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Independent Anti-Corruption Agency – Georgia and International Standards

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Abbreviations

IDFI	Institute for Development of Freedom of Information
OECD-ACN	The Organization for Economic Co-operation and Development Anti-Corruption Network
GRECO	The Group of States Against Corruption
MIA	Ministry of Internal Affairs of Georgia
MoJ	Ministry of Justice of Georgia
MoF	Ministry of Finance of Georgia
CSB	Civil Service Bureau
SAO	State Audit Office
SSS	State Security Service of Georgia
PSG	Prosecution Service of Georgia
ACC	Anti-Corruption Council
CC	The Criminal Code of Georgia
PACE	The Parliamentary Assembly of the Council of Europe
UNCAC	The United Nations Convention Against Corruption
AA	Association Agreement between Georgia and the EU
CPI	Corruption Perception Index

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Introduction

Georgia has achieved significant progress in combating corruption over the last two decades. According to the Open Governance and Corruption Perception indexes, it has become one of the leading countries in the region and is often indicated as an example of good practice on various forums or conferences. Georgia has an ambition to become an exemplary country in combating corruption not only regionally but also globally.

Improvement of mechanisms for preventing and combating corruption is all the more important given the fact that Georgia is implementing the Association Agenda with EU,¹) and in 2018 will become Chair of the Open Government Partnership (OGP), which prioritizes anti-corruption activities in one of its thematic directions.

Eradication of corruption requires constant and progressive work. Despite successful steps taken to this end, high level and complex corruption still represent a significant challenge for Georgia. This issue is highlighted in the [OECD-ACN](#) and [GRECO](#) reports. The last round monitoring report of OECD-ACN states that:

“Georgia is now at the next stage of fighting corruption and, as many other countries, may be facing a new challenge of high level and complex corruption. Georgia is in a strong position to address this challenge, but to be successful it should not wait in complacency, but be a creative and active anti-corruption fighter, as it has been so far.”

In the recent Georgian history, no cases of high level corruption have been identified by the acting government. Neither do the investigative authorities take appropriate measures to respond to cases identified by other actors (journalists, CSOs). High-level corruption crimes are revealed only after the governments are changed. However, procedural violations during the investigations of these crimes raise concerns of political motivation. These practices negatively influence public trust towards government anti-corruption activities.

Every international report discussed in this policy document highlights gaps in key institutions tasked with combating corruption: State Security Service (SSS), Prosecution Service of Georgia (PSG), Ministry of Justice (MoJ). These gaps are related to fundamental international principles, such as independence, public trust, transparency and accountability of state institutions fighting corruption. If Georgia fails to eliminate these shortfalls, its important achievements will be damaged, and its existing anti-corruption system will weaken, which will ultimately increase corruption and damage the country’s international position.

The independence of state institutions tasked with combating corruption is one of the most important standards set by international agreements, conventions, guidelines, and recommendations. Independence of such institutions guarantees efficiency of combating corruption, accountability and high level of transparency, resulting in high level public trust towards them. Lithuania, presented as best practice in this policy document, is a clear example of this. Our analysis of the Georgian practice reveals that lack of independence is the biggest problem of the current system. The latest amendment implemented by the Government of Georgia in 2015, transferring anti-corruption functions to SSS, has

¹ In the preamble of the Association Agreement, the European Union recognizes Georgia’s success in combating corruption and promoting open governance, but nevertheless sets combating corruption as a commitment for Georgia. https://eeas.europa.eu/sites/eeas/files/association_agreement.pdf

been evaluated as a potentially dangerous reform. This suggests that the most efficient way to address existing gaps in the Georgian system is to establish an independent Anti-Corruption Agency.

The purpose of this policy document is to demonstrate the necessity of establishing an independent Anti-Corruption Agency for eradicating the shortfalls of Georgia's existing anti-corruption system. This initiative was initially raised by Transparency International Georgia in 2014.² The organization developed and presented a draft law that envisioned the creation of an independent Anti-Corruption Agency.³ However, the Government of Georgia took a different path and transferred the function of combating corruption from the Ministry of Internal Affairs to the State Security Service (SSS). The analysis presented in this document also reveals the ineffectiveness of this decision.

The policy document starts with a review of functions held by state institutions charged with combating corruption in Georgia, followed by an analysis of challenges in relation to international standards and recommendations given to Georgia by international organizations. The document then presents a review of international conventions and recommendations given to Georgia by international organizations. The final part of the document describes the Lithuanian model as a best practice, followed by IDFI's recommendations.

1. Specialized Anti-Corruption Institutions in Georgia

The corruption prevention and combating functions are divided among various institutions in Georgia and their powers and spheres of operation are not always clearly separated. Combating corruption is not the major function of any one institution. Instead, it is one of many.

The functions of prevention, detection and investigation of corruption crimes are divided among the following institutions:

- Anti-Corruption Agency of SSS
- Investigative Unit of the Chief Prosecutor's Office (the Division of Criminal Prosecution of Corruption Crimes)
- Investigative Service of the Ministry of Finance
- Investigative Department of the Ministry of Corrections
- General Inspection Units of the Ministries of Defense and Justice
- State Audit Office (SAO)

The PSG has the authority to investigate all corruption crimes, unless committed by the Ministry of Justice officials or detected by SSS or MoF.⁴ The State Audit Office monitors budgetary funds as well as political parties and election campaigns. Upon detection of signs of a criminal offence, SAO sends the case to the PSG.⁵

² Transparency International Georgia, Challenges of Georgia's Anti-Corruption Policy, [webpage, 2014](#)

³ Transparency International Georgia, Draft Law On Conflict of Interest and Corruption in Public Service, [webpage, 2016](#)

⁴ OECD-ACN Fourth Round of Monitoring [Report](#) – Georgia, 2016, 3.4. Anti-Corruption Criminal Justice Bodies, Specialised Anti-Corruption Investigative Agencies, pg. 126-127

⁵ [Law](#) of Georgia on State Audit Office, 22/06/2012, Article 6

The Anti-Corruption Agency under the SSS was originally part of the Ministry of Internal Affairs (MIA) until 2015. In August 2015, the Agency was transferred to the newly established SSS.⁶ Several justifications were offered for this reform. First, there was a need to remove excessive powers from the MIA and depoliticize its activities. Second, the transfer of the Agency to the SSS was also explained by the fact that corruption is considered to be a national security issue. Third, the head of the State Security Service would have a higher level of independence compared to a minister, since he/she is appointed by the Parliament for a 6 year term.⁷

The Anti-Corruption Agency of the SSS has the authority to investigate the following corruption crimes under the Criminal Code of Georgia⁸ : Bribery of Voters; Abuse of Functions; Abuse of Position; Illicit Involvement in Commerce; Active Bribery; Passive Bribery; Trading in Influence; Accepting Unlawful Gifts; Forgery in Public Office. The Investigation Service of the MoF has the authority to investigate: abuse of power in the private sector, bribery in the private sector, misuse and embezzlement committed through the abuse of position. The General Inspection Unit of the MoJ has the authority to investigate corruption offences committed by Ministry employees (except for prosecutors).⁹

The role of coordinating all these different anti-corruption functions was given to the Inter-Agency Coordination Council to Combat Corruption (ACC - Anti-Corruption Council), which was set up in 2008. The members of the ACC are heads of state institutions, non-governmental and international organizations. The Analytical Department of the MoJ serves as the Secretariat of the Anti-Corruption Council.

The ACC coordinates anti-corruption policy, elaborates national anti-corruption strategy documents, monitors and evaluates them, considers recommendations of international and local organizations in the processes of elaboration and implementation of strategic documents, coordinates inter-agency activities in the process of implementation of strategy documents, and supports the implementation of recommendations given by international organizations.¹⁰

Publishing and monitoring of public official asset declarations is another important component of the anti-corruption system. This function is performed by the Civil Service Bureau. CSB has started monitoring the content of asset declarations only recently, since January, 2017, and was also given the authority to impose fines for violations. Upon detecting signs of a crime, the CSB sends the declaration in question and related materials to law enforcement agencies for further investigation.¹¹

Finally, whistleblower protection is also an important mechanism for preventing corruption in the public service. The disclosure of information by whistleblowing is possible through internal and external sources. Disclosure through an internal source means informing, for example, the internal control unit, investigator, prosecutor and/or public defender, while disclosure through an external source means

⁶ [Law](#) on State Security Service of Georgia, 08/07/2015

⁷ OECD-ACN Fourth Round of Monitoring [Report](#) – Georgia, 2016, 3.4. Anti-Corruption Criminal Justice Bodies, Specialised Anti-Corruption Investigative Agencies, para. 2, pg. 128

⁸ Criminal [Code](#) of Georgia, 22/07/1999

⁹ OECD-ACN Fourth Round of Monitoring [Report](#) – Georgia, 2016, 3.4. Anti-Corruption Criminal Justice Bodies, Specialised Anti-Corruption Investigative Agencies, para. 1,3-4, pg. 128

¹⁰ The [Ordinance](#) of Government of Georgia #390 on Approval of Composition and Statute of Inter-Agency Coordination Council for Combating Corruption, 30/12/2013

¹¹ The [Ordinance](#) of the Government of Georgia #81 on Approval of the Instruction of Official's Asset Declaration Monitoring. Article 21

informing civil society or mass media. Disclosure may be made orally or through a special website – mkhileba.gov.ge.¹²

Despite the established system and awareness campaign conducted by the CSB in 2015 (training for 363 public servants) the number of disclosures and response to them remains a challenge. The final monitoring report of the OECD-ACN states that between December, 2015 and August, 2016 only 8 cases of whistleblowing were registered on the website. Information about the results of these cases was not available.¹³

2. Gaps in the Practice of Combating Corruption in Georgia

The UN Convention Against Corruption,¹⁴ being the key international anti-corruption document, sets the following requirements for state institutions tasked with combating corruption:

1. Independence and freedom from political influence
2. Ensuring specialized personnel and material resources
3. Public trust (access to information, openness)

The following is an analysis of the work performed by the SSS, PSG and ACC considering the above requirements and other international recommendations.

2.1. State Security Service

One of the justifications offered by the Government of Georgia for entrusting the anti-corruption function to the SSS was that corruption was an issue of state security. The Parliamentary Assembly of the Council of Europe (PACE) found such an approach to be potentially dangerous back in 1999, when it raised concern on the fact that states often put the interests of what they perceive to be those of national security above individual rights.¹⁵

The PACE resolution specifies that *“the risk of abuse of powers by internal security services, and thus the risk of serious human rights violations, rises when internal security services are organised in a specific fashion, when they wield certain powers such as preventive and enforcement methods which involve forcible means (for example the power to search private property, run criminal investigations, arrest and detain)”*. Therefore, PACE recommends that internal security services should not be allowed to run criminal investigations, arrest or detain people, nor should they be involved in the fight against organized crime.¹⁶ The SSS possesses these exact authorities.¹⁷ Guidelines of PACE recommendations emphasize that the sole task of internal security services must be to protect national security.¹⁸

¹² [Law](#) of Georgia on Conflict of Interest and Corruption in Public Institutions, 1997, Chapter V¹

¹³ OECD-ACN Fourth Round of Monitoring [Report](#) – Georgia, 2016, Reporting and whistle-blower protection, pg. 37

¹⁴ The United Nations [Convention](#) Against Corruption

¹⁵ Recommendation of the Parliamentary Assembly of the Council of Europe 1402 (1999) on the Control of Internal Security Services in the Council of Europe Member States, para. 2-3

¹⁶ *Ibid.*, para. 5-6

¹⁷ The [Law](#) on State Security Service of Georgia, 2015, Article 12, para. 2

¹⁸ *Supra* note 14, guidelines A. 2.

The last monitoring report of OECD-ACN assessed the placement of the Anti-Corruption Agency within the SSS as a potentially dangerous reform.¹⁹ Despite the explanation provided by the Government of Georgia that the Council of Europe standards were fully implemented in the Georgian legislation on SSS, OECD-ACN nevertheless recommended removing anticorruption-investigative authority from the SSS and the PSG.

The ACN report also highlights challenges related to the transparency of SSS.²⁰ The function of combating corruption is, in essence, incompatible with the secret nature of SSS's work and endangers the highly important standard of transparency. For example, despite the fact that the Security Service is accountable to the Parliament, the hearing of its activity report for 2016 took place during a closed session.²¹ The justification for closing the session was the secret activities of the SSS.

The public was not given the opportunity to listen to the presentation of the head of SSS and take part in the Q&A session, including for the part about the Secret Service's anti-corruption activities. The report is available on the SSS [website](#), however, the information it includes is scarce,²² with the part about anti-corruption activities being only two pages long. Such practice damages the level of public trust towards this state institution.

The SSS does not plan to implement effective measures for ensuring independence and accountability in the future either. This assumption is based on the new Anti-Corruption Action Plan for 2017-2018 that includes only three activities for the Anti-Corruption Agency, none of which envision the implementation of the OECD-ACN recommendation on removing investigative functions from the SSS. Activities that are included in the Action Plan involve processing and disclosure of statistics on corruption crimes, professional development of staff members, and trainings (for a minimum of 3 employees) on media management, effective communication and public relations.

Official statistics also suggest that the decision to transfer the Anti-Corruption Agency from the MIA to the SSS in 2015 did not improve its effectiveness in solving anti-corruption related crimes (see Figure #1). The SSS is responsible for combating a variety of corruption related crimes, which include crimes to which public officials tend to be more vulnerable to (the so-called high-level corruption cases), such as: abuse of official powers, exceeding official powers, and passive bribery²³.

The situation is particularly alarming in case of exceeding of official powers. While the total number of registered crimes per year rose from 248 in 2013 to 290 in 2016, the number of solved cases decreased from 13 to 4 over the same period.

Similarly, there was no marked improvement in solving crimes of abuse of official power. Even though the number of registered crimes decreased significantly in 2013-2016, the share of solved crimes increased from 12% to only 14%. In case of passive bribery, the share of solved crimes actually decreased

¹⁹ "...in the monitoring team's opinion, placement of an anti-corruption agency within the Security Service is dubious. According to the Council of Europe standards, internal security services should not be allowed to run criminal investigations. Civil society representatives expressed concern that the work of the SSS is not transparent." OECD-ACN Fourth Round of Monitoring [Report](#) – Georgia, 2016

²⁰ OECD-ACN Fourth Round of Monitoring [Report](#) – Georgia, 2016, 3.4. Anti-Corruption Criminal Justice Bodies, Conclusions, New recommendation 21, part 1, pg. 129

²¹ The activity report of the SSS [delivered](#) on closed session of the Parliament, Radio Liberty

²² For example, the report gives the statistics of the approved and rejected freedom of information requests; however, the reasons for rejecting the requests is impossible to determine.

²³ Active bribery – a person giving a bribe to a public servant; passive bribery – a public servant receiving a bribe

to 36% in 2016, from a relatively high rate of more than 50% in the previous three years. Equipping the SSS with anti-corruption authority in 2015 was unable to positively influence any of these trends.

Figure #1 – Corruption Related Crimes Registered and Solved by All Investigative Agencies of Georgia (2013-2016)

Article of the Criminal Code	2013		2014		2015		2016	
	Registered	Solved	Registered	Solved	Registered	Solved	Registered	Solved
Abuse of official powers (CC 332 A.)	261	31	102	21	63	7	43	6
Exceeding official powers (CC 333 A.)	248	13	163	9	289	7	290	4
Illegal participation in entrepreneurial activities (CC 337 A.)	2	2	1	1	0	0	0	0
Passive bribery (CC 338 A.)	83	58	83	48	126	70	72	26
Active bribery (CC 339 ო.)	14	9	5	5	7	1	16	6
Influence peddling (CC 339 ¹ A.)	2	1	4	3	2	2	1	0
Accepting gifts prohibited by law (CC 340 A.)	0	0	0	0	0	0	1	0
Forgery by an official (CC 341 A.)	51	35	35	24	42	25	20	6
Neglect of official duty (CC 341 A.)	75	12	34	13	62	18	57	12
Violations of internal regulations of the Special Penitentiary Service committed by their employees or persons equal to them (CC 342 ¹ A.)	1	1	0	0	0	0	1	1

Source: Information-Analytical Department of Ministry of Internal Affairs – Public information requested by IDFI for this policy document.²⁴

Finally, also a problem is the lack of public and parliamentary oversight on the secret surveillance conducted by the SSS. The current system does not eliminate the risks of illegal secret state surveillance, since the SSS still possesses technical capacity to carry out surveillance bypassing the judiciary and the Personal Data Protection Inspector. As a result, there is public perception that law enforcement agencies unlawfully use their technical capabilities to carry out secret surveillance.²⁵

Moreover, official statistics on secret investigations reveal that the highest number of motions for conducting surveillance registered in Georgian courts is related to corruption crimes, while very few are related to the direct priority areas of the SSS, such as guaranteeing security. For example, while 57 motions were considered by courts in 2016 for active bribery, only 4 were for human trafficking (see Figure #2).²⁶ This data shows that a closed and non-transparent state institution, such as the SSS, the primary function of which should be ensuring national security, is heavily involved in anti-corruption work that, in its essence, must be transparent in order to be effective. This incompatibility of functions ultimately damages public trust towards the whole state anti-corruption system.

²⁴ The letter of MIA #MIA 9 17 01238057

²⁵ Regulating Secret Surveillance in Georgia, [report](#) for April – December 2016, IDFI, pg. 3

²⁶ 2016 [Statistics](#) on Telephone Surveillance and Secret Investigation in Georgia, IDFI 2017, pg. 3-4

Figure #2 - 2016 Motions on Telephone Surveillance and Recording in Georgia by Categories of Crime	
Article of the Criminal Code of Georgia	Number of Considered Motions
Article 180. Fraud	70
Article 338. Bribe-taking	57
Article 181. Extortion	58
Article 182. Appropriation or embezzlement	18
Article 194. Legalization of illegal income (money laundering)	14
Article 108. Murder	14
Article 179. Aggravated robbery	12
Article 223 ¹ . Membership of the criminal underworld; thief in law	12
Article 212. Manufacturing or sale of forged money or securities	9
Article 109. Murder under aggravating circumstances	6
Article 221. Commercial bribery	6
Article 144. Taking hostages	5
Article 339. Bribe-giving	5
Article 143 ¹ . Human trafficking	4
Article 372. Exertion of influence on a witness, victim, expert or interpreter	3
Article 318. Sabotage	3
Article 223. Creation or management of illegal formations, or joining and participation in such formations, and/or implementation of other activities in favour of illegal formations	3
Article 315. Conspiracy or rebellion intended to change the constitutional order of Georgia through violence	3
Article 328. Joining a foreign terrorist organisation or a terrorist organisation controlled by a foreign state or supporting this organisation in terrorist activities	2

Unfortunately, public mistrust is not where the problems of the existing surveillance system stop. In April 2016, the Constitutional Court of Georgia ruled that technical access of the State Security Service to telecom operators’ networks, allowing unfettered monitoring of communication and collection of communications metadata, was unconstitutional. This decision was followed by legislative amendments that were assessed by local civil society organizations as “an unfortunate precedent of disregard of the Constitutional Court’s decision”²⁷ and appealed in the Constitutional Court.²⁸

Furthermore, a recent journalistic investigation revealed an alleged involvement of the deputy head of the SSS in a corruption scheme.²⁹ The Prosecutor’s Office was notified of this case,³⁰ however, neither the SSS nor the Prosecutor’s Office have issued public statements about its investigation. Instead, the

²⁷ The [announcement](#) of the Campaign “This Affects You”

²⁸ The [webpage](#) of the Campaign “This Affects You”

²⁹ Property [registered](#) on Soso Gogashvili’s sisters -in-law, “Rustavi 2”

³⁰ UNM [appeals](#) to the Prosecutor’s Office, “Rustavi 2”

head of the SSS stated that all questions about his deputy would be answered by his asset declaration and that everybody has property rights.³¹

Such precedents damage public trust towards the SSS and its ability to combat corruption. The lack of transparency and limited public oversight on the SSS simply fail to meet the required standards of an anti-corruption state institution.

2.2. The Prosecution Service

Lack of independence of the Georgian Prosecution Service as a whole, as well as lack of autonomy of its subordinate prosecutors was highlighted as one of its main challenges by the last round monitoring reports of both OECD-ACN and GRECO. OECD-ACN states that Georgia should continue the reform aimed at further strengthening impartiality and independence of prosecutors,³² while the GRECO Evaluation Team (GET) noted that despite ongoing reforms it “is convinced that more needs to be done to ensure the intended de-politicization of the prosecution service”.³³ In the chapter of recruitment and career advancement, that influences the independence of the system and the level of specialized personnel, GET noted that the decision-makers might have too much discretion, “which puts at risk the objectivity and impartiality of the process as well as citizens’ trust in the system”.³⁴

GET also highlighted that superior prosecutors have broad powers to influence subordinate prosecutors.³⁵ The same problem was described in the OECD-ACN fourth round monitoring report, according to which the rules of functioning of the Prosecutorial Council (with the functions of promotion, disciplining and dismissal of prosecutors) affect the independence of individual prosecutors and concentrate excessive powers in the hands of the Chief Prosecutor. At the same time, the Chief Prosecutor is appointed with the decisive involvement of too many political bodies (Ministry of Justice, Government, Parliament) that affects its independence.³⁶ Consequently, the Chief Prosecutor, who him/herself does not enjoy the necessary guarantees of independence, has excessive powers in the process of promotion, disciplining and dismissal of individual prosecutors. This ultimately threatens the impartiality of the entire process.

2.3. Anti-Corruption Interagency Coordination Council

The Anti-Corruption Interagency Coordination Council (ACC) was set up in 2008 to ensure efficient and coordinated work against corruption. The ACC is entrusted with one of the most important functions in the process of combating corruption. Namely, it defines anti-corruption policy and oversees its implementation. However, the enforcement of policy is left open and it largely depends on the responsibility and accountability of government institutions.

³¹ Vakhtang Gomelauri – Everybody has right to possess the [property](#), National Broadcaster

³² Fourth Round of Monitoring of the Istanbul Anti-Corruption Action Plan - Georgia, 2016, Prosecution Service, Concussion and recommendations, pg. 72-74

³³ GRECO Fourth Evaluation Round – Georgia, 2016, Corruption prevention in respect of prosecutors, Overview of prosecution service, para. 150, pg. 42

³⁴ *Ibid.*, para. 154, pg. 43

³⁵ *Ibid.*, para. 166, pg. 47

³⁶ *Supra note* 30, pg. 73

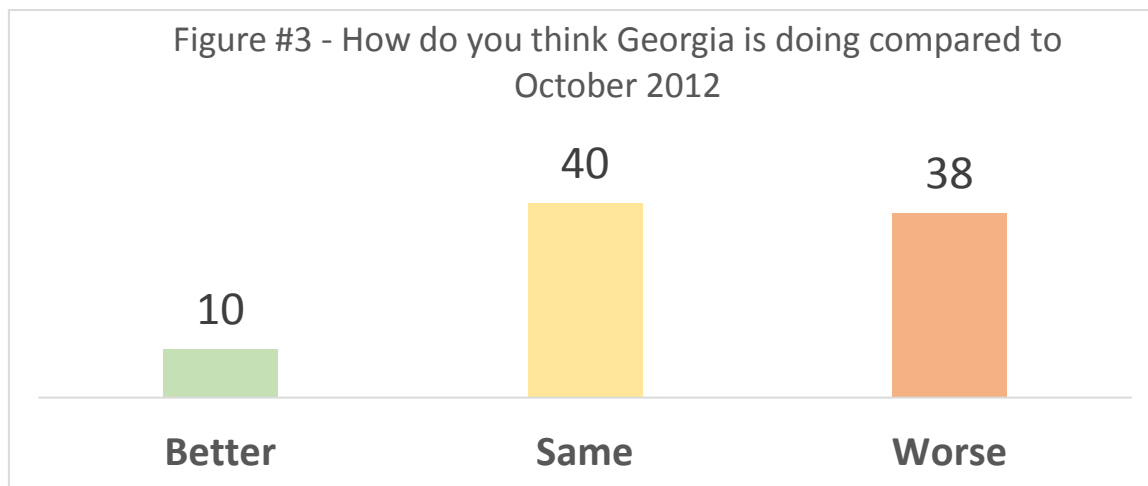
According to Georgian legislation, in the process of monitoring of policy documents the ACC is limited to having a coordination, evaluation and recommendation function. This “soft law” cannot guarantee the enforcement of policy. IN other words, the ACC cannot enforce the implementation of activities included in the National Anti-corruption Action Plan, and is limited to publishing a final monitoring report. The mandate of the ACC does not allow the possibility to combat high-level corruption either.

The OECD-ACN reports also point to the absence of enforcement mechanism for the ACC. The reports further highlight the lack of financial resources for the Secretariat of the Council that affects the process of staff development and implementation of its tasks under the anti-corruption action plan.³⁷ Finally, the reports state that very little has been done to increase the visibility of the activities of the Secretariat. In this regard, absence of the commitment of reporting to the Parliament by the ACC is also problematic.³⁸

2.4. Public Trust towards Specialized Anti-Corruption Institutions

Openness and accessibility standard of public administration is set in the Article 10 of UNCAC, in the part of public reporting. According to IDFI’s annual assessment of access to public information in Georgia, institutions charged with combating corruption do not show high levels of openness and accessibility. For example, according to the report of 2016, access to information score of the SSS is only 57%, the PSG shows relatively high score – 82%, while the Ministry of Justice and its subordinate bodies score 0% in access to information.³⁹

More generally, according to the 2016 NDI public opinion poll, the majority of the population thought that Georgia was doing worse (38%) or the same (40%) compared to 2012 (see Figure #3).⁴⁰



Georgia’s ranking in the Corruption Perception Index (CPI) also either stayed the same or decreased in 2012-2015. The country’s score increased only in 2016, from 52 to 57 (see Figure #4). Transparency International Georgia assessed this process and stated:

³⁷ Ibid., 1.4. Corruption prevention and coordination institutions, conclusions, pg. 26

³⁸ Ibid., conclusions, pg. 27

³⁹ Access to Public Information in Georgia, 2016 [Report](#), IDFI

⁴⁰ Public attitudes in Georgia, results of March 2016 [survey](#), National Democratic Institute (NDI), pg. 19

“The improvement of Georgia’s ranking in comparison with the last year’s results (score 57 instead of 52) indicated certain (but slight) progress of the country in relation to perception of corruption... In addition, only slight changes in the ranking of Georgia during 2012-2016 years indicate the lack of progress in the anti-corruption policy of the country.”⁴¹

Figure #4 – Georgia’s Results in the Corruption Perception Index (2012 – 2016)

Country - Georgia	2012	2013	2014	2015	2016
Score	52	49	52	52	57
Rank (among 174 countries)	51	55	51	48	44

Source: Transparency International – Corruption Perception Index - <https://www.transparency.org/research/cpi>

Global Corruption Barometer indicates that 41% of the Georgian population perceived government’s efforts to fight corruption inefficient in 2016. One of the recommendations issued by Transparency International after studying public opinion to countries, particularly accession countries and those in the CIS, was to reduce executive influence over the judiciary and prosecutorial services.⁴² Parallel to existing shortcomings in the prosecution system, both GRECO and OECD-ACN emphasize challenges related to low public trust.

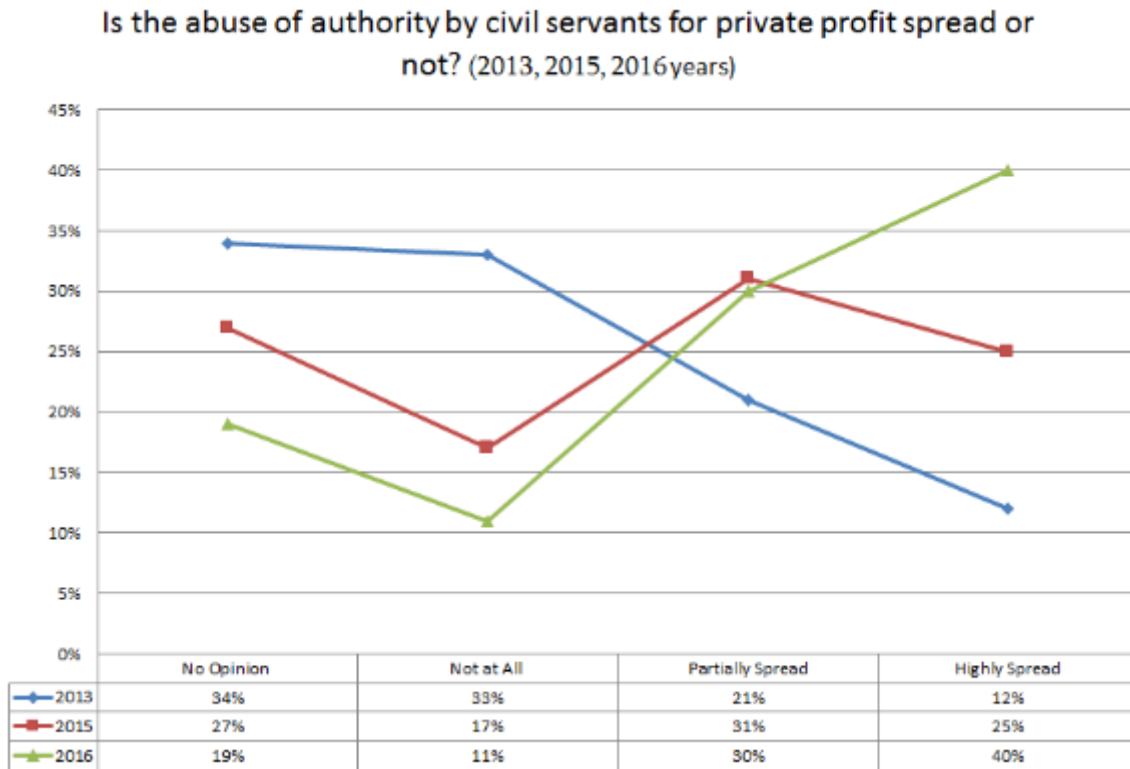
Consideration should also be given to one more public opinion survey by Transparency International Georgia conducted in 2016 that was aimed at studying public attitudes towards corruption related. The survey found that in 2016 approximately 40% of citizens believed that abuse of authority by civil servants for private profit was widespread (see Figure #5).⁴³ This number had increased by 15% from 2015 and by 20% from 2013. The same survey showed that citizens considered lower level corruption (bribery) to be less of a problem. This once again points to the need to revise the anti-corruption legislation and practice in order to better target corruption risks at the higher level.

⁴¹ Transparency International Georgia - [webpage](#)

⁴² People and Corruption: Europe and Central Asia, Global Corruption [Barometer](#), 2016, pg. 13 table, pg. 6 recommendations

⁴³ Results of the Public Opinion [Poll](#) indicates to the Deterioration in the field of corruption, Transparency International – Georgia, 2016

Figure #5 – Public Perceptions on the Abuse of Power by Civil Servants (2013-2016)



Source: Public opinion poll by Transparency International Georgia: <http://www.transparency.ge/en/blog/results-public-opinion-poll-indicates-deterioration-field-corruption>

Finally, one other factor influencing public institutions charged with combating corruption is their openness and the level of access to public information they provide. Georgia still does not have a stand-alone Freedom of Information Act, which would introduce an oversight body in this area. As a result, despite the existence of freedom of information legal provisions in the General Administrative Code public institutions do not have a unified approach to disclosing public information, contributing to lack of trust from the public.

3. International Standards

3.1. United Nations Convention Against Corruption

Georgia took the commitment to enforce the provisions of the UNCAC⁴⁴ not only through its ratification but according to the Association Agreement with the EU as well.⁴⁵ The UNCAC refers to corruption prevention bodies in its two chapters and sets relevant standards.⁴⁶ Article 6 of the Convention requires the existence of corruption prevention bodies with policy implementation, coordination, oversight and knowledge dissemination functions on prevention of corruption. Such bodies must be granted

⁴⁴ Georgia [ratified](#) UNCAC in 2008

⁴⁵ Association [Agreement](#) between the European Union and the European Atomic Energy Community and their Member States and Georgia, 2014, Article 17, para. 2

⁴⁶ [UNCAC](#), 2004

institutional independence and must be free from undue influence; material resources and specialized staff must also be provided to such bodies.⁴⁷

The Convention does not require the creation of more than a single body equipped with such functions. These functions may already be assigned to different state institutions. It is simply necessary for all of the above components to be satisfied.⁴⁸

In order to effectively combat corruption, various articles of the Convention require state parties to create a body specialized in combating corruption through law enforcement (Article 36), a body responsible for managing legal cooperation requests (Article 46), and a financial intelligence unit (Article 58). However, it is also possible for a single body to have all of these functions.⁴⁹ The Convention prioritizes guarantees of independence for each body tasked with combating corruption.

Public trust and accountability are necessary components for preventing corruption. This requirement is stipulated in Article 10 of the Convention,⁵⁰ which establishes the standard⁵¹ of openness and access to information in state institutions.

Article 13 of the Convention requires public participation in processes of preventing, combating and raising awareness about corruption. This participation should be strengthened by such measures as: enhancing the transparency of and promoting the contribution of the public to decision-making processes; greater access to information; undertaking public information and education activities that contribute to non-tolerance of corruption (including school and university curricula); respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption, subject to certain legal restrictions (protection of national security or public health and order).⁵²

Neither the Legislative nor the Technical Guides of the Convention require the creation of a new body. However, the latter does indicate that states should consider the benefits of a new body compared to granting additional functions to existing bodies. Factors in favor of having a new independent anti-corruption body include:

- Its establishment would represent a new beginning and a demonstration of a new commitment.
- Existing bodies may have lost credibility and the inertia of their existing unsuccessful practices may be difficult to change.
- Existing bodies may have staffs that do not have the skills required for the new mandate.
- A new body can be given new powers appropriate to current circumstances.

Factors in favor of existing bodies are fewer and more technical in nature:

⁴⁷ Legislative [Guide](#) for the Implementation of UNCAC, 2006, para. 52-53, pg. 20-21

⁴⁸ *Ibid.*, para. 54, p. 21

⁴⁹ *Ibid.*, para. 55-57, p. 21

⁵⁰ In order to meet the requirements of openness and accessibility, states may take the following measures: (a) Adopting procedures or regulations allowing members of the general public to obtain information on the organization, functioning and decision-making processes of public institutions, and decisions and legal acts that concern members of the public; (b) Simplifying administrative procedures in order to facilitate public access to the competent decision-making authorities; and (c) Publishing information, which may include periodic reports on the risks of corruption in the public service.

⁵¹ Legislative [Guide](#) for the Implementation of the United Nations Convention against Corruption, 2006, para. 58-59, p. 22

⁵² *Ibid.*, para. 61-62, p. 23

- They already have premises, trained staff, legal powers, internal procedures etc., all of which would have to be created from the beginning by a new body.
- Existing bodies may have a high degree of credibility already and simply need an amendment to their terms of reference and/or mandate to enhance their effectiveness.
- The creation of a new body poses a dilemma as to whether to maintain or abolish existing bodies – maintenance creates tensions and potential for conflict, abolition would inevitably be opposed by those with vested interests in the old body.⁵³

Existing public institutions charged with combating corruption in Georgia face challenges in terms of specialization of staff, legal framework, independence, access to information and public trust; that is to say, in all those components that could have served as justification for maintaining their anti-corruption functions. Creating a new body, the sole function of which would be to prevent and combat corruption, would give the Georgian government the opportunity to regain public trust and eliminate risks of high level of corruption, making its anti-corruption strategy sustainable and future-oriented.

3.2. Council of Europe Criminal Law Convention on Corruption

Article 20 of the Criminal Law Convention on Corruption⁵⁴ requires the creation of a specialized body charged with combating corruption with a level of independence necessary for effective implementation of its functions and free from any undue pressure.⁵⁵

3.3. Twenty Guiding Principles for the Fight against Corruption

The third principle of the Council of Europe Committee of Ministers Resolution against Corruption stipulates that bodies in charge of the prevention, investigation, prosecution and adjudication of corruption offences must enjoy the independence and autonomy appropriate to their functions. Such bodies must be free from improper influence and have effective means for gathering evidence, protecting the persons who help the authorities in combating corruption and preserving the confidentiality of investigations. Principle seven of the Resolution requires the promotion of specialization and training of persons or bodies in charge of fighting corruption.⁵⁶

4. Recommendations Issued by International Organizations

4.1. OECD Anti-Corruption Network

The first round monitoring report of the OECD-ACN, which evaluated the implementation of recommendations issued for Georgia in 2004, called on the Georgian government to establish a specialized anti-corruption agency with a mandate to identify, investigate and prosecute corruption offenses, including those committed by high-ranking officials. The report stated that this agency should

⁵³ Technical [Guide](#) to the United Nations Convention against Corruption, 2009, II Practical Challenges and Solutions, 1. Preventive Anti-Corruption Body or Bodies, p. 8-9

⁵⁴ Georgia [ratified](#) the Convention in 1999

⁵⁵ Council of Europe Criminal Law [Convention](#) on Corruption, 1999, Article 20

⁵⁶ Council of Europe Committee of Ministers [Resolution](#) (97) 24 on the Twenty Guiding Principles for the Fight against Corruption, 1997

have been structurally linked with the Anti-Corruption Bureau⁵⁷ or the Prosecutor's Office of that time, but with the necessary level of independence.

This recommendation was followed the creation of the Anti-Corruption Division within the Prosecutor's Office. However, the OECD-ACN noted that the division did not have necessary independence and a broad enough mandate (criminal prosecution and investigation) and coordinating functions. The report also stated that the subordination of this body to the Prosecutor's Office, its financial and human resources, policy and mandate failed to meet the requirements of the recommendation.⁵⁸

Concerns related to the independence and mandate of the Anti-Corruption Agency were expressed in the second round monitoring report of the OECD-CAN as well. The report stated that the inclusion of the Prosecutor's Office inside the Ministry of Justice was a challenge to independence and called the government to increase the autonomy of the Prosecutor's Office and reduce the influence of the Ministry of Justice.⁵⁹ This issue remains unresolved; despite many reforms, the Minister of Justice has retained the authority to make important decisions regarding the Prosecutor's Office.⁶⁰

The final round monitoring report of the OECD-CAN emphasized the initiative proposed by local NGOs to create an independent anti-corruption agency in Georgia and urged the government to strengthen the institutional arrangement of its anti-corruption policy.⁶¹

4.2. Council of Europe Group of States against Corruption (GRECO)

In its first evaluation round, GRECO did not express a strong support for creating an independent anti-corruption agency, however, stated that criminal prosecution and investigation of complex crimes, such as corruption, requires special experience and retraining.

The report stated that in order to increase public trust new anti-corruptions measures, all corruption cases must be identified and investigated by a specialized independent anti-corruption unit, while criminal prosecution must be carried out by specialized prosecutors with relevant experience. This unit must also assume a proactive approach and must collaborate with relevant state bodies.⁶²

⁵⁷ [Decree](#) of the President of Georgia on the Creation of an Anti-Corruption Bureau, May 8, 2001, (no longer valid)

⁵⁸ OECD-ACN First Round Monitoring [Report](#) – Georgia, 2006, Recommendation 3 and Additional Recommendations 2 and 3, p. 14

⁵⁹ OECD-ACN Second Round Monitoring [Report](#) – Georgia, 2010, 1. Anti-Corruption Policy, 1.6. Specialised anti-corruption policy, co-ordination and law enforcement institutions, pg. 14-16

⁶⁰ [Law](#) on the On the Prosecutor's Office, October 21, 2008, Article 8

⁶¹ OECD-ACN Fourth Round Monitoring [Report](#) – Georgia, 2016, 1.4. Corruption prevention and coordination institutions, Conclusion, p. 26

⁶² GRECO First [Evaluation](#) Round – Georgia, 2000, 4. Public Prosecution Office, para. 126, p. 19

5. Lithuania – Best Practice of an Independent Anti-Corruption Service

After reviewing the shortcomings of Georgian anti-corruption institutions, it is important to consider a best practice example of how to overcome these challenges. The case of Lithuania is the most relevant in this regard, since it clearly demonstrates how an effective anti-corruption institution can be created and function in line with international standards. In 2008, the OECD evaluated the legislative and institutional changes made by Lithuania for the purpose of creating its Special Investigations Service as positive reform that solved the problems of the previous decade.⁶³

The OECD report attributed Lithuania's decision to create an independent anti-corruption to a number of factors, including the political commitment of the Lithuanian government, strong outside incentives and reform requirement during the accession process to the EU, as well membership in international anti-corruption monitoring mechanisms such as the Council of Europe's GRECO. The process of legislative reform in the area of corruption was also facilitated by Lithuania's accession to major international treaties in the field of corruption and its participation in different technical co-operation and evaluation programs, including those of the OECD.⁶⁴

Georgia has a number of commitments that require the independence of its anti-corruption agencies, including the EU Association Agreement and its implementation agenda, GRECO, OECD-CAN, and major international anti-corruption conventions. Therefore, Georgia needs to take significant steps towards fulfilling these commitments.

The compatibility of the Lithuanian model with Georgia has been recognized by the Georgian government as well through the National Anti-Corruption Action Plan. As a result of this, the Georgia State Security Service plans to visit the Lithuanian Special Investigations Service for the purpose of strengthening international anti-corruption cooperation.

The first Independent Anti-Corruption Service was created in Hong Kong in 1974. The reason for its creation was a study, which revealed that corruption was widespread in many areas of the state. This resulted in the government's decision to create an independent anti-corruption commission with the functions of prevention, detection, investigation and raising of public awareness about corruption.⁶⁵

Even though, since 1990s, Lithuania was already a leading country in combating corruption and had one of the world's most comprehensive anti-corruption systems, it still decided to follow the Hong Kong model. In 2000, the government separated the Special Investigations Service from the Ministry of Internal Affairs and established it as an independent institution charged with prevention and investigation of corruption.⁶⁶

The functions of criminal prosecution and investigation of corruption offenses in Lithuania are divided among the Prosecution and the Special Investigations Service. Normally, it is the Investigations Service that initiates preliminary investigation into most corruption offences. When another law enforcement or security service (e.g., Financial Crime Investigation Service, Police Organised Crime Investigation Service,

⁶³ Specialised Anti-Corruption Institutions, [review of models](#), Anti-Corruption Network for Eastern Europe and Central Asia, OECD, 2008, Lithuania: Special Investigations Service, p. 60

⁶⁴ Ibid., p. 58

⁶⁵ Ibid., Hong Kong Special Administrative Region: Independent Commission against Corruption, p. 43

⁶⁶ Ibid., Lithuania: Special Investigations Service, p. 58

State Security Service, Tax or Custom Administration) detects a corruption offence, they normally inform the Special Investigations Service or the Prosecution to take over the investigation.⁶⁷

The following institutions are charged with corruption prevention in Lithuania:

- 1) Special Investigations Service
- 2) Government
- 3) Chief Ethics Commission
- 4) Other state, municipal and non-state institutions⁶⁸

5.1. Special Investigations Service

The Special Investigations Service of Lithuania was established on February 18, 1997 within the Ministry of Internal Affairs, and was entrusted with the functions to fight against corruption and offences against the civil service.

Although the Service started off with quite a number of proceedings in relation to corruption-related offences, it seemed apparent that law enforcement efforts consisting in detecting and investigating isolated offences were insufficient; it was necessary to analyze and investigate the system of public administration so that it does not provide opportunities for corrupt practices.

The analysis of anti-corruption activities was followed by a decision to expand the Service's functions and entrust it with the development and implementation of corruption prevention measures. Moreover, the Service was separated from the Ministry of the Internal Affairs in order to establish it as an independent and impartial body. This decision came into force in 2000.⁶⁹

5.1.1. Independence

The Special Investigations Service is independent from interference from state institutions and their employees, political parties, the mass media, and other natural or legal persons. It is prohibited to hold meetings and protest rallies within a 25 meter radius from the building of the Service. A criminal action against an Officer of the Service may be instituted only by the Prosecutor General or their Deputy.⁷⁰ The Special Investigations Service is funded from the state budget.⁷¹ Its preliminary investigations and inquiries are supervised by a prosecutor.⁷²

5.1.2. Accountability

The Special Investigations Service is a state law enforcement agency accountable to the President and the Parliament of Lithuania. At least twice a year, the Service presents a written report about its activities and ways to make them more efficient to the Parliament and the Chairperson of the Parliament.⁷³ The Service also publishes annual reports that include visualizations and statistics about its

⁶⁷ Ibid., Legal and Institutional Framework, p. 61

⁶⁸ Prevention of Corruption [Law](#) of the Republic of Lithuania, 2002, Article 12

⁶⁹ Special Investigations Service [Website](#)

⁷⁰ Republic of Lithuania [Law](#) on the Special Investigations Service, 2000, Articles 16-17

⁷¹ Ibid., Article 20

⁷² Ibid., Article 22

⁷³ Republic of Lithuania [Law](#) on the Special Investigations Service, 2000, Article 8, Paragraph 7

work.⁷⁴ The Service plans and implements corruption prevention measures, and identifies and investigates corruption-related crimes.⁷⁵

5.1.3. Management

A candidate to the post of the Director of the Special Investigations Service is nominated to the Parliament by the President, who also appoints and dismisses the Director with the consent of the Parliament. The Director is appointed for a term of five years but may hold this post no longer than for two terms in succession. The First Deputy Director and the Deputy Director are appointed and dismissed by the President by the advice of the Director.⁷⁶

The ground for dismissal of the Director and Deputy Directors are:

- Resignation
- Breach of the oath
- Coming into effect of a conviction
- Ill health attested by an opinion of an appropriate medical examining commission
- Mutual agreement
- Transfer by his own consent to another job
- Actions incompatible with the position
- Termination of term in office⁷⁷

The Director, Deputy Directors and Officers of the Special Investigations Service are prohibited from: being members of political parties or political organizations, and taking part in political activities; being members of trade unions; working and receiving remuneration in the capacity of an advisor, expert or consultant, except where it is necessary for intelligence activities carried out by the Service and for a period not longer than is necessary for attaining the objective of the assignment; concluding contracts on behalf of the Special Investigations Service with enterprises where they themselves or members of their families are owners or co-owners; representing the interests of national or foreign enterprises; accepting gifts or services directly or indirectly related to their office.⁷⁸

5.1.4. Functions

Functions of the Special Investigations Service are:

- Carrying out operational activities in detecting and preventing corruption related crimes.
- Conducting an inquiry and preliminary investigation.
- Co-operation with other law enforcement institutions.
- Collection, storage, analysis and summing up of information about corruption.
- Preparation and implementation of corruption prevention and other measures on the basis of the available information.
- Implementation of crime control and prevention programs jointly with other law enforcement institutions.⁷⁹

⁷⁴ Annual Performance [Report](#) of the Special Investigations Service of the Republic of Lithuania, 2015

⁷⁵ Republic of Lithuania [Law](#) on the Special Investigations Service, 2000, Article 2, Paragraph 1

⁷⁶ *Ibid.*, Article 11

⁷⁷ *Ibid.*, Article 12

⁷⁸ *Ibid.*, Article 15

⁷⁹ *Ibid.*, Article 8

Functions of the Special Investigations Service are divided into three categories: investigative, preventive and educational. According to the Law on Operational Activities, the Special Investigations Service carries out operational activities to detect and identify corruption crimes (corruption, bribery, abuse of power, etc.).⁸⁰ In accordance with the Criminal Code and the Criminal Procedure Code, the Service also carries out preliminary investigation of these crimes. Preliminary investigations may be based on citizen appeals. The Service promotes citizens initiatives, so anonymous letters are also permissible. Letters can be submitted in print as well as by e-mail, fax or phone any time of the day or the week.⁸¹

For the purpose of preventing corruption, the Service carries out the following activities: analysis of corruption risks, anti-corruption programs, evaluation of legislative acts and draft laws, gathering information about persons employed or about to be employed by state or municipal bodies, public education and awareness raising, public disclosure of identified corruption cases, other activities stipulated by law.⁸²

For the purpose of raising awareness and education the public about corruption, the Service, together with the Government and the Ministry of Education, works towards integrating anti-corruption programs in schools and higher education institutions, as well as organizing various conferences, campaigns, debates and other events. The Service also works with the media.⁸³

5.1.5. Authority

An officer of the Special Investigations Service shall have the right: to inspect identity documents and take persons suspected of commission of a crime to the offices of the Special Investigations Service or the police; to enter, without any hindrance, the premises of any enterprise; to stop motor vehicles and check the documents of the driver, passengers or the vehicle, inspect the cargo and other things in the vehicle; to obtain information or explanation from persons about crimes which are being planned, committed or have been committed; to inspect economic, financial and other activities of all types of enterprises, agencies and organizations. Officers are also authorized at border points and customs to inspect the documents of any individual and their means of transport; to detain the infringers of the border and customs rules and take them to the offices of the border police, customs or other law enforcement institutions.⁸⁴

5.2. Government

The Lithuanian Government is obligated to ensure that the Ministries and subordinate bodies take measures necessary for preventing corruption and allocate necessary funds for this purpose. The Government, together with the Special Investigations Service, elaborates a National Anti-Corruption Program and submits it to the Parliament. The Government also submits legislative proposals to the Parliament aimed at implementing corruption prevention measures.⁸⁵

⁸⁰ Republic of Lithuania [Law](#) on Operational Activities, 2000

⁸¹ Special Investigations Service [Website](#)

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Republic of Lithuania [Law](#) on the Special Investigations Service, 2000, Article 13

⁸⁵ Ibid., Article 13

5.3. Chief Official Ethics Commission

The Ethics Commission is a collegial body created by and accountable to the Lithuanian Parliament. The Commission oversees state servants and persons responsible for lobbying and works to prevent corruption in their activities.⁸⁶

5.4. Other State, Municipal and Non-state Institutions

Lithuanian state, municipal and non-state institutions have the authority to set up internal services or define specific officials that will work towards preventing and controlling corruption within the scope of these institutions. These services and officials can appeal to state and municipal institutions concerning corruption prevention issues, implement measures that will help prevent corruption in their institutions, and obtain methodological information on how to prevent corruption.

Conclusion and Recommendations

Despite Georgia's considerable success in combating corruption over the past decade, further steps are needed to enable the state anti-corruption system to better target more complex, and specifically high level corruption. Creation of an Independent Anti-Corruption Agency is the best way to accomplish this goal.

Lithuania's example, examined in this document, is highly relevant for Georgia. Lithuania decided to create an independent body precisely at a point when it had already achieved significant success in fighting corruption. By doing so, Lithuania decided to tackle the fundamental challenges of low public trust and independence of anti-corruption institutions.

IDFI calls on the:

- **The Government of Georgia** to launch discussions within the framework of the Open Government Partnership Georgia Forum on creating an independent anti-corruption agency. This is especially important, since Georgia, being the Chair country of the Partnership, is expected to implement reforms that will serve as an example to other members of the open government movement.
- **The Parliament of Georgia** to renew discussions of the Draft Law on Amendments to the Conflict of Interest and Corruption in Public Service submitted by Transparency International Georgia that envisioned setting up an independent anti-corruption agency.

The Independent Anti-Corruption Agency must:

- Develop an anti-corruption policy and practice based on UNCAC.
- Require public institutions to develop specific action plans and manuals and oversee their implementation. It must carry out periodic reviews of progress made on anti-corruption action plans, request evidence of implementation and hold hearings.
- Evaluate and inspect other public institutions.
- Develop anti-corruption manuals and codes of conduct.
- Conduct corruption risk assessments.
- Issue recommendations on policymaking and legislative amendments.

⁸⁶ [Law](#) on the Chief Official Ethics Commission, 2008, Article 2, Paragraph 1

- Research legislative and administrative procedures.
- Monitor asset declarations filed by public officials.
- Implement information actions on the topic of whistleblower protection, supervise the special website - mkhileba.gov.ge, and keep statistics on whistleblowing cases and their results.
- Be equipped with investigative authority to summon individuals for questioning, receive documentation, information, and obtain testimonies and other evidence.
- Be granted the authority to monitor political parties financing.
- Be granted the ability to exchange information with relevant national and international agencies engaged in anti-corruption related activities.
- Sign cooperation agreements with relevant international and regional organizations.
- Accept and review citizen complaints, as well as reports from other agencies that conduct corruption related investigations.
- Conduct public opinion polls and develop other sources for obtaining information about public opinion.
- Disseminate information on anti-corruption measures, including through NGOs and educational institutions. The Agency must also work to integrate corruption issues in school or university programs for the purpose of preventing corruption and raising awareness.
- Publish performance reports and ensure wide dissemination of its reports and manuals.

The Independent Anti-Corruption Agency must have the guarantee to:

- Have a level of independence necessary for successfully performing its functions. Given the importance of this component, specific regulations must be set for the appointment, activities and dismissal of the director and other high ranking positions of the Agency, and composition of the supervisory board. The Agency must be given sufficient financial resources. It must have predefined procedures for employment, appointment / election, evaluation, promotion and remuneration of employees. Finally, it must have the obligation to report to the Parliament, and requirements for civil society and media involvement in its activities.
- Determine the levels of accountability and reporting it deems to be necessary.
- Have access to necessary resources. Granting the Agency a multi-year budget would reduce the legislator's influence and provide additional guarantees for independence. Alternatively, its budget could be approved as a general grant allowing the Agency to manage its own budget. This would free individual elements of the budget from legislative influence. The budget must be monitored through an audit. The number of employees, their specializations, trainings, and procedures for appointment and dismissal must be predetermined.

The creation of an independent anti-corruption agency will revitalize the fight against corruption, increase public trust and facilitate the identification of high level corrupt cases.⁸⁷

⁸⁷ The recommendations about based on the UNCAC Technical [Guide](#), II.1. Preventive anti-corruption body or bodies, p. 9-12

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Freedom of Information Request

The Letter of the Ministry of Internal Affairs #MIA 9 17 01238057