” that will ensure effective and transparent consideration of appeals.<sup>88</sup> (In this regard, the Code is weaker than the law, which as mentioned above, *requires* the establishment of this mechanism.) The information about the appeals received by the mechanism and the decisions it has adopted must then be submitted to the GNCC along with the broadcast entity’s annual report.<sup>89</sup> The code also establishes rules for adjudication of appeals by the self-regulation body and for challenging the decisions made by such a body.<sup>90</sup> The code requires broadcast entities to refrain from airing “false or misleading information” and stipulates that “significant factual mistakes” must be corrected “openly and immediately, through proportionate means and forms during appropriate airtime.”<sup>91</sup> An individual subjected to accusations in a media program must be given an opportunity to provide a prompt and proportionate response, which should be covered in a fair and accurate manner in the same program where the accusation was made.<sup>92</sup> There are no similar provisions in place for print entities.

## Accountability (practice)

Score: 25

### To what extent can media outlets be held accountable in practice?

Ensuring accountability of Georgian media entities has proved to be problematic in practice, due in part to the weak self-regulatory and regulatory mechanisms.

While the law requires broadcast media entities to set up self-regulation mechanisms that would deal with appeals related to the content of their programmes, no such mechanisms have been implemented in practice.<sup>93</sup> Meanwhile, the effectiveness of the government regulatory body, the GNCC, is undermined by its political bias and lack of independence. For example, during the 2008 parliamentary elections the GNCC failed to sanction a number of TV stations even though the monitoring conducted by the Central Electoral Commission revealed violations in their coverage of the campaign.<sup>94</sup> The government-backed station Alania TV was able to broadcast for months without having any license in 2008 and 2009.<sup>95</sup> Managers of independent TV outlets perceive the GNCC’s rulings as lenient towards pro-government broadcasters and strict against stations that are critical of the government.<sup>96</sup> On the positive side, the GNCC recently consented to investigate alleged violations of the law on advertising by Imedi and Rustavi-2 after reporters from Studio Monitor, an independent film studio, filed a complaint.<sup>97</sup>

No Georgian media outlet has an ombudsman or has set up forums through which the public can interact with editors and reporters.<sup>98</sup> However, media entities usually do grant interested parties the right to respond to allegations or reports concerning them.<sup>99</sup> An expert interviewee noted that newspapers generally try to correct erroneous information when a mistake is brought to their attention, although TV stations generally fail to do this.<sup>100</sup>

<sup>88</sup> Broadcasters Code of Conduct, *supra*, Article 7.

<sup>89</sup> *Id.*, Article 8.

<sup>90</sup> *Id.*, Articles 9-11.

<sup>91</sup> *Id.*, Article 13

<sup>92</sup> *Id.*, Article 20.

<sup>93</sup> Transparency International Georgia, *Television in Georgia – Ownership, Control and Regulation*, 14.

<sup>94</sup> OSCE/ODIHR *Georgia: Parliamentary Elections 21 May 2008*, OSCE/ODIHR Election Observation Mission Final Report, (Warsaw: OSCE/ODIHR, 2008).

<sup>95</sup> Civil Georgia, *CDM Calls on GNCC not to Hinder Satellite Broadcast License for Maestro TV*, 3 June 2009, <http://www.civil.ge/eng/article.php?id=21043> (accessed on 1 April 2011).

<sup>96</sup> International Research and Exchange Board, *Media Sustainability Index 2011*, 146.

<sup>97</sup> Media.ge, *GNCC Declares Repeated Complaint against National Channels as Admissible*, 18 March 2011, <http://www.media.ge/en/node/40585> (accessed on 4 April 2011).

<sup>98</sup> Interviews of Davit Paichadze and Nino Danelia with the author.

<sup>99</sup> *Id.*

<sup>100</sup> Interview of media analyst Nino Danelia with the author.

## Integrity Mechanisms (law)

Score: 50

**To what extent are there provisions in place to ensure the integrity of media employees?**

Georgia has legal provisions designed to ensure the integrity of media employees, but these provisions are limited to broadcast entities only.

In March 2009, the GNCC adopted the Broadcasters Code of Conduct, which aims to “ensure that all types of broadcasters, especially Georgian Public Broadcasting, approach the norms of professional ethics and their accountability to the public with an equal degree of responsibility”. The code is a comprehensive document that covers the following areas: self-regulation and accountability; accuracy; unbiased programming; fair treatment; socio-political programmes and election coverage; opinion polls; editorial independence; diversity, equality and tolerance; right to privacy; protection of underage individuals; crime and anti-social behaviour; armed conflict, accidents and emergencies; protection from harm and abuse; advertising; sponsorship; copyrights; and competitions and lotteries. The code establishes a number of mandatory rules in each of these areas, while also offering recommendations.

There is no similar mechanism for Georgia’s print media at present. According to an expert interviewee, very few media entities, whether electronic or print, have their own codes of ethics or ethics committees.<sup>101</sup>

## Integrity Mechanisms (practice)

Score: 25

**To what extent is the integrity of media employees ensured in practice?**

There are considerable problems in Georgia in terms of ensuring the integrity of media employees in practice.

The GNCC Broadcasters Code of Conduct mentioned in the previous section is not implemented effectively in practice and the provisions of the code are violated by various media entities on a regular basis. Broadcasters may not face legal sanctions for violating the Code of Conduct and they may themselves decide how to react to violations that are reported to them.<sup>102</sup>

Professional organisations defending journalists and governing media ethics remain weak. A media analyst told TI Georgia that many of Georgia’s journalists view professional ethics as a theoretical issue irrelevant to their practical work, and any attempts to enforce ethical standards are instantly labelled as censorship.<sup>103</sup>

<sup>101</sup> Interview of Nino Danelia with the author.

<sup>102</sup> OSCE/ODIHR Georgia: Municipal Elections, 30 May 2010, OSCE/ODIHR Election Observation Mission Final Report, (Warsaw: OSCE/ODIHR, 2010), 15.

<sup>103</sup> Interview of Davit Paichadze with the author.

A vivid example of a lack of journalistic integrity was a fake news report of a Russian invasion that Imedi TV aired in March 2010 without clearly marking the lengthy report as a make believe scenario as it was aired.<sup>104</sup>

A recently founded union of journalists has yet to have a significant impact on the working environment for journalists. Professional media associations tend to depend on donor funding and are not self-sustainable.<sup>105</sup> Civil society activists founded a self-regulatory mechanism in 2009, the Association of the Georgian Charter of Journalism Ethics, which individual journalists can join. The Charter's council reviews complaints about violations of the ethics code. IREX found that the mechanism gained some traction, although a few signatories have challenged its non-binding verdicts.<sup>106</sup>

Journalists frequently fail to prepare reports based on multiple sources and to present the views of all relevant parties when reporting on controversial issues. IREX concludes that tightened political control in tandem with lax editorial commitment to established journalism standards hindered delivery of objective and well-sourced information.<sup>107</sup> As noted before, as a result of the deep polarisation and partisanship of the Georgian media, editorial pressure, a lack of resources and qualified staff, many journalists resort to biased and inaccurate reporting at the expense of professional standards.<sup>108</sup>

## Investigate and Expose Cases of Corruption (practice)

Score: 25

To what extent is the media active and successful in investigating and exposing cases of corruption?

Georgian media, as a whole, have not been particularly active or successful in investigating and exposing cases of corruption in recent years. Only print media, as well as a few TV production studios have engaged in investigative reporting, while the channels with a nationwide audience do not have such programs at present.

IREX noted that investigative journalism is “barely visible” in the Georgian media, emphasizing that the development of this genre is hampered by “poor investigative skills” of reporters and a “growing fear of retribution.”<sup>109</sup> Freedom House suggests that the fear of possible punishment deters journalists from investigating possible cases of corruption.<sup>110</sup> The efforts to investigate alleged cases of corruption are also hindered by the fact that the authorities often create barriers to the media's efforts at obtaining public information, particularly the information regarding the activities of law enforcement bodies and government spending.<sup>111</sup>

The ability of the media to expose corruption has suffered considerably as a result of its lack of independence from the authorities. This is particularly true

<sup>104</sup> Civil Georgia, *Fake Report on Renewed War Triggers Panic, Anger on Imedi TV*, 14 March 2010, <http://civil.ge/eng/article.php?id=22080> (accessed on 4 April 2011).

<sup>105</sup> International Research and Exchange Board, *Media Sustainability Index 2011*, 143.

<sup>106</sup> International Research and Exchange Board, *Media Sustainability Index 2009*, 148, 153. *Id.*, 141.

<sup>107</sup> Caucasus Research Resource Centers, *Georgia Comprehensive Media Research: Summary Findings*, 9.

<sup>108</sup> International Research and Exchange Board, *Media Sustainability Index 2009*, 143.

<sup>109</sup> Freedom House, *Nations in Transit 2009*, 223.

<sup>110</sup> International Research and Exchange Board, *Media Sustainability Index 2009*, 141.

for the major national broadcasters. Investigative journalism programmes disappeared from Rustavi-2 immediately after the Rose Revolution and were also removed from Imedi when the channel was taken over by an allegedly government-friendly businessman, Joseph Kay, in 2008. Georgian Public Broadcasting does not presently air investigative reports either.

The majority of investigative documentaries that are produced today are done by the handful of independent studios sponsored by foreign donors. However, the national TV stations have all declined to air these documentaries, despite the fact that the studios offered to provide them for free. As a result, they only appear on the Kavkasia and Maestro channels, neither of which broadcast outside the capital.<sup>112</sup> A 2009 analysis of the Georgian media highlighted the fact that there are no dedicated investigative programs on any national channel even though one survey found that over 75 percent of respondents that they would like to see such programmes.<sup>113</sup> A number of central and local newspapers have also engaged in investigative journalism. However, an expert interviewee told TI Georgia that these investigations are not always well documented or substantiated, which casts a shadow upon their credibility.<sup>114</sup>

### Inform Public on Corruption and Its Impact (practice)

**Score: 25**

**To what extent is the media active and successful in informing the public of corruption and its impact on the country?**

As is the case with investigative journalism, the Georgian media has not been active and successful in informing the public of corruption and its impact on the country.

An expert interviewee told TI Georgia that, in recent years, the government has assumed the lead role in terms of informing the public about corruption-related matters, while the media's activities in this field have mostly been limited to airing police footage, often recorded by hidden camera, about arrests of public officials charged with corruption. According to Paichadze, the media usually receives ready-made stories from the authorities and does very little investigation of its own.<sup>115</sup>

Georgian TV stations presently have no dedicated programmes that aim to inform the public about corruption and its impact on Georgian society.

### Inform Public on Governance Issues (practice)

**Score: 25**

**To what extent is the media active and successful in informing the public of the activities of the government and other governance actors?**

Georgia has many media outlets presenting diverse views and a variety of political programmes. At the same time, the ability of the media to inform the pub-

<sup>112</sup> Transparency International Georgia, *Television in Georgia – Ownership, Control and Regulation*, 13.

<sup>113</sup> Caucasus Research Resource Centers, *Georgia Comprehensive Media Research: Summary Findings*, 6, 10.

<sup>114</sup> Interview of Davit Paichadze with the author.

<sup>115</sup> *Id.*

lic of activities of the government and other political actors in a balanced manner is often undermined by the lack of independence and notable bias of most outlets. Georgian journalists tend to be generalists and only few have developed expertise on specific issues.

As noted before, the Georgian media landscape is presently characterised by strong polarisation and partisanship and editorial censorship within outlets, which makes it difficult for journalists to provide an objective and balanced coverage of current events. Freedom House has suggested that the fear of possible consequences prevents some journalists from engaging in overt criticism of the government or providing in-depth reporting on controversial political issues.<sup>116</sup>

A 2009 analysis of the Georgian media showed that Rustavi-2, Imedi and Georgian Public Broadcasting have refrained from airing reports that could have harmed the government's image, while Maestro and Kavkasia did not cover stories that could have led to bad publicity for the opposition. Media monitoring conducted as part of the analysis showed that both pro-government and pro-opposition channels frequently broadcast information that is "misleading, inaccurate and highly partisan".<sup>117</sup>

Another analysis of the Georgian media noted that there is a lack of journalistic competition between the three major TV stations (Rustavi 2, Imedi and Georgian Public Broadcasting). As a consequence, their news programmes are almost identical as they tend to cover the same stories in largely the same manner and are "highly reluctant to air reports that are critical of the president and his government."<sup>118</sup> The same analysis concluded that the Georgian TV landscape lacks programmes that dare to ask tough questions and report critically on politicians from all camps.<sup>119</sup>

These problems have had a negative impact on the media's ability to cover important political developments such as political campaigns. The OSCE/ODIHR observation mission of the 2010 municipal elections found that many Georgian media outlets remain strongly influenced by their owners, with only a few of them pursuing a more independent editorial policy.<sup>120</sup> The mission noted that, while the media generally provided voters with a diverse range of views, the campaign news coverage lacked balance on all TV stations except for the Georgian Public Broadcaster and that critical and independent opinions on the performance of the authorities and analysis of contestants' platforms were generally absent from the news programs of the main TV channels.<sup>121</sup>

Media monitoring conducted by the Caucasus Research Resource Centres (CRRC) around the 2010 elections confirmed that pro-government and pro-opposition channels relied on the use of negative and often aggressive attitudes toward the opposite camp, while information was often presented from one angle only. According to CRRC's findings, political talk shows were characterized by "subjectivity, low professionalism and media bias". Both, on news-

<sup>116</sup> Freedom House, *Nations in Transit 2009*, 223.

<sup>117</sup> Caucasus Research Resource Centers, *Georgia Comprehensive Media Research: Summary Findings*, 8-9.

<sup>118</sup> Transparency International Georgia, *Television in Georgia – Ownership, Control and Regulation*, 4.

<sup>119</sup> *Id.*, 20.

<sup>120</sup> OSCE/ODIHR Georgia: Municipal Elections, 30 May 2010, OSCE/ODIHR Election Observation Mission Final Report (Warsaw: OSCE/ODIHR, 2010), 14.

<sup>121</sup> *Id.*, 15.

casts as well as talk shows, journalists provided information the source of which was often not presented, not reliable or not named at all.<sup>122</sup>

The GPB was criticised for not devoting a single television talk show to major changes in the Constitution that were passed by Parliament in September 2010.<sup>123</sup> Similarly, Channel 1 failed to cover an anti-government protest by war veterans in early 2011, raising questions about its editorial independence.<sup>124</sup>

A positive development is the reform of the GPB's Channel 2 (only broadcast in Tbilisi). Channel 2 is devoted to airing unedited, live broadcasts of parliamentary debates and committee hearings as well as press conferences, including those of opposition parties.<sup>125</sup> On the whole, Georgian Public Broadcasting is believed to have recently made progress towards becoming a forum for different ideas.<sup>126</sup>

<sup>122</sup> United Nations Development Program (UNDP) Georgia/CRRC, *Media Monitoring of the Election Campaign: Final Report*, August 2010, [http://undp.org.ge/files/24\\_975\\_639258\\_MM-CRRC-report-201007.pdf](http://undp.org.ge/files/24_975_639258_MM-CRRC-report-201007.pdf) (accessed on 29 March 2011).

<sup>123</sup> Civil Georgia, *Public TV Criticized for 'Ignoring' Constitution Discussions*, 14. September 2010, <http://www.civil.ge/eng/article.php?id=22668> (accessed on 30 March 2011).

<sup>124</sup> Civil Georgia, *Public TV Cites 'Lack of Footage' Behind Failure to Report on Protest Break Up*, 5 January, 2011, <http://civil.ge/eng/article.php?id=23019> (accessed on 29 March, 2011); Neil MacFarlane: *Post-Revolutionary Georgia on the Edge?*, 13, <http://www.chathamhouse.org.uk/publications/papers/view/-/id/1027/> (accessed on 29 March, 2011).

<sup>125</sup> Civil Georgia, *13 Parties Agree on Terms of Political Channel*, 22 February 2010, <http://www.civil.ge/eng/article.php?id=22009> (accessed on 30 March 2011).

<sup>126</sup> International Research and Exchange Board, *Media Sustainability Index 2011*, 148.

# 12. Business

## Summary

Georgia's legal framework is generally favourable for businesses as registration is simple and quick and the overall burden of government regulation is small. Independence of private companies is only fully ensured in law. In practice, the absence of a fully independent judiciary and the resulting lack of protection against unwarranted government interference and infringements on property rights sometimes undermine independence of the private sector. Integrity of the business sector is not ensured sufficiently either in law or in practice. The business sector is currently not involved in the government's anti-corruption policies, while its link with civil society is weak.

The table below presents the indicator scores which summarize the assessment of business in terms of its capacity, its internal governance and its role within the Georgian integrity system. The remainder of this section presents the qualitative assessment for each indicator.

### Total Score: 50 / 100

Dimension	Indicator	Law	Practice
Capacity 68/100	Resources	75	50
	Independence	100	50
Governance 58/100	Transparency	100	50
	Accountability	50	50
	Integrity	50	50
Role 25/100	Anti-Corruption Policy		
	Engagement	25	
	Support for/engagement with Civil Society	25	

## Structure and Organisation

In recent years, the Georgian government has pursued a policy of deregulation and reduction of administrative barriers to business. Consequently, the legal provisions governing the activities of commercial enterprises have been amended substantially and some new laws have been passed. The main legal provisions governing the operation of businesses in Georgia are given in the Law on Entrepreneurs, the Tax Code, the Civil Code. A large number of other laws also govern business activities.

Small firms are most common in Georgia and over three quarters of all firms are privately held Limited Liability Companies (LLCs). The rate of domestic ownership is 65 percent for large companies and 93-94 percent for medium and small enterprises. At the end of 2010, 138 companies with a combined market capitalization of \$ 1.06bn were listed at the Georgian Stock Exchange.<sup>1</sup> In February 2011, the state held shares in more than 1,150 entities.<sup>2</sup> Public ownership of enterprises has decreased substantially due to an ongoing privatization process. Banks make up 95 percent of the financial sector.<sup>3</sup>

## Assessment

### Resources (law)

Score: 75

To what extent does the legal framework offer an enabling environment for the formation and operation of individual businesses?

Georgia's legislative framework is generally business-friendly. The country is ranked 12<sup>th</sup> among 183 economies in the 2011 edition of the World Bank's Doing Business survey.<sup>4</sup>

According to the World Bank, Georgia ranks 8<sup>th</sup> in the world in terms of the ease of starting a business as the process involves only three steps (compared to the OECD average of 5.6): registering with the designated state agency, paying the registration fee and opening a corporate bank account.<sup>5</sup> Businesses are registered by the National Agency of Public Registry. A refusal to register a business can be challenged in court.<sup>6</sup> A decision to wind-up a business must be registered with the same agency. The law requires that the process of closing a business must be completed within four months from the date of registration of such decision.<sup>7</sup> The Heritage Foundation has described Georgia's procedures for closing a business as "relatively simple".<sup>8</sup>

A number of other aspects of the legal framework are very favourable for businesses. According to the World Bank, Georgia's total tax rate amounts to 15.3 percent of profit (compared to the OECD average of 43). Property regis-

<sup>1</sup> Federation of Euro-Asian Stock Exchanges, <http://www.feas.org/Member.cfm?MemberID=10> (accessed on 21 February 2011).

<sup>2</sup> Enterprise Management Agency of the Ministry of Economy and Sustainable Development, <http://ema.gov.ge> (accessed on 21 February 2011).

<sup>3</sup> The National Bank of Georgia, *Annual Report 2009* (Tbilisi: the National Bank of Georgia, 2009), 73.

<sup>4</sup> The World Bank and the International Finance Corporation, *Doing Business 2011: Georgia* (Washington: The International Bank for Reconstruction and Development/The World Bank, 2011), 2.

<sup>5</sup> *Id.*, 10.

<sup>6</sup> The Georgian Law on Entrepreneurs, adopted on 28 October 1994, Articles 4-5(3).

<sup>7</sup> The Georgian Law on Entrepreneurs, Article 14.

<sup>8</sup> The Heritage Foundation, *2010 Index of Economic Freedom*, <http://www.heritage.org/index/download> (accessed on 8 February 2011).

tration involves just a single procedure (compared to the OECD average of 4.8), while 10 procedures are required to obtain a construction permit (the OECD average is 15.8).<sup>9</sup> The Law on State Support for Investments establishes the National Investment Agency responsible for assisting investors in obtaining various licenses and permits through an expedited procedure.<sup>10</sup> The 2005 Law on Free Trade and Competition, which does not regulate anti-trust,<sup>11</sup> establishes the Free Trade and Competition Agency tasked with preventing state bodies from taking discriminatory action against businesses.<sup>12</sup>

Property rights are guaranteed by the Georgian Constitution, which states that private property can only be seized to meet public needs where this is directly allowed by the law and with appropriate compensation.<sup>13</sup> The state can expropriate private property in the event of urgent public need but doing so requires a presidential decree and a court decision. The state is required to offer the owner of the expropriated property an appropriate compensation, the size of which can also be disputed by the owner in court.<sup>14</sup> These legislative provisions are potentially problematic given the Georgian executive branch's excessive influence over the judiciary (discussed in greater detail in the subsequent sections of this chapter, as well as the chapter on the judiciary).

The Civil Code contains detailed provisions governing the exercise of property rights.<sup>15</sup> Intellectual property rights are protected by a number of laws, including the Law on Author's Rights and Other Related Rights, the Georgian Patent Law and the Law on Trademarks.<sup>16</sup>

The Civil Code also devotes considerable attention to contract enforcement procedures.<sup>17</sup> Georgia's rank in the World Bank's Doing Business survey in terms of the legislation governing contract enforcement is lower than the country's overall rank and the number of the required procedures (36) is also higher than the OECD average (31.2).<sup>18</sup> Similarly, the Global Competitiveness report ranks Georgia 89<sup>th</sup> out of 139 countries in terms of the efficiency of the legal framework for settling disputes.<sup>19</sup>

## Resources (practice)

Score: 50

To what extent are individual businesses able in practice to form and operate effectively?

The registration of businesses is simple and cheap in practice and the overall burden of government regulation is small. However, property rights (including intellectual property rights) are not protected adequately in Georgia.

According to TI Georgia's expert interviewees, the registration process is as easy in practice as it is in the law.<sup>20</sup> One interviewee said that the registering

<sup>9</sup> The World Bank and the International Finance Corporation, *Ease of Doing Business in Georgia*, <http://doingbusiness.org/data/exploreconomies/georgia#starting-a-business> (accessed on 8 February 2011).

<sup>10</sup> The Law on State Support for Investments, adopted on 30 June 2006.

<sup>11</sup> European Commission, 2010, Implementation of the European Neighbourhood Policy in 2009: Progress Report Georgia, [http://ec.europa.eu/world/enp/pdf/progress2010/sec10\\_518\\_en.pdf](http://ec.europa.eu/world/enp/pdf/progress2010/sec10_518_en.pdf).

<sup>12</sup> The Law on Free Trade and Competition, adopted on 3 June 2005.

<sup>13</sup> The Constitution of Georgia, adopted on 24 August 1995, Article 21.

<sup>14</sup> The Georgian Law on Expropriation of Property for Public Need, adopted on 23 July 1999, Articles 2-3, 6, 8.

<sup>15</sup> The Georgian Civil Code, adopted on 26 June 1997, Book 2.

<sup>16</sup> The Georgian Patent Law, adopted on 5 February 1999; The Georgian Law on Author's Rights and Other related Rights, adopted on 22 June 1999; The Georgian Law on Trademarks, adopted on 5 February 1999.

<sup>17</sup> The Georgian Civil Code, Book 3.

<sup>18</sup> The World Bank and the International Finance Corporation, *Ease of Doing Business in Georgia*, <http://doingbusiness.org/data/exploreconomies/georgia#enforcing-contracts> (accessed on 8 February 2011).

<sup>19</sup> World Economic Forum, *The Global Competitiveness Report 2010-2011* (Geneva: World Economic Forum, 2010), 162-163.

<sup>20</sup> Interview of Davit Narmania, head of the Caucasus Institute of Economic and Social Research, with the author, Tbilisi, 23 December 2010; interview of Nino Evgenidze, projects director at the Economic Policy Research Center, Tbilisi, 21 Jan 2011.

authorities are now very well equipped technically and that this has greatly enhanced the process, noting that Georgia has actually overtaken many of the richer countries in this area.<sup>21</sup> The World Bank also noted that the registration of a business in Georgia is relatively simple in practice, taking just three days on average (compared to the OECD average of 13.8 days), while the cost of registration is five percent of the per capita income (close to the OECD average of 5.3 and below the Eastern Europe and Central Asia average of 8.5).<sup>22</sup>

Georgia has a favourable environment for businesses in several other aspects. It ranks 2<sup>nd</sup> among countries surveyed in terms of the ease of property registration;<sup>23</sup> it has the 4<sup>th</sup> smallest burden of government regulation in the world and the 7<sup>th</sup> smallest total tax rate;<sup>24</sup> Senior managers in Georgian firms only devote two percent of their time to dealing with government regulations, which is the lowest figure in Eastern Europe and Central Asia, and Georgian firms face less corruption than their counterparts in other countries of Eastern Europe and Central Asia.<sup>25</sup>

Closing down a business or declaring bankruptcy is more problematic. According to the World Bank, the process could take up to 3.3 years, which is substantially longer than the OECD average of 1.7, although the cost of the procedure is lower than the OECD average (four percent of the cost of estate compared to 9.1).<sup>26</sup> TI Georgia's expert interviewee also noted that the process of closing a business is unnecessarily complicated in practice because of the excessively tough requirements established by the tax authorities.<sup>27</sup>

Property rights are not always respected in Georgia. Although the situation has improved since the 2006-2007 real estate boom, when a "real assault on private property" took place,<sup>28</sup> the government still expropriates property occasionally, especially in areas selected for the development of tourist infrastructure. As noted by an expert interviewed by TI Georgia, one's property rights are generally secure in Georgia as long as there is no specific state interest in a piece of property.<sup>29</sup> Other interviewees noted that owners rarely win their appeals against such decisions in court.<sup>30</sup> Georgia's problems in terms of the protection of property rights are also reflected in major international surveys. In the World Economic Forum's Global Competitiveness index, Georgia ranks 120<sup>th</sup> out of 139 countries in terms of the protection of property rights.<sup>31</sup> Georgia scored 40 out of 100 for property rights in the Heritage Foundation's Index of Economic Freedom (well below the country's overall score of 70.4).<sup>32</sup>

Intellectual property rights are not enforced effectively either. One recent study identified Georgia as the world's top user of pirated software.<sup>33</sup> It has been suggested that the use of such software is pervasive both in the public and private sectors. Roughly 70 percent of the computers used in various government agencies operate with pirated software.<sup>34</sup>

Business representatives have criticised amendments made to the Law on Public Registry in December 2010, which introduced mandatory registration of all transactions that somehow concern properties.<sup>35</sup>

<sup>21</sup> Interview of a Tbilisi-based business lawyer with the author, Tbilisi, 13 January 2011.

<sup>22</sup> The World Bank and the International Finance Corporation, *Ease of Doing Business in Georgia*, <http://doingbusiness.org/data/exploreeconomies/georgia#starting-a-business> (accessed on 8 February 2011).

<sup>23</sup> *Id.*

<sup>24</sup> World Economic Forum, *The Global Competitiveness Report 2010-2011* (Geneva: World Economic Forum, 2010), 162-163.

<sup>25</sup> Enterprise Surveys, *Running a Business in Georgia*, Enterprise Surveys Country Notes Series (The World Bank and the International Finance Corporation, 2009), 1, 4.

<sup>26</sup> The World Bank and the International Finance Corporation, *Ease of Doing Business in Georgia*, <http://doingbusiness.org/data/exploreeconomies/georgia#closing-a-business> (accessed on 8 February 2011).

<sup>27</sup> Interview of Davit Narmania with the author.

<sup>28</sup> Interview of a Tbilisi-based business lawyer with the author.

<sup>29</sup> *Id.*

<sup>30</sup> Interview of Davit Narmania with the author; interview of Nino Evgenidze with the author.

<sup>31</sup> World Economic Forum, *The Global Competitiveness Report 2010-2011* (Geneva: World Economic Forum, 2010), 162-163.

<sup>32</sup> The Heritage Foundation, *2011 Index of Economic Freedom*, <http://www.heritage.org/index/Country/Georgia> (accessed on 8 February 2011).

<sup>33</sup> BBC News, "Software Piracy Continues Global Rise", 11 May 2010, <http://www.bbc.co.uk/news/10107774> (accessed on 24 January 2010).

<sup>34</sup> Eurasianet.org, "Georgia: Tbilisi's Reliance on Pirated Software Leaves Government Vulnerable to Cyber-Attack", 27 January 2010, <http://www.eurasianet.org/departments/insightb/articles/eav012810a.shtml> (accessed on 24 January 2010).

<sup>35</sup> American Chamber of Commerce in Georgia, Letter to Prime Minister Nika Gilauri, 7 February 2011.

## Independence (law)

Score: 100

To what extent are there legal safeguards to prevent unwarranted external interference in activities of private businesses?

The legal framework does not contain provisions that would authorise excessive government interference with the operation of businesses.<sup>36</sup>

The Constitution guarantees the right to receive “full compensation” for the damages resulting from unlawful actions of state bodies through a court.<sup>37</sup> The Law on State Control of Entrepreneurial Activities expressly states that businesses are entitled to receive compensation for any damages caused by an unlawful state inspection.<sup>38</sup>

The state supervision of businesses is regulated by a dedicated law which requires government bodies to ensure that their control of commercial activities is exercised strictly according to the legal provisions. The law further stipulates that such control can only be exercised by designated bodies and only upon a judge’s decision. Judges are required by the law to only authorise such control in cases where the relevant state bodies present materials suggesting that an entrepreneur has violated the law. If the permission is granted, the relevant state body is only authorised to inspect the specific part of an enterprise’s activities referred to in the judicial decision. Prior to the commencement of the inspection, the relevant state body must present the enterprise in question with a written list of its rights and duties. Different state bodies cannot inspect the same business over the same matter. The requirement of judicial authorisation also applies to state bodies seeking to conduct inspections of commercial entities on behalf of law enforcement agencies as part of ongoing investigations. The exceptions to the requirement of judicial authorisation are reasonable and include tax inspections conducted by the tax authorities, as well as environmental inspections carried out by the relevant agencies.<sup>39</sup>

The regulations on tax inspections are also reasonable. The law stipulates that such inspections can only be carried out by the designated tax agencies and must not result in the suspension of the normal operation of a business. A taxpayer must be notified about an upcoming inspection at least 10 days in advance. An urgent inspection can be carried out without an advance notification but requires a judge’s permission.<sup>40</sup>

The Tax Code contains a special chapter devoted to the protection of taxpayers. Under the law, taxpayers have a right to refrain from disclosing tax-related information to state bodies other than the tax authorities, while the representatives of the tax authorities are required to preserve secrecy of the information about taxpayers. Taxpayers can challenge actions and decisions of the tax authorities and can refuse to comply with their requests that contradict the

<sup>36</sup> Enterprise Surveys, *Running a Business in Georgia*, Enterprise Surveys Country Notes Series (The World Bank and the International Finance Corporation, 2009), 4.

<sup>37</sup> The Constitution of Georgia, Article 42.

<sup>38</sup> The Law on Control of Entrepreneurial Activities, Article 3.

<sup>39</sup> *Id.*, Articles 1, 3-5.

<sup>40</sup> The Georgian Tax Code, adopted on 17 September 2010, Articles 255-268.

law. Moreover, the law expressly states that a violation of taxpayers' rights is a punishable offence and grants taxpayers the right to seek compensation for the damages resulting from unlawful actions and decisions of the authorities. The law establishes the office of Tax Ombudsman to oversee the protection of taxpayers' rights and interests in Georgia. The Tax Ombudsman is appointed by the prime minister in consultation with the parliament speaker and is required to report to parliament annually.<sup>41</sup>

Tax-related disputes can be adjudicated either inside the Ministry of Finance (first by the Revenue Service and then by a special council for disputes) or in a court. The complainant can take the case to court at any stage of its adjudication in the Ministry of Finance.<sup>42</sup>

### Independence (practice)

Score: 50

To what extent is the business sector free from unwarranted external interference in its work in practice?

The legal provisions designed to protect businesses from unwarranted interference are not always applied effectively in practice, primarily due to the absence of a fully independent judiciary in Georgia.

According to one expert interviewee, Georgia's big businesses are engaged in an unusually close collaboration with the authorities and even shoulder some of the costs that would normally be borne by the state (some types of social aid and investments in local infrastructure, for example). It is difficult to say whether this happens because of government pressure or whether there are some mutually beneficial agreements between the government and businesses, although businesses do usually expect more favourable treatment from the tax authorities in return.<sup>43</sup> Another expert told TI Georgia that big businesses are very cautious about their relations with the government and do their best to please the political leadership. He noted that Georgian businesses resort to a kind of self-censorship because otherwise they would be inviting retaliation (such as financial police inspections or massive tax assessments).<sup>44</sup> The fact that, during the recent election campaigns, opposition parties have received virtually no donations from business, while dozens of companies have donated money to the ruling National Movement, could be another indication of the lack of business independence and the widespread fear of the government among entrepreneurs (although the opposition's internal weaknesses and the peculiarities of the electoral system probably also account for the uneven distribution of donations).<sup>45</sup>

Owners and managers of several independent media outlets have repeatedly claimed that the government has pressured potential advertisers to not adver-

<sup>41</sup> *Id.*, Articles 38-44.

<sup>42</sup> *Id.*, Articles 296-308.

<sup>43</sup> Interview of Davit Narmania with the author.

<sup>44</sup> Interview of a Tbilisi-based business lawyer with the author.

<sup>45</sup> See the Political Parties chapter for a more detailed discussion of this subject.

tise with them.<sup>46</sup> There are also credible accounts of small business owners being pressured into buying several tones of grapes from farmers in Kakheti by individuals close to the Revenue Service with the luring threat of special audits.<sup>47</sup>

According to the experts interviewed by TI Georgia, the treatment of businesses by the tax authorities tends to be excessively harsh. An expert interviewee told TI Georgia that the tax agency frequently tries to trap businesses and seeks unnecessarily tough punishment for violations (for example, imprisonment rather than a fine).<sup>48</sup>

These problems are aggravated by Georgia's lack of an independent judiciary,<sup>49</sup> which effectively leaves businesses with no means of protection against unlawful interference. The Global Competitiveness Report ranks Georgia 104<sup>th</sup> out of 139 countries in terms of judicial independence,<sup>50</sup> while the Heritage Foundation has noted that "Georgians continue to doubt the judicial system's ability to protect private property and contracts."<sup>51</sup> According to TI Georgia's expert interviewee, the authorities tend to process tax-related disputes through the criminal justice system and businessmen have virtually no hope of winning their cases (as discussed in the chapter on the judiciary, the acquittal rate in criminal cases is extremely low in Georgia).<sup>52,53</sup>

The U.S. Department of Commerce has warned investors of "uneven and arbitrary" interpretation and enforcement of laws and regulations, especially in the areas of tax and customs, by bureaucrats and courts.<sup>54</sup>

TI Georgia's expert interviewees could not recall any recent examples of the government seizing private companies directly, although it was suggested that the government sometimes ensures acquisition of ownership by third parties through the tax authorities and the court system. This is said to be particularly true for the country's largest enterprises, some of which have changed hands on several occasions in recent years, including shares in the national television channel Imedi TV.<sup>55</sup> Also, the privatization process has lacked transparency and it has been suggested that government officials could indirectly control shares in the privatized entities.<sup>56</sup>

On the positive side, the government appears to be aware of the existing problems and has taken some steps to address them. President Saakashvili noted in his December 2010 statement that "a lot of shortcomings remain in the relations between the state and the entrepreneurs", emphasizing that many businessmen feel that they are being treated unfairly and "cases are still frequent, when the punishment is more severe than the violation deserves".<sup>57</sup> The president's comments coincided with the introduction of a number of legal changes designed to provide businesses with better protection. In March 2011, the Georgian Revenue Service received a new leadership and President Mikheil Saakashvili stated that the new leadership had been instructed to emphasise

<sup>46</sup> U.S. State Department, Human Rights Report 2009, Georgia, <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136032.htm> (accessed 21 February, 2011); TI Georgia: Television in Georgia – Ownership, Control and Regulation, Tbilisi, November 20, 2009.

<sup>47</sup> Transparency International Georgia, Taxation in Georgia – An Overview, Tbilisi, 9 June 2010, <http://www.transparency.ge/en/post/report/georgian-taxation-system-overview> (accessed on 5 March, 2011).

<sup>48</sup> Interview of Nino Evgenidze with the author.

<sup>49</sup> See the Judiciary chapter for more detail.

<sup>50</sup> World Economic Forum, *The Global Competitiveness Report 2010-2011*, 162-163.

<sup>51</sup> The Heritage Foundation, *2011 Index of Economic Freedom*, <http://www.heritage.org/index/Country/Georgia> (accessed on 8 February 2011).

<sup>52</sup> Interview of a Tbilisi-based business lawyer with the author.

<sup>53</sup> Interview of Davit Narmania with the author.

<sup>54</sup> U.S. Department of Commerce, Doing Business in Georgia: 2009 Country Commercial Guide for U.S. Companies.

<sup>55</sup> Civil Georgia, "Imedi TV Changes Hands", Tbilisi, 25 February 2009, <http://www.civil.ge/eng/article.php?id=20475> (accessed on 15 March, 2011).

<sup>56</sup> Interview of a Tbilisi-based lawyer with the author.

<sup>57</sup> Civil Georgia, "Saakashvili on 'Shortcomings' in Relations with Business", Tbilisi, 4 December 2010.

fairness in the tax collection process and to avoid overreaction from the tax collectors, which would lead to a sentiment of injustice among taxpayers.<sup>58</sup>

The Tax Ombudsman responsible for the protection of the rights of businessmen was officially appointed in late January 2011.

## Transparency (law)

Score: 100

To what extent are there provisions to ensure transparency in the activities of the business sector?

The law contains robust provisions on the transparency of the business sector.

Under the Law on Entrepreneurial Activities, information regarding the registration of businesses is public and any interested person can obtain it from the Public Registry, the agency in charge of the registration process.<sup>59</sup>

An annual audit is required of enterprises that are traded on the Georgian Stock Exchange (GSE), licensed by the National Bank or where the number of partners exceeds 100. The boards of such enterprises must hire an auditor that is legally and economically independent from the directors and partners of the enterprise.<sup>60</sup>

The National Bank has the authority to oversee the financial sector, including banks, non-banking depository enterprises and insurance companies. The National Bank can inspect and audit their operations, suspend licenses and impose sanctions. The National Bank is also authorised to exercise oversight over the stock market.<sup>61</sup> The Financial Monitoring Service is a special body responsible for the prevention of money laundering and financing of terrorism.<sup>62</sup> In addition, Georgia has a dedicated law for the prevention of money laundering, which requires both the Financial Monitoring Service and the relevant business entities to monitor and report any suspicious transactions.<sup>63</sup>

Commercial banks are required to have annual audits conducted by an external auditor and to produce annual financial reports compiled in line with international accounting standards. The Annual audit and financial reports must be submitted to the National Bank and published. In addition, banks can be inspected by the National Bank or by the auditors hired by the National Bank.<sup>64</sup>

There are additional transparency provisions for companies trading on the stock market. They are required to publish and submit to the National Bank annual and semi-annual reports on their operations. The annual report must contain an audit report. The National Bank can request further information or require companies to present special reports on specific developments. All of these reports

<sup>58</sup> Civil Georgia, "Saakashvili on Reshuffle in Revenue Service", Tbilisi, 7 March, 2011, <http://civil.ge/eng/article.php?id=23212> (accessed on 15 March, 2011).

<sup>59</sup> The Georgian Law on Entrepreneurs, Article 7.

<sup>60</sup> *Id.*, Article 13.

<sup>61</sup> The Georgian Organic Law on National Bank of Georgia, adopted on 24 September 2009, Articles 47-52.

<sup>62</sup> *Id.*, Article 53.

<sup>63</sup> The Law on Facilitation of Prevention of Legalisation of Unlawful Profits, adopted on 6 June 2003, Articles 3-6.

<sup>64</sup> The Georgian Organic Law on National Bank of Georgia, Articles 26-29.

must also be submitted to the stock market where the company in question is traded.<sup>65</sup> Members of the governing bodies of such companies must submit information regarding their shares to the National Bank and the stock market.<sup>66</sup> The individuals or groups of individuals that purchase a “significant amount” of stocks must notify the National Bank and the stock market about it.<sup>67</sup>

Georgian businesses (except for small businesses) are required by law to adhere to the International Financial Reporting Standards adopted by the International Accounting Standards Board.<sup>68</sup>

One significant shortcoming of the law, as identified in the Global Integrity Report, is that state-owned companies are not required to disclose their financial records to interested citizens.<sup>69</sup> (However, this may not have a major impact given the massive privatization of state-owned enterprises in recent years).

## Transparency (practice)

Score: 50

### To what extent is there transparency in the business sector in practice?

Information about registered companies is either readily-available online or is made available upon request. Banks and stock market actors report to the relevant authorities as required by the law. On the negative side, the ownership of some companies (especially those established in off-shore locations) is not sufficiently transparent.

The National Agency of the Public Registry (the body responsible for registration of businesses in Georgia) has an online database offering some general information on all registered enterprises. Information regarding ownership structure is not available online, although, according to one expert interviewed by TI Georgia, it is usually made available by the agency upon request. The same expert noted, however, that obtaining information about the off-shore companies operating in Georgia is problematic.<sup>70</sup> Data on foreign direct investment shows that off-shore locations including the British Virgin Islands, Cyprus and Panama have been significant sources of financial flows into Georgia.<sup>71</sup> Transparency of the ownership of large, formerly-state owned enterprises privatized in recent years has been a matter of concern as well.<sup>72</sup>

Big businesses (mostly banks) tend to have websites that offer some useful data about them, including management information, financial reports, etc. At the same time, certain important types of information, such as ownership structure, are missing from the majority of these websites. Overall, according to a 2009 survey, only 30 percent of Georgian firms have their own websites, (the average figure for the Eastern Europe and Central Asia region is 48 percent).<sup>73</sup>

<sup>65</sup> The Law on Stock Market, adopted on 24 December 1998, Article 11.

<sup>66</sup> *Id.*, Article 12.

<sup>67</sup> *Id.*, Article 14.

<sup>68</sup> The Georgian Law on Regulation of Accounting and Financial Reporting, adopted on 5 February 1999, Articles 2, 10.

<sup>69</sup> Global Integrity, *Global Integrity Scorecard: Georgia 2009*, (Global Integrity, 2009), 154.

<sup>70</sup> Interview of Davit Narmania with the author.

<sup>71</sup> Geostat, Foreign Direct Investments by Country: [http://geostat.ge/cms/site\\_images/\\_files/english/bop/FDI\\_Eng-countries.xls](http://geostat.ge/cms/site_images/_files/english/bop/FDI_Eng-countries.xls), (accessed on 14 March, 2011).

<sup>72</sup> Interview of a Tbilisi-based business lawyer with the author.

<sup>73</sup> Enterprise Surveys, *Running a Business in Georgia*, Enterprise Surveys Country Notes Series, 4.

The National Bank's supervisory activities are focused on commercial banks since these make up 95 percent of the Georgian financial sector.<sup>74</sup> According to the National Bank, it exercises oversight on the basis of a "reasonable assessment of risks" and has adopted a relevant methodology based on international standards and best practice.<sup>75</sup> Georgia's stock market is small though the companies operating there do submit reports as required by the law and these are posted to the stock market's website.<sup>76</sup>

According to the 2009 survey cited above, over 47 percent of Georgian firms have their annual financial statements reviewed by an external auditor, which is a higher figure than the 37-percent average for the Eastern Europe and Central Asia region.<sup>77</sup> As for accounting standards, according to an expert interviewed by TI Georgia, the country's large and medium sized companies generally follow international standards.<sup>78</sup> The latest World Competitiveness Report ranks the quality of financial auditing and reporting standards for the private sector in Georgia 92<sup>nd</sup> out of 139 countries<sup>79</sup>, suggesting that there are still problems in this area.

## Accountability (law)

Score: 50

To what extent are there rules and laws governing oversight of the business sector and governing corporate governance of individual companies?

Georgian legislation concerning corporate governance has improved considerably in recent years although some regulations are still weak.

Corporate governance provisions were largely missing from the Georgian law in past but were added in 2008. The law establishes some general rules, while allowing companies to have other issues addressed through their internal charters and regulations.

Companies must hold a general meeting of partners at least once a year. Any decision outside the routine operation of a company requires consent of a general meeting of partners. The general meeting decides, among other things, on changing the company's charter, establishing branches, approving the annual results, auditing, reorganizing or shutting down the company.<sup>80</sup>

Every partner in an enterprise has the right to receive a copy of the enterprise's annual financial report and other documents, to request explanations regarding these documents and to have them examined by an auditor.<sup>81</sup> Partners in some types of enterprises (joint liability companies) have the right to inspect the books and other documents of the enterprise and to require other partners to fulfil their obligations vis-a-vis the enterprise.<sup>82</sup> Owners of at least 5 percent of stocks in a joint-stock enterprise can request an inspection of the enterprise's

<sup>74</sup> The National Bank of Georgia, *Annual Report 2009* (Tbilisi: the National Bank of Georgia, 2009), 73.

<sup>75</sup> *Id.*, 72-87.

<sup>76</sup> [www.gse.ge](http://www.gse.ge)

<sup>77</sup> Enterprise Surveys, *Running a Business in Georgia*, Enterprise Surveys Country Notes Series, 4.

<sup>78</sup> Interview of Davit Narmania with the author.

<sup>79</sup> World Economic Forum, *The Global Competitiveness Report 2010-2011*, 383.

<sup>80</sup> The Georgian Law on Entrepreneurs, Articles 8-9 (1).

<sup>81</sup> *Id.*, Article 3.

<sup>82</sup> *Id.*, Article 24.

commercial activities or the entire annual balance if they suspect irregularities. They can also require the company's governing body to provide copies of concluded deals, as well as information about upcoming deals.<sup>83</sup>

Banks, as well as joint-stock companies that trade on the stock market and companies that have over 100 partners, are required to have supervisory boards elected by the general meeting of partners. A company's board is responsible for controlling the activities of its directors and has the authority to inspect the company's financial documents, reports and assets. Directors are also required to submit annual reports to the board.<sup>84</sup>

According to public records requested by TI Georgia in February 2011, not a single lobbyist was officially registered with Parliament, the State Chancellery or Tbilisi city hall at the time the request was made, indicating that legislation regulating lobbying is ineffective.

## Accountability (practice)

Score: 50

### To what extent is there effective corporate governance in companies in practice?

Progress has been made in recent years in the application of corporate governance rules by Georgian enterprises, most notably by banks. However, some significant weaknesses remain to be addressed and there is no agency overseeing the implementation of the relevant regulations.

A 2009 survey by the IFC revealed that the corporate governance practices of Georgian companies had "improved considerably" during the preceding four years, with more than 77 percent of the surveyed companies showing "improved awareness" of best practices in the field. At the same time, the survey revealed areas that required further improvement, including effectiveness of supervisory boards, internal controls, information disclosure and shareholder rights.<sup>85</sup>

An expert interviewed by TI Georgia suggested that Georgian banks follow the existing corporate governance provisions more thoroughly than other types of commercial entities.<sup>86</sup> In September 2009, a number of Georgian banks signed the voluntary Corporate Governance Code developed by the IFC, the Georgian Banking Association and the Georgian Stock Market.<sup>87</sup>

An expert interviewee noted that no government body monitors adherence to the corporate governance rules in practice.<sup>88</sup> The problems related to corporate governance are reflected in the Global Competitiveness report where Georgia is ranked 109<sup>th</sup> out of 136 countries in terms of the efficacy of corporate boards and 122<sup>nd</sup> in terms of protection of minority shareholders' interests.<sup>89</sup>

<sup>83</sup> *Id.*, Article 53.

<sup>84</sup> *Id.*, Articles 55-57.

<sup>85</sup> IFC News, "IFC Survey Finds Better Corporate Governance in Georgian Companies, Recommends Improvements", 25 September 2009, <http://www.ifc.org/ifcext/media.nsf/content/SelectedPressRelease?OpenDocument&UNID=FCAD840C8199AF278525763C004831EA> (accessed on 8 February 2011).

<sup>86</sup> Interview of Davit Narmania with the author.

<sup>87</sup> The Association of Georgian Banks, "Corporate Governance Code", <http://abg.org.ge/Admin1280837677.php> (accessed on 8 February 2011).

<sup>88</sup> Interview of Davit Narmania with the author.

<sup>89</sup> World Economic Forum, *The Global Competitiveness Report 2010-2011*, 162-163.

An expert interviewed by TI Georgia said that the National Bank is generally successful in overseeing the activities of private banks. She noted, however, that the regulators failed to prevent some of the Georgian banks from engaging in excessively risky operations on the real estate market in 2006-2008.<sup>90</sup> This view was challenged by a National Bank representative, who told TI Georgia that the National Bank did not consider the aforementioned activities to be a systemic risk and emphasized that none of the Georgian banks faced the threat of insolvency as a result of them.<sup>91</sup>

## Integrity mechanisms (law)

Score: 50

To what extent are there mechanisms in place to ensure the integrity of all those acting in the business sector?

The legal framework contains adequate provisions regarding corrupt practices within and between enterprises and corporate liability, while also establishing some limited rules concerning conflict of interest in the private sector. At the same time, there is a general lack of both sector-wide and individual codes of conduct.

Private sector bribery (both active and passive) is a punishable offence under the Criminal Code and can result in a prison sentence of up to six years.<sup>92</sup> The Code also establishes punishment for money laundering and illicit deals during public procurement.<sup>93</sup> The Code contains provisions on corporate liability. Legal persons (including commercial entities) can be held responsible for crimes committed by their authorised representatives on their behalf, with their involvement or with the purpose of benefitting them. The types of punishment that can be imposed on legal persons include liquidation, termination of license, fine or confiscation of property.<sup>94</sup>

The law contains some general integrity rules for the individuals in charge of companies. For example, the head of a company cannot simultaneously hold a similar position in another company of the same type without the consent of the company's partners. The law requires company directors and board members to act according to the principles of integrity. Company executives cannot use the information they have acquired through their office for personal benefit unless a meeting of the company's partners authorises them to do so.<sup>95</sup>

There are mandatory integrity rules for the companies trading on the stock market. The members of governing bodies of such companies are required to act according to the principle of integrity and in a way that best serves the interests of the company and the holders of its stocks. The holders can sue the members of the governing body over the failure to respect these requirements. A member of the governing body of a company must notify the company's board about any upcoming transactions involving conflict of interest and is barred from participating in the vote on such a transaction. Moreover, the company must inform the National Bank about such transactions and post the information on its own website or the website of the stock market.<sup>96</sup>

<sup>90</sup> Interview of Nino Evgenidze with the author.

<sup>91</sup> Correspondence of Giorgi Melashvili, Chief Executive Officer of the National Bank of Georgia, with the author, 1 June 2011.

<sup>92</sup> The Georgian Criminal Code, adopted on 22 July 1999, Article 221.

<sup>93</sup> *Id.*, Articles 194, 195 (1).

<sup>94</sup> *Id.*, Articles 107 (1), 107 (3).

<sup>95</sup> The Georgian Law on Entrepreneurs, Article 9.

<sup>96</sup> The Law on Stock Market, Articles 16-16(1).

On the negative side, no sector-wide codes of conduct or anti-corruption codes exist in Georgia at present. Moreover, a 2009 survey by IFC revealed that only 16 percent of the surveyed companies had internal codes regulating conflict of interest and related-party transactions.<sup>97</sup> Also, the existing legal provisions on whistle-blower protection do not extend to private sector employees.

## Integrity Mechanisms (practice)

Score: 50

To what extent is the integrity of those working in the business sector ensured in practice?

The limited nature of integrity-related legal provisions and the lack of a sector-wide ethics code correspond with a number of problems in practice.

As noted in the previous section, it is not common for Georgian businesses to have codes of conduct. It also appears that the few existing codes are not applied consistently in practice. For example, 34 percent of respondents in a recent IFC survey noted that supervisory board members did not abstain from voting in the event of a conflict of interest.<sup>98</sup> The experts interviewed by TI Georgia confirmed that only a handful of companies have ethics codes/programmes, noting that little information is available regarding the implementation of such rules in practice.<sup>99</sup>

In the World Competitiveness Report 2010-2011, corporate ethics of Georgian firms was ranked 78<sup>th</sup> out of 139 countries.<sup>100</sup>

Protection of whistle blowers is problematic in practice as well. As noted by Global Integrity, Georgia's private sector employees are "highly vulnerable to recrimination or other negative consequences for reporting cases of corruption, graft, abuse of power, or abuse of resources".<sup>101</sup>

No black list of companies involved in corruption and money laundering has been compiled, although the website of the Financial Monitoring Service does carry an international list of companies sponsoring terrorism.<sup>102</sup>

No statistics are available on bribery in the private sector.

## Anti-Corruption Policy Engagement (law & practice)

Score: 25

To what extent is the business sector active in engaging the domestic government on anti-corruption?

Georgia's business sector does not participate actively in the government's anti-corruption policies and initiatives.

<sup>97</sup> IFC News, "IFC Survey Finds Better Corporate Governance in Georgian Companies, Recommends Improvements".

<sup>98</sup> *Id.*

<sup>99</sup> Interview of Davit Narmania with the author; interview of Nino Evgenidze with the author.

<sup>100</sup> World Economic Forum, *The Global Competitiveness Report 2010-2011*, 382.

<sup>101</sup> Global Integrity, *Global Integrity Scorecard: Georgia 2009*, 117.

<sup>102</sup> The Financial Monitoring Service of Georgia, [www.fms.gov.ge](http://www.fms.gov.ge).

The business sector's involvement in anti-corruption policies has been very limited so far. None of the TI Georgia's expert interviewees could recall any instances of companies or business associations participating in anti-corruption initiatives or making statements on the subject. The OECD ACN also noted in its latest report on Georgia that the "private sector has not yet been involved in the anti-corruption policy".<sup>103</sup> The National Anti-Corruption Strategy does envisage efforts aimed at reducing corruption in the private sector<sup>104</sup> but business is not represented in the Anti-Corruption Council, the body that is responsible for the development and coordination of anti-corruption policies (and includes, along with government officials, civil society representatives).

Even though 24 Georgian companies have signed up to the UN Global Compact, only nine of them presently have the status of an "active member", while 15 have been designated as "non-communicating" members because of their failure to submit progress reports within the established deadlines.<sup>105</sup> The few reports submitted by Georgian companies suggest that they have only devoted limited attention to the anti-corruption component of the Compact.

At the same time, according to an expert interviewee, business associations discuss possible problems and irregularities with the Tax Ombudsman and also communicate the relevant information through a range of informal channels.<sup>106</sup>

## Support for/Engagement with Civil Society (law & practice) Score: 25

### To what extent does the business sector engage with/provide support to civil society on its task of combating corruption?

The Georgian business sector has not, so far, joined or sponsored civil society's anti-corruption activities.

The link between civil society and business is weak in Georgia. CSOs rely almost exclusively on foreign donor support, while receiving little to no funding from local companies. According to a 2005 survey, only a fifth of Georgian CSOs had received donations from businesses or individuals and these were usually irregular and small.<sup>107</sup> None of the experts interviewed by TI Georgia for this report could recall any examples of joint anti-corruption initiatives implemented by civil society and the business sector. A small number of CSOs (including TI Georgia) have businessmen on their boards but this is a rare exception.

An expert interviewee told TI Georgia that CSOs are partially to blame for this situation, as they are generally content with foreign donor aid and do not actively try to solicit support from the business community. At the same time, she noted that, given their general cautious attitude towards the government, Georgian businesses probably would not be eager to sponsor some of civil society's anti-corruption initiatives.<sup>108</sup>

<sup>103</sup> OECD Anti-Corruption Network for Eastern Europe and Central Asia, Istanbul Anti-Corruption Action Plan, *Second Round of Monitoring, Georgia Monitoring Report*, (Paris: OECD ACN, 2010), 45-46.

<sup>104</sup> The National Anti-Corruption Strategy of Georgia, [http://www.justice.gov.ge/files/Documents/analitikuri/antikorufsiuli\\_statigia.pdf](http://www.justice.gov.ge/files/Documents/analitikuri/antikorufsiuli_statigia.pdf) (accessed on 8 February 2011).

<sup>105</sup> United Nations Global Compact, Participants and Stakeholders, [http://www.unglobalcompact.org/participants/search?business\\_type=2&commit=Search&cop\\_status=all&country\[\]=65&joined\\_after=&joined\\_before=&keyword=&listing\\_status\\_id=all&organization\\_type\\_id=&page=1&per\\_page=50&sector\\_id=all](http://www.unglobalcompact.org/participants/search?business_type=2&commit=Search&cop_status=all&country[]=65&joined_after=&joined_before=&keyword=&listing_status_id=all&organization_type_id=&page=1&per_page=50&sector_id=all) (accessed on 8 February 2011).

<sup>106</sup> The correspondence of George Welton, executive director of the American Chamber of Commerce in Georgia, with the author, 28 May 2011.

<sup>107</sup> Centre for Training and Consultancy, *An Assessment of Georgian Civil Society (2005)*, CIVICUS Civil Society Index Shortened Assessment Tool Report for Georgia, 31.

<sup>108</sup> Interview of Nino Evgenidze with the author.

# VII. Conclusions

The preceding chapters and the temple graph demonstrate strengths and weaknesses within each NIS institution and also highlight imbalances in Georgia’s overall National Integrity System and the importance of the linkages between different pillars.

The executive branch and the law enforcement agencies are particularly strong compared with others, especially in terms of their *capacity* and their *role* in fighting corruption. They rank in the middle of the pack on the internal governance indicators (transparency, accountability and integrity). While strength in any area is a positive sign, the comparative weakness of other pillars warrants particular attention. Shortcomings in the legislature’s and the judiciary’s *independence* and *ability to oversee the executive* suggest critical deficiencies in the system of checks and balances. This is particularly worrying since the non-state pillars that are supposed to serve as watchdogs – the media, political parties and civil society – are among the weakest institutions in the integrity system. As a result, the potential for abuse of entrusted power remains a concern.

## NIS Pillars: Key Strengths and Weaknesses

The table below summarizes the most important strengths and weakness of the Georgian NIS pillars, as identified in the preceding chapters.

Pillar	Legislature
Key Strengths	<ul style="list-style-type: none"><li>● Generally strong legal framework</li><li>● Good transparency in practice (Parliament’s website contains good information and it is responsive to FOI requests)</li></ul>
Key Weaknesses	<ul style="list-style-type: none"><li>● Lack of pluralism and lack of independence from the executive branch</li><li>● Failure to exercise executive oversight and to sufficiently scrutinize the executive branch’s legislative proposals</li></ul>

Pillar	Executive Branch (President and Cabinet of Ministers)
Key Strengths	<ul style="list-style-type: none"> <li>● Good capacity (both in terms of resources and independence)</li> <li>● A number of successful reforms, including anti-corruption efforts</li> </ul>
Key Weaknesses	<ul style="list-style-type: none"> <li>● Weak accountability in practice</li> <li>● Low transparency of the President's administration in practice</li> </ul>

Pillar	Judiciary
Key Strengths	<ul style="list-style-type: none"> <li>● Considerable improvement in available resources</li> <li>● Eradication of bribery among judges</li> </ul>
Key Weaknesses	<ul style="list-style-type: none"> <li>● Lack of independence from the executive branch and the resulting inability to hold the executive branch accountable</li> <li>● Problems related to transparency</li> </ul>

Pillar	Public Administration
Key Strengths	<ul style="list-style-type: none"> <li>● Considerable improvement in available resources</li> <li>● Generally good legal provisions supporting transparency, accountability and integrity</li> <li>● In many agencies, good transparency and accountability in practice, e.g. asset declarations are posted online and some agencies have impressive websites</li> </ul>
Key Weaknesses	<ul style="list-style-type: none"> <li>● Lack of independence from the political leadership</li> <li>● Lack of uniform practices in the entire public sector, including inconsistent application of transparency and integrity provisions</li> <li>● Some gaps in legal provisions on transparency and integrity</li> <li>● The public sector insufficiently active in terms of informing the general public on corruption-related issues and anti-corruption reforms</li> </ul>

Pillar	Law Enforcement Agencies (Ministry of Internal Affairs and Prosecutor's Office)
Key Strengths	<ul style="list-style-type: none"> <li>● Good capacity (especially resources)</li> <li>● Good legal provisions on accountability and integrity</li> <li>● Successful in combating bribery</li> </ul>

- Key Weaknesses**
- Low transparency
  - Lack of accountability at higher levels or when political interests are at stake
  - Political interference resulting in selective prosecution and inconsistent execution of the law

**Pillar Chamber of Control (Supreme Audit Institution)**

- Key Strengths**
- Good legal provisions supporting its independence
  - Growth of financial resources allocated by the state and improvement of capacity through successful reforms
  - Good transparency in practice
- Key Weaknesses**
- Capacity-related problems still affect the Chamber's ability to conduct complex audits effectively

**Pillar Electoral Management Body**

- Key Strengths**
- Considerable improvement in available resources
  - Good transparency both in law and practice
- Key Weaknesses**
- Insufficient independence in practice
  - Lack of accountability
  - Ineffective at regulating campaign financing (largely because of the lack of adequate legal powers)
  - Problems with election administration (use of administrative resources during campaign, vote count and tabulation procedures, handling of complaints)

**Pillar Public Defender**

- Key Strengths**
- Independent both in law and in practice
  - Good transparency in law and in practice
  - Strong investigatory powers in law
- Key Weaknesses**
- Resources allocated by the state are inadequate
  - Investigative function undermined by non-cooperation of some state agencies in practice

**Pillar Political Parties**

- Key Strengths**
- Good legal provisions on capacity (ease of registration, independence from undue external interference)

- Key Weaknesses**
- Current distribution of resources between parties inhibits effective political competition
  - Insufficient financial transparency and accountability
  - Weakness of internal democratic governance
  - Failure to aggregate and represent larger social interests

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**Pillar**
**Media**
**Key Strengths**

- Good legal provisions on establishment/ registration of media entities, independence and ownership transparency

**Key Weaknesses**

- Lack of editorial independence in the most influential media entities (reflected in a clear bias either towards the government or the opposition)
- Lack of ownership transparency in practice, especially in the most influential media entities
- Weakness in terms of exposing cases of corruption and informing the public on governance issues
- Lack of independence in the regulatory commission, including media licensing process

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**Pillar**
**Civil Society**
**Key Strengths**

- Good legal provisions on resources (ease of registration) and independence
- High level of independence in practice (general lack of undue interference and harassment by the authorities)

**Key Weaknesses**

- Lack of resources in practice (no diversity of funding sources)
- Weak integrity and accountability mechanisms
- Ineffective in holding government accountable and contributing to policy reform

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**Pillar**
**Business**
**Key Strengths**

- Good legal provisions on resources (ease of registration) and independence

**Key Weaknesses**

- Independence-related problems in practice (inadequate protection from undue interference from the authorities)
  - Failure to participate in anti-corruption policy or to support/engage with civil society
-

## Interconnections between Pillars

The NIS concept presupposes that a weakness in a single institution could lead to serious flaws in the entire integrity system. Thus, the interplay between pillars is a key part of assessing the system's overall strength. While the NIS assessment highlights many strengths in the institutions, this section naturally focuses on the most significant weaknesses.

Most notably, weaknesses of the Georgian legislature and political parties influence, either directly or indirectly, almost every other pillar.

The weakness of **political parties**, particularly in terms of organisational sustainability and ability to represent people's interests – in the context of a dominant executive – results in the the overwhelming domination of parliament by the ruling United National Movement (about 80 percent of seats, when only two-thirds are required for a constitutional majority). Coupled with the lack of internal democratic governance in political parties, the one-party makeup of parliament reduces the **legislature's** independence significantly. Since (as will be shown below) parliament's insufficient independence affects the majority of other pillars, the weakness of political parties is a major shortcoming of Georgia's National Integrity System.

The lack of a strong and independent parliament (along with the lack of a strong **judiciary**) is the primary cause of the **executive branch's** insufficient accountability. As noted in the relevant chapter of this report, the legislature's current loyalty to the president and cabinet means that it has largely failed to make practical use of its broad legal powers of oversight.

The legislature's weaknesses are reflected in a number of other NIS pillars. They can reduce the independence of the **Chamber of Control** and limit its ability to sanction irregularities since parliament (in its current shape) is very unlikely to act upon the Chamber's findings of violations at the higher tiers of the executive branch (this also further reduces the accountability of the executive). Similarly, the **Public Defender's** findings and recommendations have been ignored by the legislature on a number of occasions in recent years. The total dominance of a single party in parliament also reduces the ability of Georgian **Civil Society Organizations (CSOs)** to influence policies through advocacy.

There is also a strong connection between the weakness of the legislature and the **judiciary's** lack of independence. Parliament appoints the chairperson and members of the Supreme Court (which subsequently plays a key role in appointing lower-level judges). The current makeup of the legislature establishes an environment in which politically-motivated appointments in the judiciary are likely. The low independence of the judiciary, in turn, further undermines the accountability of the **executive branch**, as well as the accountability of **law enforcement** agencies (especially the high-level officials from these agencies).

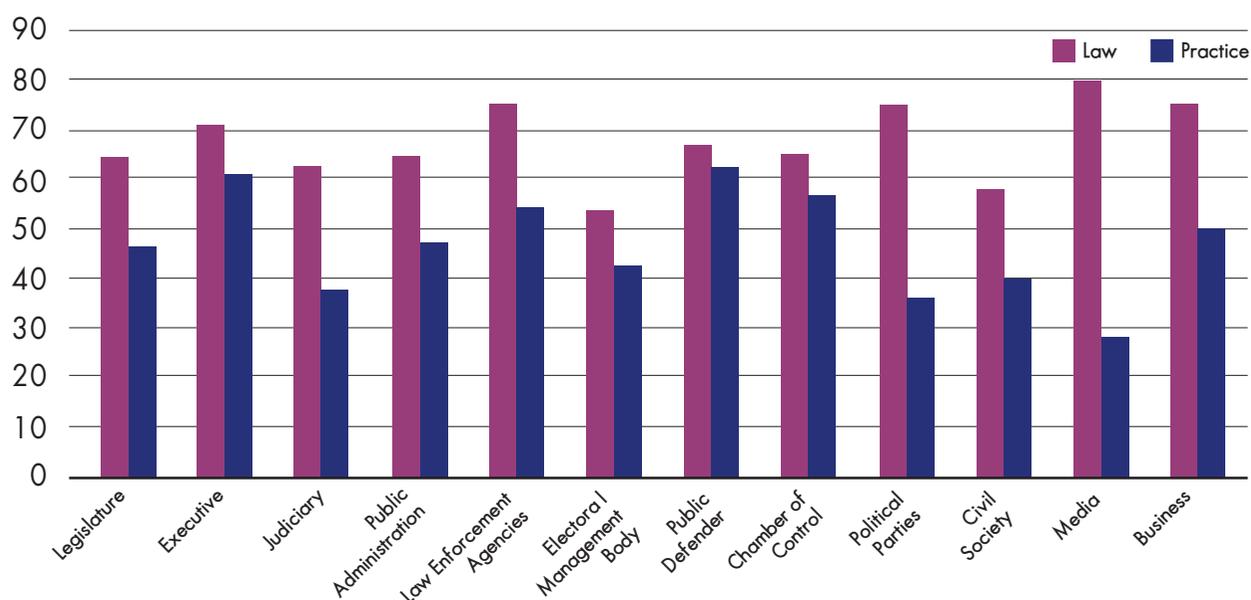
The judiciary's inadequate performance in terms of independence has also affected accountability of the **electoral management body** (electoral officials are rarely sanctioned for violations by courts) and independence of **business** (private companies cannot rely on courts for protection/remedy against possible cases of arbitrary interference in their operation by the authorities).

The chain of cause and effect is circular. For example, not only do the weaknesses of Georgian **political parties** affect other institutions of the integrity system, but the party system's problems are also exacerbated by the weaknesses of other pillars. Insufficient independence of the **public administration** (resulting from the **executive branch's** excessive interference), and the lack of a clear separation between public administration and the ruling party, creates an uneven playing field during elections in Georgia, as the ruling party enjoys exclusive access to a variety of public resources. The lack of independent **media** and **business** has had a similar effect, providing the ruling party with considerable advantage in terms of access to private resources. The **electoral management body** has generally failed to create equal conditions for electoral competition. In addition, insufficient independence of **law enforcement agencies** from the country's political leadership means that they are sometimes used for promoting partisan interests, further undermining political competition.

The Georgian **media's** continued failure to properly inform the public on governance issues undermines the accountability of a number of state pillars such as the **executive**, the **legislature** and the **judiciary**.

### Discrepancies between Law and Practice

In several cases, the analysis revealed significant mismatch between law and practice, suggesting that some of the country's sound legal provisions are not implemented thoroughly and consistently.



As demonstrated in the chart above, the media, political parties, business and judiciary pillars show the greatest gap between law and practice, while the civil society, the law enforcement agencies, the legislature and the public administration also reveal notable discrepancies. Seven of Georgia's 12 NIS pillars got a total score of less than 50 for practice.

The access of political parties to resources is guaranteed in the law but the huge disparity between the ruling party and all other political groups in practice and the shortcomings of the electoral system significantly undermine political competition.

There are strong legal provisions regarding independence of business and media but the independence of these NIS pillars is not ensured adequately in practice. In case of business, the lack of a strong judiciary can be highlighted as a major factor. As for the media, while instances of blatant pressure and harassment on journalists are rare, the government is believed to have established control over the country's most influential media entities (TV channels with nationwide audience) through their takeover by government-friendly businessmen. The lack of media ownership transparency and editorial independence is therefore a matter of concern.

Parliament's independence is protected adequately in the law but (as noted in the preceding section) is undermined in practice by a lack of pluralism in the legislature and weakness of democratic governance inside political parties. The judiciary's legal framework has improved considerably in recent years but this progress is yet to be followed by comparable changes in practice. Both the legislature and the judiciary have strong legal powers in terms of executive branch oversight but have failed to utilize in practice due to their lack of independence.

### **Main Challenges for Coming Years**

As noted in the introduction to this chapter, the reforms implemented in Georgia since 2004 have strengthened Georgia's executive branch (including the law enforcement agencies) significantly and have dramatically increased its capacity to address various problems, including corruption. At the same time, other key government institutions – the legislature and the judiciary – have not seen comparable progress during these years and are presently considerably weaker than the executive branch. The non-governmental pillars of the National Integrity System also remain weak in Georgia and are currently incapable of performing their respective roles properly. All non-governmental pillars scored 25 for role, while all government pillars (except for the executive branch and law enforcement agencies) scored 50 or lower for this dimension. Strengthening these institutions will be a key challenge in the coming years if

integrity is to be protected adequately throughout the country's governance system.

Addressing current gaps between law and practices will be another major challenge. The existence of big differences between law and practice, in some cases, suggests weakness (or absence) of proper monitoring/accountability mechanisms. As far as the public sector is concerned, strengthening of the newly-established internal audit units of public agencies is of particular importance. The Civil Service Bureau can play an important role in terms of endorsing uniformity of rules and activities throughout the public sector and ensuring that the best practices adopted by some government agencies are shared with other parts of the public sector.

# VIII. Recommendations

Pillar	Legislature
Problem	<ul style="list-style-type: none"> <li>● Parliament is not independent from the executive branch and cannot exercise oversight effectively in practice</li> </ul>
Recommendation	<ul style="list-style-type: none"> <li>● In order to render parliament more independent, steps must be taken to ensure better representation of diverse political interests in the legislature. The current system of allocation of seats in parliamentary elections could be revised to attain this objective</li> <li>· Addressing imbalances and lack of transparency of campaign finance through legislative amendments will also allow be a step towards more pluralistic governance</li> </ul>

Pillar	Executive Branch
Problem	<ul style="list-style-type: none"> <li>● Executive branch is not held sufficiently accountable (mainly due to the weakness of parliament and judiciary)</li> </ul>
Recommendation	<ul style="list-style-type: none"> <li>● Addressing the weaknesses of parliament and the judiciary will help improve the accountability of the executive branch</li> </ul>

Pillar	Judiciary
Problem	<ul style="list-style-type: none"> <li>● Judiciary suffers from undue influence of the executive branch and law enforcement agencies</li> <li>● Judiciary is not sufficiently transparent</li> </ul>
Recommendation	<ul style="list-style-type: none"> <li>● Rules for the formation of the High Council of Justice could change: the chairperson of the Supreme Court would not have an exclusive right to nominate judiciary's representatives in the Council. Instead, members of the Conference of Judges would also have the right of nomination</li> </ul>

- Consent of the president's and parliament's representatives in the High Council of Justice should not be required for judicial appointments
- Posting of judicial decisions on court websites should become mandatory

Pillar	Public Administration
<p><b>Problem</b></p>	<ul style="list-style-type: none"> <li>● Public administration is not protected from political influence/interference in practice, which undermines the independence of civil servants</li> <li>● Transparency and integrity provisions are not applied consistently and thoroughly across the civil service</li> </ul>
<p><b>Recommendation</b></p>	<ul style="list-style-type: none"> <li>● Measures must be taken against the practice of arbitrary dismissal of civil servants, especially when the political leadership of any given public agency changes</li> <li>● The legal provisions concerning appointment of civil servants, as well as those concerning their dismissal during “reorganisation” of public agencies could be expanded and rendered more specific, in order to avoid abuse. Clear and uniform rules governing promotion and bonuses should be introduced.</li> <li>● The Civil Service Bureau’s powers and resources could be expanded, enabling it to provide training on transparency and integrity issues to civil servants and to monitor the implementation of the relevant rules</li> <li>● The Civil Service Bureau must endorse uniformity of rules and activities throughout the public sector and ensure that the best practices adopted by some government agencies are shared with other parts of the public sector</li> <li>● Uniformity of rules and practices throughout the public administration must be ensured. For example, minimum common standards must be established regarding the type of information that public agencies are required to release proactively. TI Georgia’s “Ten Open Data Guidelines” are one source of guidance on <i>how</i> public information should be released</li> <li>● The existing robust provisions on transparency and integrity must also apply to some local government</li> </ul>

representatives who appear to be exempt from these rules at present. Ambiguities regarding the application of existing integrity provisions to the Legal Entities of Public Law must be resolved

- Proper functioning of internal audit units (those that are responsible for the application of integrity rules under the law) must be ensured through capacity building

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Pillar	Law Enforcement Agencies
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- |         |   |
|---------|---|
| Problem | <ul style="list-style-type: none"> <li>● Law enforcement agencies are not sufficiently transparent</li> <li>● Law enforcement agencies are not held accountable in a consistent manner, especially when high-ranking officers are concerned or political interests are at stake</li> <li>● Law enforcement agencies sometimes suffer from partisan influence, resulting in selective prosecutions and execution of the law</li> </ul> |
|---------|---|

- |                |   |
|----------------|---|
| Recommendation | <ul style="list-style-type: none"> <li>● More extensive transparency provisions must be included in the laws governing the operation of the law enforcement agencies</li> <li>● Alleged offences involving law enforcement officers, especially high-ranking officers, must be investigated properly</li> </ul> |
|----------------|---|

Pillar	Chamber of Control
--------	--------------------

- |         |  |
|---------|--|
| Problem | <ul style="list-style-type: none"> <li>● The Chamber of Control still faces problems in terms of capacity, especially an insufficient number of auditors capable of conducting complex audits</li> </ul> |
|---------|--|

- |                |  |
|----------------|--|
| Recommendation | <ul style="list-style-type: none"> <li>● It is necessary to ensure that the Chamber of Control has the resources to recruit the necessary number of highly-qualified auditors</li> </ul> |
|----------------|--|

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Pillar	Electoral Management Body
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- |         |  |
|---------|--|
| Problem | <ul style="list-style-type: none"> <li>● The electoral administration is not sufficiently independent in practice</li> <li>● The electoral administration's accountability is not ensured in practice</li> <li>● The electoral administration cannot effectively regulate party (campaign) financing because of the lack of relevant legal powers</li> <li>● The electoral administration has failed to manage some aspects of the electoral process adequately (misuse of administrative resources, vote count and tabulation, handling of complaints)</li> </ul> |
|---------|--|

- Recommendation**
- Rules regarding the composition of electoral administration must be revised to ensure political impartiality and professionalism of the administration
  - It is necessary to ensure proper consideration of complaints and appeals against the electoral administration in courts
  - The political parties law and the electoral law could be revised to provide the Central Electoral Commission with more robust powers in terms of party finance regulation and monitoring
  - The legal provisions designed to prevent misuse of administrative resources must be strengthened
  - Hiring of electoral administration officials at the lower levels should be tied to knowledge of procedures via test-based performance measures

Pillar	Public Defender
<b>Problem</b>	<ul style="list-style-type: none"> <li>● The Public Defender does not receive adequate funding from the state and has to rely on donor support to run its office and meet its core obligations</li> <li>● The Public Defender's investigatory work is sometimes undermined by a lack of cooperation from other public agencies</li> </ul>
<b>Recommendation</b>	<ul style="list-style-type: none"> <li>● Annual allocations to the Public Defender's Office from the state budget must be revised in order to ensure that all operational costs are covered</li> <li>● Public officials must be sanctioned for the violation of the legal requirement to assist the Public Defender's investigations</li> </ul>

Pillar	Political Parties
<b>Problem</b>	<ul style="list-style-type: none"> <li>● Current distribution of resources between parties does not allow for effective competition and leads to a lack of pluralism in the political system</li> <li>● Financial transparency and accountability of political parties is not ensured in law or practice. Internal democratic governance is weak in political parties</li> </ul>
<b>Recommendation</b>	<ul style="list-style-type: none"> <li>● The government should consider the possibility of introducing a campaign spending cap in order to address the existing imbalances</li> <li>● Revising the current rules for the allocation of seats in parliament would also promote greater political competition and pluralism</li> </ul>

- As recommended for the Electoral Management Body, the political parties law and the electoral law could be revised to provide the Central Electoral Commission with more robust powers in terms of party finance regulation and monitoring
- Political parties must engage in comprehensive efforts to build grassroots structures and to ensure proper representation of broad interests in their leadership, platform and activities

Pillar	Media
<b>Problem</b>	<ul style="list-style-type: none"> <li>● The most influential media entities are not independent and show a strong bias in their reporting</li> <li>● Media ownership is not transparent in practice</li> <li>● Media is ineffective at exposing corruption and informing the public on governance issues</li> </ul>
<b>Recommendation</b>	<ul style="list-style-type: none"> <li>● The GNCC must monitor and ensure implementation of the Broadcasters' Code of Conduct, especially the provisions on editorial independence</li> <li>● Full implementation of the new legal provisions on ownership transparency must be ensured (possibly by GNCC)</li> <li>● Georgian Public Broadcaster must devote resources towards investigative programmes</li> <li>● Both government and foreign donors must assist the development of investigative journalism</li> <li>● The GNCC must not de-emphasize political content when issuing broadcasting licences</li> </ul>

Pillar	Civil Society
<b>Problem</b>	<ul style="list-style-type: none"> <li>● Civil society does not have diverse sources of funding and relies almost entirely on foreign donor support</li> <li>● Integrity and accountability is not ensured sufficiently throughout the civil sector.</li> <li>● Civil society is ineffective at holding government accountable and contributing to policy reform/ formulation</li> </ul>
<b>Recommendation</b>	<ul style="list-style-type: none"> <li>● Government must create more opportunities and mechanisms for relevant civil society organizations to be engaged in policy formulation; this would require publication or sharing of draft documents</li> </ul>

with sufficient periods of time for comment, and engagement of key groups earlier in the policy formulation period

- Government must consider possible expansion of current state funding opportunities for civil society organisations, including contracting CSOs in service provision agreements and exploring opportunities of public-private partnerships
- Tax legislation encouraging individual and corporate philanthropy should be further strengthened and extended
- Civil society organisations must improve their internal governance procedures and make these better known to their constituencies/target beneficiary groups
- Civil society organisations must improve their link with the larger public in order to be able to better represent broad societal interests in policy debates and to have a more legitimate claim to participation in policy formulation

Pillar	Business
<p><b>Problem</b></p>	<ul style="list-style-type: none"> <li>● Business is not protected sufficiently from undue interference in practice.</li> <li>● Business is not involved in the formulation of anti-corruption policies and has a weak link with civil society</li> </ul>
<p><b>Recommendation</b></p>	<ul style="list-style-type: none"> <li>● Independence of the judiciary must be strengthened (see the recommendations above)</li> <li>● New legislative provisions (including those in the new Tax Code) designed to protect business from undue interference must be applied consistently in practice</li> <li>● Government must seek input from business during the formulation of anti-corruption policies</li> <li>● Businesses and civil society organisations must develop partnerships through joint projects addressing common areas of concern</li> </ul>

# Appendix 1

## NIS Assessment Scores

	Final Score	Law score	Practice score	Law vs. aggregate	Capacity						Capacity Avg.	Governance						Governance Avg.	Role						Role Avg	Role Descriptions	
					Resources			Independence				Transparency	Accountability			Integrity			Role 1		Role 2		Role 3				
					Law	Practice	Law	Law	Practice	Law			Practice	Law	Practice	Law	Practice		Law	Practice	Law	Practice	Law	Practice			
Legislature	54.2	64.3	46.4	17.9	100	50	75	25	62.5	75	75	50	50	75	50	62.5	25	50	—	—	—	37.5	1- Executive oversight 2- Legal reform 3-				
Executive (President and Cabinet of Ministers)	69.4	70.8	60.7	10.1	—	75	100	100	91.7	50	75	25	75	50	54.2	50	50	75	—	—	—	62.5	1- Public sector management 2- Legal system 3-				
Judiciary	43.8	62.5	33.3	29.2	75	50	75	25	56.3	50	25	75	25	75	50	50	25	—	—	—	2.5	1- Executive oversight 2- 3-					
Public Administration	50.0	65.0	46.9	18.1	—	50	50	25	41.7	75	50	75	75	75	50	66.7	25	—	50	50	41.7	1- Public education 2- Cooperation with public institutions, CSOs and private agencies in preventing/addressing corruption 3- Reduce corruption Risk by Safeguarding Integrity in Public Procurement					
Law Enforcement Agencies	68.1	75.0	54.2	20.8	—	100	75	50	75	50	25	75	25	100	50	54.2	75	—	—	—	7.5	1- Corruption prosecution 2- 3-					
Electoral Management Body	47.2	54.2	42.9	11.3	—	50	75	25	50	75	75	50	25	50	50	54.2	25	—	—	—	37.5	1- Campaign regulation 2- Election administration 3-					
Chamber of Control	62.8	65.6	57.1	8.5	50	75	50	75	58.3	75	75	75	75	100	can't score	80	50	50	50	50	50	50	1- Effective financial audits 2- Detecting and sanctioning misbehaviour 3- Improving financial management				
Public Defender	63.9	66.7	62.5	4.2	—	50	75	75	66.7	75	75	75	75	75	can't score	75	50	—	—	—	50	1- Investigation 2- Promoting good practice 3-					
Political Parties	47.9	75.0	35.7	39.3	100	25	100	50	68.8	75	50	50	50	50	25	50	25	—	25	—	—	2.5	1- Interest aggregation and representation 2- Anti-corruption commitment 3-				
Media	45.8	80.0	28.1	51.9	100	50	75	25	62.5	100	25	75	25	50	25	50	25	—	25	—	25	2.5	1- Investigate and expose cases of corruption 2- Inform public on corruption and its impact 3- Inform public on governance issues				
Civil Society	40.3	58.3	40.0	18.3	75	25	75	75	62.5	—	50	—	25	25	25	33.3	25	—	25	—	—	2.5	1- Hold government accountable 2- Policy reform 3-				
Business	50.7	75.0	50.0	25.0	75	50	100	50	68.8	100	50	50	50	50	50	58.3	25	—	25	—	—	2.5	1- Anti-corruption policy engagement 2- Support engagement with civil society 3-				

# Appendix 2

## NIS Freedom of information Field Tests

Chapter Three of the General Administrative Code of Georgia establishes the rules for citizens' access to public information. According to the law, information requested must be made available by public agencies to the requestors within a maximum period of 10 working days.

To measure the transparency of public NIS institutions, TI Georgia organised a series of field tests. The results are incorporated into the *transparency (practice)* indicator questions for each relevant pillar. According to these tests, the most responsive NIS institutions were the Chamber of Control, Central Election Commission and the Supreme Court. By contrast, the executive and law enforcement pillars were the least responsive. There were no differences observed depending on who submitted the request, or whether it was a standard or difficult request. Most institutions responded within the 10 days required by law.

### Methodology

To test the transparency of the public NIS institutions in practice, 52 Freedom of Information (FOI) requests were sent to 13 different public institutions representing the seven public sector NIS pillars.<sup>1</sup> The testing measured institutional responsiveness across two variables: type of requestor and type of request. Testing was conducted in two rounds in order to smooth the results across time. Some public NIS pillars span a number of different agencies and public bodies, while others are smaller. In order to gain a more representative sample of the larger pillars, TI Georgia tested a number of sub-agencies within them. The 13 public bodies tested are:

**Legislature** – four sub-institutions:

- Legal Issues Committee
- Procedural Issues and Rules Committee
- Budget and Finance Committee
- Office of the Chief of Staff

<sup>1</sup> Only NIS pillars representing public agencies were tested, since non-public agencies such as the media, business and civil society are not subject to the FOI law.

<sup>2</sup> However location cannot be considered a third analytical variable (as type of requestor and type of request) because the majority of requestors were from Tbilisi and location was not tested equally across institution and time.

<sup>3</sup> Examples of standard requests include: to the Ministry of Justice, "What are the salaries and bonuses of the minister, the deputy minister, the head of department and the lead specialists?"; to the Legal Issues Committee, "What is the procedure for attending a Committee session? How can I find out when the next Committee session will be held and what issues will be discussed? How can I submit my comments to the Committee session?" to the Central Election Commission, "Request for annual (2008) political party finance reports".

<sup>4</sup> Examples of difficult requests include: to the Ministry of Finance, "Procurements breakdown (2008) according to single-source and open tenders"; to the Ministry of Defense, "List of vehicles purchased in 2007 and 2008 by MoD and the amount of money spent on these vehicles"; to the Prosecutor's Office, "Breakdown of plea bargains in 2009 according to the number of people, amount of money paid by each and crimes committed"; to the Office of the Public Defender, "Copies of recommendations that the Ombudsman's office has sent to government bodies in 2008 and 2009".

<sup>5</sup> Each of the eight response codes falls into two categories: satisfactory and unsatisfactory. Satisfactory responses include codes 1 and 2; plus three of the response code "5 – written refusal". In the latter case, two difficult requests to the Ombudsman's office and one to the Ministry of Justice were coded as "satisfactory" because the institutions responded in a timely manner, explaining that the questions asked required additional research beyond the means of the institution. TI Georgia found these explanations acceptable and did not want to code them as unsatisfactory. Finally, in one instance the requestor was unable to submit the request due to problems in the postal system. The case is coded as a satisfactory outcome in order not to unfairly punish the concerned institution (Central Election Commission).

<sup>6</sup> Unsatisfactory outcomes included mute refusals (no response to the request at all), oral refusals, written refusals without an acceptable reason (for example, reference to a law which is not applicable), incorrect referrals and incomplete answers.

**Executive** – three sub-institutions:

- Ministry of Finance
- Ministry of Defence
- Ministry of Justice

**Law Enforcement** – two sub-institutions:

- Prosecutor's Office
- Ministry of Internal Affairs

To test the **Judiciary**, requests were sent to the Supreme Court; the **Central Election Commission**, **Chamber of Control and Public Defender** were directly tested.

The field tests measured institutional responsiveness across two variables: type of requestor, and type of request. In order to test whether access to information is applied equally and without discrimination, requests were submitted by four different types of requestors, selected from both Tbilisi and regional city centres of Georgia.<sup>2</sup>

1. Journalist
2. NGO representative
3. Non-affiliated citizen
4. Non-affiliated citizen, ethnic minority (as indicated by surname)

Each institution also received a standard and a difficult request. A standard request is defined as a request for information that is expected to be readily and immediately available within the institution concerned (e.g. a financial report, budget, annual activity report or information on contracts).<sup>3</sup> A difficult request is assumed to require some additional research or work with data on the part of the institution in order to provide an answer.<sup>4</sup>

Two rounds of field tests were conducted in the spring of 2010. In each round, each institution received one standard and one difficult request so that in total, each institution received a total of four requests. Across the two rounds of testing each institution received one request from each type of requestor.

## Results

The table below summarizes the results of the field tests for each pillar. In 79 percent of cases, public agencies provided satisfactory responses to the FOI requests<sup>5</sup> and unsatisfactory responses to 21 percent of requests.<sup>6</sup>

Figure 1: Summary of results

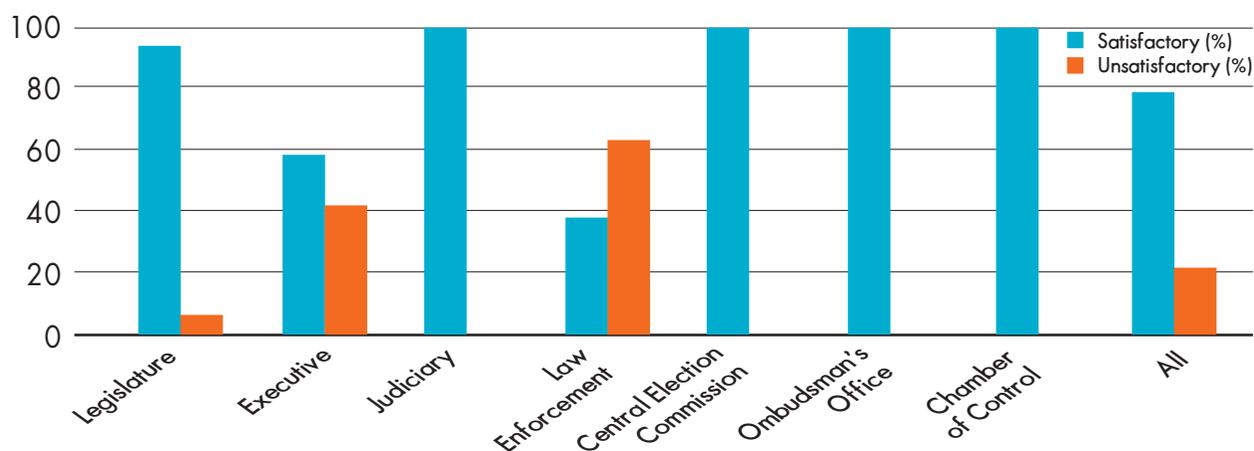
	Legislative	Executive	Judiciary	Law Enforcement	Central Election Commission	Public Defender	Chamber of Control	Total	
RESPONSE CODE	Info Received	14	6	3	3	3	2	4	35 (65%)
	Transferred or Referred	1	1						2 (4%)
	Incomplete Answer		1	1					2 (4%)
	Oral Refusal				1				1 (2%)
	Written Refusal		2				2		4 (8%)
	Mute Refusal	1	2		4				7 (15%)
	Unable to submit					1			1 (2%)
	Refusal to accept request								0 (0%)
	<b>Total</b>	<b>16 (31%)</b>	<b>12 (23%)</b>	<b>4 (8%)</b>	<b>8 (15%)</b>	<b>4 (8%)</b>	<b>4 (8%)</b>	<b>4 (98%)</b>	<b>52 (100%)</b>

The most responsive institutions were the Chamber of Control, Central Election Commission and the Supreme Court, all of which responded fully to every request submitted. The Parliament also did very well, with only one unsatisfactory response out of 16 requests.

By contrast, the executive and law enforcement pillars were the least responsive. The law enforcement bodies (Prosecutor's Office and Ministry of Internal Affairs) responded with full answers to only three questions out of eight. The Prosecutor's Office was one of the least responsive sub-institutions, responding to only one request out of four. Of the five law enforcement requests that were not answered, only one was refused in written form, while four were "mutely refused" (no response at all).

The number of mute refusals highlights the lack of transparency among law enforcement agencies. A mute refusal, the worst response type, was given in three out of four requests submitted to the Prosecutor's Office and in one out of four requests submitted to the Ministry of Internal Affairs. No other NIS institution had a higher occurrence of mute refusals than the law enforcement pillar. Following close behind is the Ministry of Defence (tested under the Executive pillar), which gave two mute refusals out of four requests.

Figure 2: Responsiveness by NIS Institution



### Questions about the bonuses of senior politicians

Thirty percent of the mute, oral or written refusals (five out of 13) were requests for information about the annual bonuses paid to senior staff in executive agencies (Ministries of Defence, Finance and Justice) and in the Law Enforcement pillar (Ministry of Interior and Prosecutor’s Office). Only two of the five requests for bonuses were answered at all (three were mute refusals) and neither of the responses provided the relevant information.<sup>7</sup> It is generally assumed that bonuses make up a substantial portion of senior official’s salaries, but this information is not publicly available. In refusing to provide bonuses information, two institutions referred to Georgia’s constitution, which upholds protection of privacy and individual information.<sup>8</sup> However, the General Administrative Code of Georgia<sup>9</sup> states that “Personal data, **except for those of an official**, may not be accessible for anyone without the consent of the person concerned or reasoned decision of a court, as provided in Article 28 of this Code [emphasis added]”. Subsequent to these field tests, TI Georgia further investigated the issue of bonuses and was able to accurately estimate the bonuses of senior officials by subtracting their salary according to the law from their declared income.<sup>10</sup> In addition, the Institute for Development of Freedom of Information has received information on bonuses from some government agencies such as the Ministry of Environment.

### Responsiveness by type of requestor

TI Georgia worked with four different types of requestors in order to measure whether the responsiveness of state institutions would vary according to the source of the information request. We find that the type of requestor has very little effect on the chances of a receiving an adequate response. The results are summarized in the table below:

Figure 3: Responsiveness by type of requestor

<i>Requestor type</i>	Total number of requests submitted	Satisfactory outcomes	Satisfactory outcomes (%)	Unsatisfactory outcomes	Unsatisfactory outcomes (%)
NGO	12	10	83.3	2	16.7
Journalist	13	10	76.9	3	23.1
Ethnic Minority	14	11	78.6	3	21.4
Unaffiliated Citizen	13	10	76.9	3	23.1

### Responsiveness by type of request

No difference in responsiveness was seen between standard and difficult requests. Nineteen standard requests were answered or transferred, while 18 difficult requests were correctly answered or transferred. The difference is not significant enough to conclude with any certainty that public agencies are more likely to respond to “simple” rather than “complex” types of requests.

<sup>7</sup> All the requests for information about bonuses were coded “unsatisfactory”.

<sup>8</sup> Article 42 (2).

<sup>9</sup> Article 44 (1).

<sup>10</sup> Ryan, Caitlin and Rusudan Khotivari, “Tracking top-level ministry official’s income and bonuses”, *Transparency International Georgia Blog*, 1 February 2011.

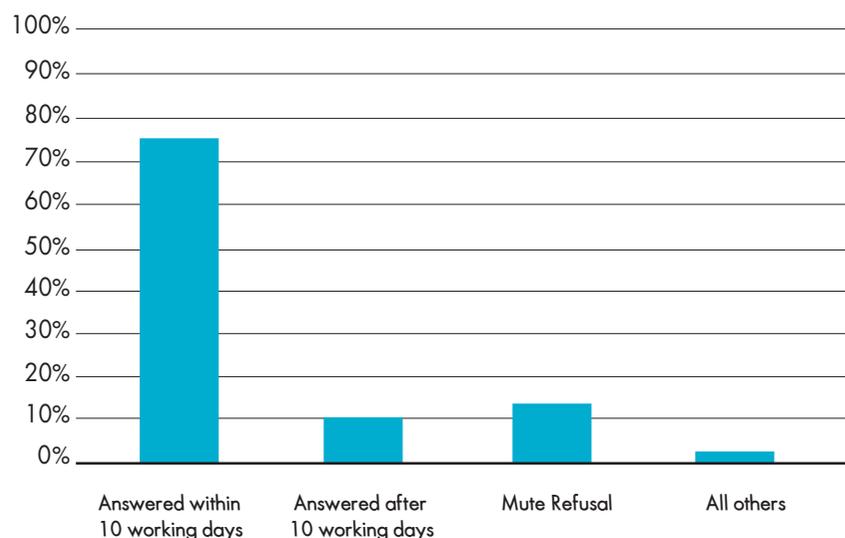
Figure 4: Responsiveness by type of request

	Standard Request	Difficult Request
Information Received	18	17
Transferred or Referred	1	1
Incomplete Answer	1	1
Oral Refusal	0	1
Written Refusal	1	3
Mute Refusal	4	3
Unable to submit	1	0
Refusal to accept request	0	0
<b>Total</b>	<b>26</b>	<b>26</b>

### Timeliness of responses

In most cases the response was provided within 10 working days (as required by the General Administrative Code of Georgia). According to the law, if the entire 10 days' period is needed to answer the request, the public institution must inform the requestor immediately.<sup>11</sup> This provision of the law was mostly not adhered to. There was only one case when the Central Election Commission actually notified the requestor that the maximum period of 10 days would be needed for the response.

Figure 5: Institutions' response time



<sup>11</sup> Article 40 (2) of the General Administrative Code of Georgia

# Appendix 3

## Stakeholder Consultation Workshop

### Georgia's National Integrity System Assessment – Draft Report

Radisson Blu Iveria  
Monday, 30 May 2011, 10:30-16:45

The NIS is a qualitative study that for the first time assesses the role and strength of 12 key institutions in fighting and preventing corruption in Georgia.

Workshop Goals:

- Build a common understanding of Georgia's "national integrity system" and its current state
- Seek feedback on the assessment before final publication
- Refine and prioritize recommendations for future policy reforms

#### Agenda

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**10:00** Coffee and registration

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**10:30** Welcome and Introductions (Ballroom, first floor)

Eka Gigauri, Executive Director, Transparency International Georgia  
Vakhtang Lezhava, Chief Advisor to the Prime Minister

*In English with simultaneous translation*

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**11:00** Goals of the workshop; Background and methodology  
(Ballroom, first floor)

Caitlin Ryan, Senior Analyst and Program Manager,  
Transparency International Georgia

**NIS Conclusions and Recommendations**

Ekle Urushadze, NIS Lead Researcher, Transparency International Georgia

**Q&A**

Eka Gigauri, Executive Director, Transparency International Georgia

*In English with simultaneous translation*

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**12:45** Participants invited to lunch, Filini Restaurant (second floor of Radisson)

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**14:00** Feedback groups (individual meeting rooms, first floor of Radisson):

**1. Core governance institutions**

Facilitator: Ketevan Vashakidze, Eurasia Partnership Foundation

**Room 3**

Legislature ; Executive; Judiciary

**2. Public agencies**

Facilitator: Tamuna Karosanidze, TI Georgia board member

**Room 5**

Public Administration; Law Enforcement; Electoral Management

Public Defender; Chamber of Control

**3. Non-governmental actors**

Facilitator: Giorgi Gogia, Human Rights Watch

**Room 6**

Political Parties; Media; Civil Society; Business

*In Georgian; private translation into English provided as needed*

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**15:30** Coffee break

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**16:00-16:45** Reporting back and final discussion (Ballroom, first floor)

Eka Gigauri, Executive Director, Transparency International Georgia

*In English with simultaneous translation*

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## Background and Introduction to the Workshop

Thank you for joining our NIS Stakeholder Workshop. The NIS assessment is a major project for TI-Georgia and the stakeholder workshop is an important part of this process. We will share with you the research to date, ask you to comment on the findings of the research team, and set priorities based on the weaknesses that have been found in Georgia's national integrity system.

### Working language

Most presentations of the event will be English, with simultaneous translation into Georgian. In the afternoon Feedback Groups, facilitators will make language decisions based on the majority of speakers and TI Georgia's staff will provide private translation for those who need it.

Due to time constraints, we were only able to translate a summary of each chapter into Georgian, but we have also made the Conclusions and Recommendations section available in Georgian language. The final publication will be provided in both languages.

### Preparatory reading and expectations

English-language drafts of the core NIS chapters, plus the Conclusions and Recommendations section, have been made available via our website to all participants (<http://transparency.ge/en/nis-chapters-stakeholder-workshop>). A summary of each chapter and a full version of the Conclusions and Recommendations is available in Georgian.

Participants are welcome to comment on any pillar at the workshop, but you are not expected to be an expert in every area. We have invited a key set of individuals representing both relevant individuals within each institution, as well as external experts. It would be helpful if you could read the draft text of the pillar(s) in which you feel you are most expert prior to the workshop, and join the Feedback Group in which you feel you have the strongest knowledge.

#### Discussion points for Feedback Groups

The Feedback Groups are asked to comment on the following areas for each pillar:

1. Is there any substantive or important information for this pillar that has been missed by the researchers?
2. Are there additional weaknesses or red flags for this pillar that need to be added to the list?
3. Is the aggregated score for this pillar significantly wrong, and if so why?
4. Are the preliminary recommendations appropriate and feasible? Which ones are considered a priority by participants?

#### About the National Integrity System Assessment

The National Integrity System (NIS) assessment is an approach developed by Transparency International and applied to date in over one hundred countries. Assessments were recently published for Ireland, Ukraine and the UK, among other countries and assessments coming out for Armenia, Sri Lanka and 25 European nations coming out in 2011. Further details are available at: [http://www.transparency.org/policy\\_research/nis](http://www.transparency.org/policy_research/nis)

The assessment follows a predefined methodology and research framework. The study assesses the robustness and effectiveness of a country's institutions in 12 key areas, described as 'pillars', that are bulwarks against corruption. 4

#### A note on the scoring system

The NIS is effectively a qualitative study, comprising a survey of key institutions and whether they are fit-for-purpose in safeguarding national integrity. However, each pillar is also given a score so that it is possible to make a relative comparison between pillars. The sub-sections for each pillar are scored out of 100 in increments of 25 (e.g. 0, 25, 50, etc) with an assessment both for the law and practice. A final score is then aggregated for each pillar. We can also look at the gaps in law and practice.

#### Status of the draft report

Please note that the report distributed to participants is still in draft form. It will be revised in the light of feedback from this workshop and other sources, including an external academic review, and thoroughly edited before publication in July 2011.

This project is funded by the UK's Department for International Development, Global Transparency Fund.