



# TWO YEARS IN GOVERNMENT: GEORGIAN DREAM'S PERFORMANCE REVIEW

OCTOBER 2012 - DECEMBER 2014



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## INTRODUCTION

The 1 October 2012 parliamentary elections established a new ruling parliamentary majority and brought the Georgian Dream Coalition in the executive power. As part of its pre-election promises, the new government pledged to undertake major reforms and changes in almost all aspects of governance, including: depolitization of the governance system, removing undue pressure from the private sector, improving protection of human rights and the welfare of citizens.

Georgian nongovernmental organizations (NGOs) have been following the processes since the 2012 elections very actively. Civil society representatives regularly responded to government initiatives and offered its recommendations to the respective institutions. NGOs were very often proactive about their recommendations, advocating for deep reforms in various policy fields.

The report provides an overview of the reforms and changes undertaken by the Georgian Dream government in over 20 key public policy areas, independent assessment and recommendations to tackle problems. These are areas which were often discussed by civil society and the authors believe more efforts are needed: general governance, electoral reform, local self-governance, human rights and equality, economy and investment environment, foreign policy, open government and media environment.

After two years of coming into power, Georgian Dream boasts to have made achievements in many of these areas. NGOs, however, believe that there are even more challenges remaining. Each chapter of the report includes the following sections: (1) the situation before the 2012 parliamentary elections; (2) what has happened since the elections – reforms undertaken by the new government and significant events that have occurred; (3) recommendations of the nongovernmental organizations in tackling any remaining or newly arisen challenges. The report covers the period since October 2012 up until the end of 2014. In particular cases, the authors also consider and discuss those significant developments that have taken place up to March 2015.

Each chapter was prepared by NGOs with the expertise in respective policy areas. These NGOs have been long observing the developments in these sectors. Recommendations prepared by the civil society representatives are backed by their expert knowledge in each field as well as best international practices. NGOs that have contributed chapters to this report are: Article 42 of the Constitution, Civil Development Agency (CiDA), Economic Policy Research Center (EPRC), Georgia's Reforms Associates (GRASS), Georgian Young Lawyers' Association (GYLA), Green Alternative, Human Rights Center, Human Rights Education and Monitoring Center (EMC), Identoba, Institute For Development of Freedom of Information (IDFI), International Society For Fair Elections and Democracy (ISFED), Public Movement Multinational Georgia (PMMG), Open Society Georgia Foundation (OSGF), Partnership for Human Rights (PHR) and Transparency International (TI) Georgia. Authors are responsible only for chapters authored by them and may not share the views expressed by authors of other parts of the report.

While working on the report, NGOs were basing on the findings of their prior qualitative and quantitative research, publicly available information and media reports. In order to eliminate any errors and inaccuracies, the report was sent to the Government Administration, Parliament and the High Council of Justice. We would like to thank all stakeholders who provided feedback; some of the comments were reflected by the authors in the final report.

Finally, we hope that addresses of this report will prioritize reform areas and recommendations provided by the civil society representatives and react upon them in the nearest future. We are ready to further consult all institutions of the government with our assessment and recommendations.

# I. GOVERNANCE SYSTEM

Transparency International Georgia



## THE SITUATION BEFORE THE 2012 PARLIAMENTARY ELECTIONS

United National Movement (UNM) government was known for effectively eliminating bribery and modernizing the country. Many successful reforms were carried out after 2004 that have enabled Georgian economy to grow after years of stagnation. Basic infrastructure was significantly improved. During the last few years of the UNM rule, however, a high number of issues surfaced concerning overall governance.

The executive branch of the government clearly dominated over the others. Law enforcement agencies were especially strong and the institutions that are meant to be exercising checks of the executive – parliament, judiciary, state audit office, election administration – were rather weak and not independent. Another characteristic of the UNM governance was that personalities were at the center of it, who carried out functions also beyond their official capacity, resulting into informal interference in other areas of the system. This was a significant drawback to the process of building democratic institutions. Weakness of the parliament and the judiciary allowed for the executive to function without any proper oversight. There were, therefore, serious issues with the constitutional checks and balances. Furthermore, lack of civic engagement mechanisms in the policymaking process led to weakening of civic participation and low levels of transparency and accountability.<sup>1</sup>

2012 parliamentary elections marked the first transition of power with an election in Georgia which was widely welcomed. The new government was particularly open during the first several months after its election. Emergence of pluralism among the media was another significant development. Since 2012, in terms of governance and institution-building, a number of trends can be observed.

### I.1 Parliament

#### SINCE THE ELECTIONS

The new Parliament is more pluralistic as there are a strong parliamentary opposition and multi-party majority present.

As per the initiative of the Speaker, regular meetings were held with the civil society. A consultation group was established with the Human Rights and Civil Integration Committee which was a platform for NGOs and interested individuals to engage and propose recommendations. The ad hoc commissions were also very open, especially the commission investigating conflicts of interest with the former Georgia's National Communications Commission (GNCC) administration and the commission to select the Board member of Georgia's Public Broadcaster (GPB).

Parliament members initiated some important amendments, including regulations to reform the secret government surveillance legislative framework.

The work of the new Parliament was especially transparent during its first year, the practice which is continued to date. A new, improved website was launched. Draft legislation and the schedule of hearings have become more accessible to the wider public.

However, some problems remain with the work of the legislature. First of all, the relationship between political parties is very tense and confrontational. This has made it impossible for the MPs to reach consensus on important issues. The content of the debates in Parliament is very often related to the past of the politicians and not legislation. There were instances when such heated debates turned into verbal abuse and even physical confrontation.

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<sup>1</sup> TI Georgia, National Integrity Systems Assessment, 2011, <http://bit.ly/11rUFX4>

There were a number of processes which were mishandled. The process of drafting the political prisoners list was very problematic, resulting into questions raised regarding certain individuals on the list. For this reason, several NGOs left the respective commission.

Lately, it has become a habit for the Parliament to delay enactment of progressive reforms without proper consideration. This has happened in regards to the rule for questioning witnesses<sup>2</sup>, jury trials<sup>3</sup>, cashier machines and other significant changes, which had already been adopted by the Parliament<sup>4</sup>. In many instances, it was unclear what the arguments behind the delay were.

The Parliament has appeared to be weak in terms of checking the executive government, especially when it comes to monitoring the law enforcement agencies. What is more, the parliamentary majority, with a few exceptions, approved all amendment initiated by the law enforcement, including the ones that have been assessed very negatively by the civil society, without a question. Events around the secret government surveillance regulations exactly prove the point: with Parliament's approval, to date the law enforcement retains unfettered access to the data stored with telecoms.

During this time, the requests of the parliamentary minority on inviting ministers to the Parliament to discuss latest developments, were ignored.

The Trust Group established with the Defense and Security Committee has not been very active during this time and has not been effectively monitoring relevant government institutions. The Group became active only during the investigation of an allegedly politically motivated case in the Ministry of Defense.

There were instances when the parliamentary majority failed to consider the public interest due to political considerations. For this reason, the the processes were often delayed and dragged, there is a vacant seat at the High Council of Justice to date; the formation of the Georgia's Public Broadcaster was politically motivated which was significantly dragged; Parliament didn't elect among candidates nominated by the President for the Central Election Commission and the Supreme Court during the first vote; it also failed to selected the judge for the Constitutional Court for the seat that has remained vacant for over a year.

TI Georgia's public opinion poll demonstrated that the visibility of individual MPs is very low; so is the trust and general awareness about the activities of the Parliament.

## **RECOMMENDATIONS**

We recommend that:

1. Parliament adopts and follows the Ethics Code;
2. MPs concentrate on thematic discussions during their speeches, in order to increase awareness and visibility;
3. Parliament improves its oversight of the executive government and, among other things, address the problems of the staffing problems and conflicts of interest in the government;
4. Trust Group becomes more effective in carrying out its mandate and monitor relevant government agencies;
5. Parliament revokes its own practice of delaying the enactment of adopted laws;
6. Parliament initiates events to increase government accountability, i.e. organize open discussions with the ministers.

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<sup>2</sup> TI Georgia, Statement on yet another postponement of enactment of new rule of interrogating witnesses: <http://goo.gl/qB97vy>, 23 December 2013

<sup>3</sup> TI Georgia, Non-governmental organizations response to plans to postpone introduction of jury trials: <http://goo.gl/kg0ikl>, 18 September 2014

<sup>4</sup> TI Georgia, Delays in enactment of legislative reforms demonstrate government inefficiency: <http://goo.gl/oPEokn>, 16 December 2014



## 1.2 Executive government

### SINCE THE ELECTIONS

One of the most important achievements of the government was the signature of the Association Agreement with the EU in 2014. The government administration was very open in the aftermath of the elections; Ministry of Defense became remarkably transparent. The Ministry of Justice was open and encouraged stakeholder engagement too. The penitentiary reform was also a welcome step. The Human Rights Strategy was adopted by the government, as well as a general strategy to guide its work up to 2020.

The 2013 decree of the government of Georgia on proactive disclosure of information is especially noteworthy as a step towards more transparency.<sup>5</sup> During this time, the President played a very positive role in terms of balancing the government administration, e.g. his decision to veto controversial secret government surveillance laws. The President was very actively consulting and cooperating with the civil society.

Despite the progress mentioned above, there were a number of challenges and worrying trends:

There have been multiple signs of informal governance,<sup>6</sup> whereas a person without any official capacity was involved in deciding state matters. This, naturally, very negatively affects the functioning of democratic institutions in Georgia. Moreover, in this process, a certain government institution was undermined and ignored.

It became evident, that the government's primary focus is strengthening of law enforcement institutions and views this as analogous to the strength of the state<sup>5</sup>. At the same time, the legislative branch has not been effective in providing their oversight. There is no mechanism in the Parliament which would allow it to investigate the offenses by the law enforcement. Furthermore, the law enforcement agencies are also the least transparent and accountable among government institutions.

After the change of government, massive dismissals of civil servants took place both in the central<sup>7</sup> and local government.<sup>8</sup> New employees were hired as interim civil servants,<sup>9</sup> in order to bypass competitions. As a result, even though steps were made to improve the legislative framework of the civil service (i.e. guidelines for holding competitions), the government has not made any progress in terms of creating an independent and impartial public administration.

Despite the fact that the government has pledged to reform the Prosecutor's Office, the future of this process is unknown even after two years in power. Questions remain concerning independence of the this office.

After two years in power, the government announced that the Ministry of Internal Affairs will also be reformed. As in the previous instance, the specific plans of the government are still unknown.

More recently the executive government representatives have been becoming more and more aggressive

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<sup>5</sup> Decree of the Government of Georgia, On Requesting and Publishing Public Information Electronically, August 2014, <http://bit.ly/18Vvb86>

<sup>6</sup> National Democratic Institute (NDI), *Public attitudes in Georgia*, August 2014, <http://bit.ly/1zyhN0d>

<sup>7</sup> TI Georgia releases a new report on the changes in the civil service after 2012 parliamentary elections: <http://goo.gl/fWw6gd>, 12 August 2013

<sup>8</sup> TI Georgia, CSOs condemn the dismissals of civil servants from Tbilisi City Hall, allegedly on political grounds: <http://goo.gl/c7Kdqb>, 12 September 2014

<sup>9</sup> TI Georgia, The acting civil servants won vast majority of competitions held by central government institutions: <http://goo.gl/3cswUA>, 28 May 2014

towards the media and nongovernmental organizations. There were, however, attempts to discredit civil society representatives before as well -- in 2013.<sup>10</sup>

Most of the ministries do not have a long-term development strategy of their respective areas. This has been more critical in case of economic policies. There have been instances that government often switches between positions on the same issue. This may be due to a lack of vision.

Harmonized cooperation between the ministries remain a challenge. Individual ministries have been observed to be leading with the narrow interests of their own office and ignoring other ministries' commitments and priorities which are undertaken by important policy documents and strategies, including the Association Agreement.

## **RECOMMENDATIONS**

To address the challenges discussed above, the government should undertake the following steps:

1. Eliminate any occurrences of informal governance and disallow the persons without an official mandate and capacity to interfere with the work of the executive government;
2. Respect the existing accountability mechanisms which obligate it to carry out the rulings of the court and respond to queries from the Members of Parliament;
3. Proceed with and finalize the Ministry of Internal Affairs and Prosecutor's Office large-scale reforms and ensure that independence and political neutrality of these institutions, as well as accountability and transparency of their operations, are guaranteed;
4. Implement the civil service reform to ensure the professional and impartial personnel in the public administration.

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<sup>10</sup> Green Alternative, NGOs statement in response to the statement made by Minister of Energy and Natural Resources of Georgia: <http://goo.gl/V02g8r>, 23 April 2013

## 2. LAW-ENFORCEMENT SYSTEM

Georgian Young Lawyers' Association (GYLA)  
Human Rights Education and Monitoring Center (EMC)



ადამიანის უფლებების სწავლებისა და მონიტორინგის ცენტრი

**EMC**

Human Rights Education and Monitoring Center

## THE SITUATION BEFORE THE 2012 PARLIAMENTARY ELECTIONS

Public attitudes towards law-enforcement agencies have vastly contributed to the changing political environment in Georgia. In recent years there has been a growing feeling that while crime rates have decreased, there has been an increase in illegal and unfair practices by the police and Prosecutor's Office. And that there was inadequate official reaction to such practices. Indeed, there is evidence that in some instances high political officials had tolerated or even encouraged such crimes.<sup>11</sup> The lack of an effective and independent mechanism for examining the lawfulness of the actions of law-enforcement agencies and reacting to them,<sup>12</sup> gave rise to public distrust towards these institutions.

The 2012 election period was accompanied by an especially strong feeling that law-enforcement agencies were not sufficiently distant from political power. There was a common concern that law-enforcement agencies could be used for political purposes. Following the elections, depoliticizing the law-enforcement system and restraining it within the legal framework was a key challenge for the new government.

## SINCE THE ELECTIONS

### 2.1 Prosecutor's Office

During the post-election period, relations between the Prosecutor's Office and the judicial system changed substantially. There were expectations that the loyalty between the Prosecutor's Office and the judiciary would transform into relationships built on the law, and that courts would exercise a real check over the executive. Such transformation was not the result of significant institutional changes in the Prosecutor's Office, however.

The changes introduced in relation to the Prosecutor's Office during the two years since their election were the following:

- Legislative amendments have removed the Prosecutor's Office from its subordinate position under the Minister of Justice. The Minister of Justice's prosecutorial mandate has been entirely removed.<sup>13</sup> Thus the activities of the Prosecutor's Office have been somewhat distanced from the political influence of the Minister. Nevertheless, these changes failed to sufficiently separate the power of the prosecution from political control, owing to its remaining close ties with the central body of executive authorities – the Government.<sup>14</sup>
- There has been active work in the juvenile justice sector to develop a special, unified Juvenile Justice Code. Further, specialized units with specialized prosecutors were set up in the Prosecutor's Office to work on juvenile justice.

Apart from institutional reform, other positive trends were also identified. For instance, prosecution's motions on application of preventive measures (e.g. pre-trial detention) have become more thorough.<sup>15</sup> However, at the same time, old and negative trends still persisted – including the unjustified practice of abusing investigative subordination, when the Prosecutor's Office would hand over the investigation of

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<sup>11</sup> European Court of Human Rights, *CASE OF ENUKIDZE AND GIRGVLIANI v. GEORGIA* (ECHR, Application no. 25091/07) 2011; GYLA, *Zero Tolerance to Arbitrariness of the Police*, <http://gyla.ge/geo/news?info=64> GYLA, *Persons Responsible for 7 November 2007 Events Still Unpunished*, <http://gyla.ge/geo/news?info=328>

<sup>12</sup> Report by the Council of Europe Commissioner for Human Rights on the Visit to Georgia, 2011, pg. 11, Paragraph 43

<sup>13</sup> Amendments made to the Law of Georgia "on the Prosecutor's Office" on 30 May 2013

<sup>14</sup> Thomas Hammarberg, *Georgia in Transition*, 2013, pg. 25-26, <http://bit.ly/1OyTNUZ>; GYLA's statement on reforming the Prosecutor's Office in Georgia: <https://gyla.ge/eng/news?info=1589>

<sup>15</sup> GYLA, *Court Monitoring Report*, pg. 15-16, <http://gyla.ge/uploads/publications/6-GEO.pdf>

crimes potentially committed by police officers to the Ministry of Interior.<sup>16</sup> Ineffective investigation of human rights violations is still a problem.<sup>17</sup>

Following a statement by the Prime Minister at the end of 2014, a sitting was held as part of the criminal justice inter-agency council aimed at developing a reform concept of the Prosecutor's Office and planning works for drafting relevant legislative acts.

In the beginning of April 2015, Ministry of Justice presented results of a large-scale research on international standards, recommendations and different standards of selecting and appointing the Chief Prosecutor. Later, the Prosecutor's Office also presented the reform concept of the Office, which sets out different regulations for appointing the Chief Prosecutor. Although the proposed model refers to major shortcomings of the system, it does not effectively address those significant challenges that exist in the selection process of the Chief Prosecutor; particularly, the process is insufficiently distanced from the political process and from the executive government and there is an unsatisfactory level of involvement of stakeholders – other than the ruling party – in the selection process. The Coalition for Independent and Transparent Judiciary has already expressed its concerns and suggestions regarding the presented concept.<sup>18</sup>

Moreover, the process that was carried out within the Inter-Agency Council was not particularly transparent and straightforward. The stakeholders to this process, especially civil society organizations, were not informed in advance about the procedures and guidelines to follow, making it difficult to engage.

## 2.2 Ministry of Interior

Within a year of the change of government, the Parliament adopted the new Law on Police,<sup>19</sup> and the Minister of Interior approved the new Code of Ethics for the police.<sup>20</sup> These acts have particularly focused on the key principles of the work of the police, which is a welcome step.

The new Law on Police is better than its predecessor. However, along with some positive novelties, it includes some general and vague provisions regulating policing measures. Such formulation of policing measures has unjustifiably broadened the preventive functions of the police and created risks of unjustified and dangerous interference in the private life of individuals.<sup>21</sup>

In addition to the legislative amendments during the reporting period, it is worth noting that:

- During the last two years the police has carried out a number of raids as preventive police operations. Certain cases of human rights violations have been documented during these raids.<sup>22</sup> GYLA defended in court several individuals who were detained during the raids for allegedly

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<sup>16</sup> EMC, *NGOs and Religious Organizations Demand Reaction from the Parliament over Facts of Religious Intolerance*, December 2014, <http://emc.org.ge/2014/12/03/peticia-parlaments/>

<sup>17</sup> GYLA has approached the European Court over ineffective investigation of facts of inhuman treatment of former inmates, 13 March 2015: <https://gyla.ge/geo/news?info=2438>; GYLA urges the Prosecutor's Office to secure timely and effective investigation into potential crimes committed by police officers, 12 March 2015: <https://gyla.ge/geo/news?info=2435>; GYLA evaluates human rights situation in 2014, 10 December 2014: <https://gyla.ge/geo/news?info=2370>

<sup>18</sup> <http://bit.ly/1zEzVeF>

<sup>19</sup> On 4 October 2013 the Parliament adopted the Law of Georgia "on the Police"

<sup>20</sup> Code of Ethics of the Georgian Police, 2013, <http://bit.ly/1ETHBbY>

<sup>21</sup> GYLA, *GYLA's Comments Taken into Account in the draft Law "on the Police"*, October 2013, <http://bit.ly/1BM8aLn>; <http://emc.org.ge/2013/09/25/emc-police-law/>

<sup>22</sup> EMC, *EMC Urges Ministry of Interior to Make Explanations*, August 2013, <http://emc.org.ge/2013/08/25/>; NGOs' joint statement on police raids: <https://gyla.ge/eng/news?info=1697>

committing administrative offences. In all of these cases the courts rejected police arguments and acquitted the citizens without any charges.<sup>23</sup>

- Transparency and accountability of the Ministry of Interior remains a problem. Obtaining public information from the Ministry over last two years has been problematic.<sup>24</sup> However, very recently a number of measures were taken for increasing the transparency – some of the statutes of certain departments of MIA were made public;
- ensuring the safety of participants of peaceful assemblies has proved to be a challenge for the MIA;<sup>25</sup>
- ensuring secularism and religious neutrality turned out to be a significant challenge for the police.<sup>26</sup>

At the end of 2014 the Prime Minister announced the launch of a reform process of the Ministry of Interior. The Prime Minister appointed the Council for State Security and Crisis Management to coordinate the reforms. The Council for State Security and Crisis Management is not the best format for an open and inclusive process. Therefore, administering the reform under its auspices creates risks that the reform will lack the possibilities for meaningful discussions and stakeholder engagement.

## **RECOMMENDATIONS**

### **Prosecutor's Office**

Within the framework of the reform of the Prosecutor's Office already initiated by the government, the authorities should create institutional guarantees for the independence of the public prosecution system from political influence. To this end, the following is required:

1. substantial amendment to the procedure for selecting the Chief Prosecutor. It is important that this process should be properly distanced from political players and it being based on pre-defined objective criteria. Participation of non-political, neutral professional groups and civil society should be ensured in the selection process. Final decision about appointment of the Chief Prosecutor should be made by the Parliament of Georgia.
2. Dismissal of the Chief Prosecutor and defining the basis for dismissal should be made through impeachments;
3. The law should clearly define the grounds for dismissal of the Chief Prosecutor. Dismissal of the Chief Prosecutor from office should be possible through impeachment only;
4. Determining the criteria for selecting the Chief Prosecutor, defining his term of office and prohibiting election of the same person for the second term, introducing other guarantees facilitating increased degree of independence;
5. improved regulation of relations between various units of the Prosecutor's Office and prosecutors of different ranks, more decentralization in decision-making, and lower level prosecutors being empowered to make decisions;
6. reform of the disciplinary system of prosecutors, ensuring that the principles of accountability and impartiality are observed;
7. improved capacity of prosecutors to effectively and impartially exercise of prosecutorial supervision over investigation. Clear definition of the scope and limits of the powers belonging to the

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<sup>23</sup> GYLA, *GYLA's Successful Cases of October, 2014*, <http://gyla.ge/geo/news?info=2333>; *GYLA's Successful Cases of November, 2014*, <http://gyla.ge/geo/news?info=2367>; *GYLA's Successful Cases of October, 2013*, <http://gyla.ge/geo/news?info=1818>

<sup>24</sup> Media.ge, *Part of Journalists Has Difficulty in Receiving Information from the Ministry of Interior*, March 2014, <http://bit.ly/1Ngm3s8>

<sup>25</sup> EMC, *Mol Activity Evaluation Report*, pg. 3, April 2014, <http://bit.ly/1BM8U3c>; TI Georgia, *Initial assessment of events that took place in connection with the International Day Against Homophobia and Transphobia on May 17*: <http://goo.gl/b5nS71>

<sup>26</sup> EMC, *NGOs and Religious Organizations Demand Reaction from the Parliament over Facts of Religious Intolerance*, December 2014, <http://bit.ly/1btAnBO>; TI Georgia, *Joint statement of CSOs concerning violation of Muslims' rights in village Mokhe*, <http://goo.gl/JLOf0m>; TI Georgia, *Statement of non-governmental organizations on the incident at the Armenian church*, <http://goo.gl/Tz1KAf>; TI Georgia, *CSOs respond to recent attacks on the Muslim community of Kobuleti*, <http://goo.gl/ELx15H>

Prosecutor's office in investigation. These definitions need to be provided at the level of procedural legislation;

8. improved prosecutors' capacity to justify motions and request of specific preventive measures;
9. increased competence of representatives of the Prosecutor's Office in the fight against hate crimes; and
10. establishment of an independent investigation mechanism.<sup>27</sup>

### **Ministry of Interior**

The authorities should pursue fundamental reforms to redistribute a wide range of powers concentrated in the Ministry of Interior. Within the reforms already initiated, it is crucial to:

1. set up institutional mechanisms for securing a depoliticized system. Among others this means distancing the Criminal Police Department and other key units from the Ministry's central administration;
2. redistribute power concentrated within the system, and to distance the security services from the Ministry, and policing and investigation services, aimed at deconcentration of powers;
3. limit the practices of exchange of information collected for preventive and investigation purposes and develop strictly regulated rules for sharing information;
4. publicize the Ministry's internal regulatory acts, including the regulations of key departments, aimed at achieving transparency;
5. improve public access to public information and substantially transform the Ministry's policy in favor of increased transparency;
6. process and preserve public information in a form that would ease its timely transfer to interested parties;
7. revise the Law on the Police and fill in the existing gaps;
8. build the capacity of the police and investigative authorities in the fight against hate crimes;
9. strengthen the principle of defending the political and religious neutrality of the police, and, to this end, clarify ethical norms and strictly control adherence to them; and
10. set up an independent investigation mechanism.

## **2.3 Criminal justice legislative process**

### **THE SITUATION BEFORE THE 2012 PARLIAMENTARY ELECTIONS**

The need to duly regulate secret surveillance and wiretapping, and ensure the right to privacy was a particular challenge for the new government in the area of criminal justice reform.<sup>28</sup> Another significant concern was the need to reform the overly strict criminal law and the consecutive sentencing system, which prevented judges from determining an appropriate sanction based on a range of factors — and resulted in excessively long prison-sentences and prison overcrowding.<sup>29</sup>

In addition, there was a need to reform the system of administrative detention and amend a number of procedural norms related to it that did not conform to the principle of adversarial trial.<sup>30</sup>

### **SINCE THE ELECTIONS**

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<sup>27</sup> GYLA, *Joint Conference by GYLA and Public Defender, June 2014*, <http://gyla.ge/geo/news?info=2154>

<sup>28</sup> Thomas Hammarberg, September 2013, *Georgia in Transition: Report on the human rights dimension: background, steps taken and remaining challenges*: <http://goo.gl/2yfhAV>, pg. 8, 40-41

<sup>29</sup> *Ibid*, pg. 19-20

<sup>30</sup> *Ibid*, pg. 20

During the post-election period, the process of reforming the criminal legislation and criminal justice regulations was especially noteworthy. The new government has significantly reformed the system in a number of areas:

- the principle of consecutive sentencing system was revoked;<sup>31</sup>
- legislation regulating plea bargaining was improved;<sup>32</sup>
- defense lawyers were granted the right to carry out search/extraction of evidence. At the same time, they have been stripped of the right to submit evidence through an exceptional procedure.
- significant work was carried out for the purpose of comprehensive revision of criminal code. Draft amendments were prepared by local and international experts. The amendments were discussed within several working groups. The draft was also published to the Legislative Herald [matsne.gov.ge](http://matsne.gov.ge);
- in addition, there is an on-going reform process for the system of administrative offences. This is a fundamental reform aimed at protecting basic human rights standards, which must be mentioned in any assessment of the government's work. The reform is still pending, but the vision of the special state commission includes redefining which types of misdemeanors are treated as administrative offences, and which are considered criminal. Such clarification of misdemeanors and the appropriate processes to handle them must be welcomed
- there has been a positive expansion of the rights of the victim in the criminal process. This expansion includes the right to appeal to a senior prosecutor, or a higher court a refusal to grant a victim's status by the prosecutor,. In addition, a victim now has the right and ability to familiarize themselves with the criminal case files.<sup>33</sup> However, it has to be emphasized that in most cases investigation is carried out based on relatively strict categories of the articles. Which means that it is not possible to appeal in court, if being rejected to review the case files, or in case recognized as defendant. Moreover, Prosecutor's Office never reveals the reasons for unjustified recognition of a person as a defendant. It is worth mentioning that the rights of defendants during plea agreement have also been increased;
- it should be noted that juvenile judicial code has been created, according to which special institutions and mechanisms will be established for juveniles who came into conflict with law. Moreover, the Code sets out different standards not only for those juveniles, who came into conflict with the law, but also for victim and witnessing juveniles. Adoption of the law was positively assessed by "Coalition for Independent and Transparent Judiciary", the coalition encouraged each branch of the government for consistent and effective implementation of the Code.<sup>34</sup>

Legislative reform in the area of criminal justice system has not all been positive. There have also been examples of regressive or retrograde initiatives introduced by the new government:

- new regulations on witness interrogation, which were due to enter into force, were put on hold; however at the end of 2013 the Parliament voted for and postponed the new regulations entering into force, as a result the old regulation on witness interrogation gives, that gives unjustified advantage to the prosecution<sup>35</sup> remained in force.
- until now it remains unclear until now whether the government is going to let the new regulation enter into force when due or introduce a new one.

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<sup>31</sup> However, the principle of concurrent sentences that is now in force is also criticized, March 2013, <http://bit.ly/1EG8f5E>

<sup>32</sup> Amendments made to the Criminal Procedure Code on 24 July 2014

<sup>33</sup> GYLA, *amendments made to the Criminal Procedure Code of Georgia on 14 June 2013*, <http://gyla.ge/geo/news?info=1537>

<sup>34</sup> <http://bit.ly/1zEzVeF>

<sup>35</sup> Amendments made to Article 332 of the Criminal Procedure Code of Georgia on 26 December 2013, <https://gyla.ge/geo/news?info=1651>; <https://gyla.ge/geo/news?info=1904>; <https://gyla.ge/geo/news?info=1915>



- as a result of the amendments adopted in September 2014, the provision which provided for a full jurisdiction of jury trials was also postponed for two years (until 1 October 2016)<sup>36</sup> Considering that it takes time for the system of jury to become fully operational, it is linked to financial and training resources. These factors might be considered as reasons for delay of its activation. Nevertheless, it is unknown, what is the long-term vision of the government regarding the scale of this mechanism and its future operation.
- Parliament's integration of a chapter on secret investigative actions in the Criminal Procedure Code was a significant step.<sup>37</sup> By this decision, general standards were set in legislation covering secret investigative actions - including secret surveillance and wiretapping. Previously there were legislative restrictions on the use of such methods of investigation. While the introduction of some checks on the use of wiretapping and secret surveillance is to be welcomed, Parliament has not yet decided how to control access to communication data. Despite long-term advocacy of civil society organizations and recommendations by experts, the Parliament has preserved the right of the Ministry of Interior to carry out surveillance and wiretapping without external controls. This considerably weakens the standards adopted by Parliament in August 2014 on the conduct of secret investigative actions. In addition,, Parliament assigned to the Personal Data Protection Inspector the power to authorize secret wiretapping. The Personal Data Protection Inspector ought to have been the chief controller of the process, and thus these two roles have been conflated.<sup>38</sup> *This Affects You* campaign has filed an appeal in the Constitutional Court to appeal the abovementioned changes.<sup>39</sup>

## RECOMMENDATIONS

1. The government should continue legislative reforms that will strengthen the adversarial nature of the court process.
2. Parliament should introduce such rules governing witness interrogation that will ensure equality of parties and that will eliminate the cases of influence over the witness, or any other type of influences. Furthermore, the Prosecutor's Office, Ministry of Interior and other authorities who have investigative functions<sup>40</sup> must develop staff capacity prior to the implementation of the new procedures of witness interrogation. In this manner practical problems of implementation may be avoided.
3. Parliament should put into effect full jurisdiction of jury trials.
4. The government ought to continue working on the procedural issue of secret surveillance and wiretapping. A model must be developed that will enhance amendments to the Criminal Procedure Code of Georgia about secret investigative actions adopted by Parliament on 1 August 2014 and that will secure the right to privacy and prevent unlawful interference in communications.
5. The government should ensure that reforms of the administrative offences processes include a ban on administrative detention. Administrative misdemeanors of a criminal nature to should be included in criminal legislation. This will ensure fair trial standards for such misdemeanors. This change should only be enacted if including such misdemeanors in the criminal code does not result in a criminal record for such misdemeanors and ensuing consequences.

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<sup>36</sup> Legislative Herald of Georgia, *Amendment made to Article 330 of the Criminal Procedure Code of Georgia on 18 September 2014*, <https://matsne.gov.ge/ka/document/view/2511901>.

<sup>37</sup> Amendments to the Criminal Procedure Code of Georgia adopted on 1 August 2014.

<sup>38</sup> Transparency International – Georgia, *This Affects You – They Are Still Listening: Beselia-Popkhadze-Sesiashvili's Draft Deteriorates August Provisions*, November 2014, <http://bit.ly/1BqTxNT>, <https://gyla.ge/geo/news?info=2351>

<sup>39</sup> <https://gyla.ge/geo/news?info=2470>

<sup>40</sup> Investigation unit of a relevant service of the Ministry of Finances of Georgia; investigation unit of the Ministry of Defense of Georgia; relevant unit of the Ministry of Justice of Georgia; investigation unit of the Ministry of Corrections and Probation of Georgia.

6. New legislation on drugs must be introduced. A humanization of drug policy is necessary that rejects the disproportionate sanctions currently in effect. Preferably, the use of narcotic substances should not be subject to a sentence of imprisonment and should not be linked to a criminal record. The draft law regarding the Article-260 of Criminal Code, presented in the parliament, while preparing the report, is inconsistent and is fragmented. Considering the significance of the problem, it cannot be considered as an intention to solve this problem.<sup>41</sup>
7. Courts should use preventive measures only in cases of necessity. Where possible courts should look to apply alternatives to release on bail and detention.
8. Victim's procedural rights must be protected by clear regulation. In particular, should the court refuse to recognize a victim in a case, he or she should be able to challenge that decision. The right to challenge should exist for all categories of crime. In addition, victims should be allowed not only to familiarize themselves with the case file but also copy them.

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<sup>41</sup> <http://bit.ly/1EcbmCy>

## 3. JUDICIAL SYSTEM

Georgian Young Lawyers' Association (GYLA)  
Human Rights Education and Monitoring Center (EMC)



ადამიანის უფლებების სწავლებისა და მონიტორინგის ცენტრი

**EMC**  
Human Rights Education and Monitoring Center

## THE SITUATION BEFORE THE 2012 PARLIAMENTARY ELECTIONS

Despite reforms carried out in the judicial system in the preceding years, public trust in the judiciary was extremely low.<sup>42</sup> Prior to 2012, in the vast majority of cases courts would grant the prosecution's motion on preventive measures in the absolute majority of cases. This raised concerns about the level of influence the Prosecutor's Office had over the judiciary.<sup>43</sup> 98% of cases resulted in guilty verdicts during 2011.<sup>44</sup> The vast majority of criminal cases - over 80% - were concluded with plea bargain.<sup>45</sup> This illustrates citizens' belief that the system was not fair and would not result in a fair verdict or sentencing; therefore the accused agreed to the terms of plea bargain proposed by prosecutors. Further, the percentage of administrative disputes resolved in favor of the state (85% in 2011) was equally suspicious. Traditionally, when examining administrative disputes, various instance courts would simply repeat the arguments of the state bodies and reject the arguments of a complainant without any proper reasoning and justification.<sup>46</sup>

Institutional and systemic problems also adversely affected the degree of judicial independence. Such problems include: concerns around the non-transparent process of judicial appointments; serious gaps in legislation regulating the disciplinary responsibility of judges, which allowed arbitrary use of the system, inter alia against the so-called "disobedient" judges to dismiss them from the system; concentration of extremely broad powers in the hands of the Chairperson of the Supreme Court, the composition of the High Council of Justice- the highest authority charged with the function of judicial administration – which failed to ensure its political neutrality and efficiency. Moreover, the Council lacked transparency and its decisions were often unjustified/unsubstantiated.

## SINCE THE ELECTIONS

The new government has focused on reforming the judicial system. Several stages of the reform were undertaken over the past two years.

The number of decisions on administrative disputes in favor of the state has decreased drastically. While 85% of monitored administrative cases in 2011 were resolved in the state's favor, this figure in 2014 reduced to 53%.<sup>47</sup> After the 2012 elections, judges would no longer mechanically grant the prosecution's motions on pre-trial detention, and would apply bail against defendants more frequently. Further, judges try to provide more reasoning for decisions on application of preventive measures.<sup>48</sup> Nevertheless, it is still rare that a preventive measure other than pre-trial detention or bail is applied, or that the preventive measure is not applied at all. Presently, parliament is working on the draft- law that was submitted by the Ministry of Justice. It refers to periodic and regular revision of sentencing; it also specifies that right of the judge not to apply a preventive measure at all. It also obliges the judge to provide justification for his/her ruling regarding the use of a preventive measure, and to refer in the ruling to each evidence that served as a ground for the ruling.<sup>49</sup>

There have also been improvements in how judges' deal with plea bargain cases. Prior to the elections, judges passively and routinely approved all plea bargain agreements, without probing into fairness of a

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<sup>42</sup> Report by the Council of Europe Commissioner for Human Rights on the Visit to Georgia, 2011, Paragraphs 103-107; Universal Periodic Review Georgia (Report submitted in July 2010) Submitting NGO Coalition: Georgian Young Lawyers' Association Human Rights Centre, Article 42 of the Constitution, Educators and Scientists Free Trade Union of Georgia, <http://bit.ly/1y76goC>.

<sup>43</sup> Georgian Young Lawyers' Association, Monitoring Report of the Administrative Panel of the Tbilisi City Court, 2012, pg. 20, <http://bit.ly/19ls49i>.

<sup>44</sup> Statistical information provided by the Supreme Court on the criminal cases, 2011, <http://bit.ly/1FVb6LW>.

<sup>45</sup> Statistical information provided by the Supreme Court on the criminal cases, 2011, <http://bit.ly/1FVb6LW>.

<sup>46</sup> Green Alternative, I.Macharashvili, 2012, *Forest Management in Georgia: Problems and Challenges*, [www.greenalt.org](http://www.greenalt.org); T.Gurchiani, K.Gujaraidze, 2011, Implementation of the Aarhus Convention in Georgia, Alternative Report, 2015, <http://bit.ly/1CPv18>.

<sup>47</sup> TI Georgia, *Court Monitoring Report, 2014*, <http://bit.ly/1OyVWjp>

<sup>48</sup> GYLA, *Monitoring Report of Criminal Trials*, 2014, pg.6, <http://bit.ly/1N8wQpV>

<sup>49</sup> <http://parliament.ge/ge/law/8932/19822>

sentence.<sup>50</sup> This positive trend does not result from specific legislative amendments, but rather from the change in the state policy, as confirmed by monitoring of court trials.<sup>51</sup>

As a result of significant institutional and legislative changes undertaken within the judicial system:

- Court trials are more open and transparent. Media and other interested parties are now allowed to record court hearings (video and audio).
- The change in the composition of the High Council of Justice and of the Disciplinary Board of Judges<sup>52</sup> have positively affected the functioning of these bodies, especially that of the Council.
- The degree of transparency of the High Council of Justice has increased; diversity of opinions and the practice of genuine discussions have emerged in the Council.
- The powers of the Chairperson of the Supreme Court were restricted, with greater power being given to the conference of judges.

While there were many positive changes, there were negative ones as well. In particular, despite the negative position taken by the Venice Commission<sup>53</sup> and the local experts,<sup>54</sup> the constitutional amendment adopted in 2010 concerning the appointment of judges for a probation period was further reinforced by additional amendments made to the Organic Law on Common Courts. Accordingly, this institute became effective in practice as of 2014.

The fact that broad powers vested by legislation in the High Council of Justice are not balanced with respective standards of accountability and transparency, is one of the key remaining problems in the system of judicial administration. This is inconsistent with the good governance principles of a public body. The legislation regulating the Council's activities is vague, and a number of important issues are left totally unregulated. This expands statutory powers of the Council even further and in fact grants it unrestricted discretion in respect of many issues.

The fact that the process of nomination of a Chief Justice candidate by the president and election of the latter by the parliament was organized in a timely manner deserves a positive assessment.<sup>55</sup>

## RECOMMENDATIONS

In order to create institutional guarantees of judicial independence, it is crucial to:<sup>56</sup>

1. revoke the possibility of appointing judges for a probation period of 3 years;
2. improve initial selection and appointment of judges; define at legislative level clearly formulated and proper criteria, and tools for verifying a candidate's professionalism and good faith; further, to regulate at legislative level the Council's obligation to make justified decisions throughout this process;
3. reform the system of liability of judges. Disciplinary proceedings should be based on predictable and foreseeable grounds, while the procedure should ensure a fair trial rights for the judge. In addition, the system of criminal liability of judges should be revised substantially from material as well as procedural standpoint;

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<sup>50</sup> GYLA, *Monitoring of Criminal Trials in the Batumi, Kutaisi and Tbilisi City and Appellate Courts*, 2014, <http://bit.ly/1CYuOYc>

<sup>51</sup> GYLA, *Monitoring of Criminal Trials in the Batumi, Kutaisi and Tbilisi City and Appellate Courts, January-August 2014*, pg. 34, <http://bit.ly/1CYuOYc>

<sup>52</sup> Amendments made to the Organic Law of Georgia "on Common Courts" on 1 May 2013

<sup>53</sup> Council of Europe, *Opinion by the Venice Commission, 2014*, <http://bit.ly/1BnrQGH>

<sup>54</sup> Coalition for Independent and Transparent Judiciary, *Coalition's Position on Appointment of Judges for a Probation Period*, <http://bit.ly/1BMdpuL>

<sup>55</sup> <https://gyla.ge/geo/news?info=2456>

<sup>56</sup> *Ibid*

4. change the case assigning system and limit the Chair's powers in this process;
5. introduce the principle of electing court Chairs and revise the legislation as far as the powers of the court chairperson is concerned.
6. clearly delimit functions between the Supreme Court and the High Council of Justice, as well as to revise procedural norms for appointing the Supreme Court members and the Chairperson to offices, aimed at increasing transparency of the process and the degree of reasoning of decisions;
7. oblige the High Council of Justice to justify its decisions;
8. improve legislation regulating the Council's activities, e.g. to define norms regulating conflict of interests, preparation of sittings, drawing up of agenda, etc.
9. enhance judges' continuing professional training system for increased degree of reasoning of decisions in the High School of Justice and establishment of the human rights oriented judicial system.<sup>57</sup>

In parallel to this report being written, the Ministry of Justice was continuously working over the next package of legislative amendments to the court reform, which to some extent refers to the aforementioned problems. The package includes changes regarding case assignment, it makes the position of a court chairperson an elected one and envisages reform of the system of disciplinary responsibility of judges. Nevertheless, apart from the positive changes, the package of legislative amendments also contains a number of problematic issues, such as: pre-term termination of the term of the sitting Court chairmen, re-appointment of the serving court officers, as well as some other changes that are not comprehensive enough to eliminate the existing problems in the relevant field, such as the package, leaves the grounds for disciplinary responsibility of judges unchanged, the reform of the case assignment system is not comprehensive enough and it only touches the surface of the problem. At the time of writing this report, the package of the legislative amendments has still not been sent to the Parliament.

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<sup>57</sup> Including special trainings on the Aarhus Convention (Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters).

# 4. PENITENTIARY SYSTEM

Open Society Georgia Foundation (OSGF)  
Human Rights Center



## THE SITUATION BEFORE THE 2012 PARLIAMENTARY ELECTIONS

Prior to the 2012 Parliamentary Elections, it was evident that prisoners were systematically abused, and the government ignored the issue.<sup>58</sup> Prisoner abuse and a culture of impunity became common characteristics of the penitentiary system.<sup>59</sup> The prison abuse video tapes disseminated by media outlets on 18 September, 2012 confirmed the systemic nature of abuse in penal institutions. The Zero Tolerance policy pursued in Georgia from 2006 led to a massive increase in the number of inmates in prisons, with over 24 000 incarcerated individuals in Georgian prisons.<sup>60</sup> In the years preceding the 2012 elections, Georgia's population increasingly felt a sense of injustice and the need for political change, which was achieved through the October 2012 Parliamentary Elections. Systemic problems within the penitentiary system were a significant factor leading to the handover of political power in 2012.

## SINCE THE ELECTIONS

The penitentiary system has been significantly reformed since 2013. As a result of the reforms, torture of inmates is no longer a systemic problem,<sup>61</sup> yet, incidences of prisoner abuse were still reported between 2013 and 2014.<sup>62</sup> A large-scale amnesty carried out in January 2013, and the active application of pardoning and early release mechanisms has, in large part, resolved the problem of over-crowded penitentiary institutions. The integration of the Penitentiary Department into the Ministry of Corrections and Legal Assistance and its full subordination to the Ministry was a key reform. Significant reforms were implemented in the penitentiary system as relates to inmate access to healthcare, but problems in this area still remain. Despite the reforms, inefficient investigation into the thousands of complaints of prisoner abuse is a prevalent problem. To this day, there is no effective mechanism to review complaints made by incarcerated persons, while the inquiries carried out by the General Inspectorate in connection with offences and misdemeanors within the system are largely subjective and inefficient.

## RECOMMENDATIONS

1. Parliament should set up an independent and effective mechanism to review complaints by incarcerated individuals including an independent investigative authority, which will examine complaints made by incarcerated persons. Before this mechanism is set up, the Chief Prosecutor's Office should effectively investigate accusations of prisoner abuse by the staff of the penitentiary system without delay;
2. Parliament should effectively supervise, and investigate abuse within the penitentiary system as needed;
3. Parliament should monitor the fulfillment of obligations taken by the Government related to torture prevention under the "National Human Rights Strategy of Georgia" (for 2014-2020).

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<sup>58</sup> Report by the Public Defender of Georgia, *on the Protection of Human Rights and Freedoms in Georgia*, 2012.

<sup>59</sup> *Studying the Practices of Torture and Inhuman Treatment within the Penitentiary System of Georgia (2003-12)*, analytical report published with financial support of the "Open Society – Georgia" Foundation", 2014.

<sup>60</sup> A report by the EU Special Adviser on Constitutional and Legal Reform and Human Rights in Georgia, Thomas Hammarberg, *Georgia in Transition, Report on the human rights dimension: background, steps taken and remaining challenges*, September 2013.

<sup>61</sup> Report by the Public Defender of Georgia, *on the Protection of Human Rights and Freedoms in Georgia*, 2013.

<sup>62</sup> Report by the Human Rights Center, *Rights of Convicted Persons and Mechanisms of their Protection*, 2014.



## 5. ELECTORAL REFORM

International Society for Fair Elections and Democracy (ISFED)



**ISFED**

INTERNATIONAL SOCIETY FOR  
FAIR ELECTIONS AND DEMOCRACY

სამართლიანი არჩევნებისა  
და დემოკრატიის საერთაშორისო  
საზოგადოება

## 5.1 Electoral system

### THE SITUATION BEFORE THE 2012 PARLIAMENTARY ELECTIONS

As of 2012, the electoral systems for both parliamentary and local elections failed to ensure fair elections for the following reasons:

- The will of voters was and is not proportionally reflected in mandates;
- The principle of equality of votes is and was violated, stemming from the extreme differences between the number of inhabitants living in different electoral districts;
- The majoritarian (single mandate district) system risks wasting a significant number of votes;
- The sufficient representation of women in office is and was not ensured;
- Only the mayor of Tbilisi was directly elected. In all other cases, officials of the executive bodies of local, self-governing municipalities – mayors and *gamgebelis* – were appointed by the chairpersons of local councils (*sakrebulos*).

Notably, the Georgian Dream Coalition pointed out a number of problems with the electoral system in its 2012 electoral program, where it was noted that **the system is unfair and “it is necessary to introduce such an electoral system which would enable us to obtain results that are commensurate with the voters’ will, [and] thus the opportunity to have all the main political parties in the country represented in Parliament.”**<sup>63</sup>

### SINCE THE ELECTIONS

Calls to revise the electoral system for parliamentary and local elections were voiced not only by non-governmental organizations and political parties, but the necessity of reforms has been consistently pointed out by the Venice Commission and OSCE/Office for Democratic Institutions and Human Rights.<sup>64</sup> Nevertheless, no substantial reforms have taken place in this area. In 2014, the electoral system was reformed for the local municipal elections and even these reforms were only partial. Reforms included:

- Mayors and *gamgebelis* are now directly elected;
- A 50% electoral threshold was set for the election of mayors and *gamgebelis*;
- A 4% electoral threshold was set for the election of all *sakrebulos*. Before the reform, only the Tbilisi *sakrebulo* was elected with a threshold of 4%, and a threshold of 5% applied to other municipalities;
- Five more *sakrebulo* members are elected via the proportional system in self-governing communities. A total of 15 *sakrebulo deputies* are now elected in self-governing communities via the proportional system;
- Besides the abovementioned positive changes, a number of negative developments are present in the legislation including:
  - Initiative groups were banned from nominating mayor/*gamgebeli* candidates. This has an indisputably negative effect on creating a competitive electoral environment. It is unclear what purpose this regulation serves;
  - The introduction of a no confidence procedure against mayors and *gamgebelis* is a negative development. Through this mechanism, *sakrebulos* may dismiss mayors/*gamgebelis* elected by the majority of the population. This is not in line with the principles of a representative democracy.<sup>65</sup>

<sup>63</sup> Electoral Block “Bidzina Ivanishvili-Georgian Dream”, Electoral Program, Parliamentary Elections, 2012, pg.4, pg.6, <http://bit.ly/1zkn0xG> (in Georgian);

<sup>64</sup> European Commission for Democracy through Law (Venice Commission) and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) Joint Opinion on the Draft Election Code of Georgia, 2011, pg. 8. para. 22

<sup>65</sup> ISFED, *Joint Statement of Non-governmental Organizations*, June 2014, <http://www.isfed.ge/main/540/eng/>

## RECOMMENDATIONS

Although many of the reforms carried out merit praise, we think that in sum, the legislative reforms which were expected following the 2012 elections have yet to fully materialize.<sup>66</sup> Hence, we recommend that:

1. The Government of Georgia demonstrate its willingness to systemically reform the electoral system. It should, in a timely fashion, create an electoral system reform working group which includes interested parties in the process and which will be able to undertake fundamental reforms for both parliamentary and municipal elections. The group should benefit from wide political support so that the decisions made by the group carry weight with the government;
2. It should be ensured that the will of voters is proportionally reflected in mandates;
3. In accordance with international recommendations, the equality of votes should be ensured;
4. The number of wasted votes should be reduced;
5. Initiative groups should have the right to nominate mayoral and *gamgebeli* candidates;
6. Compulsory quotas should be introduced to increase the representation of women;
7. The no confidence mechanism against mayors/*gamgebelis* should be revoked.

## 5.2 Election administration

### THE SITUATION BEFORE THE 2012 PARLIAMENTARY ELECTIONS

Despite the fact that the election administration is formally an apolitical body, in practice it has been demonstrated that it was and is not free from political influences. This assertion has been true with regard to the members appointed by parties and non-partisan members.<sup>67</sup>

### SINCE THE ELECTIONS

Despite the importance of the issue, the inter-faction group of the Parliament of Georgia which works on election matters did not consider the rules for the composition of the election administration. This issue was on the agenda of the inter-faction group created in March, 2013. However, the issue was not considered then nor in 2014. Therefore, reforms in this area have not taken place. A shortage of time and the complexity of the issue were cited as reasons for not carrying out reform in this area.

Notably, based on the results of the 2012 Parliamentary Elections, only one appointed member represented an opposition party among the seven members appointed by political parties. This again attests to the need for reform in this area.

## RECOMMENDATIONS

Although the election administration is subject to a lower degree of political pressure than in the past, the 2014 Local Elections demonstrated that certain members of the Commission make political rather than policy based decisions. This was caused, in large part, by problems in the rules which dictate the composition of the electoral administration. In addition, previous elections brought to light problems related to the low level of qualification of the members of the election commission.<sup>68</sup>

1. The rules dictating the composition of all levels of the electoral administration should be reformed in order to create a competent and impartial election administration. Selection of members should, above all, be based on professional qualification. This will ensure the improvement of professionalism in the election administration and will assist the administration in remaining free from political influence;
2. To improve the level of professionalism, members of commissions at all levels should be required to hold electoral certificates;

<sup>66</sup> Analysis of the Amendments to the Election Code adopted in 2014, April, 2014, [http://www.electionportal.ge/uploads/reforms/13/Analysis\\_of\\_the\\_Amendments\\_Final\\_ENG.pdf](http://www.electionportal.ge/uploads/reforms/13/Analysis_of_the_Amendments_Final_ENG.pdf)

<sup>67</sup> ISFED, *Monitoring Of October 1 st, 2012 Parliamentary Elections Final Report*, <http://www.isfed.ge/main/330/eng/>

<sup>68</sup> ISFED, *Monitoring of 2014 Local Self-Government Elections -Final Report*, <http://www.isfed.ge/main/777/eng/>

3. It is recommended that the number of commission members be reduced, enabling the employment of more qualified staff in the election administration;
4. It is paramount that the election administration be objective and that the impression of incoherence and impartiality be eliminated;<sup>69</sup>
5. Training of members of precinct commissions should receive more attention, especially, as relates to drafting final protocols.

### 5.3 The voter lists

#### THE SITUATION BEFORE THE 2012 PARLIAMENTARY ELECTIONS

The Commission for Ensuring Voter List Accuracy created for the 2012 elections made significant progress in improving the accuracy of the voter lists. However, it failed to solve problems including the existence of hundreds of thousands of unidentified and deregistered persons on the list.

Additionally, the precise number of voters residing abroad was unknown, and the exact number of voters was suspect.

#### SINCE THE ELECTIONS

- According to an amendment made to the Election Code in 2013, biometric registration was to take place for the 2014 Local Elections. However, in 2014, this amendment was revoked. Instead, photographs in the databases of the State Service Development Agency were compared and duplications in the lists were rectified in this manner;
- Voters' photographs were added to the table lists of voters in the 2014 Local Elections in order to identify voters at precincts and to avoid multiple voting;
- For the 2013 and 2014 elections, deregistered voters and voters registered without an address had to apply to the State Service Development Agency in order to vote. At the Agency, they were required to register with their address of residence or indicate their factual residential location. We think that the decision to re-register the deregistered voters was a step towards improving the voter lists. However, the results demonstrate that the campaign led by the government was insufficient;<sup>70</sup>
- It was decided that a military serviceman of the Ministry of Internal Affairs stationed at a military base could vote in the proportional elections of *sakrebulo*, and s/he may vote in the *sakrebulo* majoritarian and mayoral/*gamgebeli* elections if his or her military base is located within the electoral district where s/he is registered based on his or her place of residence;
- In the 2014 Local Elections, the number of so-called special precincts was significantly reduced which is a positive development;<sup>71</sup>
- The census was launched in November, 2014 which should contribute to determining the overall number of voters.

#### RECOMMENDATIONS

The elimination of duplicate listings of voters in the voter list by comparing photographs was an additional guarantee against voting with fraudulent documents. This should be considered a step forward. However, this was not a large scale<sup>72</sup> issue and did not fully resolve problems related to the lists.

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<sup>69</sup> GYLA, *2014 Local Self-Government Election Observation Mission, Pre-Election Environment, Election Day And Post-Election Period Monitoring Report*, pg.75, [https://gyla.ge/uploads/publications/web\\_en.pdf](https://gyla.ge/uploads/publications/web_en.pdf)

<sup>70</sup> ISFED, *Monitoring of 2014 Local Self-Government Elections – Final Report*, <http://www.isfed.ge/main/777/eng/>

GYLA, *Monitoring Mission for 2013 Presidential Elections, Monitoring Report for Pre-election Environment, Election Day and the Post-election period*, 2013, pg.22, [https://gyla.ge/uploads/publications/2013/monitoring\\_report\\_eng.pdf](https://gyla.ge/uploads/publications/2013/monitoring_report_eng.pdf)

<sup>71</sup> GYLA, *2014 Local Self-Government Election Observation Mission, Pre-Election Environment, Election Day And Post-Election Period Monitoring Report*, pg.25, [https://gyla.ge/uploads/publications/web\\_en.pdf](https://gyla.ge/uploads/publications/web_en.pdf)

1. We think that the only way to make the voter lists fully accurate is to use voters' biometric data;
2. With consideration to the interests of voters residing abroad, discussions on alternative forms of voting should be initiated;
3. We think that military servicemen of the MIA who are stationed at a base whose location is not in the same area as their registration location should not be able to vote in the proportional local elections. Also, the same restrictions should apply to Ministry of Defense servicemen.<sup>73</sup>

## 5.4 Legislation on the activities of political parties

### THE SITUATION BEFORE THE 2012 PARLIAMENTARY ELECTIONS

At the end of 2011, political party finance reforms were carried out. As a result, multiple constitutionally guaranteed human rights were endangered. Civil society activity resulted in improvements to many regulations, but certain problems remained in the legislation. In addition, the work of the State Audit Office was problematic. In many cases, the Office made partial and politically motivated decisions against opposition parties.<sup>74</sup>

### SINCE THE ELECTIONS

- Legal entities have been authorized to finance political parties;<sup>75</sup>
- Penalties under the party finance law have been reduced from five times the donated amount to twice the donated amount;
- The courts may collect information on an individual's finances;
- The timeline for processing and appealing cases of administrative infractions and liens has been specified;
- The threshold above which a political party receives state financing has been reduced from 4% to 3% of the vote in parliamentary elections ;
- An electoral subject which obtains 3% or more of the vote in *sakrebulo* elections receives a one-time payment of up to 500 000 GEL to cover electoral campaign expenses;
- The work of the State Audit Office has become more transparent, and its decisions are no longer selective.

### RECOMMENDATIONS

1. Regulations related to vote-buying should be reformed. In instances of vote-buying, the person whose vote is being bought should not be held criminally responsible;
2. The institutional independence of the State Audit Office should be guaranteed.

## 5.5 Administrative resources

### THE SITUATION BEFORE THE 2012 PARLIAMENTARY ELECTIONS

As of 2012, the illegal use of administrative resources for electoral purposes was a widespread practice. The right of various officials to freely participate in the election campaign for certain candidates or parties made it difficult to distinguish between the state and the incumbent political party. Consequently, the interests of

<sup>72</sup> State Service Development Agency, *Presentation of Results of the Project to Eliminate Duplication*, May, 2014, <http://bit.ly/1xz8dzw> (in Georgian)

<sup>73</sup> GYLA, ISFED, TI Georgia, *Recommendations Presented in 2013 regarding voters' list*, [http://www.electionportal.ge/uploads/reforms/7/Voters%60List\\_Secretary\\_ENG.pdf](http://www.electionportal.ge/uploads/reforms/7/Voters%60List_Secretary_ENG.pdf)

<sup>74</sup> ISFED, *Monitoring Of October 1 st, 2012 Parliamentary Elections Final Report*, <http://www.isfed.ge/main/330/eng/>

<sup>75</sup> *Recommendations of NGOs regarding the Amendments made in 2013 to the Legislation on Financing Political Parties*, [http://www.electionportal.ge/uploads/reforms/9/PartyFinancing\\_ENG%28first%29.pdf](http://www.electionportal.ge/uploads/reforms/9/PartyFinancing_ENG%28first%29.pdf), [http://www.electionportal.ge/uploads/reforms/9/Party\\_Financing\\_ENG.pdf](http://www.electionportal.ge/uploads/reforms/9/Party_Financing_ENG.pdf)

the state and the party were often confused and equated. This affected both the pre-electoral environment and election results.<sup>76</sup>

### **SINCE THE ELECTIONS**

- Campaigning during events financed by the budget was partially banned. Although the recommendation proposed by the non-governmental organizations envisaged a total ban, under the adopted amendment, only the event organizer is prohibited from campaigning during the event. This, compared with the proposed recommendation, is a significantly narrower regulation and may result in confusion while enforcing the law;<sup>77</sup>
- Under the amendments adopted before the Presidential Elections in 2013, it is illegal to increase the budgets of municipalities or the Adjara Autonomous Republic during the pre-election period. The latter had already been forbidden prior to the amendment;<sup>78</sup>
- Regulations related to a potential presidential candidate's current office were adopted;
- Election monitoring demonstrates that the use of administrative resources was less common during the 2013 and 2014 elections.<sup>79</sup>

### **RECOMMENDATIONS**

1. The number of officials designated as 'political officials' in the Election Code should be reduced. Namely, deputy ministers and governors should be removed from the list;<sup>80</sup>
2. The term "campaigning" should be clearly defined. In particular, the notion of "passive campaigning" should be added and certain persons (law enforcement agency and religious organization representatives etc.) should not be allowed to attend campaign events as representatives of their organizations.

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<sup>76</sup> ISFED, *Monitoring Of October 1 st, 2012 Parliamentary Elections Final Report*, pg. 27, <http://www.isfed.ge/main/330/eng/>;

<sup>77</sup> *Recommendations of NGOs on Use of Administrative Resources in 2013*, [http://www.electionportal.ge/uploads/reforms/6/State\\_Resources\\_ENG.pdf](http://www.electionportal.ge/uploads/reforms/6/State_Resources_ENG.pdf)

<sup>78</sup> GYLA, *Monitoring Mission for 2013 Presidential Elections, Monitoring Report for Pre-election Environment, Election Day and the Post-election period*, 2013, pg.13, [https://gyla.ge/uploads/publications/2013/monitoring\\_report\\_eng.pdf](https://gyla.ge/uploads/publications/2013/monitoring_report_eng.pdf)

<sup>79</sup> ISFED, *Monitoring of 2014 Local Self-Government Elections -Final Report*, pg. 29, [http://www.isfed.ge/main/777/eng/Final\\_Report\\_on\\_2013\\_Elections](http://www.isfed.ge/main/777/eng/Final_Report_on_2013_Elections), pg.18 <http://www.isfed.ge/main/525/eng/>;

<sup>80</sup> *What Recommendations of NGOs presented in 2013 were Taken into Account and what were not*, [http://www.electionportal.ge/uploads/reforms/12/analysis\\_interfaction\\_group\\_recommendations\\_ENG.pdf](http://www.electionportal.ge/uploads/reforms/12/analysis_interfaction_group_recommendations_ENG.pdf)

# 6. LOCAL SELF-GOVERNANCE REFORM

Open Society Georgia Foundation (OSGF)  
International Society for Fair Elections and Democracy (ISFED)  
Article 42 of the Constitution



## 6.1 Self-governance Reform

### THE SITUATION BEFORE THE 2012 PARLIAMENTARY ELECTIONS

Over the last two decades, there were five waves of self-governance reform in Georgia. The UNM government originally intended to carry out self-governance reform. However, later, it centralized power. As a result of the 2005 self-governance reforms, the lowest level of self-governance was abolished, and municipalities formed during the Soviet period at the *rayon* level were declared the only level of self-governance.<sup>81</sup> Following this reform, the vast majority of taxes were centralized, the level of formal and informal supervision by the central government gradually increased, and the already limited authority and finances of self-governance entities decreased. The increased level of responsibilities without corresponding increases in fiscal decentralization is inconsistent with the bolder ambitions of the consolidated self-governance entities.<sup>82</sup>

After the 2012 Parliamentary Elections, the issue of creating real self-governance, based on democratic principles, was once again raised in public discourse. The centralized system of governance, an absence of institutional and financial guarantees for municipal bodies, estrangement between local governments and the population, and a lack of citizen participation in decision-making are among the problems the elected government inherited.<sup>83</sup>

The Georgian Dream Coalition emphasized the necessity of reforming the self-governance system during its campaign and underlined the importance of decentralization and the independence of self-governing bodies.<sup>84</sup> Later, the Georgian government adopted a strategy for decentralization with active participation from civil society. It determined the directions and the main principles of reform in this area.<sup>85</sup> At the same time, the Ministry of Regional Development and Infrastructure, with widespread participation from society, began to work on drafting the Code on Self-Governance.

The draft Code on Self-Governance was widely supported by civil society organizations and was presented to the Parliament of Georgia in November, 2013. Opposition to the Code ensued, and the Patriarch of the Georgian Orthodox Church, Ilia II was decisive in creating opposition to the Code. He believed that some of the provisions of the draft Code would instigate separatism.<sup>86</sup> His statements, to a certain degree, changed the public's attitude towards the reform and enabled the government to remove regulations from the Code which Ilia II had indirectly indicated as problematic, as well as those provisions for which there was no consensus in the ruling party. Civil society organizations actively called on the government to refrain from changing the course of the reform and to pursue the principles of the government's strategy.<sup>87</sup>

### SINCE THE ELECTIONS

The adoption of the Organic Law Code on Self-governance was a step towards decentralization. Although, compared to the previous, often cosmetic reforms, clear progress was made, but substantial reforms were impeded. Some regulations in the original version of the Code, which had enjoyed wide support among civil society organizations, experts and the public, were not adopted by the Parliament, while others were delayed and others were not adopted.

The most significant reform under the new Code on Self-governance is the direct election of mayors and *gamgebelis*. In the 2014 Local Elections, all self-governing entities elected both representative and executive

<sup>81</sup> The reform resulted in reduction of the number from 1 004 (village, town, city) to 69;

<sup>82</sup> Open Society Georgia Foundation, *Annual Report on Local Democracy Development in Georgia (2009-2010)*, pg.7., [http://www.osgf.ge/files/publications/2011/Report\\_ENG\\_Web.pdf](http://www.osgf.ge/files/publications/2011/Report_ENG_Web.pdf)

<sup>83</sup> Open Society Georgia Foundation, *Annual Report on Local Democracy Development in Georgia (1991-2012)*, pg. 6., <http://bit.ly/18Xxsj4> (in Georgian)

<sup>84</sup> *The Electoral Program of Coalition "Bidzina Ivanishvili – Georgian Dream"*, pg.14., <http://bit.ly/1zkn0xG> (in Georgian)

<sup>85</sup> The Main Principles of the Strategy for Decentralization of the Georgian Government and Development of Self-governance for 2013-2014, <http://bit.ly/1Gmvoyr> (in Georgian)

<sup>86</sup> ISFED, *Analysis of the Draft Law on Local Self-Governance, International Experience*, pg.4., <http://www.isfed.ge/main/547/eng/> ;

<sup>87</sup> Open Society Georgia Foundation, *Special Statement of 25 NGOs – Self-government reform process should not be impeded*, October, 2013, [http://www.osgf.ge/index.php?lang\\_id=ENG&sec\\_id=15&info\\_id=3511](http://www.osgf.ge/index.php?lang_id=ENG&sec_id=15&info_id=3511)



bodies. Despite the sometimes less than appropriate tone and instances of violent confrontations during the electoral campaigns, the elections were held in a democratic manner.<sup>88</sup> The newly introduced electoral threshold of 50% for electing executive bodies made it necessary to hold second rounds in most municipalities. This has granted mayors and *gamgebelis* greater legitimacy.

By comparing the electoral program of the Georgian Dream Coalition, (the Main Principles of the Strategy of the Government of Georgia for Decentralization and Development of Self-governance), and the original and final versions of the Code on Self-governance and the process of implementation of the transitional provisions of the Code, the dynamics of the reform process are apparent:

**Public self-governance.** Unlike the government strategy and the original version of the Code on Self-governance, the final version of the Code does not include (not even in a limited form) the notion of public self-governance. This notion had been cited as an important mechanism for public participation. According to the transitional provisions of the Code, the Georgian government was obliged to develop and propose to Parliament a draft law on additional forms of public participation in self-governance by the end of 2014. Having missed the deadline, the Ministry of Regional Development and Infrastructure still drafted the bill in the beginning of 2015 based on the draft developed by non-governmental organizations.

**The Capital, Tbilisi.** In the Georgian capital, representative and executive bodies were to be formed at the district level. Districts were to have their own powers and a budget. The organic law which was adopted does not envisage the creation of the abovementioned bodies.

**Territorial Optimization of Self-governance.** In accordance with the Strategy, new municipalities were to be formed throughout the country before the Local Elections in 2014. Their number mentioned in the drafts of the Code was reduced first to 20<sup>89</sup> and later to 13.<sup>90</sup> Finally, their number was further reduced to only those regional centers which did not have the status of self-governing city (seven in total). Optimization has not taken place even in the self-governing cities. Pilot optimization programs have not been implemented. The reform was limited to the separation of the cities from the municipalities. Both governmental entities (the city and the community) remain in their former centers which undermines the process of territorial optimization. Whether the optimization process is completed will depend on the political will of the government. According to the Code, it should be complete a year prior to the 2017 Local Elections (by the autumn of 2016).

**Regional Self-governance.** Self-governance at the regional level was supposed to be introduced pursuant to the government's Strategy. At the regional level, regional councils were to be formed and consist of representatives of local self-governing entities. The councils would be chaired by a person nominated by the council and approved by the Georgian government. In the process of drafting the Code, the formation of the regional councils was scrapped and instead consultative councils consisting of *gamgebelis* and the chairpersons of *sakrebulo*s were established. The position of appointed governors was retained. Regions will not have their own powers or budget.

**Economic Basis.** According to the government's Strategy, the incomes of the self-governing entities were to increase through the adoption of shared taxes. Shared taxes consist of leaving a share of income tax at the local level. In addition, the central government was going to start the process of transferring state property to the local self-governing entities. In 2014, Parliament adopted the Code on the Budget which envisages transferring a segment of income taxes to local self-governing entities' budgets. Despite the reform, no broad discussion has yet started, and the public is unaware of which mechanism will be used by the government to implement the shared income tax system. Moreover, even though the Code (Article 107)

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<sup>88</sup> ISFED, *Monitoring of 2014 Local Self-Government Elections -Final Report*, <http://www.isfed.ge/main/777/eng/>

<sup>89</sup> According to the draft Code, the new municipalities would be formed in those municipalities whose regional centers had more than 10 thousand inhabitants

<sup>90</sup> After drafting the Code, the new municipalities would be formed in those cities which had more than 15 thousand inhabitants

determined the types of properties that were to be transferred to local self-governing entities, the state has not started transfers to municipalities.

The implementation of commitments undertaken under the Code on Self-governance will determine the results of the fifth wave of self-governance reform. In this process, coordination between state agencies and civil society organizations will be of particular significance. The Commission on Regional Development and Self-governance Reform created by the initiative of the Prime Minister in October, 2014 may make the process more effective and sustainable. However, the Commission's plans remain unknown to the public.

## **RECOMMENDATIONS**

The success of self-governance reform will largely depend on the implementation of commitments which the ruling party included in the transitional provisions of the Code on Self-governance. To create institutionally and financially independent self-governance and to improve the relationship between citizens and self-governing entities, we recommend that:

1. Mechanisms that will ensure the financial independence and fiscal decentralization of self-governing entities be developed and approved, including by means of the shared income tax mechanism;
2. Rules should be adopted for transferring property to the ownership of self-governing entities as well as rules for the management and use of other types of property;
3. The territorial optimization of self-governance should continue in order to consolidate self-governance bodies and to create the necessary preconditions for the economic development of self-governing entities;
4. The institute of governor should be reformed as relates to its functions, role and authority;
5. In close cooperation with the public, additional forms and mechanisms for citizen participation in self-governance should be set up;
6. As a part of the ongoing constitutional reform, constitutional guarantees for self-governance should be strengthened, including by adopting the principle of subsidiarity.

## **6.2 Human resources management: hiring and dismissing civil servants**

### **THE SITUATION BEFORE THE 2012 PARLIAMENTARY ELECTIONS**

After the 2012 Parliamentary Elections, developments in self-governing entities have shown that the population does not fully understand the purpose and functions of self-governance. The population expected that the change of central government would have naturally been followed by changes in the composition of the self-governing entities and that the Georgian Dream Coalition would have become the decision-making political force at the local level.

This attitude resulted from the fact that, in the past, self-governing body officials were perceived as representatives and supporters of the ruling party on the local level due to their activities. In addition, unfortunately, local officials took politically motivated and illegal actions against municipal employees including dismissing or threatening employees, intimidation, and the use of administrative resources.<sup>91</sup>

### **SINCE THE ELECTIONS**

When the new government started to discuss local self-governance reform protest rallies and municipal government staff changes were ongoing. The staff changes in local government bodies took place in two stages. The first wave of large scale changes occurred after the 2012 Parliamentary Elections. *Gamgebelis* in 55 municipalities and chairpersons of local councils in 31 municipalities were replaced between October 1, 2012 and August 3, 2013. In many cases, their resignation took place alongside protest rallies and sometimes violent confrontations. When high officials were removed from office, corresponding staff changes also took

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<sup>91</sup> ISFED, *The Final Report of ISFED about Municipal Developments following the Parliamentary Elections*, <http://www.isfed.ge/main/798/geo/> (in Georgian)

place. From October 1, 2012 to June 1, 2013, 2 321 personnel were dismissed.<sup>92</sup> Among others, chairpersons of territorial bodies were also removed from office. Most of the dismissed personnel filed their own resignation. In some cases, dozens of employees submitted letters of resignation on the same day. This logically aroused suspicions about whether decisions to resign had been made voluntarily. In addition, partisan preferences were apparent when hiring new employees and supporters of the Georgian Dream were appointed to the newly vacant positions.<sup>93</sup> These developments in the municipalities once again highlighted the instability of the civil service and the direct dependence of local self-governing entities on the central government.

In February 2014, Article 134<sup>4</sup> was added to the Law of Georgia on the Civil Service. The Law stated that, after the 2014 Local Elections, every civil servant employed at the local level would receive the status of 'acting' civil servant. The provision created the risk that the employees of local self-governing entities would come under direct and indirect political pressure.<sup>94</sup> However, this article was later revoked by Parliament, which merits a positive assessment.<sup>95</sup>

It is notable that, after the 2014 Local Elections, another wave of massive dismissals was launched in Tbilisi and in a number of other municipalities. The dismissals were carried out based on direct orders from high-ranking officials as well as through personal letters of resignation. For example, in the Tbilisi municipality, Isani, as many as 40 employees were dismissed after submitting letters of resignation.<sup>96</sup> Also, several employees of the Tbilisi Mayor's Office were forced to resign "voluntarily". Some were demoted.<sup>97</sup> It is notable that, according to research carried out by ISFED, after the Local Elections, 155 persons were dismissed in one month from the Tbilisi Mayor's Office and most of them resigned on the basis of letters of resignation.<sup>98</sup> The situation is similar in the regions of Georgia. For example, 737 persons were dismissed from local self-government bodies in Imereti and Guria over the course of a two month period. Among them, 116 submitted personal letters of resignation. Forty-nine civil servants were dismissed by one order in the municipality of Bagdati. One hundred and twenty staff members were discharged in one day by one order in Ozurgeti municipality. In Chiatura, 114 employees simultaneously wrote letters of resignation "voluntarily".<sup>99</sup>

After the Local Elections, on the background of widespread dismissals, in accordance with the amendment made to the Law on Civil Service, a process of contests and attestation of civil servants was launched in the municipalities. However, the previous large scale dismissal of civil servants cast doubt on the objectivity and fairness of the process.<sup>100</sup>

Furthermore, the transparency of the process was seriously compromised by the fact that some municipalities refused non-governmental organizations' requests to monitor the planned attestations and contests. In addition, the potentially politically motivated dismissals which occurred beforehand created a

<sup>92</sup> ISFED, *The Final Report of ISFED about Municipal Developments following the Parliamentary Elections*, September 2013, <http://www.isfed.ge/main/449/eng/>

<sup>93</sup> ISFED, *The Final Report of ISFED about Municipal Developments following the Parliamentary Elections*, <http://www.isfed.ge/main/798/geo/> (in Georgian)

<sup>94</sup> Transparency International Georgia, *Monitoring Report on Misuse of Administrative Resources Ahead of the 2014 Municipal Elections*, pg.14, <http://transparency.ge/en/post/report/misuse-administrative-resources-ahead-2014-municipal-elections>

<sup>95</sup> The Parliament of Georgia, *All municipal servants to be subject to testing*, <http://goo.gl/2vCneh>

<sup>96</sup> Netgazeti.ge, *GYLA: Possible Duress on Employees in Isani Gamgeoba* <http://bit.ly/1BreYyl>; Tabula, *Deputy gamgebeli of Isani is being Forced to Resign*, October, 2014, <http://bit.ly/1Oz4PJT> (in Georgian); GYLA, *GYLA Calls on Law Enforcement Agencies to Investigate the Alleged Facts of Duress on Deputy gamgebeli of Isani*, October, 2014, <https://gyla.ge/eng/news?info=2288>

<sup>97</sup> Prime Time, <http://bit.ly/1HGpJRV>

GYLA, *Statement of NGOs on Alleged Political Persecution of Employees of Tbilisi City Hall*, October, 2014, <https://gyla.ge/eng/news?info=2301>;

<sup>98</sup> ISFED, *Employment of 155 People Terminated in Tbilisi City Hall over a Period of One Month*, <http://www.isfed.ge/main/761/eng/>

<sup>99</sup> Editori, *Report of Mediatori about the Ongoing Processes in Guria and Imereti*, October, 2014, <http://editori.ge/?p=1909> (in Georgian)

<sup>100</sup> Pirveli Radio, *Statement of NGOs regarding the Tests held in the Mayor's Office*, November, 2014, <http://pirveliradio.ge/?newsid=35373> (in Georgian);

justified suspicion that the commission in charge of the competitive hiring process would not make objective decisions.

*Sakrebulo* member expense reimbursement practices also remain problematic. According to the Code on Self-governance, *sakrebulo* members are reimbursed for expenses incurred from work related activities in accordance with the relevant municipal *sakrebulo* regulation. However, after the reform's implementation, the rules for reimbursement have not been modified in any significant manner. Currently, the rules for reimbursement for the cost of meetings remain incoherent, are inconsistent between municipalities, and are often confusing as it is unclear what criteria determines the differences between maximum limits which *sakrebulo* members may request reimbursement for in different municipalities.<sup>101</sup>

## **RECOMMENDATIONS**

Given the abovementioned, we think:

1. The rules for remuneration of *sakrebulo* members within the local-governance reforms should be improved, and a consistent practice should be developed;
2. The practice of politically motivated, discriminatory dismissal of civil servants by high-ranking officials should be eliminated in local self-governing entities;
3. Law enforcement agencies and the Prosecutor's Office should pursue effective recourse on criminal cases of duress as envisaged under the Criminal Code of Georgia and responsible persons should be convicted;
4. Local self-governing entities should allow any interested party to monitor attestation and hiring contests in order to avoid arousing suspicions regarding the fairness of the process.

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<sup>101</sup> ISFED, *Rules of Regulation for Compensating Sakrebulo Members – Inconsistent Practice in Municipalities*, <http://www.isfed.ge/main/790/eng/>

# 7. FREEDOM OF RELIGION

Human Rights Education and Monitoring Center (EMC)

ადამიანის უფლებების სწავლებისა და მონიტორინგის ცენტრი

**EMC**

Human Rights Education and Monitoring Center

## THE SITUATION BEFORE THE 2012 PARLIAMENTARY ELECTIONS

Systematic problems are present in the domain of freedom of religion. For years, the government has failed to develop an adequate legislative framework and policy which would enable religious organizations to operate in a non-discriminatory environment. Problematic practices include the state's financing of the Georgian Orthodox Church, inconsistent practices in regards to restitution of properties religious organizations were deprived of during the Soviet period, discriminatory tax legislation, and an intolerant and discriminatory environment in public schools.

In spite of these issues, several important reforms were carried out during the previous government which safeguarded religious freedom and ensured a degree of equality. In this regard, the Law on General Education, passed in 2005, is notable. The Law created important legal safeguards which guarantee a secular and tolerant environment in public schools. However, the government failed to adequately implement the safeguards envisaged by the legislation. Specifically, the government has not effectively investigated high profile offences motivated by religious hatred or detained prominent members certain extremist groups. The government also failed to create a liberal approach to registration which would enable all religious organizations to become Legal Entities of Public Law.

## SINCE THE ELECTIONS

After the 2012 transition of power, the situation with regard to religious freedom has seriously deteriorated.

### Ineffective state policy towards violence motivated by religious hatred

Over the course of the last two years, a number of instances of religious violence have taken place (e.g. Nigvziani, Tsintskaro, Samtatskaro<sup>102</sup>, the celebration of Hanukkah in Tbilisi<sup>103</sup>, Chela<sup>104</sup>, Terjola<sup>105</sup>, Kobuleti<sup>106</sup>, Mokhe<sup>107</sup>), and the government has responded in an adequate manner. Through its inaction, and in some cases discriminatory attitude, it has contributed to the instigation of intolerance.

Each case of violence was of a social nature. Discourse analysis of the conflicts that took place demonstrates that the dominant religious group is privatizing public space, sacralizing it, and attempting to inhibit public self-representation of other religious groups.

In each conflict, it was evident that public school teachers and Christian clerics played negative roles by cultivating intolerance. In addition, local government representatives violated the principle of religious neutrality by implementing non-secular policies which induced aggression from the dominant group directed at the minority population.<sup>108</sup>

After the transition of the government, six instances of serious religious violence against the Georgian Muslim community took place. However, state policies were ineffective.<sup>109</sup> The Ministry of Internal Affairs did not effectively and timely respond to any of the cases and instead passively observed events. The law enforcement agencies also failed to ensure effective investigations.<sup>110</sup> To date, investigations of the Nigvziani and Samtatskaro cases have not been finalized. The state's demonstratively ineffective policies caused violence to spread in a number of instances and in a variety of situations.

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<sup>102</sup> EMC, *Research Paper: Crisis of Secularism and Loyalty towards the Dominant Group*, 2012, <http://bit.ly/1ePX80D> (in Georgian)

<sup>103</sup> Netgazeti, *Religious Crime Qualified as Hooliganism*, <http://bit.ly/1CqKlbM> (in Georgian)

<sup>104</sup> Georgian Democracy Initiative, *Joint statement of the NGOs on events in Chela village*, August, 2013, <http://gdi.ge/en/news/rights-of-muslim-population-grossly-violated.page>

<sup>105</sup> EMC, *Legal Analysis of the Religious Conflict which Took Place in Terjola*, June, 2014, <http://bit.ly/1r1H69D> (in Georgian)

<sup>106</sup> EMC, *Joint Statement on the Facts of Restriction of Rights of the Muslim Community in Kobuleti*, September 2014, <http://bit.ly/1x8ffFx>

<sup>107</sup> EMC, *Statement on Gross Violation of Rights of Muslims in Mokhe*, October 2014, <http://bit.ly/1FVIQJ0> (in Georgian)

<sup>108</sup> *Georgia in Transition, Report on the Human Rights Dimension: Background, Steps Taken and Remaining Challenges*, Thomas Hammarberg, September 2013, pg. 50.

<sup>109</sup> *Id.* pg. 49;

<sup>110</sup> Report of the Ombudsman of Georgia, 2013;

Together with the ineffective policies for fighting against religious intolerance and violence, the Ministry of Internal Affairs has been demonstratively repressive against religious minorities. During planned operations in the villages of Chela<sup>111</sup> and Mokhe<sup>112</sup>, the police illegally detained several members of the Muslim community and used manifestly disproportionate force against them. This behavior highlights the MIA's tolerance of religious violence. Moreover, analysis of existing practice shows that the state consistently refrains from using legal and repressive mechanisms in cases where representatives of the dominant religious group carry out religious violence and/or persecution, while at the same time carrying out repression against religious minorities.

Despite multiple Human Rights Education and Monitoring Center (EMC) petitions, the Prosecutor's Office has refused to launch an investigation into the abuse of power by the police in Chela, providing the justification that the case did not appear to be a crime. The prosecutor's office has started an investigation based on an EMC petition in regards to a case involving the abuse of power by the police in Mokhe. However, the investigation has not yet made any tangible progress.

Analysis of offences motivated by religious hatred perpetrated against Jehovah's Witnesses also evidences a rise in religious intolerance and the government's ineffective policies.<sup>113</sup> According to the Christian Organization of Jehovah's Witnesses, in 2013, 53 cases of violence against their members were reported. In 2014, the number of incidents reached 64. Comparative analysis of previous years' statistics shows that instances of violence against the Jehovah's Witnesses have radically increased. Moreover, they have become increasingly collective and public. It is evident that this trend stems from to the impunity of offenders.

### **The State Agency for Religious Matters and its undefined mandate**

The state responded to issues related to religious freedom by creating the State Agency for Religious Issues which is under the Prime Minister's supervision. The Agency was granted the exclusive authority to resolve issues related to religion. This type of state agency is typical of post-Soviet political systems and carries the risk that the state may attempt to control religious organizations. Analysis of the activities of the agency as well as its publically declared positions supports this supposition. Thus far, the Agency's work focuses on developing mechanisms to control the finances of four religious denominations and transferring financial and material goods to various religious organizations through a commission created for this purpose.<sup>114</sup> This creates the risk that the state may gain control over religious organizations. The chairperson of the Agency noted in public statements that the purpose of the Agency's work is not to safeguard the freedom of religion, but instead to ensure state security. The Agency's understanding of freedom of religion related issues is inadequate. Its work is limited to activities such as the introduction of inter-religious studies in schools and the adoption of special regulations for the construction of religious facilities.<sup>115</sup> The Agency failed to effectively respond to any of the highly public cases of religious violence (Terjola, Kobuleti, Mokhe). The mandate of the Agency is vague and risks duplicating the competencies of other state agencies. Notably, the Agency does not have democratic and public forums for communicating with religious organizations. For this reason, the organization has little legitimacy with regard to developing religion related policies.

### **The inadequacy of activities envisaged in the Action Plan for Human Rights**

The commitments made under the Action Plan for Human Rights (2014-2015) in the area of religious freedom fail to meet the grave challenges in this domain. Among other issues, it does not include

<sup>111</sup> EMC, The Events of Chela, <http://bit.ly/1BrhFzP> (video in Georgian);

<sup>112</sup> EMC, *EMC Petitions to the Prosecutor's Office regarding the Abuse of Power by the Police*, <http://bit.ly/191QrUD> (in Georgian);

<sup>113</sup> EMC, *Analysis of Violent Acts against Jehovah's Witnesses*, April, 2014, <http://bit.ly/1N9on64> (in Georgian);

<sup>114</sup> State Agency for Religious Issues, *Results of the First Session of the Commission for Studying Financial and Proprietary Issues of Religious Organizations*, October 2014, <http://bit.ly/1Gnzlxxy> (in Georgian) Also, *The Second Session of the Commission for Studying Financial and Proprietary Issues of Religious Organizations*, December 2014, <http://bit.ly/1lw3M9p>

<sup>115</sup> Now the Agency itself considers the issues of issuing construction permits – see the official information published on the Facebook page of the State Agency for Religious Issues, October 2014. *Results of the First Session of the Commission for Studying Financial and Proprietary Issues of Religious Organizations*. On the same page, the State Agency for Religious Issues is Planning to Create a Textbook on Religions for Schools, <http://on.fb.me/1xzCHBt> (video in Georgian)

mechanisms aimed at improving discriminatory legislation, eliminating the non-secular practice of financing religious organizations, improving the difficult conditions in public schools with regard to religion, or measures aimed at eliminating violations of religious neutrality in the civil service. Most activities envisaged under the Action Plan are within the competences of the State Agency for Religious Issues. With the institution's problematic legitimacy and disputable mandate, the effectiveness of this organization's implementation of the Action Plan is questionable.

### **The non-secular and discriminatory system of financing religious organizations**

Financing religious organizations is based on preferences for and a privileged attitude towards the Orthodox Church. For years, the local and central governments have provided extensive material support to the Georgian Orthodox Church. Funding the Church is often not in line with the public interest. Funding levels are not determined by reasonable, measurable and objective criteria. Under the new government, as under the previous government, financing the Church has continued.<sup>116</sup>

On January 27, 2014, the Georgian government adopted a resolution on "Approving Rules for Undertaking Certain Measures for Partial Compensation of Damages Incurred by Religious Organizations in Existence in Georgia under the Soviet Totalitarian Regime". The resolution lays out rules for compensation of material and moral damages that Islamic, Jewish, Roman-Catholic and Armenian Apostolic religious groups experienced during Soviet rule. This resolution is discriminatory as it does not include all of the religious groups which incurred damages under the Soviet totalitarian regime. This approach creates the risk of creating a hierarchy among religions. In addition, the resolution contains neither rules for computing damages nor objective and fair criteria which could be used to determine the value of damages. The compensation of these four confessions, as with financing the Orthodox Church, is a direct financing model which violates the principle of secularism.

Analysis of the agreements between the state and the four denominations envisaged under the resolution shows that the state directly determines the purposes of the finances, demands detailed accounting, requires midterm and final reports, and audits the organizations. This is a gross intervention by the state into the activities of religious groups.

### **The non-secular and discriminatory environment in public schools**

Religious indoctrination, proselytizing and discrimination in public schools remain serious challenges for the education system.<sup>117</sup> The Ministry of Education and Science has not effectively addressed these issues, nor does it have a strategy or policy document for these issues. The Ministry does not use proactive monitoring mechanisms to identify and respond to problems. In this regard, the organized participation of representatives of the school administration and students against Jehovah's Witnesses in Terjola is notable. The Ministry of Education and Science did not respond to this incident in an adequate manner, and despite a number of statements and complaints issued by EMC, it failed to identify disciplinary infractions in teachers' conduct.<sup>118</sup>

### **The problem of restitution of property deprived of religious groups in the Soviet period**

Despite the fact that the property deprived of the Orthodox Church during the Soviet period was fully restituted, a comparable degree of restitution has not been made to other religious organizations.<sup>119</sup> This creates serious problems for them in the process of exercising freedom of religion.<sup>120</sup> The conflict that took place in Mokhe was an example of the problem regarding restitutions. The Muslim community has requested

<sup>116</sup> Joint Research Paper of EMC and Tolerance and Diversity Institute (TDI), *Practice of Financing of Religious Organizations by Central and Local Governments*, 2014, <http://goo.gl/6d9tr5> (in Georgian)

<sup>117</sup> EMC, *Religion in Public Schools*, 2014, <http://bit.ly/R6DyVwf> (in Georgian)

<sup>118</sup> EMC, *EMC Appeals a Decision of Internal Audit Department of the Ministry of Education*, September 2014, <http://bit.ly/1y8tIBS> (in Georgian)

<sup>119</sup> *Georgia in Transition, Report on the Human Rights Dimension: Background, Steps Taken and Remaining Challenges*, Thomas Hammarberg, September 2013, pg. 49; GEORGIA 2013 INTERNATIONAL RELIGIOUS FREEDOM REPORT pg. 3;

<sup>120</sup> Tolerance and Diversity Institute (TDI), *Research Paper on Needs of Religious Organizations in Georgia*, <http://bit.ly/1CKPxfu> (in Georgian);



the restitution of the disputed building since 2007. The problem of restitution is particularly severe for the Armenian Apostolic Church and the Catholic Church<sup>121</sup> as, in some cases, churches which they possessed historically are now occupied by the Orthodox Church. This thus entails serious historical and legal disputes. In this regard, the composition and mandate of the commission deliberating the issue of the building in Mokhe as well as the state's methods of solving the issues related to restitution by democratic procedures instead of the judicial system is especially problematic.<sup>122</sup>

### **Problems related to the construction of religious buildings**

Religious organizations face serious challenges when attempting to construct religious buildings. Local municipalities, as a rule, protract the process of issuing construction permits or create otherwise illegal barriers for non-Orthodox religious organizations.<sup>123</sup> Usually, this is due to the protest of the dominant religious group. In Terjola, due to resistance from the local Orthodox community against the construction of a Kingdom Hall for Jehovah's Witnesses, the local government made an illegal and discriminatory decision when it revoked the Hall's construction permit. An administrative proceeding has proven that the Kingdom Hall's construction is legal. However, Terjola Municipality has not annulled its decision to date, in violation of the General Administrative Code.<sup>124</sup>

### **Violations of the autonomy of religious organizations**

The new Agency for Religious Issues and the practice of financing religious organizations create an institutional problem as, in practice, financing results in the violation of the autonomy of religious organizations. However, in the case of the Muslim community, the government's direct influence on the Department of the Mufti has caused protest in the Muslim community. The conflict and estrangement between the Muslim community and the Department of the Mufti was particularly visible during public discussions on constructing mosques in Chela, Mokhe and Batumi. At those times, the leaders of the organization made statements of loyalty to the government contrary to the demands of the community. Legitimacy of and democratic governance within the Department of the Mufti are problematic issues.<sup>125</sup>

## **RECOMMENDATIONS**

1. The competences of the Agency for Religious Issues should be reformed as they are vague, broad and potentially duplicate competences of other administrative bodies. The need for such an agency should be examined;
2. Policies should be adopted for the restitution of property deprived of religious organizations during the Soviet period;
3. The discriminatory and non-secular practice of financing the Orthodox Church by the government of Georgia and the Parliament of Georgia as well as the practice of financing four religious organizations under the Georgian government's resolution dated January 27, 2014 should stop immediately;
4. The government should clearly define standards for ensuring religious neutrality in the civil service and ensure effective monitoring of implementation;
5. The government should provide training to representatives of local municipalities in the areas of secularism, prohibition of discrimination and issues related to tolerance;
6. Eliminate state policies which diminish the autonomy of religious organizations;
7. Competent state agencies should resolve the ongoing violations of the freedom of religion in a timely manner (the impediment to the boarding-school of Muslim students in Kobuleti, cessation of construction of religious buildings for Jehovah's Witnesses in Terjola);

<sup>121</sup> INTERNATIONAL RELIGIOUS FREEDOM REPORT 2013, pg. 4, <http://bit.ly/1y8tIBS>

<sup>122</sup> The State Agency for Religious Issues, *The First Session of the Commission Studying the Contentious Buildings in Mokhe village was held on December 27, December 2014*, <http://bit.ly/1EUTs9E> (in Georgian)

<sup>123</sup> Tolerance and Diversity Institute (TDI), *Research Paper on Needs of Religious Organizations in Georgia*, <http://bit.ly/1CKPxfu> (in Georgian);

<sup>124</sup> EMC, *Legal Analysis of the Religious Conflict which Took Place in Terjola*, June, 2014, <http://bit.ly/1rIH69D> (in Georgian);

<sup>125</sup> Batumelebi, *Pupils Resumed Hunger Strike in Achvistavi*, March 2015, <http://bit.ly/1N9sBKR> (in Georgian)

8. The Ministry of Education and Science should adopt a strategy to fight against indoctrination, proselytizing and the practice of discrimination in public schools. It should proactively monitor the situation in public schools;
9. The Ministry of Internal Affairs and the Prosecutor's Office should ensure effective and independent investigation of offences motivated by religious hatred. In this regard, detailed statistics should be maintained;
10. The Prosecutor's Office should ensure effective investigation of disproportionate use of force against and illegal detentions of representatives of the Mokhe Muslim community;
11. Municipalities should understand problems related to the construction of religious buildings and resolve them.

## 8. ETHNIC MINORITIES

Public Movement Multinational Georgia (PMMG)



## **THE SITUATION BEFORE THE 2012 PARLIAMENTARY ELECTIONS**

Until 2012, the government openly declared the need to secure the safety and civic integration of ethnic minorities. In practice, however, the publicly declared state policy was rarely translated into specific positive actions. There was a perceptible lack of sincerity in state policy and it did not draw on the genuine needs and concerns of minorities. In light of the general situation in the country concerning violations of human rights, instances reflecting violations of the rights of ethnic minorities and associated pernicious practices in areas densely inhabited by ethnic minorities were particularly severe. This was repeatedly highlighted in national and international monitoring documents dealing with the protection of human rights. The Framework Convention for the protection of national minorities was ratified in 2005 but was not substantively implemented. Although, certain efforts have been made to ensure the accessibility of education and state language instruction to ethnic minorities, they were ineffective as they did not give sufficient consideration to the needs of the beneficiaries and their actual concerns. The number of public schools that taught in the languages of ethnic minorities decreased, although the quality of overall instruction improved. The National Concept for National Integration and Tolerance was developed, which the international community assessed positively. However, the concept failed to provide programs tailored to the needs and interests of the target groups, in so far as the very approach of the government to the issue of minorities had always been viewed through the prism of security, leaving little room for planning and implementing genuine public programs addressing the concerns of minorities. The civic and political engagement indicator for ethnic minorities both on the local and national levels was only nominal. The level of political engagement in the region of Samtskhe-Javakheti was higher than in the region of Kvemo Kartli, while minorities were scarcely represented at the national level. There were a few instances when ethnic minority representatives were more engaged in decision-making as a result of backing from the ruling party. Certain efforts, albeit unsatisfactory, were aimed at the preservation of ethnic minority cultural traditions. Although religious organizations were granted the right to register, restitution of religious/cultural facilities remained unresolved. A series of infrastructure projects were implemented in areas densely inhabited by ethnic minorities.

## **SINCE THE ELECTIONS**

Over the past two years, the government has made efforts aimed at protecting ethnic minorities and ensuring their civic integration: a series of measures have been planned and implemented to strengthen the rule of law as well as to increase the accessibility of education for ethnic minorities and provide them with Georgian language classes. To carry out the National Concept for Tolerance and Civil Integration, an updated action plan has been developed. To enhance the civic, political, and electoral participation of ethnic minorities, national programs have been developed and a number of measures have been implemented. The state has made serious efforts to build up infrastructure in the regions densely populated by ethnic minorities and to provide ethnic minorities vocational training and employment assistance. At the same time, to encourage their social and regional mobility, programs have been developed aimed at the preservation of minority culture. Importantly, the election environment in the regions densely populated by ethnic minorities has been marked by increased transparency and greater freedom as compared to the previous period. Positive steps have been taken in order to raise the level of awareness in the protection of minority rights among the students of the Academy of the MIA, to increase the number of minority students at the Academy, and to facilitate their future employment on the local level. The Defense Ministry encourages ethnic minority representatives to enroll in the National Defense Academy. The Ministry of Sports and Youth Affairs has developed and is implementing special programs that are focused on the fulfillment of ethnic minority interests and ensuring their engagement, as well as encouraging intercultural dialogue.

Nevertheless, a number of challenges persist which if addressed would, on the one hand, contribute to the full realization of the rights, needs, and interests of ethnic minorities, and, on the other hand, create powerful preconditions for their deserved political, social, economic, and civic integration.

## RECOMMENDATIONS

1. As regards ensuring the rule of law, efforts remain insufficient to achieve the desired results. Gaps in the legislation inhibit rights. The legal framework does not fully reflect the international commitments undertaken by the country in terms of human rights protection;
2. More time should be devoted to ensuring accessibility of education for ethnic minorities, identifying the efficacy of state programs for teaching the state language, analyzing their quality, and drawing pertinent conclusions;
3. The regions populated by ethnic minorities continue to face the problem related to access to national broadcasting. There is a scarcity of programs in minority languages, a limited range of coverage and participation of ethnic minorities in television and radio programs, and a shortage of electronic and print media circulating in the languages of ethnic minorities. Initiatives and efforts to promote tolerance and cultural diversity in the media are inadequate. Ethnic minorities continue to receive little information on the processes surrounding the country's Euro-Atlantic integration and the resulting benefits;
4. Programs and activities aimed at ensuring the civic, political, and electoral participation of ethnic minorities have lacked consistency. An example of this is the shortage of programs to provide career development trainings to professionals and ethnic minority civil servants. As regards ethnic minority political engagement, the low level of minority representation in civil service is a persistent problem. Although the reform of local self-government has been initiated, there is a manifest tendency of informally strengthening the gubernatorial powers in minority-populated regions, which, in turn, affects the achievement of real self-governance which focuses on the needs and interests of the local residents. In areas populated by ethnic minorities there is still a lack of trust in the law enforcement agencies. Nevertheless, law enforcement agencies attempt to interfere in political processes considerably less often than in the past. In spite of positive developments, more efforts are required in order to promote the social and regional integration of ethnic minorities;
5. There is not a unified and consistent state policy with regard to the preservation of ethnic minority cultural traditions . Although some steps have been taken to transfer religious buildings to ethnic minority, community-based religious organizations, the process has been inconsistent.

Considering the above:

1. To ensure the rule of law, the legal framework should be improved, and the harmonization of national legislation with international commitments undertaken by Georgia should be facilitated. More effective measures should be taken to raise the legal awareness of public officials, and more intense activities should be carried out to enhance the culture of tolerance in the general public;
2. To ensure access to pre-school, pre-school education centers should be set up. The quality of teaching in pre-school institutions should be improved through professional development of teachers, retraining the administrative personnel of pre-school institutions, and creating a variety of educational resources, as well as through providing financial support to pre-school institutions. Bilingual education should be introduced in pre-school institutions. Effective measures should be taken and a better state policy to improve the teaching of minority languages should be developed. The concept of bilingual education reform combined with a strategy for its implementation and an action plan should be developed. The issue of bilingual textbook publication should be revised and effective mechanisms developed in this respect. As a result textbooks would provide improved

- language instruction and effective understanding of the content. A uniform state approach should be developed to create a system and instrument for assessing the knowledge of the Georgian language;
3. News programs in ethnic minority languages prepared by the Public Broadcaster need to be improved in terms of their content, format, and runtime. Ethnic minorities living in Georgia should get more information about developments in the county, in their native languages. The problems of ethnic minorities should be properly covered, and the general public should be informed about their cultural heritage. TV programs should increase ethnic minority participation in public debates. TV coverage should be expanded. News programs' coverage in minority languages should be expanded;
  4. In order to facilitate civic participation of ethnic minorities, training programs that will aid them acquire professional and administrative skills should be developed. To ensure the professional development of ethnic minorities, existing instruments and vocational education programs should be adapted to general integration policy and programs. To ensure the political participation of ethnic minorities, it is important that ethnic minorities as well as the specifics of ethnic minority regions be taken into account to the greatest possible extent in local self-government. The government should ensure full implementation of the Law on Local Self-Government. In addition, it is desirable that the legislature, as well as all stakeholders, initiate a discussion on the possible introduction of a 'ranked voting method' for local elections, so that voters can have the opportunity to vote for the candidate that they deem more desirable, rather than voting only for the entire party list. This, in turn, could contribute to the political and electoral participation of ethnic minorities. To enhance political culture, wider awareness raising programs should be developed and trainings should be introduced for representatives of political parties. More efforts should be directed at informing ethnic minorities about international legal norms, as well as the country's Euro-Atlantic course. The quantitative and qualitative participation of ethnic minorities in electoral processes should be promoted and the existing practice of releasing information and educational programs need to be further developed. Special attention should be paid to raising the professional competences of the Electoral Administration members representing ethnic minorities, as well as to the level of their quantitative involvement in administering elections;
  5. To ensure the social and economic integration of ethnic minorities, state training and capacity building programs for local communities should be developed. Agriculture and cross-border trade development should be encouraged in the regions of Kvemo Kartli and Samtskhe-Javakheti. The state purchases programs of agricultural products should be encouraged in the above regions. Local farmers in Kvemo Kartli and Samtskhe-Javakheti regions need to be supported, especially in the agricultural sector, and need access to low interest loans. The economic ties of Kvemo Kartli and Samtskhe-Javakheti with the other regions of Georgia should also be promoted;
  6. A special body should be set up to work on issues related to the preservation of ethnic minority cultural traditions. This will improve the effective implementation of cultural policy and provide the public with pertinent information on the national and regional levels. Funding of ethnic minority cultural heritage promotion should increase. Financial support should be provided to the print media written in ethnic minority languages. The media should help facilitate participation in the cultural life of the region, and due attention should be paid to the protection of cultural heritage and solving issues related to religious facilities. A full list of the critical monuments requiring urgent restoration works should be compiled and rehabilitation works should follow immediately thereafter;
  7. It is necessary to provide effective coordination of state policy towards ethnic minorities, to strengthen qualitative communication with the population and non-governmental organizations in ethnic minority regions, and to encourage the wider participation of ethnic minorities in the public policy-making process. There should be effective communication and cooperation with local authorities.

# 9. LGBT Rights

Identoba



იდენტობა | Identoba  
For Gender Equality and LGBT Human Rights

## THE SITUATION BEFORE THE 2012 PARLIAMENTARY ELECTIONS

Several years ago, there was little public or political discussion of discrimination against LGBT people and the gross violations of their rights in Georgia. The invisibility of the LGBT community's problems enabled the government to avoid taking proactive measures to protect their rights. On May 17, 2012, a small march organized by the LGBT rights movement was attacked by members of the Orthodox Parents' Union. The attack was led by several clerics. The government acted neither to prevent violence during the attack nor afterwards when deciding to punish offenders.

Under the new government, the state again failed to protect the freedom of assembly of LGBT activists in 2013. On May 17, 2013 a rally against Homophobia and Transphobia became the victim of an unprecedented level of violence by participants of a counter-rally organized by representatives of the Georgian Orthodox Church. Despite the fact that the violence could have been expected and the government gave LGBT activists public and private guarantees of security, the police were fully unprepared for the counter-rally, and effectively, allowed the perpetrators to attack the rally. Restrictions on the freedom of assembly of LGBT people remains a challenge to date. In 2014, due to the high risk of violence and the homophobic campaign run by the Orthodox Church, which started in April (the Georgian Patriarch declared May 17 a day of the sanctity of family and called on people to march in the streets), activists decided not to organize a public event. Despite negotiations organized by several non-governmental organizations, the government failed to ensure the organization of a large-scale public event on the issue of equality on May 17, 2014. This would be, at least symbolically, a reasonable governmental response to the events that took place in 2013.

The situation of the LGBT community has significantly worsened in 2013-2014. With the rise in visibility of the LGBT movement, campaigns against LGBT people have intensified, and the number of violent acts against LGBT persons has increased significantly.<sup>126</sup> In 2013, LGBT males were surveyed, and 56% of them reported experiencing physical violence against them, a number which is 30% higher compared to a survey of LGBT persons conducted in 2012.<sup>127</sup>

Despite the existence of highly visible cases of violence, most of the offences motivated by hatred remain uninvestigated or are inappropriately classified. In this regard, the non-investigation of cases related to the events of May 17, 2013 are notable. In 2014, even the brutal murder of Sabi Beriani, a transgender person, was insufficient grounds for the government to investigate the crime as a hate crime. The investigation has yet to provide a clear motive for the crime.

LGBT people are the victims of domestic violence (roughly 10 individuals have sought help from Identoba in the last two years), harassment in the workplace,<sup>128</sup> and harassment and violence in the streets.<sup>129</sup>

Oppression in educational institutions is particularly problematic. The education system is blind to the need for inclusive and anti-discriminatory policies for LGBT students. An unprecedented rise in cases of bullying and segregation has been witnessed. According to reports written by Identoba's psychologist, suicidal thoughts, depression and poor performance and abandonment of engagement in schoolwork are particularly prevalent for LGBT youth.

Discrimination against gay men and men who have sex with men is prevalent in certain penitentiaries (e.g.: Rustavi), which have isolated or exploited the labor of such individuals. Often, prisoners are forced to wear special bands on their arm.<sup>130</sup> The prison administration tolerates this practice.

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<sup>126</sup> Identoba, *Social Situation of Gay, Bisexual and Transgender Males*, 2013, <http://identoba.com/2014/01/20/research/> (in Georgian)

<sup>127</sup> Women's Initiatives Supporting Group, *Situation of LGBT Persons in Georgia*, Irakli Vacharadze, 2012, <http://women.ge/en/2012/12/28/lgbtdiscriminationsurvey/>

<sup>128</sup> Identoba, *Trap of Dilemmas and Compromises, Professional Development of LGBT Persons*, Lela Rekhviashvili, 2013, <http://identoba.com/2014/01/30/lela-rekhviashvili/> (in Georgian);

<sup>129</sup> Women's Initiatives Supporting Group, *Situation of LGBT persons in Georgia*, Irakli Vacharadze, 2012, <http://women.ge/en/2012/12/28/lgbtdiscriminationsurvey/>



The police do not act on rights violations against the most vulnerable sub-groups, including transgender persons and commercial sex workers and instead use homophobic epithets against victims of crime.<sup>131</sup>

The legal non-recognition of transgender people's gender is an important issue as it causes serious problems for transgender persons in terms of employment. This makes them a particularly vulnerable group in society.

Most politicians, including high-ranking officials, directly engage in a homophobic and hate-filled behavior, siding with the mass of homophobic individuals in Georgian society. This clearly violates the principle of equality guaranteed under the constitution.<sup>132</sup>

The policies of the Orthodox Church are directed at the persecution of and physical retribution against LGBT people. The Church's discriminatory position is strengthened and made particularly dangerous by recently organized groups that have the goal of protecting "national ideology" and by so-called "human rights defenders" which are affiliated with the Patriarchate or act on its behalf. These groups, in the name of "national identity" and "faith", deliberately fight against the rights of LGBT persons. They stand out for their violent rhetoric and aggressive behavior.

The media is insensitive towards issues related to LGBT people and fails to distinguish victims from perpetrators. They present perpetrators and rights' defenders in the same light thereby propping up inequality in the country.

Cases have increased where doctors, lawyers and other professionals refuse to render services to LGBT people on the basis of homophobia and transphobia. The cause of this is the impunity which prevails in the country. The statement of the Prime Minister that marriage equality would be banned under the Constitution questions the commitment of the Georgian Dream government to one of their declared top priorities – the protection of human rights. The adoption of the Law on Anti-Discrimination, which was a requirement of the EU as a part of the initialing of the Association Agreement, has not resulted in the improvement of the situation of LGBT people. It is important to note that the Law has a weak enforcement mechanism which diminishes the chance that it will be used, especially considering the homophobic context.

The fierce discussions around the anti-discrimination law, May 17 and other painful events have awakened society and led many to express themselves in relation to the rights of LGBT people. This helped to bring the issue to the public's attention, made politicians take positions on the issue, consolidated the human rights discourse, and spurred on the desire to know more about LGBT persons among human rights defense organizations.

## RECOMMENDATIONS

1. The police, the Prosecutor's Office and judges should be retrained in identification, investigation and classification of cases of discrimination against LGBT persons and hate crimes. To this end, Georgia should become involved in the OSCE's free police training program, Training against Hate Crimes for Law Enforcement (TAHCLE);
2. Effective and timely investigations should be carried out for current cases of offences motivated by hatred. The victim and society should be kept up to date on the progress of investigations;
3. Detailed statistics should be kept on offences motivated by hatred;

<sup>130</sup> Identoba, *Researching the Needs of MSM Prisoners in Penitentiary Establishments of Georgia with regard to HIV Infection*, Nino Bolkvadze, 2013, <http://identoba.com/2014/01/20/research-2/> (in Georgian)

<sup>131</sup> Identoba, *Research Report on Situation of Protection of Rights of MSM Sex-workers*, Nino Bolkvadze, 2015, <http://identoba.com/2015/02/02/sex-work/> (in Georgian)

<sup>132</sup> Identoba, *The State Minister for Diaspora Issues Joins Religious Aggressors*, January 2015, <http://identoba.com/2015/01/09/bregadze/> (in Georgian)  
 17 May, *Dzidziguri to LGBT Persons: The Country Should be Defended from You*, February, 2015, <http://17maisi.org/2015/02/16/dzidziguri-2/> (in Georgian)

4. The common courts should understand the need to effectively use Article 53(3<sup>1</sup>) of the Criminal Code, and a strategy should be developed in this area. Relevant statistics should be kept;
5. Special investigative and prosecutorial groups should be formed in the Ministry of Internal Affairs and the Prosecutor's Office designated for offences committed against LGBT persons on the basis of sexual orientation and gender;
6. Teachers and persons employed in the education system should be tested, undergo certification and receive training on anti-discrimination measures before being appointed to official positions. Anti-discrimination policies should be enforced;
7. Special anti-discrimination policies should be developed for the civil service, and they should be enforced in order to prevent discriminatory actions by employees of administrative bodies;
8. Doctors, social workers and other professionals should be involved in training programs, and the principle of non-discrimination should be enforced when granting licenses to hospitals;
9. Based on international best practice, the procedure for changing gender in the identity documents of transgender persons should be simplified;<sup>133</sup>
10. The use of hate speech by civil servants should be regulated and administrative sanctions or disciplinary proceedings should be applied in response to instances of hate speech;
11. Political parties should refrain from hate speech and should develop internal codes of conduct which bar and sanction hate speech.

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<sup>133</sup> Identoba, *International Standards and the Best Practice for Legal Requirements for Recognition of the Gender of Transgender Persons*, 2012, <http://goo.gl/wZzLHc>

# 10. RIGHTS OF PERSONS WITH DISABILITIES

Human Rights Education and Monitoring Center (EMC)

ადამიანის უფლებების სწავლებისა და მონიტორინგის ცენტრი

**EMC**

Human Rights Education and Monitoring Center

## THE SITUATION BEFORE THE 2012 PARLIAMENTARY ELECTIONS

Persons with disabilities remain one of the most vulnerable, segregated and marginalized groups in the country. Due to the non-existence of legislation and effective and coherent state policies, persons who belong to this group are subject to continuous and gross violations of their rights, and are often completely marginalized. Prejudices and stereotypes in society are an additional factor leading to the social isolation of persons with disabilities and their exclusion from public space.

- Legislation on the rights of persons with disabilities often does not comply with the main principles of the UN Convention on the Rights of Persons with Disabilities (hereinafter the “Convention” or “UNCRPD”). Current regulations, on the one hand, do not include the new approaches and methods envisaged in the Convention, and, on the other hand, many regulations contradict the key values of the document;<sup>134</sup>
- National laws and policy are still based on the medical model. This model only takes into consideration a person’s medical assessment and fully excludes barriers created by social factors;<sup>135</sup>
- There are not unified statistics related to persons with disabilities. Hence, it is impossible to ascertain the needs of these persons or to understand the extent of these needs;
- Persons with disabilities still face problems with the physical environment and accessibility to information and services. These are often factors which lead to their isolation, and this also creates barriers to the enjoyment of other rights;<sup>136</sup>
- Legislation and state policy do not adequately ensure the protection of the labor rights of persons with disabilities and the promotion of their employment which causes the exclusion of this group from the labor market;<sup>137</sup>
- State health and social programs are not based on complete statistical data. The extent of programs and the number of beneficiaries often make the adequacy and effectiveness of these programs questionable;
- Legislation regulating higher and professional education does not include the issue of inclusive education. The general system of education still maintains separate specialized schools for disabled student and mainstream schools;<sup>138</sup>
- Psychiatric facilities remain the main means of care for persons with psycho-social needs which is in contradiction to the Convention’s approach.<sup>139</sup> In addition, the deinstitutionalization process has not yet considered the interests of children with disabilities to a sufficient extent.<sup>140</sup>

## SINCE THE ELECTIONS

- The Parliament of Georgia ratified the Convention as well as an accompanying declaration in its appendix on December 26, 2013. This act marked a significant step towards strengthening the rights of persons with disabilities;
- The Georgian government started to create an institutional framework to bring the existing system in compliance with the Convention. The state coordination council working on issues related to

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<sup>134</sup> EMC, *the Guideline for Implementation of the UN Convention on the Rights of Persons with Disabilities (Recommendation Conception for Legislation and the Main Areas of Policy)*; 2014, pg. 8-18, <http://bit.ly/1CqVleA> (in Georgian)

<sup>135</sup> Association “Dea”, *The Final Report of Monitoring of Implementation of the Government Plan for 2010-2012 of the State Concept of Integration of Persons with Disabilities*, 2012, pg: 3-4

<sup>136</sup> EMC, *the Guideline for Implementation of the UN Convention on the Rights of Persons with Disabilities (Recommendation Conception for Legislation and the Main Areas of Policy)*; 2014, pg. 118-119, <http://bit.ly/1CqVleA> (in Georgian)

Bureau of Democracy, Human Rights and Labor Country Reports on Human Rights Practices for 2013 Georgia; Persons with disabilities; <http://1.usa.gov/1BoL3b1>

<sup>137</sup> *The Report of the Ombudsman of Georgia on the Situation of Human Rights and Freedoms Protection in Georgia*, 2013, pg. 520; <http://bit.ly/1FHRkFj> (in Georgian)

<sup>138</sup> EMC, *the Guideline for Implementation of the UN Convention on the Rights of Persons with Disabilities*, 2014, <http://bit.ly/1CqVleA>

<sup>139</sup> *Id.*

<sup>140</sup> GEORGIA IN TRANSITION Report on the human rights dimension: background, steps taken and remaining challenge; 7.5. Rights of Persons with Disabilities; pg. 39, <http://bit.ly/1GnZx0u>

persons with disabilities was designated as the implementation agency for the Convention,<sup>141</sup> and the Ombudsman of Georgia was designated as the implementation monitoring agency;

- The Constitutional Court of Georgia in a 2014 decision declared the existing legal model unconstitutional and abolished it. The Parliament adopted a law which provides a model which supports consent instead of taking it away from persons with disabilities;
- On December 31, 2014, the Georgian government adopted the “Strategic Document for Development of Psychiatric Health and Action Plan for 2015-2020.”

## RECOMMENDATIONS

1. Legislation should be substantially reformed to harmonize it with the standards of the Convention, including in the areas of education, access to employment, health, social protection etc.;
2. The process of formation and transformation of the institutional framework should continue. The process should include persons with disabilities and organizations working for their rights. The process should be adequately transparent and ensure the development and implementation of a system commensurate with the Convention’s standards;
3. The reform of the legal model should be implemented in accordance with the decision of the Constitutional Court, the standards of the Convention, and with the participation of persons with disabilities;
4. A procedure for granting the status of person with a disability should be developed and implemented. The procedure should be based on a social model which assesses individual needs and takes into account obstacles and environmental barriers;
5. Statistics related to persons with disabilities should be developed based on relevant methods. State policies should be based on the individual needs of persons with disabilities;
6. In accordance with the requirements of the Convention, standards should be elaborated for access to information and services. Mechanisms for enforcement of regulations on access to information and services should be developed;
7. Healthcare services should be provided to persons with disabilities without discrimination across the country (including psychiatric healthcare). Services oriented towards the needs of this group should include the provision of information about health and disabled persons’ participation in decision making processes on starting/completing treatment should be compulsory;
8. State programs compatible with the special needs of persons with disabilities should be developed, and persons with disabilities should be taken into consideration within existing state programs;
9. A complex strategy for employment of persons with disabilities should be adopted. Legislative and institutional mechanisms should be created and implemented for the employment of persons with disabilities corresponding to their employment needs;
10. Education at all levels (including pre-school, higher and professional education) should be based on the idea of inclusive education. A systemic and coherent policy should be carried out to introduce the principle of inclusion and it should be effectively implemented;
11. The deinstitutionalization of large treatment facilities should continue, taking into consideration the interests of persons with disabilities. During the deinstitutionalization process, the issue of closing down boarding-school care services for children with disabilities should be discussed;
12. The state should promote independent lifestyles for persons with disabilities by means of home care and individualized care schemes;
13. For the inclusion of persons with disabilities in the life of society, services oriented toward the community should be introduced and developed. A high-standard of individualized services should be offered to all beneficiaries;

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<sup>141</sup> The Secretariat of the Prime Minister of Georgia in the area of Human Rights Protection: the Mid-term Assessment Report of the Implementation of the Governmental Action Plan in Human Rights, 2014. pg. 97.

14. The electoral environment and electoral process should gradually be adapted to allow for the engagement of persons with disabilities across Georgia. It should be based on systemic approaches and should include access to relevant information;
15. The state should implement a systemic policy which raises awareness about persons with disabilities. This policy should aim to raise awareness of rights and freedoms and protect the dignity and respect of persons with disabilities;
16. The state should ensure the participation of persons with disabilities in legislative/institutional or policy formulation/reform processes and should create institutionalized and effective mechanisms for the same;
17. In all areas of state policy, including in the fight against discrimination, children and women with disabilities should be taken into consideration as target groups.

## II. VIOLENCE AGAINST WOMEN

Partnership for Human Rights (PHR)



## **THE SITUATION BEFORE THE 2012 PARLIAMENTARY ELECTIONS**

Violence against women and domestic violence are not new challenges for Georgia. The most visible expression of violence against women is women's oppression, resulting from the inequality between men and women inside the family, as well as various kinds of violent actions against women, including sexual assault and murder.

The first domestic violence legislation appeared in Georgia in 2006, when Parliament passed the Law on the Prevention of Domestic Violence, Protection and Assistance against Domestic Violence. The law aims to create legal guarantees for the protection of the rights and freedoms of family members through recognizing their legal equality, to ensure their physical and mental integrity, and to safeguard family values.

In July 2012, Parliament approved a legal amendment, whereby two important articles – Articles 126<sup>1</sup> and 111<sup>1</sup> – were added to the Georgian Criminal Code. They made domestic violence between family members a crime.

Although the adoption of the above laws was recognized as a step forward by both international and local communities, it is important to note that a wide range of problems related to the fight against domestic violence still linger, and they deal exactly with the application of the interim measures and inefficiencies of the criminal justice system's response and implementation of the legislation.

## **SINCE THE ELECTIONS**

### **Positive Changes**

It is important to highlight a number of positive measures aimed at combating violence against women which were implemented by the Government over the period from 2012 to 2014 including:

- The adoption of the National Action Plan for 2014-2015 containing a special chapter on women's empowerment and the fight against domestic violence;
- The approval of the Action Plan for 2014-2016 aimed at the implementation of gender equality policies;
- Changes made to the Criminal Code including a separate article prohibiting forced marriage;
- Signing the Council of Europe Convention on Violence Against Women and Domestic Violence Prevention and Suppression;
- On July 2, 2014, the Interior Minister's order # 491 defined inspector-investigators and senior inspector-investigators of the territorial units of the Ministry of Internal Affairs as persons authorized to issue a restraining order and draw up the restraining order protocol;
- In 2014, the Georgian Parliament approved a set of amendments changing the law on Domestic Violence and a number of other legislative acts. These changes added a sixth domestic violence related crime to the law – negligence;
- The Georgian Parliament initiated a draft law on The Amendments to the Criminal Code, which provides a new formulation for Article 126<sup>1</sup> of the Criminal Code – domestic violence. In particular, the first part of the article in the draft provides for up to 1 year of prison in addition to the community service work, while in the second part of the article the term of imprisonment was extended.

### **Challenges**

Although a number of legislative and institutional changes have been carried out by the Georgian government in the past two years, the system's main challenges should be identified and discussed.

**An inefficient system:** the state system that regulates issues related to violence against women and domestic violence remains inefficient. Here, it should be primarily noted that:

- State reforms are not based on in-depth research of the problem;
- There has not been an analytical assessment of the practical effect of the new regulations resulting from the amendments to the Criminal Code;
- The law enforcement system does not have a clear and effective mechanism to fight against domestic violence;



- The existing mechanism of orders (restraining, protective) do not ensure the safety of victims in practice;
- There is no monitoring of the enforcement of issued orders;
- Existing services cannot provide for the empowerment of the victims.

**Statistics:** The Public Defender's 2013 parliamentary report says<sup>142</sup> that the LEPL "112" Emergency Response Center received **5 447 calls** reporting a family conflict, of which only 358 cases were identified as domestic violence, while in **212 cases deterrent warrants were issued**. The most brutal form of violence is murder. According to MIA official data, **21 cases** of murder of women were identified in 2013. Based on the 2014 MIA official statistics, the "112" hotline received **over 10 000 incoming calls** reporting domestic violence, and in **817 cases a restraining order was issued**. According to the Public Defender, **19 cases involving the murder of women** were registered in 2014. Interestingly, the information released by the media on the number of women murdered, which makes up **at least 26 cases**, is different from official statistics. The cases reported by the Media include several instances of driving to someone to suicide and a case dealing with the homicide of a transsexual woman, these cases are likely to be absent in the official government statistics. The very fact raises legitimate questions as to the reliability of the State's statistics, all the more so since MIA statistics vary from the information provided by the Supreme Court<sup>143</sup>. In particular, in 2014, the court issued **92 protective orders** and approved **945 restraining orders**. Importantly, court statistics do not record information on the gender, age, and status, or other important data of the victim / abuser.

**The scope of investigation/examination of the cases of violence against women:** It is important to note that the legal qualifications of the persons authorized to respond to such cases are low, which, in most cases, is expressed in incomplete knowledge of how pertinent legal mechanisms should be applied. In practice, there are frequent instances when:

- Investigation begins only if there are evident signs of severe bodily injury;
- Sex and / or gender-based crimes are not determined as aggravated crimes either by the investigation or during the trial;

Notably, the number of cases involving sexual abuse by family members in 2012-2013 was zero.

**Women left beyond the system:** Despite the fact that regulations on domestic violence and violence against women equally protect all women from violence, the system overlooks women with disabilities. International studies underscore the fact that women with disabilities face twice as great a risk of violence. Very often, they suffer from double discrimination: as women and as persons with disabilities. Nevertheless, the statistics on domestic violence do not contain information about the number of disabled, female victims. On June 27 and July 30, 2014, the organization Partnership for Human Rights sent letters (# 05 / 80-14; # 05 / 105-14) to the Ministry of Internal Affairs and requested information on activities carried out to improve the relevant statistics. The letters (# 1395076; 1583271 #) received in response state that MIA does not maintain statistics on women/victims with disabilities nor does it intend to do so in the future. The official government statistics do not indicate how many disabled women have become victims of violence, which is largely due to the lack of action on the part of the law enforcement agencies expressed in ignoring the measures prescribed by the law. When an alleged victim is a disabled woman (suffering from mental disability), the reported violence is not taken seriously. Police actions are confined to taking her to a psychiatric and/or another type of clinic. Government-supported shelters are not available for such women as their services are not designed to meet the needs of disabled women. As a result, women with disabilities are forced to live in a violent environment. This is evidenced by the regulations designed for the shelters as well as the statistics on women victims placed in victim shelters. None of the listed victims is a woman with disabilities, or someone needing psycho-social treatment. This approach essentially contradicts international standards and creates unequal conditions for women victims with disabilities compared to other female victims just because they are disabled.

<sup>142</sup> The Public Defender, *the Public Defender's Report on the Human rights Situation in Georgia*, 2013, <http://bit.ly/1FHRkFj>

<sup>143</sup> Letter # 06 / 194-15 / 05 / 290-15; February 16, 2015;

**National Strategy for Violence Prevention:** due to the rise of violence and murder against women, the Government came up with the National Strategy for Violence Prevention. At this point, only the draft version of the strategy has been developed. We would like to point out the weaknesses of the draft strategy:

- The strategy is not based on research of the preceding period;
- The strategy includes only long-term goals;
- The draft, for the most part, is general, paying greater attention to theories leading to violence and the methods of combating it and being less supported by practical experience and steps that can help prevent violence from occurring;
- The strategy is not based on evidence;
- The strategy does not single out the role of the judiciary in fighting domestic violence, for example, in terms of the gender-sensitive justice administration.

**Services and rehabilitation:** For the safety of the victims of domestic violence and repeated violence prevention, it is essential to have effective security measures, as well as rehabilitation services in place. The existing services are insufficient in quantity and are incomplete as regards their contents: victims often have to go back to their attackers. This is preconditioned by the lack of economic empowerment programs, employment problems (in exceptional cases victims are provided low-paid temporary employment), housing problems for victims, lack of resources for training programs, etc. As for psychological rehabilitation, this is either not done, or is done incompletely.

## **RECOMMENDATIONS**

1. Develop a mechanism that shall ensure the efficiency of issuance, approval, and execution of orders;
2. Create result-oriented special, complete rehabilitation, and support programs for victims of domestic violence;
3. The punitive and preventive measures prescribed by the legislation should be applied consistently and accurately;
4. The procedures for investigating/examining an instance of domestic violence should be gender sensitive and emphasize the need to protect victims;
5. Develop effective investigation indicators for hate crimes, which will make it possible to identify the sex and gender identity of victims of crime and provide a pertinent legal qualification for criminal offences on the stage of investigation as well as during the trial;
6. Have simplified procedures for issuing orders as well as special investigation procedures outlined in the greatest possible details;
7. Improve the unified system of developing statistics both on the relevant agency level and in the court;
8. Revise/improve the legislation and ratify the Convention;
9. Develop the strategy in the working groups, engaging experts and representatives of women's organizations;
10. Design a short-term effective mechanism to avoid future violence;
11. Scrutinize, record, and permanently double-check all the incoming reports of domestic violence on which a relevant order was issued;
12. Examine the needs of the law enforcement and the judiciary in this regard;
13. Develop an effective mechanism for identifying sexual violence against women and ensure that the judiciary becomes gender-sensitive;
14. Tighten the order enforcement mechanism, develop mandatory monitoring rules;
15. Spell out special investigation / examination procedures aimed at the potential to identify women with disabilities as victims of violence. Adapt all shelters to the needs of such persons.

# 12. LABOR RIGHTS

Human Rights Education and Monitoring Center (EMC)

ადამიანის უფლებების სწავლებისა და მონიტორინგის ცენტრი

**EMC**

Human Rights Education and Monitoring Center

## THE SITUATION BEFORE THE 2012 PARLIAMENTARY ELECTIONS

As a result of policies implemented since 2006, the area of employment, including industrial production has been maximally deregulated. Human rights protections were removed, resulting in unimaginably large scale and severe violations of employees' rights. Analysis of the situation in the area of labor rights shows the need for substantial reform of state policies and the strengthening of a rights-based approach.

## SINCE THE ELECTIONS

### Reforms to the Labor Code and its impact on the rights of employees

Labor legislation, despite the amendments made to the Labor Code in 2013, still needs improvement and reform. This applies to regulations which, to a certain degree, have already been reformed.

The process of reforming labor legislation, on the one hand, was an important and positive step forward as it showed the government's preliminary political will to improve the situation in the country regarding the protection of labor rights. On the other hand, Parliament passed amendments concerned with issues related to labor rights.<sup>144</sup> However, analysis of reforms demonstrates that problems persist in the law and the new standards are insufficient to protect the rights of workers.<sup>145</sup> In addition, implementation of labor rights, in practice, shows that the amendments have neither ensured a significant reduction in the scale and severity of labor rights violations nor improved working conditions.<sup>146</sup> This is due to the fact that the reforms did not include an effective enforcement mechanism.

A survey conducted by trade unions demonstrates that the extent of rights violations remains significant in the areas which the reforms aimed to affect. The number of dismissals without legal grounds, required notification, or justification remains high. Additionally, issues remain in regards to working during holidays, night shifts and overtime without additional pay or benefits.<sup>147</sup> The Ombudsman of Georgia has also pointed out the high number of illegal dismissals in the civil service.<sup>148</sup>

### The absence of a mechanism to control occupational safety, labor conditions, and its consequences

Under the Labor Code adopted in 2006, the state effectively abandoned attempts at the supervision of labor conditions and employees' right to a safe and healthy working environment. Instead, it entrusted these functions to individual enterprises.

Today, there is no institution in the country which is responsible to act in cases of violations of safety and working environment rules.<sup>149</sup> The Labor Inspection Department, created in 2015, does not fulfill this function. As such, the situation in enterprises in terms of occupational safety is extremely severe, especially for those persons working with heavy machinery.<sup>150</sup>

The Ombudsman of Georgia has indicated a catastrophic increase in fatalities and injuries in his reports and statements since 2007. The Ombudsman's 2013 report assesses the 2010-2011 statistics as particularly alarming. In this period, the number of occupational accidents, fatalities, and injuries peaked.<sup>151</sup>

The absence and/or insufficient control mechanisms render regulations within the Labor Code which require employers to provide a maximally safe environment for employees' life and health unusable.<sup>152</sup>

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<sup>144</sup> The Organic Law of Georgia, *the Organic Law of Georgia amending the Organic Law of Georgia Labor Code of Georgia*, Registration Code 270000000.04.001.016069, July, 2013;

<sup>145</sup> Legal opinion of the Young Lawyers' Association of Georgia regarding the amendment to the Labor Code of Georgia, April, 2013;

<sup>146</sup> Trade Union of Georgia, Friedrich Ebert Foundation, *Research Report on Rights of Workers in Georgia, Statistical Research*, 2014;

<sup>147</sup> Trade Union of Georgia, *Research Report on Rights of Workers in Georgia, Statistical Research*, 2014, pg. 6-15. <http://bit.ly/1BrjkkI>

<sup>148</sup> *The Report of the Ombudsman of Georgia on the Situation of Human Rights and Freedoms Protection in Georgia*, 2013, pg.412-421., <http://bit.ly/1FHRkFj> (in Georgian)

<sup>149</sup> EMC, *EMC Calls on the Authorities to Take Measures for Safeguarding Conditions of Labor*, September 2013, <http://bit.ly/1lzBWNL>

<sup>150</sup> Trade Union of Georgia, *Georgia – Protection of Labor and Safety at Workplace*, 2013;

<sup>151</sup> *The Report of the Ombudsman of Georgia on the Situation of Human Rights and Freedoms Protection in Georgia*, 2013, pg.422., <http://bit.ly/1FHRkFj> (in Georgian)

The Georgian government's State Program on Monitoring Conditions of Labor in 2015 and the newly created Labor Inspection Department do not envisage the creation of an effective monitoring mechanism. They also fail to meet existing challenges and cannot be considered significant steps forward in the area of monitoring the conditions of labor.<sup>153</sup> Moreover, this step demonstrates the state's lack of preparedness to create an effective and able monitoring mechanism.

### **Protection of the labor rights of vulnerable groups**

Current legislation and practice show that vulnerable groups, such as women, persons with disabilities and children, require special protection including positive measures and/or special guarantees. However, the 2013 amendments did not enact or strengthen legislative protective mechanisms for these groups, except for several changes which relate to the better implementation of women's labor rights.

One of the most important challenges both legislatively and in practice are problems related to the protection of employed women's rights. The latest research demonstrates discriminatory practices against women during pre-employment and employment, at the time of dismissal, during maternity leave and in relation to other issues.<sup>154</sup>

Regulations regarding the labor rights of persons with disabilities, with few exceptions, do not provide guarantees for their rights. Namely, there is no legislation, state policy or institutional mechanism which would support employing persons with disabilities or that would create dignified and fair labor conditions for them.<sup>155</sup>

### **The need to ratify international treaties**

Georgia has ratified the UN Covenant on Economic, Social and Cultural Rights, some of the articles of the the European Social Charter, and 16 conventions (including 8 fundamental) of the International Labour Organization.<sup>156</sup>

However, Georgia has not ratified a number of important articles of the European Social Charter, including Article 3 which concerns occupational safety.<sup>157</sup> The government has not ratified a variety of important conventions of the International Labour Organization related to labor inspection, safeguarding occupational safety, and guarantees for women's labor rights among other issues.

Despite the fact that the Georgian government is planning to reform certain areas as stated in the Action Plan, it does not express readiness to ratify treaties on the same subjects.<sup>158</sup> This would be an important guarantee that the reform of national legislation would aim to comply with international standards. The government's approach indicates that the state's policy is incoherent and creates questions with regard to implementation of reforms and their effectiveness.

## **Undertaken reforms**

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<sup>152</sup> *The Report of the Ombudsman of Georgia on the Situation of Human Rights and Freedoms Protection in Georgia*, 2013, pg.421-422., <http://bit.ly/1FHRkFj> (in Georgian)

<sup>153</sup> Resolution N38 of the Georgian government, dated February 5, 2015, on *Approving the State Program for Monitoring Conditions of Labor*;

<sup>154</sup> Article 42 of the Constitution, *Gender Discrimination in Employment Relations*, 2014, <http://bit.ly/1OADAIH> (in Georgian), the Georgian Young Lawyers' Association and Partnership for Human Rights, *Analysis of Labor Legislation of Georgia – Gender-based Discrimination at Workplace and its Legal Implications*, 2014, <https://gyla.ge/uploads/publications/kvleva-ENG.pdf>;

<sup>155</sup> EMC, *the Guideline for Implementation of the UN Convention on the Rights of Persons with Disabilities (Recommendation Conception for Legislation and the Main Areas of Policy)*; 2014, pg. 99-103, <http://bit.ly/1CqVleA> (in Georgian);

<sup>156</sup> Official webpage of International Labor Organization, <http://bit.ly/1BOckZD>

<sup>157</sup> Official website of the Council of Europe, <http://bit.ly/1EXTmy2>;

<sup>158</sup> Resolution N445 of the Georgian government, dated July 9, 2014, on *Approving Governmental Action Plan for Protection of Human Rights in Georgia (for 2014-2015) and Establishing the Coordination Inter-Agency Council of the Action Plan as well as Approving its Charter*, Chapter 21. Labor Rights;

In 2013, the Parliament of Georgia adopted amendments reforming a number of regulations within the Labor Code. However, the reforms did not cover a number of fundamental issues.<sup>159</sup>

The Georgian government made commitments to engage in certain activities within the auspices of the Governmental Action Plan (2014-2015) for Human Rights Protection in Georgia. This was an important step.<sup>160</sup>

The authorities have started developing the institution of mediation with international assistance and have created a tripartite commission. The charter of the Tripartite Commission of Social Partnership was approved in 2013. However, as of March 2015, only one session of the commission has been held. This demonstrates its ineffectiveness. Additionally, most of the agreements entered between parties during mediation are unenforceable.<sup>161</sup>

## RECOMMENDATIONS

The authorities should step up work on reforming the legislative framework, develop state policies on labor, and create respective institutional mechanisms;

1. The state should renew the process of reforming regulations on labor rights. The reforms should include occupational safety, mechanisms for monitoring the conditions of labor and other issues;
2. The process of reforming labor laws should be concerned with creating additional material and procedural guarantees for vulnerable groups including through various supportive and promotional measures which ensure adequate implementation of the right to labor for groups at high risk of rights violations;
3. Create an agency which regulates working and safety conditions. It should aim to form an effective and able institution with corresponding authority as well as material, technical and human resources. Further, international standards and international best practice should be taken into account when creating the agency which will monitor labor conditions;
4. The state should use legislative, institutional and administrative measures to implement regulations related to labor issues;
5. To strengthen social dialogue, it is important that the Tripartite Social Partnership commission starts to work in an effective manner. Moreover, work should continue to improve the mediation mechanism. Namely, the reforms should both improve the legislative framework to maximize effectiveness of monitoring and enforcement of agreements reached through mediation. The state should prepare adequate material and human resources for mediation;
6. The state should ratify relevant international agreements, including, Conventions #81 and #129 of the International Labour Organization which deal with labor inspection and the state's obligation to create an effective oversight mechanism; Convention #155 on Occupational Safety and Health, Convention #176 on Safety and Health in Mines; Convention #183 on the Protection of Motherhood; and a number of articles within the European Social Charter, including Article 3 which concerns labor safety issues.

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<sup>159</sup> The Organic Law of Georgia, *the Organic Law of Georgia amending the Organic Law of Georgia Labor Code of Georgia*, Registration Code 270000000.04.001.016069

<sup>160</sup> Resolution N445 of the Georgian government, dated July 9, 2014, on *Approving Governmental Action Plan for Protection of Human Rights in Georgia (for 2014-2015) and Establishing the Coordination Inter-Agency Council of the Action Plan as well as Approving its Charter*, Chapter 21. Labor Rights;

<sup>161</sup> The Public Statement of the Trade Union, "Company RMG Does not Comply with the Terms of the Agreement Entered in with the Trade Union," <http://gtuc.ge/?p=3039> (in Georgian); Magazine Netgazeti "The New Trade Union of Railway Workers Announce Another Protest Rally," <http://www.netgazeti.ge/GE/105/News/41070/> (in Georgian)

# 13. THE RIGHT TO HOUSING

Human Rights Education and Monitoring Center (EMC)

ადამიანის უფლებების სწავლებისა და მონიტორინგის ცენტრი

**EMC**

Human Rights Education and Monitoring Center

## THE SITUATION BEFORE THE 2012 PARLIAMENTARY ELECTIONS

### The scale of homelessness and the severity of rights violations

Causes of homelessness in Georgia are systemic, and stem from an ineffective social protection system and hard economic conditions among other reasons.<sup>162</sup> The authorities do not measure the extent of homelessness in the country, the needs of these persons, or the forms and causes of homelessness. The number of homeless persons has not been counted and no special registry of homeless persons exists, making it impossible to solve the problems of homelessness in an effective and coherent manner.<sup>163</sup> However, despite this, the Tbilisi Mayor's Office has noted in conversations that in Tbilisi alone there are a dozen accommodation facilities for the homeless.

Homeless families have to live in extremely harsh conditions. Often, they have absolutely no housing or have forcibly entered buildings not intended as shelter. These buildings do not meet the minimum requirements to be considered accommodation. Specifically, in these buildings there are no sewage, water, or electricity supply systems. There are also safety hazards.<sup>164</sup> As a result, this population's rights to housing, health, education, social protection, and privacy are systematically violated, causing their marginalization and self-victimization.<sup>165</sup> The problems of homeless persons are of a systemic nature.<sup>166</sup>

### Problems in the legislative framework

The notion of a homeless person is not well defined in Georgian legislation. It does not include the various types of homelessness which exist in Georgia.<sup>167</sup> The definition provided in the Law on Social Protection does not include the group of people who do not have their own house but instead live with acquaintances, in specialized facilities, or buildings which they have occupied. People who have accommodation, but whose living conditions do not meet the minimum requirements of livable accommodation are also not included.<sup>168</sup> Together with the problem of the definition of homelessness, Georgian legislation still does not provide standards related to the right to housing for homeless persons.

Georgian law does not envisage a responsible person for registration of homeless persons or a registration procedure.<sup>169</sup> Georgian legislation creates a limited obligation for local municipalities to register persons who reside in shelters.<sup>170</sup>

Homeless persons who live in the streets are the most vulnerable group among the homeless and are denied registration in the state registry of socially vulnerable persons. Consequently, these persons do not receive benefits given to socially vulnerable persons.<sup>171</sup>

As a result of amendments made to Resolution NI26, dated April 20, 2010, on Reducing Poverty and Improving Social Protection of the Population in the Country, persons who had forcibly entered into premises which the state owns are not registered in the databases of socially vulnerable people and are left

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<sup>162</sup> EMC, *Non-recognition, Inaction and Repression in Exchange of Accommodation: Analysis of the Situation of Socially Vulnerable, Homeless Families who have Forcibly Entered into State Owned Buildings and State Policy*, 2014, pg. 5., <http://emc.org.ge/2014/08/15> (in Georgian)

<sup>163</sup> *Id.* pg. 5

<sup>164</sup> *Id.* pg. 6

<sup>165</sup> *Id.* pg. 6

<sup>166</sup> *The Report of the Ombudsman of Georgia on the Situation of Human Rights and Freedoms Protection in Georgia*, 2013, pg.552, <http://www.ombudsman.ge/uploads/other/1/1563.pdf> (in Georgian)

<sup>167</sup> Matsne – Legislative Herald of Georgia, *Law of Georgia on Social Assistance*, December 2006, Article 4(p)

<sup>168</sup> EMC, *Non-recognition, Inaction and Repression in Exchange of Accommodation: Analysis of the Situation of Socially Vulnerable, Homeless Families who have Forcibly Entered into State Owned Buildings and State Policy*, 2014, <http://emc.org.ge/2014/08/15> (in Georgian);

<sup>169</sup> *Id.*

<sup>170</sup> *Law of Georgia on Social Assistance*, December 2006, Article 18.

<sup>171</sup> EMC, *Non-recognition, Inaction and Repression in Exchange of Accommodation: Analysis of the Situation of Socially Vulnerable, Homeless Families who have Forcibly Entered into State Owned Buildings and State Policy*, 2014, pg. 59., <http://emc.org.ge/2014/08/15> (in Georgian);



without the status of socially vulnerable persons and therefore benefits.<sup>172</sup> This practice is an unjustified and repressive tool against homeless families.

### Problems in state policy

The main problems in state policy are as follows:

- It does not recognize the needs and problems of homeless people at the level of state policy. Moreover, when the homeless resort to self-help by forcibly entering buildings owned by the state, the state policy towards these persons is based on a strategy of non-recognition, inaction and repression;<sup>173</sup>
- There is neither a statewide strategy nor a systematic approach to the problems and needs of homeless persons;<sup>174</sup>
- Together with the absence of an overall strategy and vision for resolving the problems of homeless persons, funding is insufficient within the central and local budgets to provide housing for these persons.<sup>175</sup>

### SINCE THE ELECTIONS

- The problems of homeless people have not been recognized at the state level. Recently, representatives of central and local governments, in official statements and meetings, have recognized the challenges related to protection of homeless persons' rights. However, the issue has not become part of state policy;
- In 2013-2014, Georgia created an inter-agency, ad-hoc commission on the problems of homeless people which, in 2014, was replaced by the Commission for Problems of Homeless People Living on the Territory of Tbilisi. However, the extent of their work was/is limited to resolving urgent needs of one homeless group – people without shelter.<sup>176</sup> There is no long-term strategy or vision for resolving the problems of these people. As a result, a camp, which was not intended to be permanent, has been in use for two years. The continuous use of this temporary measure does not meet adequate minimum living standards. However, the Tbilisi Mayor's Office has started on construction of a shelter for people without housing in the village of Lilo;
- In 2014, the state included measures for adequate accommodation in the National Strategy for Protection of Human Rights (for 2014-2020).<sup>177</sup> However, this was not reflected in the Governmental Action Plan for the Protection of Human Rights (2014-2015).<sup>178</sup>

### RECOMMENDATIONS

- I. To improve the protection of the rights of homeless people, the state should develop a statewide, systemic policy which aims to ascertain reasons for homelessness, its prevention and to resolve the problems of homeless persons;

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<sup>172</sup> *Id.*, pg. 56-64, Amendment to Resolution NI26, dated April 20, 2010, on Reducing Poverty and Improving Social Protection of the Population in the Country, [https://matsne.gov.ge/index.php?option=com\\_idmssearch&view=docView&id=1924397](https://matsne.gov.ge/index.php?option=com_idmssearch&view=docView&id=1924397), *The Report of the Ombudsman of Georgia on the Situation of Human Rights and Freedoms Protection in Georgia*, 2013, <http://www.ombudsman.ge/uploads/other/1/1563.pdf> (in Georgian)

<sup>173</sup> *Non-recognition, Inaction and Repression in Exchange of Accommodation: Analysis of the Situation of Socially Vulnerable, Homeless Families who have Forcibly Entered into State Owned Buildings and State Policy*, 2014, pg. 5., <http://emc.org.ge/2014/08/15> (in Georgian)

<sup>174</sup> *Id.*, pg. 69; *The Report of the Ombudsman of Georgia on the Situation of Human Rights and Freedoms Protection in Georgia*, 2013, pg.559, <http://www.ombudsman.ge/uploads/other/1/1563.pdf> (in Georgian)

<sup>175</sup> *The Report of the Ombudsman of Georgia on the Situation of Human Rights and Freedoms Protection in Georgia*, 2013, pg.9 and pg. 552, <http://www.ombudsman.ge/uploads/other/1/1563.pdf> (in Georgian)

<sup>176</sup> *Id.* pg.68;

<sup>177</sup> Matsne – Legislative Herald of Georgia, Resolution of the Parliament of Georgia, on *Approving the National Strategy for Human Rights in Georgia (2014-2020)*, April 30, 2014

<sup>178</sup> Matsne – Legislative Herald of Georgia, Resolution of the Georgian government, on *Approving Governmental Action Plan for Protection of Human Rights in Georgia (for 2014-2015) and Establishing the Coordination Inter-Agency Council of the Action Plan as well as Approving its Charter*, July, 2014;

2. The legislative framework should be substantially reformed and standards of living conditions should be adopted. The definition of a homeless person should be modified and improved to include different forms of homelessness;
3. An inter-agency mechanism should be created which, by means of involving both the central and local governments, will carry out systemic reforms, including improvement of the legislation and developing corresponding policy;
4. The amendments made to the Georgian government's Resolution NI26, dated April 20, 2010, on Reducing Poverty and Improving Social Protection of the Population in the Country should be revoked as they disproportionately restrict the rights of homeless persons who forcibly occupied state property. Specifically, it restricts their right to register in the overall database of socially vulnerable persons and to receive related benefits;
5. The rules for counting and registering homeless persons should be improved. The responsible agency and its competencies should be defined;
6. Concrete actions aimed at improving the living standards and conditions of homeless persons should be included in the Governmental Action Plan for Protection of Human Rights.

# 14. THE CONDITION OF IDPS

Georgian Young Lawyers' Association (GYLA)



## THE SITUATION BEFORE THE 2012 PARLIAMENTARY ELECTIONS

Internally displaced persons are a vulnerable group in Georgia. In the documents which define state policy, it has been clearly stated that the long-term solution for the problems of IDPs is voluntary return to their permanent residences. By adopting the state strategy for IDPs, the state has realized that IDP return to permanent residences, being the best long-term solution, does not rule out the integration of IDPs in areas of displacement as well as capacity building. For this reason, the strategy, together with dignified and safe return, was based on supporting dignified living standards and the involvement of IDPs in the life of society.<sup>179</sup>

Although important steps have been taken to support dignified living conditions for IDPs (the Action Plan of the State Strategy for IDPs took effect in 2009<sup>180</sup>), important aspects of accommodation have not been reflected in the internal mechanisms. Despite the fact that IDPs' right to housing has been recognized in internal normative acts, standards of adequate accommodation have not been clearly defined.

Analysis of court practice demonstrates that the courts were not considering individual needs of IDPs to a sufficient extent and were narrowly interpreting legal norms as well as the goals of the state's strategy and the action plan which aim to place these persons under special care of the state.<sup>181</sup>

National legislation contained limited guarantees against unjustified evictions of IDPs. Between 2010 and 2012<sup>182</sup> incidences of evictions of IDPs from various buildings (mostly from state owned buildings) and violations of the right to housing reached alarming numbers.<sup>183</sup> During this period, there was an absence of adequate mechanisms to defend IDPs from unjustified evictions.

At the onset of transferring ownership of properties in so-called compact centers to IDPs in 2009, the state incorrectly believed that such transfers could be equated with providing adequate accommodation. Consequently, IDPs often gained ownership of properties which failed to meet minimum standards of living. Also, questions were raised as to whether IDPs had sufficient information about the privatization process, the results of refusing privatization, and alternative options which would provide them with long-term accommodation. Notably, procedural violations occurred in the process of forming agreements on privatization.

In December 2011, under the amendments made to the Law of Georgia on Internally Displaced Persons, IDPs displaced from villages adjacent to the occupied territories as a result of the 2008 war faced discrimination. They were deprived of the opportunity to obtain the status of IDP and benefit from the social guarantees which the law provided for.

## SINCE THE ELECTIONS

- During the period from August 1, 2013 until June 1, 2014, IDPs were re-registered in order to update information about IDPs;
- Since March 1, 2014, the new Law on Internally Displaced Persons from the Occupied Territories took effect. For the first time, it defined the notions of adequate accommodation and ensured long-term accommodation. The law provides that the state has the obligation to provide accommodation for homeless IDPs;

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<sup>179</sup> Ordinance N47 of the Georgian government, dated February 2, 2007, on *Approving State Strategy for Internally Displaced Persons*

<sup>180</sup> Ordinance N403 of the Georgian government, dated May 28, 2009, on *Approving Action Plan for the State Strategy for Internally Displaced Persons for 2009-2012*;

<sup>181</sup> GYLA, *Research Paper – IDPs' Right to Adequate Housing (Legislative Analysis, the Key Trends of the Court Practice)* 2013, [https://gyla.ge/uploads/publications/2013/IDP%27s\\_right\\_to\\_adequate\\_housing\\_2013.pdf](https://gyla.ge/uploads/publications/2013/IDP%27s_right_to_adequate_housing_2013.pdf)

<sup>182</sup> GYLA, *Statement on Evictions of IDPs from Various Buildings*, <https://gyla.ge/eng/news?info=1128>; <https://gyla.ge/eng/news?info=1064>;

<sup>183</sup> GYLA Research Paper, *State Policy Towards IDPs*, 2011, pg.18-39, [https://gyla.ge/uploads/publications/2011/saxelmcfifo\\_politika\\_devnilta\\_mimart\\_eng.pdf](https://gyla.ge/uploads/publications/2011/saxelmcfifo_politika_devnilta_mimart_eng.pdf)

- On August 9, 2013, under Order N320 of the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, rules and procedures for providing accommodation to IDPs have been approved;
- Notably, the discriminatory regulation barring IDP status for persons displaced from villages adjacent to the occupied territories as a result of the 2008 war remained in effect until June, 2013. It was abolished only on June 11, 2013, by a decision of the Constitutional Court in a case where the Georgian Young Lawyer's Association was the petitioner (the petition was submitted under the name of Tristan Mamagulashvili, a resident of the village of Dvani in the Kareli region). The Court found the provision unconstitutional. As a result, every person whose house is not on the occupied territories but in reality the Georgian government does not have effective control over will have the opportunity to obtain IDP status.<sup>184</sup>

In 2014, 257 000 IDPs (85 000 families) were registered in Georgia. Around 23 500 families have been provided with housing and 5 108 families have received financial compensation to purchase accommodation.<sup>185</sup> These figures prove that the state will continue to face challenges in attempting to provide housing for IDPs in the years to come.

As evidenced by recent practice, the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, as a rule, does not send written decisions on denial of accommodation provision to addressee IDPs in a timely manner. Further, the written decisions do not include information about how the decisions can be appealed which creates a significant barrier for IDPs to enjoy their procedural rights (to protect and remedy their rights through appeals).<sup>186</sup>

Concrete steps taken to provide housing to IDPs merit positive assessment. However, problems in different areas impede this process, which reflects negatively on the IDP rights situation.

## RECOMMENDATIONS

1. Work should continue to bring the legislation determining the rights of IDPs into full compliance with international standards;
2. IDPs who live in buildings that are subject to privatization should be informed in a timely manner about the privatization process, its results and alternatives;
3. To speed up the process of privatization, coordinated work among agencies involved in privatization should be supported;
4. Problems revealed during privatization should be analyzed and the number of IDP families who become owners of inadequate accommodations as a result of privatization should be ascertained. Proposals should be developed to rectify existing problems;
5. Through analyzing existing practices, the criteria and the system of points for providing housing should be reformed;
6. The Ministry should observe legal procedures by sending written decisions to addressee IDPs and providing an explanation as to how decisions can be appealed.

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<sup>184</sup> GYLA, Constitutional Court Granted GYLA's Constitutional Claim, June 2013, <https://gyla.ge/eng/news?info=1609>

<sup>185</sup> GYLA Research, *State Policy on Providing Housing for IDPs, 2014*, pg. 5, <https://gyla.ge/uploads/publications/StatePolicyonProvidingHousingfortheIDPs.pdf>

<sup>186</sup> GYLA Research, *State Policy on Providing Housing for IDPs, 2014*, pg. 41-42, <https://gyla.ge/uploads/publications/StatePolicyonProvidingHousingfortheIDPs.pdf>

# 15. ENVIRONMENTAL PROTECTION, NATURAL RESOURCES AND ENERGY

Green Alternative



## 15.1 Environmental protection and natural resources

### THE SITUATION BEFORE THE 2012 PARLIAMENTARY ELECTIONS

Before the 2012 Parliamentary Elections the United National Movement (UNM) government undertook hasty and poorly planned reforms in the field of environmental protection and natural resources management that seriously damaged the country's environment and population. For years, the government failed to define a state policy on environmental protection and the rational use of natural resources. Existing mechanisms for preventing pollution were altogether eliminated. The government's natural resource management function was reduced to license auctioning and was frequently passed from one ministry to another. As a result, the balance between environmental protection and use of natural resources was utterly disrupted. The legislative base moved further and further away from the principles of sustainable development and EU legislation. The legal and institutional changes of this period were made in a non-transparent manner and without consultations with stakeholders. Most of these changes were oriented towards increasing budget revenues through maximizing the utilization of natural resources. Decisions about large-scale exploitation (logging, mineral extraction, energy, fishing, etc.) and infrastructure projects<sup>187</sup> were made without prior assessment of available resources and without taking into account the environmental and social impact of these projects. This period was also characterized by regular cabinet reshuffles. The Minister of Environmental Protection position was held by eight individuals, with ministers often lacking appropriate education and experience. When the Minister changed, other officials in the Ministry also changed. High level ministry positions were frequently occupied by persons close to the minister – non-specialists that 'followed' the new minister from his or her previous position, and representatives of the ruling party's inner circle. Corruption was, to a certain extent, eradicated on the lower levels of bureaucracy (for example, in the previously corrupt forestry sector), but, unfortunately, the fight against corruption was equated with repressive measures and unending structural changes that were not followed by appropriate steps which would make the government more transparent and accountable. Legislation ensuring public participation and transparency during the decision-making process on environmental issues deteriorated. This period was also characterized by signs of elite corruption including conflicts of interest, 'revolving doors', frequent legislative changes in favor of companies close to the government, and selective enforcement of the law.<sup>188</sup> The worsening process of environmental governance reached its culmination in 2011, when a significant portion of natural resource management functions was transferred from the Ministry of Environment to the Ministry of Energy.

Despite the above issues, during the UNM government, several significant achievements were made in the field of environmental protection and natural resource management. Several strategic documents<sup>189</sup> were adopted and their implementation started. The network of protected areas was expanded and their infrastructure was developed. These successes were determined by the UNM government's decision to continue developing projects started before the Rose Revolution. Unfortunately, some of these projects were either halted or altogether cancelled in the final years of UNM governance. For example, the creation of the Environmental Inspectorate in 2005 was a successful project that was then abolished in 2011 as part of a series of absolutely unjustified institutional reforms. The creation of several important protected areas (located in Upper Svaneti, Kvemo Svaneti, Racha-Lechkhumi, the Samegrelo highlands, and Pshav-Khevsureti) was also delayed. The real reason for these delays were government plans to transfer these protected areas

<sup>187</sup> For example: Poti airport, Lazika, Khudoni HPP, Namakhvani HPP, Tbilisi Bypass Railway Project and others.

<sup>188</sup> Publications: *Ore Above Law*, 2013; *Energy Projects and Corruption in Georgia*, 2013; *Hunting of Endangered Animals*, 2013; *Forest Management in Georgia: Problems and Challenges*, 2012 and so forth, [www.greenalt.org](http://www.greenalt.org); *Transparency International Georgia, Businessmen in Politics and Politicians in Business – Problem of Revolving Door in Georgia*, 2013. [www.transparency.ge](http://www.transparency.ge)

<sup>189</sup> *Biodiversity Strategy and Action Plan (2005)*, *Environment Protection Action Program (2012)*, etc.

to private companies (for forest use, mineral extraction, construction of hydro power plants and infrastructure projects).<sup>190</sup>

## **SINCE THE ELECTIONS**

Bidzina Ivanishvili – Georgian Dream Coalition declared environmental protection to be one of its main priorities. The Georgian Dream Coalition declared that it believed that economic development must be based on the principles of sustainable development, and that if they came to power, the coalition planned to immediately start developing new environmental protection standards and a regulatory framework in line with EU requirements, create a new system based on modern principles of strategic environmental impact assessment, issuing environmental impact permits and conducting environmental monitoring, ban the construction of large-scale hydro and nuclear power plants, promote the use of alternative and renewable energy sources, and implement government programs to increase energy efficiency among a number of other reforms.

After the 2012 parliamentary elections, significant steps were taken in the field of environmental protection and natural resource management. The Ministry of Environment and Natural Resource Protection was re-established, with various structural units being returned to it from the Ministry of Energy (forest fund management, environmental supervision, licensing, etc.). The new government annulled several destructive normative legal acts (for example, those related to hunting endangered species). Parliament repealed legislation that allowed companies to pay their way out of crimes committed in the field of environmental protection and natural resources, while the Constitutional Court declared the practice unconstitutional.<sup>191</sup>

Over the past two years various strategic environmental protection documents have been adopted.<sup>192</sup> It is noteworthy that the Ministry of Environment, with stakeholder participation, developed the National Forestry Plan (approved by Parliament), and started developing the National Forest Program. A number of international and national environmental organizations had been calling for the adoption of a national forestry policy document since 1999. No government had demonstrated the political will to adopt such a document until 2012. Nineteen new protected areas have been established. However, budget funding for protected areas (especially the new ones) is inadequate. Laws on waste management and genetically modified organisms have also been adopted.

Despite the above-mentioned achievements, at this stage, a significant portion of the Georgian Dream's election program remains unfulfilled. It is unfortunate that the current government has not conducted a political and legal assessment of its predecessor's misconduct. As a result, the Georgian Dream has begun to make mistakes similar to those of the UNM. The new government has not attempted to establish procedures ensuring government transparency, accountability and public participation, even though it criticized its predecessor for a lack of democratic procedures. In particular, legislation regulating Environmental Impact Assessment (EIA) has not seen improvement. The following shortcomings remain in the EIA legislation: the law allows for EIA not to apply to activities such as mining, construction of nuclear power plants, processing of wood, agricultural and food products, manufacturing of paper, leather and

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<sup>190</sup> Green Alternative, Environmental Policy, Institutional and Regulatory Gap Analysis, 2012

<sup>191</sup> The following companies (closely related to the UNM government) took advantage of this law to avoid legal responsibility: JSC Madneuli and Ltd. Kvartsiti paid GEL 13 million in order to have charges dropped on all violations and crimes committed by them between April 1, 1994 and May 14, 2012, without the government conducting any assessment of the amount of environmental damage and other consequences these violations had caused during the 18 year period. A similar agreement cost Ltd. Saknakshiri (GIG Group) only GEL 40,000. See: N. Gujaraidze, Secret Agreements Against the Environment, Green Alternative, 2013, page 28, [www.greenalt.org](http://www.greenalt.org)

<sup>192</sup> Biodiversity Strategy and Action Plan for 2014-2020, The Second National Program to Combat Desertification 2015-2022, The Economics of Ecosystems and Biodiversity (TEEB) and others



textile, and some types infrastructure projects (activities that were subject to EIA before the adoption of the Law on Licenses and Permits in 2005). The current list of activities does not correspond to activities listed in Annex I of the EU Directive 85/337/EEC and Annex I of the Aarhus Convention. The law does not include open provisions for certain types of activities, as defined by EU Directive 85/337/EEC (Annex 2 activities). Decisions are still being made through a simple administrative procedure, which severely limits public participation in the decision-making process. The deadlines for administrative procedures have not been increased (the state environmental examination lasts 10-15 days). The problems caused by the absence of these procedures were evident during the state decision-making process in projects related to energy, urban development and the mining industry.

A number of reports, including those written by international experts hired by the Ministry of Environment, have noted these problems. Unfortunately, for years, the Ministry has justified holding off on real changes by pointing to ongoing work on other projects and draft laws funded by international donors. For example, in previous years, the Ministry referred to ongoing work on a comprehensive Environment Protection Code. Today, the Ministry has indicated that it is working on drafting a new law with financial support from the UN's Economic Commission for Europe. In reality, the draft law on environmental impacts was prepared in 2006-2007. Due to the lack of political will, the legal procedures for its adoption have not been initiated to this day.

The current government, like the UNM government before it, considers economic development and protection of the environment as two mutually exclusive processes. As a result, efforts are not being made to introduce, develop and implement legal mechanisms that would ensure economic development while also taking into account environmental and social factors in accordance with the principles of sustainable development. The timely adoption of the abovementioned draft law (which envisions the introduction of strategic environmental assessment and improvement of EIA procedures) would be a positive step in this direction.

The Prime Minister and economic profile ministries interfere with the Ministry of Environment's decision-making process related to various projects, exceeding their authority and violating the already imperfect legislation. The existence of such interference is clearly illustrated by statements and actions of government representatives related to specific cases such as the Khudoni HPP project<sup>193</sup> and the actions of RMG at Sakdrisi-Khachaghiani<sup>194</sup>.

We would like to highlight the following issues although numerous others exist:

I. Current legislation and practices related to Environmental Impact Assessment (EIA), mineral resources, and water clearly contradict obligations taken by Georgia as part of the EU Association Agreement and other multilateral international agreements. Moreover, they pose a threat to human health and welfare, the natural environment, and cultural heritage. An incomplete EIA system increases the cost of infrastructure projects and makes it difficult to attract investment, including funding opportunities from international financial institutions. The following projects are examples of increased and unjustified costs due to an incomplete EIA: Bakhvi HPP; Larsi and Dariali HPPs; Tbilisi Railway Bypass Project. Notably, the Bakhvi HPP was destroyed by a landslide twice due to its inappropriate location. It has not generated a single kilowatt of power since its opening ceremony (December 2013);

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<sup>193</sup> Green Alternative, Statement by CSOs on Khudoni HPP, March 2015 <http://bit.ly/1E0ZmbA>; the public defender's recommendation for the Georgian government related to the legality of the Khudoni HPP construction

<sup>194</sup> EurasiaNet: Georgia Opts for Gold Mining at Protected Historical Site (18 March 2014): <http://www.eurasianet.org/node/68161>

2. The absence of legislation on spatial planning and strategic environmental assessment hinders the harmonious development of different sectors (tourism, agriculture, energy, environmental protection) and enhances the cumulative impact of projects on the natural and social environment;

3. Selective law enforcement (including inaction of government bodies in the face of apparent violations punishable under the Criminal Code), conflicts of interest, and abuse of power by state officials are evident in the mineral and energy industries. Examples of this include the illegal construction of two bridges over the Rioni River by JSC Namakhvani HPP Cascades (a subsidiary of an Oil and Gas Corporation) without a construction permit from relevant government bodies, the destruction of the Sakdrisi-Kachaghiani archaeological monument and the illegal construction of leaching sites. Unfortunately, the murder Merab Arevadze, a ranger at the Borjomi-Kharagauli National Park, has not been fully investigated. The fulfillment of conditions set by permits and licenses is not being monitored or is performed inadequately. Examples of inadequate monitoring include the Larsi HPP and Kazbegi HPP projects;

4. Access to justice in environmental matters has, in some respects, worsened. For example, the government refused to satisfy an administrative complaint by Green Alternative related to the ancient gold mine in Sakdrisi by saying that Green Alternative was an improper complainant. The government explained that the complaint concerned public participation in the decision-making process, while the Aarhus Convention states that “an entity has the right to appeal only those issues that are related to access to information”.<sup>195</sup> Government representatives continue to demonstrate ignorance and disrespect towards European and national legislation during court disputes, despite the fact that no court has so far satisfied such demands. Long and often unexplained delays of court cases are another problem in access to justice. These facts will be reflected in a report on the fulfillment of the Aarhus Convention;

5. The Georgian Dream government has recently adopted a staffing policy similar to that of the United National Movement. Leading positions at the Ministry of Environment Protection and Natural Resources and its subordinate LEPLs are still occupied by persons without appropriate education and experience – persons previously employed at various law enforcement agencies or a minister’s coworkers from his or her previous position are often employed;

6. Problems related to environmental protection and natural resource management at the local government level are a distinct issue. The Law on Local Government remains unclear in respect to environmental legislation. According to the law, management of natural resources of local importance, including water and forest resources and municipality-owned land resources, are all within the competence of a municipality. However, natural resources of local importance remain grouped together legally, even though they should be dealt with individually. Were such a split to occur, the municipalities do not have the necessary knowledge and experience to effectively manage these resources. Such problems were evident during the implementation process of the forestry reform in 2006-2007. Municipalities will undoubtedly encounter similar problems in municipal waste management (starting January 15, 2015). There are no rules for keeping domestic animals, while issues related to stray animals are frequently dealt with using uncivilized methods or altogether ignored. Exclusive competences of a municipality include issuing construction permits on its territory and monitoring construction according to the existing legislative framework. According to the law, the executive body of a local government unit performs the following tasks on its territory: issuing construction permits on buildings of class II (buildings with a low risk factor), III (buildings with a medium

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<sup>195</sup> Court Cases: The administrative complaint of Green Alternative and Irina Ghambashidze on the removal of a monument status from the Sakdrisi-Kachaghiani ancient gold mine, <http://greenalt.org/>

risk factor) and IV (buildings with a high risk factor) and state supervision of construction. Some construction projects that fall under the above classification are so specific (for example, 50 megawatt hydro power plants) that the municipalities have no capacity to make objective decisions that ensure public safety when issuing permits and monitoring the fulfillment of permit conditions;

### **RECOMMENDATIONS**

Several long-term strategic documents on environmental protection and natural resource management have been developed to date. These documents clearly identify existing problems and define actions required to solve them. A gradual implementation of these strategic documents constitutes an obligation under the EU Association Agreement. We present here a number of recommendations that are fully in line with the national strategic documents, the EU Association Agreement and other international obligations, and that have not been implemented over the past two years, despite an ever deteriorating situation:

1. The legal framework regulating the environmental impact assessment system must be improved. This process should at least include the harmonization of the existing legal framework with the requirements of multilateral international treaties as well as EU Directive 85/337/EEC;
2. Legislation on strategic environmental assessment and spatial planning must be adopted and mechanisms for its implementation must be introduced;
3. Water management legislation must be brought in line with the requirements of multilateral international agreements, and its implementation mechanisms (e.g. river basin management) must be introduced according to relevant EU guidelines<sup>196</sup>;
4. The principles of sustainable forest management must be introduced in order to ensure environmental protection as well as the availability of local resources to the population. The following are of particular importance: zoning-categorization of the forest fund according to function and ecological value; expansion of the network of protected areas; creation of forest regulations that ensure fulfillment of primary needs in legal and environmentally safe ways; and improvement of accountability and monitoring/control mechanisms;
5. The effectiveness of changes made in recent years in the field of mineral resource use must be assessed and a framework for mineral resource management must be developed. Strict social and environmental protection requirements for and monitoring of mineral resource use (prospecting, extraction, enrichment, processing) must be introduced immediately;
6. Cases of conflict of interest and elite corruption related to natural resource management must be investigated, and Parliamentary oversight should be active.

## **15.2 Energy**

Energy security has been one of the most important challenges for Georgia since independence. The period prior to the Rose Revolution was characterized by severe energy crises caused by corruption and lawlessness in the energy system as well as the use of energy resources as a political tool by Russia. The energy crisis had a disastrous impact on the environment (forest degradation, erosion, etc.) as well as the health of the population (air pollution due to low-grade oil etc.).

Since 1994 international donors and financial institutions have made significant investments in the Georgian energy sector (rehabilitation of the existing generation and transmission facilities, institutional reforms). Collection of natural gas and electricity consumption fees has improved. In 2006, a large-scale privatization

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<sup>196</sup> The adoption of the draft law was postponed, most probably due to resistance from economic profile ministries.

process of existing power plants began.<sup>197</sup> This process gradually increased electricity production to 10,371 million kWh in 2014.<sup>198</sup> Since 2007, the country has been able to export electricity.

## **CURRENT PROBLEMS**

Despite some progress in recent years, significant challenges remain in the energy sector. Energy independence and integration with the EU are two of Georgia's declared goals. Unfortunately, the country's policies and legislation are largely inconsistent with these goals.

Energy independence is sometimes incorrectly reduced to refer only to electricity. In reality, electricity constitutes only 21% of the country's total energy use. Fossil fuels make up the largest share of energy used in Georgia, and oil products, natural gas, and coal are imported commodities. Electricity makes up only 1.5% of all imported energy resources. Thermal power plants that operate on imported fuel generate 17.7% of domestically generated electricity.<sup>199</sup> This means that the construction of new hydro power plants in order to substitute electricity currently exported or produced by thermal power plants will not have a significant effect on the volume of exported energy. The following factors further increase the risk of economic and political dependence:

- A significant part of the Georgian energy system is owned by Russian state-owned companies. This raises even more questions about the actions of the former and current governments.<sup>200</sup> These companies own the electric power plants Khrami HPP 1, Khrami HPP 2, Zhinvali HPP, and the Gardabani thermal power plant Mtkvari Energetika. Together, these plants generate 2,100 million kWh, which is more than 20% of Georgia's annual electricity production. Together, these power stations generate 27-28% (about 970 million kWh) of electricity during the winter season (December – March). They are also base electric power stations, meaning that without them, the energy system is unable to function. Two more companies worth mentioning are JSC Telasi (which distributes 20-22% of total electricity to Tbilisi and its surrounding areas) and JSC Sakrusenergo, holder of an electricity transmission license and co-owned by the Georgian government and the United Energy System of Russia. Neither the former nor the current government sees a problem in this arrangement, even though both the UNM and GD governments have justified the construction of new hydro power plants (while disregarding environmental and social problems) with the need to secure energy independence from Russia. Considering the loyalty Georgian politicians display towards companies oriented towards using Russian energy and natural resources (RMG, Georgian Water and Power), their expectations that their western partners should impose sanctions on Russian companies (because of Russia's occupation of 20% of Georgia's territory) are completely unfounded;
- Under existing law, investor companies are guaranteed indefinite ownership and management of the electric power plants they build in Georgia.<sup>201</sup> Projects implemented in this way offer minimal benefit to the country's energy independence or budget revenues.<sup>202</sup> It should also be noted that, in many

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<sup>197</sup> Only two of the existing power stations Enguri HPP and Vardnili HPP, located in Abkhazia, are state-owned. The Georgian energy system receives the cheapest electricity from these power plants, which results in a relatively low overall price on electricity.

<sup>198</sup> Electricity Market Operator, <http://www.esco.ge/>

<sup>199</sup> National Statistics Office of Georgia, Georgia's Energy Balance, 2013

<sup>200</sup> [esco.ge](http://esco.ge/); [energy.gov.ge](http://energy.gov.ge)

<sup>201</sup> Government Decree №214, August 21, 2013

<sup>202</sup> Within a period of 10 years after launching production on a power plant (and for the duration agreed upon in the memorandum) an investor is obligated to annually sell 20% of the annual production of the power plant to JSC Electricity System Commercial Operator (ESCO), using a guaranteed purchase agreement signed in advance. The remaining electricity is usually exported. In case the country requires electricity above the 20% limit during the 10 year period, it must purchase this electricity (and the entire electricity generated by a power plant beyond the 10 year period) from the investor at international market price. See also:

cases, investors are offshore registered companies, whose real owners and shareholders are unknown. Investors may be backed by hostile countries;

- Apart from problems related to energy security, there are a number of issues that are inconsistent with the principles of sustainable energy and the requirements of international multilateral agreements, including the EU Association Agreement:<sup>203</sup>
- Decisions on the construction of new power stations (capacity, design, location, start-completion dates of construction) are made in a non-transparent way without public participation. Coupled with already inefficient legislation, this results in the Environmental Impact Assessment (EIA) process losing all meaning;
- Energy projects are often implemented in populated areas. The law does not adequately address the issues of compensation and forced resettlement due to infrastructure projects. This problem creates an additional barrier for entities interested in such projects. This shortcoming of the national legislation sometimes leads to agreements between the government and specific companies using international financial institution policies instead of domestic policies. For example, the agreement signed with the company involved in the Khudoni HPP project obligated it to act in accordance with World Bank policy 4.12., a condition the company failed to fulfill.
- In order to maximize benefits, the energy potential of rivers is exaggerated by downplaying environmental and social threats. The government still uses Soviet era assessment standards, which allow for diversion of up to 90% of the average annual river flow to be used for energy purposes. Energy advanced countries all abandoned this approach starting in the 1970s. This methodology contradicts EU directives and the Association Agreement between Georgia and the EU. It also ignores national environmental legislation.<sup>204</sup> Offers made by the Ministry of Energy to investors are based on such assessments.<sup>205</sup> On the one hand, these projects pose a risk to the environment and the socio-economic interests of the local population. On the other hand, they mislead potential investors. Some donors have recognized mistakes made in previous years. As a result, a new methodology of water use has been developed that is in line with modern standards and EU directives. Unfortunately, the government is not pushing forward on adopting the methodology;
- A number of donors and international organizations apply a double standard to Georgia. For example, Icelandic Landsvirkjun Power, which maintains the image of a socially and environmentally responsible company in Europe, is involved in the construction of hydro power plants on the territories of the Kazbegi and Machakhela national parks.<sup>206</sup> The European Bank for Reconstruction and Development (EBRD) has funded projects in Georgia in flagrant violation of its own policies.<sup>207</sup> The existence of double standards is also made evident by the fact that various international donor organizations have taken part in inadequate assessments of river potential as mentioned above;<sup>208</sup>
- The energy sector is still characterized by manifestations of elite corruption including conflicts of interest, presenting the interests of a specific group as 'urgent/state necessity', making legal exceptions for specific companies, and turning a blind eye to violations of the law;<sup>209</sup>
- The Georgian government is not taking effective steps towards a sustainable energy system in vital areas including environmental integration (without which the negative externalities of existing and planned power stations will increase, while their productivity and viability will be reduced),

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Publications: Memorandums of Understanding and Agreements Signed for the Implementation of Energy Projects – A Legal Analysis, 2012; Existing and Predictable Risks of HPP Construction in Georgia, 2014, [www.greenalt.org](http://www.greenalt.org)

<sup>203</sup> Problems related to the energy sector are further discussed in the subsection on environment protection and natural resources.

<sup>204</sup> NBSAP 2014-2020; TEEB Scoping Study for Georgia, 2013

<sup>205</sup> The Ministry of Energy, potential projects and memorandums already signed with investors, [www.energy.gov.ge](http://www.energy.gov.ge)

<sup>206</sup> Landsvirkjun Power, <http://www.lvpower.com/>

<sup>207</sup> Green Alternative, Hydro Power Plant on the Paravani River, Impact Study of a EBRD Funded Project, 2013, [www.greenalt.org](http://www.greenalt.org)

<sup>208</sup> The Ministry of Energy, promising projects, <http://bit.ly/1JCdKq6>

<sup>209</sup> Green Alternative, Energy Projects and Corruption in Georgia, 2013, [www.greenalt.org](http://www.greenalt.org)

renewable energy sources and energy efficiency schemes, diversification of the energy system, and development of competitive systems in order to provide users with affordable energy;

- Georgia's accession process to the European Energy Community (EC) is being delayed, despite the fact that the Ministry of Energy has been unable to explain the threats it sees from this organization. The delay of EC membership may indicate a change in the country's pro-western course. This means that the government would be rejecting a transparent, stable and legal regulatory environment, without which, it would be impossible to attract qualified strategic investors, to increase investments and transit capacity and to eliminate opportunities for corruption;<sup>210</sup>
- The existence of vertically integrated companies in the natural gas and electricity sectors, which operate on the basis of memorandums signed with the government, violates the rules of competition and contradicts EU principles;<sup>211</sup>
- Like the previous government, the Ministry of Energy continues to take credit for various projects carried out by private companies (e.g. gasification, installation of electricity meters, power plant construction, etc.). At the same time, the authorities do not spend enough effort monitoring the conditions of permits and licenses issued for these projects or the quality of performed work.

Looking at the Georgian energy sector raises serious questions regarding the issues of elite corruption, sound investment conditions, social and environmental security, and the country's pro-western course. On December 18, 2014 the European Parliament, apart from ratifying the EU-Georgia Association Agreement, also adopted a resolution on Georgia,<sup>212</sup> with a focus on energy and environmental issues. The European Parliament "calls on the European Commission to assist the Georgian government bodies and thoroughly monitor the implementation process of investment programs involving the construction, rehabilitation and reconstruction of hydro power plants; calls on government bodies to fully comply with EU standards and norms, especially when it comes to the environmental impact assessment of large-scale hydro power plants" (paragraph 46). The European Parliament draws attention to Georgia's special role in the development of the Southern Corridor and oil and gas transit pipelines, which may be of strategic importance for Europe's energy security. The European Parliament requires the "successful implementation of EU environmental standards during energy infrastructure development in Georgia" and emphasizes the need to develop renewable energy and a climate change policy in line with EU goals (paragraph 45 of the resolution).

## RECOMMENDATIONS

The following measures should be taken immediately in order to solve existing problems in the energy sector:

1. A state strategy for energy sector development must be elaborated with broad public involvement. The strategy must consider all realistic alternatives (including small hydro systems, wind and solar energy, biomass), in order to select the optimal and least painful option for the country's environment and population, as recommended by the World Commission on Dams;
2. A new energy policy consistent with the EU energy policy – 2020 must be developed; the interrupted process of accession to the European Energy Community should begin again;

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<sup>210</sup> Georgia's Accession to the Energy Community, the Eastern Partnership Civil Society Forum – Working Group 3 of the Georgian National Platform, Energy Security and Environment Protection, M. Margvelashvili, 2014

<sup>211</sup> Georgia's Accession to the Energy Community, the Eastern Partnership Civil Society Forum – Working Group 3 of the Georgian National Platform, Energy Security and Environment Protection, M. Margvelashvili, 2014

<sup>212</sup> European Parliament non-legislative resolution of 18 December 2014 on the draft Council decision on the conclusion, on behalf of the European Union, of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part (09827/2014 – C8-0129/2014 – 2014/0086(NLE)–2014/2816(INI), <http://goo.gl/Javvxx>

3. The methodology for calculating the country's aggregate energy balance should be improved. The methodology must reflect the delivery and use of all types of energy (electricity, natural gas, liquid gas, oil products, coal, wood, etc.);<sup>213</sup>
4. The development of a legislative package on renewable energy and energy efficiency should be started immediately with the involvement of experts and the public. This must include a financial action plan;
5. Conflicts of interest in the energy sector should be researched and the agreements and memorandums signed with investors in this sector must be reviewed, taking into account the country's environmental, economic and public interests;
6. The EIA legislation must be thoroughly revised in accordance with EU requirements. This includes improving public participation mechanisms, introduction of a cost-benefit analysis, and the development of eco-compensation schemes for affected communities;
7. An integrated river basin management system and a sustainable ecosystem management approach during construction and operation of hydro power plants must be introduced;
8. A moratorium should be declared immediately (before all the above recommendations) on planned large-scale projects that involve flooding thousands of hectares of land, resettlement of people from their homes and/or damaging intact ecosystems;
9. A comprehensive environmental audit should be performed on all electric power plants built during the Soviet period without a proper environmental and social impact assessment. The Georgian government must attract investments for the rehabilitation of existing hydro power plants and the construction of decentralized renewable energy sources;
10. Donor states and international organizations must pay greater attention to the results of the energy projects they fund in accordance with international best practice and EU directives. They must prevent the use of low environmental and social standards in their energy projects in Georgia, as has been the case in previous years.

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<sup>213</sup> The country's energy balance inadequately reflects the share of wood, because, unfortunately, only a portion of the consumed wood is being registered by relevant authorities. Some experts believe that at least 2 times more wood is being consumed in Georgia than official records show.

## 16. FOREIGN POLICY

Georgia's Reforms Associates (GRASS)





## SINCE THE ELECTIONS

### Positive trends

Georgian foreign policy between 2012 and 2014 has been characterized by attempts to normalize relations with Russia in parallel to the country's Euro-Atlantic aspirations. The Georgian Dream Government has taken several positive as well as negative steps in foreign policy. The following are clearly positive:

- Signing of the Association Agreement with the European Union and significant progress achieved in its ratification (apart from Georgia, the Agreement has been ratified by the European Parliament and 13 EU states);
- Successes achieved in terms of visa-free travel with the EU. Georgia has completed the first (legislative) stage of the Visa Liberalization Action Plan, and has moved on to its implementation. The EU is expected to abolish its visa regime with Georgia, if given a positive evaluation;
- Maintaining and deepening of Georgia's strategic partnership with the United States. The last two years saw regular high level visits and meetings as part of the Charter of Strategic Partnership (although with less intensity than in 2009-2011);
- The NATO Wales Summit decision to grant Georgia a substantial package of cooperation<sup>214</sup> and set up a Training and Assessment Center in Georgia;
- Georgia's participation in the new NATO mission in Afghanistan;<sup>215</sup> the decision to join the NATO Response Force, involvement in EU crisis management missions, and sending an infantry company of the armed forces to the Central African Republic;
- The decisions made by Tuvalu in 2014 and Vanuatu in 2013 to withdraw their recognition of Georgia's occupied regions and to establish diplomatic relations with Georgia. These can be considered a success of Georgia's non-recognition policy;
- The growing support for the resolution on the rights of IDPs and refugees initiated by Georgia in 2013 and 2014 in the UN General Assembly can be considered a success in multilateral diplomacy. The resolution was supported by 63 countries in 2013 and 69 in 2014;
- Winning of a legal dispute against Russia in the European Court of Human Rights in 2014 related to the mass expulsion of Georgians from Russia in 2006-2007. As a result, Russia was obligated to pay compensation to the victims;
- The return of Georgian products to the Russian market. However, over the last two years Georgian exports have increased only in this direction, which could eventually lead to increased dependence on Russia;
- In general, the country has managed to maintain multi-vectoral diplomacy in its foreign policy. Active diplomatic work has been carried out in different directions.

### Negative trends

- Frequent contradictory statements made by government officials on issues of foreign policy can be considered the main problem in this field over the last two years. In many cases, the Minister of Foreign Affairs, the Prime Minister, the President, the Chairman of the Parliament, the Chairman of the Parliamentary Foreign Affairs Committee, and others made contradictory statements about important issues such as Georgia's relations with Russia and Ukraine and the need for anti-aircraft defense systems among other issues;
- The resignation of the government's entire foreign policy team in late 2014 (Ministers of Foreign Affairs, Defense, and European and Euro-Atlantic Issues) has raised questions about Georgia's European orientation among our partners and the public;

<sup>214</sup> Civil.ge, Georgia in NATO Wales Summit Declaration, September 2014, <http://bit.ly/1yij7JT>

<sup>215</sup> Tabula, ISAF mission in Afghanistan has officially ended, December 2014, <http://bit.ly/1lxxwmk>

- Russia has continued its so-called 'creeping occupation', or the gradual relocation of barbed wire fences along the Abkhazia and Tskhinvali occupation lines and deeper into Georgian controlled territory;
- Russia has signed illegal agreements with the puppet regimes in Tskhinvali and Abkhazia, which is a clear attempt to disrupt Georgia's integration into Euro-Atlantic organizations and should be discussed in the context of the annexation of Crimea. In spite of this, Georgian officials have sometimes failed to link Russia's actions with Georgia's Euro-Atlantic course;
- The bilateral agreement on customs administration and monitoring of goods signed between Georgia and Russia in 2011 remains to be enforced. The main reason for this, apart from the delay caused by Russia, was a delay in the Georgian government's decision-making process, frequent lack of coordination, and in general, a negative/neutral attitude towards activation of a new instrument against Russia;
- The Georgian government's decision to discontinue its demand towards Russia to discuss the issue of return of refugees and internally displaced persons as part of the bilateral dialogue (prescribed by the Convention against Racial Discrimination in case of its violation) can be considered another diplomatic failure. After exhausting the possibility of dialogue, the Georgian government would be able to take its case to the International Court of Justice, which originally declined to hear the case in 2011 on the grounds that the possibility of dialogue had not been exhausted within the framework of the above convention;
- It is of particular note that Georgian diplomacy has consciously chosen a passive stance towards the events in Ukraine. This was reflected in delayed statements, passivity in international organizations, especially the OSCE, lack of high-level visits to Ukraine, and diplomatic demarches directed at Kiev for appointing former Georgian government officials to various positions in the Ukrainian government;
- Statements made by the US State Department, the United Nations Human Rights Committee, the European Parliament and the Council of Europe Parliamentary Assembly on their concerns related to politically motivated investigations, the lack of an independent judiciary and politically motivated arrests, and criticism expressed by some European leaders towards the Georgian government related to selective justice and the Prime Minister's response that those leaders are biased towards the United National Movement is troubling. The criticism expressed by the Georgian government towards influential publications that wrote about the current political situation in Georgia is especially troubling;
- The fact that the Georgian government has refused to employ lobbying firms to improve its image abroad should be considered a negative decision. The last two years show that lobbyists are mainly engaged in improving the images of specific individuals and not in raising issues important for the country (occupation, relations with Russia, etc.);
- The reduced institutional role of the National Security Council and a lack of coordination between different branches of government related to foreign policy issues are two additional problems. A lack of coordination between the President and the Ministry of Foreign Affairs was evident;
- Tightening of the immigration policy had extremely negative consequences and created problems for both foreign citizens and Georgian citizens living in ethnic minority populated areas;
- Different branches of government have tried to justify various painful reforms and legislative initiatives by referring to requirements set by the European Union. This does not contribute to the formation of a positive image of the EU among the population;
- The Georgian government failed to act upon US President Barack Obama's statement made in January 2012 about starting a high-level dialogue on a free trade agreement. The intensity of work and high-level meetings in this direction has slowed down since 2012, which, for among other reasons, is due to a lack of US interest in this issue.

## RECOMMENDATIONS

The main challenge for the Georgian government is to keep Georgia on the agenda of its international partners. Events in the Middle East and Ukraine, the economic crisis as well as upcoming pre-election periods in our strategic partner states over the next two years create unfavorable conditions for keeping Georgia on the international agenda. Therefore, the Georgian government will have to utilize even more of its diplomatic and political resources.

The Geneva Talks format traditionally remains an area of concern. Moscow still refuses to pledge non-aggression, while, in turn, offering Tbilisi to sign just such agreements with Sokhumi and Tskhinvali, an impossible condition for Georgia considering international law. The Georgian delegation has been under pressure at the Geneva Talks over the last two years due to two factors – (1) the co-chairs realize that the Georgian authorities do not have direct access to and interest in discussing issues related to the Geneva Talks with high-ranking EU officials and (2) Russia's extremely rigid position. This resulted in tensions between the EU Special Representative and head of the Georgian delegation. It remains a challenge for the Geneva Talks to start discussions on specific issues of international security mechanisms and the topic of safe and dignified return of internally displaced persons. As a result, the negotiations are in constant danger of failure, especially during the summer round, when the General Assembly considers the newest draft resolution on internally displaced persons. Another challenge is the full implementation of incident prevention and response mechanisms, especially in the Gali region. Despite these challenges, it is still very important for Georgia to maintain the Geneva format.

New threats and challenges have been created by the so-called Co-operation and Strategic Partnership agreements signed between Russia and the occupation regimes in Tskhinvali and Sokhumi. These agreements clearly demonstrate Russia's goal of completely annexing these regions, and to use these processes as leverage against the Georgian government and especially its pro-western course. The Georgian government will have to develop a serious long-term anti-annexation strategy in order to deter and, if necessary, respond to further attempts at annexation. So far, there have not been any attempts to develop such a strategy, despite sporadic attempts by the President's Administration and the Head of Government to coordinate efforts.

New threats coming from Russia raise questions regarding the Abashidze-Karasin negotiations format. It is clear that this format has either already exhausted itself or is close to doing so. Several recent meetings in this format discussed issues unrelated to its declared mandate (e.g. implementation of the 2011 agreement between Russia and Georgia). Therefore, the appropriateness of this format will sooner or later have to be reviewed. It is important that the format does not continue 'for the sake of the format' alone, because without real results the existence of this format will create an illusion that Russia and Georgia are 'solving' problems and there is no need for mediation by the international community.

Gaining new leverage and instruments against Russia remains a significant challenge for Georgia's foreign policy. The government already decided against two such instruments that could have been activated in 2012-2014 (the 2011 WTO agreement and the bilateral dialogue on the return of internally displaced persons due to the violation of the Convention against Racial Discrimination). This has restricted Georgia's leverage to influence Russia.

Another serious challenge Georgia faces is trying to combine its policy of dialogue with Russia and the steps that need to be taken towards anti-occupation and anti-annexation. The increasing dependence of the Georgian economy on Russia is particularly important in this context. Even though current levels of trade

(10%) are not at a critical point, a further increase of dependency would give Russia significant economic leverage, which can be used against Georgia.

Attitudes towards the events in Ukraine are also worth mentioning. The continued passiveness of the Georgian government in this regard is a result of (a) a lack of coordination between statements made by the Ministry of Foreign Affairs and other government bodies; (b) differences of opinion related to Russia and the events in Ukraine between the official leaders of the government and the informal leader of the coalition; and (c) the policy of non-provocation towards Russia. It is in Georgia's interest for the international community to discuss the events of Donbas and Crimea, and the issues of Abkhazia and the Tskhinvali region within one framework. However, in order to achieve this, the Georgian government needs to conduct active diplomacy and position itself on the front line with regard to Ukraine.

The lack of coordination between the branches of government with regard to foreign policy has become evident after the reduction of the institutional role of the National Security Council. The recent formation of the Interagency Council on Foreign Policy points to the fact that the problem of coordination remains relevant even after the creation of a separate Safety Council directly under the Prime Minister. The diplomatic corps in Georgia often reports problems when trying to convey important messages to the Prime Minister and the informal leader of the coalition. This is because the current decision-making system is disorganized with messages being frequently lost or concealed.

Maintaining the non-recognition policy remains a separate foreign policy challenge. Recent years have produced the impression that the country has achieved tangible success in this regard. However, even a slight relaxation of this policy could result in Russia renewing its efforts to seek recognition, mobilizing financial and human resources for this purpose.

Introduction of a visa-free regime with the European Union remains a serious challenge. The European Commission is expected to publish a positive assessment of Georgia's readiness by the 2015 Riga Summit. After this, it will be up to the member states to make the decision. There is a chance that skeptically inclined countries will try to delay the process of granting a visa-free regime to Georgia, given the seriousness of the problem of illegal immigration to Europe and how sensitive this topic has become in recent months. Therefore, obtaining a visa-free regime with the EU will remain one of the most important short-term foreign policy objectives for Georgia.

Another strategic objective regarding the European Union would be the EU's recognition of Georgia's membership prospect. No progress has been achieved in this respect so far. However, it is expected that EU member states will make such a decision in the near future as a result of the coordinated actions of Georgia, Moldova and Ukraine.

Two major challenges with regard to the US include: (1) renewal of high-level dialogue on the Free Trade Agreement and launching trade negotiations, and (2) taking effective steps towards increasing the country's defense capabilities, including the purchase of appropriate defensive weapons from the US.

# 17. INVESTMENT ENVIRONMENT

Transparency International Georgia



## **THE SITUATION BEFORE THE 2012 PARLIAMENTARY ELECTIONS**

Investment is one of the key foundations of any country's economic development. Especially for a small developing state like Georgia, attracting foreign direct investment (FDI) is of crucial importance, because domestic investment is often insufficient.

### **SINCE THE ELECTIONS**

2012 was a politically tense and active year with the parliamentary elections on October 1 ushering in a new government. Economic activity that year was turbulent as well: in the second half of 2012, the volume of FDI accounted for 432.7 million USD, which was a decrease of 46.2 million USD on the first half of the year.

In 2013, FDI increased slightly, reaching 941.9 million USD. This exceeded the 2012 figures by only 30.3 million USD. Preliminary data from the first three quarters of 2014 show the volume of FDI in Georgia was 1.27 million USD, an increase of 35% on the same period in 2013.

On February 5, 2015 at a meeting of the Government Prime Minister Gharibashvili urged the Government members not to create artificial obstacles for business. Unfortunately, the last two years have been marked with precisely such artificial obstacles and gratuitous regulations delivering negative messages to investors.

#### ***1. Unstable legislative environment and delayed amendments***

Frequent delayed enactment of important legislative amendments has become one of the traits of the Georgian Dream Government. This has prevented the formation of a stable and predictable legal environment in the country. At the end of 2014 the time limits for enacting ten key reforms were delayed for a year.

#### ***2. New immigration policy***

Introduction of new immigration rules was another unjustified decision by the Government. The new Law on the Legal Status of Aliens and Stateless Persons, drafted by the Ministry of Justice (MoJ), entered into effect on September 1, 2014. The amendments have tightened regulations on temporary migration to Georgia. The Government of Georgia has mainly linked the need for these amendments to obligations taken as part of the visa regime dialogue with the EU. TI Georgia has examined these regulations and the views of individuals directly affected by these amendments.

TI Georgia concluded that several amendments stipulated in the new Law unreasonably complicate procedures for foreign citizens entering Georgia and obtaining the right to residence<sup>216</sup>. They create needless problems to students arriving in Georgia for their studies, investors, and those wishing to live in Georgia for family reunification. The following issues are especially problematic:

- Unjustified reduction of the number of countries with visa-free entry;
- No longer allowing visas to be obtained at the Georgian border nor the extension of visas while in Georgia;
- Insufficient Georgian diplomatic missions abroad to process visa applications;
- Lack of an online process for residence permit application;
- Unreasonable waiting periods for issuing residence permit and visa;
- Grounds for rejecting a residence permit are too broad and allow for a great deal of discretion;

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<sup>216</sup> TI Georgia, Challenges of new immigration policies of Georgia: <http://goo.gl/3e8dla>, 27 October 2014

- Frequent and unjustified application of Sub-Paragraph "a" of Article 18.1 (threat to national security) as a reason for rejection;
- Inefficient mechanisms for challenging the rejection of a residence permit.

Once the Law was adopted, numerous organizations and private individuals have protested against the new regulations, followed by the Prime Minister Gharibashvili's commentary<sup>217</sup>. He has apologized to all foreigners who experienced problems due to the amended immigration rules and promised to solve the problem(s). Indeed, in December the Parliament adopted amendments, but they only partially solve the problem. Problems still exist, including: no online visa application process and not being able to obtain a visa on the border; a vast number of unjustified, vague and inconsistent decisions on rejection of residence permit applications, including the unacceptably wide application of Article 18.1.

TI Georgia has been approached by several investors who were directly affected by controversial decisions under the new Law and who have been refused temporary residence, while in some cases their family members and staff employed in their companies were granted residence permits.

### **3. Prolonged process of reforming the Labor Code**

Talks about labor legislation reform began at the end of 2012, but the scales of the amendments were unknown. The first amendments to the Labor Code were initiated on November 22, 2012 authored by the Parliamentary Committee for Healthcare and Social Affairs. The draft provided for several key changes<sup>218</sup>. It gained parliamentary support in its first hearing on December 28, 2012. Further debates on the law were suspended and a year later, on 11 December 2013, the Parliament examined the draft at the second hearing. At the second hearing they rejected the legislation.

The suspension of hearings on the draft law and subsequent failure were triggered by a competing series of new amendments to the Labor Code drafted by the MoJ<sup>219</sup>. The MoJ's draft was initiated in the Parliament by the Government on 11 March 2013. Prior to initiation, draft versions were published and consulted on widely, which must be applauded. Interested parties often had a feeling of uncertainty because of difficulty in predicting a final version of the law. After debates in the Parliament, the draft Law was considerably modified and finally, 4 months after initiation, on June 12, 2013 the amendments were adopted at the third hearing.

Notably, after the adoption of the above important amendments, the MoJ stated that her agency intended to initiate a new package of amendments on women's rights. However, the type and scale of these potential amendments are still not known. This creates (once again) vague expectations among employers.

### **4. Prohibition on the sale of agricultural land to foreigners**

In 2013 the Parliament made an unjustified and unconstitutional decision to introduce a provisional moratorium on the acquisition of agricultural land by foreigners. The moratorium was supposed to last until the end of 2014. Georgian MPs were referring to the need to regulate the cadastral system as a driving force behind this amendment. No steps were made to regulate an integrated registration system in the following months after the moratorium came into effect. According to the explanatory note to the draft, "currently there is a real threat of unreasonable privatization of land". Remarkably, the initiators have studied neither the number of foreigners who had purchased agricultural land in Georgia, nor the area of land they owned.

<sup>217</sup> Civil.ge, PM Vows to Fix New Visa Rule 'Shortcomings Soon': <http://civil.ge/eng/article.php?id=27708>, 8 October 2014

<sup>218</sup> TI Georgia, Proposed changes to the Labor Code: <http://goo.gl/G7Fhof>, 7 December 2012

<sup>219</sup> TI Georgia, 7 comments on planned amendments to the Labor Code: <http://goo.gl/n6YMY0>, 15 April 2013

TI Georgia interviewed experts, requested public information on the proportion of agricultural land owned by foreigners, and established that this proportion does not exceed 0.7% (approximately 18,500 hectares).

While probing into the matter, the TI Georgia's representatives have interviewed several large-scale foreign investors pursuing successful business activities in Georgia for several years, paying taxes, and employing citizens of Georgia. They claimed that the new regulation considerably limited their business expansion opportunities and more investments<sup>220</sup>.

In June 2014 TI Georgia won its case in the Constitutional Court (*Mathis Huter vs. Parliament of Georgia*). The Court found the moratorium unconstitutional due to its contradiction with Article 21 of the Constitution of Georgia, pursuant to which the right to property and inheritance is recognized and guaranteed, and the abrogation of the universal right to own, acquire, transfer or inherit property is prohibited.

Notwithstanding this decision of the Constitutional Court, foreigners still encounter problems when registering land. TI Georgia is still approached by foreign investors, who have purchased agricultural land at auction, but the Public Registry does not grant registration for several months by establishing a flaw in the application. As similar problems are being reported rather often, the current situation raises questions that the Public Registry may deliberately hinder land registration process for foreigners.

#### **5. New postal service regulations**

New state regulations have negatively affected the postal/courier market as well, which was growing significantly prior to introduction of restrictions. Legal obstacles on this market were first introduced by the 25 January 2013 Order №30 of the Minister of Finance of Georgia<sup>221</sup>. Based on this Order, procedures of import-export and declaration of goods in the customs territory of Georgia were substantially amended, creating serious problems for investors in the goods transportation business.

Many business leaders suspected these regulations aimed to oust them from the market, and to grant monopoly to one specific carrier. They implied that the monopoly was to be granted to "Georgian Post", whose sole shareholder is the State.

Local carriers have gone to courts to defend their rights and invalidate the Order of the Minister of Finances. TI Georgia defended the interests of carriers in the court proceedings. Carriers have won this case in all three instance courts.

Adoption of this Order by the Minister was followed by other state regulations, some provisions of which also curb competition on the postal market.

### **RECOMMENDATIONS**

- Stable and predictable legislative process is crucial for the investment environment, and therefore interested parties must be informed about and involved in reforms planned by the authorities;
- Preferably, the process of reforming concrete issues of importance to the business environment should not be drawn out, so that target groups overcome transitional period easily and adapt timely to a new reality;
- The authorities must avoid as much as possible adopting laws that introduce gratuitous limitations for local and foreign investors and undermine their development;

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<sup>220</sup> TI Georgia, Ban on land sales – stories from large foreign farmers: <http://goo.gl/WTskU7>, 24 February 2014

<sup>221</sup> 25 January 2013 Order №30 of the Minister of Finance of Georgia: <http://goo.gl/WWWDQs>



- The authorities must refrain from adopting regulations, which curb competition on specific markets and give advantage to individual companies.

The authorities should make sure that line agencies would not use a pretext of EU requirement as a false one, as this would contribute to creating anti-EU sentiments.

## 18. ECONOMY

Economic Policy Research Center (EPRC)



**Economic Policy Research Center**  
ეკონომიკური პოლიტიკის კვლევის ცენტრი

## 18.1 Key Indicators

- Instead of the initially planned 5% growth rate, the Government of Georgia is currently expecting a 2% economic growth rate in 2015. In 2013, Georgia reported the lowest indicator in the region at 3.3%. In 2014 4.7% growth was reported instead of 5%;
- As of February 2015, compared to the corresponding period of the previous year, the national currency has depreciated against the US Dollar by 16%. To avoid inflationary pressure, the National Bank has decided to reinforce monetary policy and increased the refinancing rate from 4% to 4.5%. To reduce fluctuations of the GEL exchange rate, from November 2014 through February 2015, the National Bank reduced foreign currency reserves by USD 120 million;
- According to preliminary data, in 2014 foreign trade turnover in goods has reached USD 11 billion 457 million, exceeding the previous year's indicator by 5%. A 2% decline is reported in exports data compared to 2013 (USD 2 billion 861 million), while a 7% growth in imports (USD 8 billion 596 million) was reported. Consequently, the negative trade balance is at a record high, exceeding USD 5.7 billion;
- In 2014, the fiscal deficit with respect to Gross Domestic Product exceeded the 3% index recommended by the International Monetary Fund, equaling 3.7%;<sup>222</sup>
- In January-November 2014, a 10% decline in remittances from Russia was reported. Less than USD 56 million 522 thousand was transferred. Compared to 2013, remittances from Ukraine in 2014 declined by 30%. Particular problems related to remittances were experienced in the last three months, especially in December. The volume of remittances sent to the country equaled USD 116.1 million, which is less than the same data of December 2013 by USD 38.5 million, i.e. 24.9%. By countries, remittances from Russia have declined in December by 43%, from Greece by 11%, and from Ukraine by 67%;<sup>223</sup>
- In terms of influx of Foreign Direct Investment, the lowest indicator since 2005 was reported the six-month data of 2014, (USD 415.8 million). The situation changed in the third quarter, and growth in investments was reported. Investments exceeded USD 507 million.

Several sectors will be reviewed to discuss the economic outputs of 2013-2014 including the state budget and management of public finances; foreign debt status and foreign trade sectors; and agriculture.

## 18.2 State Budget

### THE SITUATION BEFORE THE 2012 PARLIAMENTARY ELECTIONS

- Reforms were undertaken in the areas of strategic planning of state funding and results-oriented budgeting. A medium-term expenditure framework started taking form in 2005; the first Baseline Definition Document (BDD) was developed for 2006-2009. In 2009, the Parliament of Georgia adopted the Budgetary Code of Georgia. Since 2012, drawing up the state budget in line with the program budgeting standard was introduced. In the internal audit sector, in 2010, the Law of Georgia “on Internal Audit and Inspection” was adopted, which was updated in 2011 after being improved and tailored to international standards, with its title amended to the Law of Georgia “on State Internal Financial Control”. The Internal Auditors’ Code of Ethics and Standards were improved, and the foundation was laid for internal audit methodology;
- As of December 2012, revenues of the State Budget of Georgia equaled GEL 7,158,280.0 thousand.<sup>224</sup>

<sup>222</sup> National Statistics Office of Georgia, [www.geostat.ge](http://www.geostat.ge)

<sup>223</sup> National Bank of Georgia, [www.nbg.ge](http://www.nbg.ge)

<sup>224</sup> Ministry of Finances of Georgia, *on the 2012 State Budget of Georgia, Georgian State Budget Data*, [www.mof.ge](http://www.mof.ge)

## SINCE THE ELECTIONS

The following changes are noteworthy in respect to public finances:

- The Ministry of Finance of Georgia has developed a Public Finance Reform Strategy for 2014-2018.<sup>225</sup> Since 2013, local self-government unit budgets are drawn up in the program budget format, and a corresponding methodology was developed. Further, an electronic system of budget management was developed (e-budget); harmonization of this system with the Treasury's electronic system made it possible for the spending institutions, the Budgetary Department of the Ministry of Finance, and the Treasury Service to exercise real control and management over state funds;
- In 2013, the internal audit methodology was improved, the risk assessment method was planned for the internal audit planning processes, and the systematic audit of three ministries was carried out. Stages of planning, implementation, accountability and monitoring of internal audit were introduced;
- The new Budgetary Code was elaborated, and since January 2015 the principle of consolidation includes expenses along with revenues. Registration of revenues and expenses of LEPLs will be subject to the principle of consolidation, occurring prior to this in commercial banks;
- The quality of documents submitted together with the budget has improved considerably and their spectrum has broadened. Along with the 2015 Budget Law, fiscal risk analysis and key macroeconomic and financial indicators by scenarios (basic, optimistic and pessimistic) were submitted. The Government has developed a debt sustainability analysis (for 2015-2018). Parallel to budget planning, fiscal risk identification analysis, and assessment of their effects have developed;
- Regardless of the present reform, a Medium-Term Expenditure Framework (MTEF) has not been reached in Georgia. Instead, the Baseline Definition Document (BDD) is perceived as the MTEF document;
- The two main governmental documents which the budget must be in compliance with are the BDD (explicitly required by the Budgetary Code) and the Government Strategy (Georgia 2020). The latter was authored by the Government Administration, while the former was authored by the Ministry of Finance. BDD is not written out in years and simply lists general goals and areas. The program budgeting format is of a formal nature. The program annex is not part of the budget law. Accordingly, its enforcement is complicated, and the performance of programs described in the program annex are not monitored by indicators. Accountability of budget performance concerns the budget law only, thus making it difficult to carry out results-oriented program monitoring.

Key Indicators and priorities of the budget:

- By 2014, state budget revenues were GEL 7,319,000.0 thousand;<sup>226</sup>
- The 2014 and 2015 budgets are socially oriented. Approximately 30% of the budget is spent on healthcare and in social sectors, while 8% of total expenses are allocated to increasing non-financial assets (capital expenditures);<sup>227</sup>
- In addition, fulfillment of budgetary expenditures has largely failed in areas that should be facilitating economic growth. Hence, the budget fails to stimulate the economy;
- Infrastructural projects funded from the state budget cannot be implemented, owing mainly to a large number of failed tenders. Ten months into 2014, only 65% of annual projections allocated to infrastructure were consumed.<sup>228</sup> Delays in receiving foreign long-term credits refer to problems existing in terms of administration and management, which are also allocated mostly to fund infrastructural projects;

<sup>225</sup> Ministry of Finances of Georgia, [mof.ge/common/get\\_doc.aspx?doc\\_id=11479](http://mof.ge/common/get_doc.aspx?doc_id=11479)

<sup>226</sup> Ministry of Finances of Georgia, *on the 2014 State Budget of Georgia, Georgian State Budget Data*, [www.mof.ge](http://www.mof.ge)

<sup>227</sup> Ministry of Finances of Georgia, *on the 2015 State Budget of Georgia, Georgian State Budget Data*, [www.mof.ge](http://www.mof.ge)

<sup>228</sup> State Treasury of the Ministry of Finances of Georgia, *Operation Data*, [www.treasury.gov.ge](http://www.treasury.gov.ge)

- As is well known, in 2013, the budget deficit reached GEL 632 million,<sup>229</sup> while in 2014, according to the Ministry of Finance, the expenditure section of the budget equaled GEL 8 billion 977 million, which is 98.9% of the projected 9 080 million. Unconsumed funds in 2014 equaled GEL 103 million;<sup>230</sup>
- There was a trend of spending a large portion of budgetary funds during the last quarter and months of the year. Together with delays in the influx of grants, this has a negative impact on the national currency in terms of depreciation. Apart from the declining rate of the national currency, this also reduces the National Bank's currency reserves. To maintain the GEL rate, in one day in 2014, the National Bank spent USD 45 million. In 2014 this process was accompanied by a decline in foreign investments (see Chapter on "Investment Environment"), exports, and remittances, which has played a significant role in setting the new GEL rate;
- The draft state budget for 2015 mostly reiterates the trends and priorities of 2014, and around a third of the budget is allocated for social support. As in last year, 10% of total budgetary expenses are allocated to increase non-financial assets;
- In 2015, it is planned to take on a large amount of foreign debt, with the total increase in obligations equalling GEL 1 330 million, which is 13% of the budget's total resources. Yet, it is planned to reduce the fiscal deficit compared to the projected data for the 2014 budget law, so that the fiscal deficit does not exceed the 3% fixed by the International Monetary Fund.

## RECOMMENDATIONS

1. Instead of serving as a brief instruction document for the Ministry of Finance, the program budgeting methodology should become a practical manual for all spending institutions and budgetary organizations involved in the budgetary process, which should not only clearly define the role and degree of involvement of concerned organizations, but should give them practical instructions for administering work to be performed. In the first place, a methodological document should provide for clarity of terms and their consistency with other documents developed for similar purposes, especially with the Code. In addition, it should specify and practically apply key provisions set by the Code or any other basic standard;
2. When projecting the budget, it is important to focus on long-term, growth-oriented budgetary investments. For instance, instead of single tax benefits and increasing social obligations, it is preferable to fund areas like extra infrastructural expenses and to increase funding in professional education. Education is one of the most crucial, long-term investments in the country's economic development;
3. Outputs of budgetary expenditures illustrate that the structure of expenditures varies year by year and the budget is aggravated with more current liabilities, covered mostly at the expense of increased liabilities and not increasing tax revenues;
4. During the budget projection, an increase in current and fixed expenses should be avoided as much as possible, while the social measures should be directed at the poorest families to the greatest extent possible. Further, it is recommended to optimize administrative expenses. It is not justified for the state to take a large loan to fund budgetary expenses and increases in administrative costs, which includes the labor remuneration fund;
5. The expenditure section of the budget is consumed rather slowly throughout the year. It is recommended to spend budgetary resource as equally as possible by quarters and months, to avoid additional blows to the national currency;

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<sup>229</sup> Government of Georgia, *Annual Report on Performance of the 2013 State Budget of Georgia*, <http://bit.ly/18ZgXTC>

<sup>230</sup> Report on Performance of the 2014 State Budget, [http://www.mof.ge/news/print\\_news.aspx?news\\_id=6427](http://www.mof.ge/news/print_news.aspx?news_id=6427)

6. The Ministry of Finance of Georgia and other ministries should provide the public with adequate information on the budget, and especially on the reasons leading to failed performance of projected expenses and delayed implementation of infrastructural projects.

### 18.3 Foreign debt

- As of September 2012, Georgia's foreign debt constituted USD 13.11 billion;
- The proportion of Georgia's credit resources in total budgetary funds has increased from 3% in 2013 to 12% in 2014.<sup>231</sup> Such a high indicator occurred in 2009-2010 in the context of the global economic crisis and war;
- In 2013-2015, it is estimated that the over USD 3 billion in foreign liabilities will be undertaken.

#### SINCE THE ELECTIONS

- As of September 2014 (according to the data of the National Bank of Georgia), Georgia's total foreign debt, including the governmental sector, the National Bank, commercial banks, other sectors and inter-company debts, constituted USD 13.14 billion.<sup>232</sup> 31% of the total foreign debt (USD 4.1 billion) is accounted for by government debt, and the share of commercial banks in the total foreign debt is 20%. The weighted average percentage of Georgia's debt is 1.9%;
- 94% of foreign debt is denominated in a foreign currency, thus increasing the currency risk and threat of potential growth in pressure of obligations taken in view of the exchange rate;
- The foreign debt of the Government of Georgia has not reached a critical point in respect to GDP, but its constant growth shows that defining a strategy is required. The EU, pursuant to the Maastricht criterion,<sup>233</sup> demands from Eurozone member states that state debt does not exceed 60% of the country's Gross Domestic Product (GDP). To secure a country's foreign sustainability, the World Bank and the International Monetary Fund recommend<sup>234</sup> that foreign debt volume should not exceed 150% of a country's exports and 250% of budgetary revenues. As of 2014, the Government's foreign debt against GDP equals 26.9%, while the total debt equals 35.6%. Therefore, debt service indicators in Georgia are considerably less than maximum norms;
- Pursuant to the draft 2015 state budget, by the end of 2015, the maximum volume of state debt against nominal GDP constitutes approximately 35.6%; from these, state foreign debt constitutes approximately 26.4% and state domestic debt is approximately 9.3%, data almost analogous to 2014.

#### RECOMMENDATIONS

1. In general, state debt should not be considered a problem for the country's economy. Today all states have foreign debt. However, it is essential that taking and consuming a loan is targeted and structured so that funds are used for development and we do not face default. This requires the drawing up of a strategic document for managing Georgia's debt;
2. A strategic document for managing Georgia's debt should include the following articles: support of organizational procedures for taking and managing a loan; search for debt financing sources and setting a schedule; definition of debt volume to be taken, risks assessment, management and administration of quality statistical data;
3. Taking of a loan by the Government should be agreed upon with all state institutions required by legislation and should be consistent with national interests. Importantly, issuing of a state guarantee when a loan is taken by the private sector should be restricted. The authority responsible for taking

<sup>231</sup> Ministry of Finances of Georgia, *Country's Baseline Definition Document for 2014-2017*, <http://www.mof.ge/5233>

<sup>232</sup> National Bank of Georgia, *Statistical Data*, <https://www.nbg.gov.ge/index.php?m=304>

<sup>233</sup> Organization for Economic Co-operation and Development, <http://bit.ly/1xAQCHh>

<sup>234</sup> International Monetary Fund, *Debt Sustainability Data*, <http://bit.ly/1CQLOhi>

and managing a debt should be defined and the debt taking and servicing procedures should be written out thoroughly with the participation of all involved and responsible authorities;

4. Economic sectors or projects, which state debt must be spent on, should have revenues higher than loan costs. The expediency of these projects should be examined. Social or infrastructural projects that will benefit from debt should be assessed by cost/benefit analysis. It is reasonable to take on debt from international capital markets for projects with rapid positive results, while for social services it is expedient to take a loan from relevant financial institutions under very beneficial terms;
5. The strategy should describe advantages that domestic debt has in concrete cases and demonstrate the need to replace a foreign debt with a domestic debt (for instance, treasury obligations). Over a long-term period, domestic debt may be cheaper than a foreign debt, because a foreign debt is accompanied with interest costs, as well as sterilization and exchange rate costs.

## 18.4 Trade and DCFTA

### THE SITUATION BEFORE THE 2012 PARLIAMENTARY ELECTIONS

- Over the last decade, Georgia's foreign trade turnover has expanded six fold and its exports have expanded four fold;
- As of September 2012, Georgia's foreign trade turnover constituted USD 10 billion 425 million, in which exports accounted for USD 2 billion 375 million, and imports approximately USD 8 billion;
- As of 2012, the share of total trade turnover with the following countries was as follows: Turkey – 15%, Azerbaijan – 12.3%, Ukraine – 7.5%, China – 5.8%, Germany – 5.7%, Russia – 5.1%, United States – 4.3%, Bulgaria – 3.3%, Armenia – 3.2%, Italy – 3.2%.

### SINCE THE ELECTIONS

Two major changes in the foreign trade sector in 2014 are worth noting:

1. DCFTA has entered into effect;
2. Georgia refused to engage in economic sanctions against Russia; the Russian market opened for Georgian fruits and vegetables; wine export to the Russian market, which was restored in 2012, was extended;

Consequently, in 2014:

- Georgia's key trade partners with respect to export are Azerbaijan (19%), Armenia (10%), Russia (10%), and Turkey (8%);
- In the goods categories, top exports include passenger cars (18% of total exports); ferro-alloys (10%); copper ores and concentrates (9%); natural wines (6%), and hazelnuts (6%). Agricultural products account for 26% of production exported from Georgia;
- In 2014, the European Union was one of Georgia's largest trade partners, with its share in overall imports equaling 28% and exports equaling 22%;
- Following the removal by Russia of the embargo on some sectors of Georgian production, Russia's share of trade has grown in the last three years, and its share of total exports reached 9.7% by the end of 2014;
- During last two months of 2014, increasing economic dependence on Russia and the ongoing war in Ukraine had a grave effect on Georgia's exports.<sup>235</sup>

## RECOMMENDATIONS

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<sup>235</sup> National Statistics Office of Georgia, *Foreign Trade*, <http://bit.ly/1FWiozc>

1. So far, Georgian businessmen have only used a few opportunities offered by DCFTA; it is important to raise awareness in the public and in business circles on the obligations taken under the EU Association Agreement and future opportunities;
2. The authorities should set up programs aimed at assisting local producers in meeting relevant regulations and standardization procedures for the EU through access to information, consultations, and an increased role for farming houses and training centers, etc.
3. To improve coordination, state structures should identify one authority responsible for the communication of obligations taken before the EU;
4. DCFTA provides for harmonization of Georgian legislation with EU legislation. In this respect, it is necessary to fit EU legislation to the local reality, and to assess the *ex ante* impact of legislative amendments for identifying potential alternatives and making an optimal choice. It is important to find ways to plan this process ahead of time, and to avoid spontaneity, so that legislative changes are not painful for the unprepared Georgian business environment;
5. It is important to further diversify markets, because an increasing dependence on the Russian market, as it is one of the most fragile and politically sensitive markets, could be used, on the one hand, as political leverage against the country and on the other hand, in case of excessive dependence, even in the absence of political problems the Georgian economy could face risks stemming from the risk that the current depreciation of the Russian Ruble poses to the Russian economy. Therefore, it is essential that the authorities reinforce efforts to exploit new export markets, including China and nearby Asian states.

## **18.5 Agriculture**

### **THE SITUATION BEFORE THE 2012 PARLIAMENTARY ELECTIONS**

Over the last two decades, agriculture was the only economic sector which experienced extremely slow development.

By 2012, agriculture was 8.6% of GDP.<sup>236</sup> Almost 70% of agricultural lands were not registered.<sup>237</sup> Analysis of the current situation shows several key factors hindering development in the sector:

- Absence of a formal, structured land market;
- Fragmentation of lands;
- Outdated infrastructure;
- Lack of efficient financial tools;
- Absence of technologies/"Know-How".

### **SINCE THE ELECTIONS**

Activities can be divided into several fields: subsidy policy; construction of agricultural infrastructure; institution building; and performance of obligations under the Free Trade Agreement with the EU.<sup>238</sup>

Of the above mentioned activities, the following projects are noteworthy:

- Project for Promotion of Spring Works of Land-Starved Farmers (GEL 50 million spent in 2013);

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<sup>236</sup> Ministry of Economy and Sustainable Development of Georgia, Agriculture, March 2014, <http://bit.ly/lbwgMRy>

<sup>237</sup> Radio Liberty, Deadline of Restriction on Changing the Status of Agricultural Lands Extended, December 2014, <http://bit.ly/IHK66bR>

<sup>238</sup> Ministry of Agriculture of Georgia, 2013 Activity Report of the Ministry of Agriculture of Georgia, <http://bit.ly/ICQM67Y>; Brief Report of the Ministry of Agriculture, <http://goo.gl/RFKL10>



- Beneficial Agro-Credit Project (as of 2014, 24.7 thousand loans were issued with a total value of up to GEL 651 million); 89 new enterprises were funded, and 580 enterprises were funded for expansion/re-equipping;
- The project for co-funding enterprises processing agricultural goods – as of December 2014, 16 projects and up to USD 12 million were approved;
- Apple sales support project – subsidy totaling GEL 3.2 million;
- Subsidization of tangerine manufacturing processing – beneficiaries have received income of GEL 2 127 000, with the state subsidy equaling GEL 1 035 000;
- Vintage subsidization – in 2014, the subsidy for 1 kilogram of Rkatsiteli and Kakhuri Mtsvane (*Kakhetian Green*) equaled GEL 0.35, 1 kilogram of Saperavi GEL 0.15. Vintage in 2014 was a success across the country. Overall, 124 thousand tons of grapes were processed, and income from the sale of grapes exceeded GEL 174 million (by comparison 2013 income amounted to GEL 100 million);
- Rehabilitation works of melioration systems – as of December 2014, 88 thousand hectares were irrigated and 25 thousand hectares were not;
- Agro-Insurance Pilot Program (put into effect from 1 September, 2014) – the Program provides for state subsidy of insurance premiums of up to 95%; the Program budget in 2014 was GEL 5 million;
- Activities supporting cooperation – a relevant law was adopted; as of December 2014, an agricultural status was granted to 376 cooperatives, including 99 cooperatives in high mountainous areas. Cooperatives unite 2 956 shareholders. 169 sets of motoblocs and 117 extra manual seed drills have been issued to cooperatives;
- Noteworthy developments in terms of performance of obligations under the Free Trade Agreement with the EU include the development of technical regulations on milk and honey; activation of the Food Safety Service; international certification of the laboratory of the Ministry of Agriculture of Georgia; and the setting up the Agricultural Scientific-Research Center.

### **Georgian Agriculture Development Strategy for 2015-2020**

Key areas of the Strategy include: increasing the competitiveness of those employed in the agrarian sector; institutional development; melioration and soil fertilization; regional and field development – supporting the development of a full production cycle generating added value; securing food safety; food safety, veterinary science and plant protection; climate change, environment and preservation of biodiversity;

- Changes affecting land ownership are worth a separate mention, having had an adverse effect on the investment environment, especially in the agriculture sector (for details see Sub-chapter on “Investment Environment”);
- No efficient and tangible steps have been taken in respect to land registration.

### **RECOMMENDATIONS<sup>239</sup>**

1. From 2012 to 2014, the share of agriculture in Georgia’s GDP has grown from 8.6% to 9.4%, i.e. by only 0.8%. Given current expenditures, such growth attests to the low efficiency of these expenditures, thus proving that current policy should be at least partly revised;
2. The transparency of programs is apparently on the rise against the background of an obvious increase in program funding. Programs are no longer of a haphazard nature, but still, the relevance of individual programs is questionable (e.g. the program supporting land-starved farmers).

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<sup>239</sup> Agriculture Strategy: International Experience and Georgia, <http://bit.ly/1M2tqbf> 2014; Agriculture – Challenges and Current Policy, 2013, <http://bit.ly/1FVWiQ0f>; Current State of the Land Market, 2013, <http://bit.ly/19SQckS>

3. In the coming years, the Government should take measures aimed at forming a land market, which requires the following:
  - a. An inventory of all types of documents currently available (in hard copies as well as electronically) should be created in order to have a clear idea of the current stage of land reform, the dynamics in this respect, and what is the scale of work to be performed. In case of gaps, discrepancies between information maintained by the Public Registry's central administration and its local units should be remedied;
  - b. State approaches towards various forms of land ownership should be clearly formulated (private, community, state, possibly traditional). In individual regions, registration of land parcels in private ownership alone may be insufficient, and developing a policy on community pastures and lands in joint ownership may become necessary;
  - c. Legislation granting power of attorney on land ownership should be improved in order to simplify as much as possible procedures required for registration.
4. Activities should be implemented aimed at attracting capital in agricultural production, disseminating technologies and rehabilitating basic infrastructure;
5. Although the volume of funds spent on the sector has considerably grown as a result of the Beneficial Loans Program, the Program may face a serious sustainability problem, especially when relevant funding sources are no longer available;
6. Restoration of basic infrastructure and particularly melioration systems is certainly a positive development, however, without efficient operation of land and credit markets, sustainability will hardly be achievable here as well;
7. We find that the state should not spend funds in the future on supporting land-starved farmers or similar programs, because this causes unnecessary concerns on the market, mars competition and does not contribute to substantial, quality growth;
8. Overall, the success of the country's agrarian policy will largely depend on the Government's effectiveness in terms of setting up the institutional and legislative, as well as physical infrastructure required for development.

Finally, a predictable business environment is a key factor in achieving economic progress. It is crucial that investors have guarantees and the possibility to predict and have a long-standing vision on state policy backed up with statutory acts (for instance, a long-term tax policy). If the state intends to secure extra liberalization of tax regulations step by step, it is important to stipulate this in legislative acts by indicating planned dates of enactment. It is essential to have an integrated strategy document, which would place all changes in various areas of economic policy in one common context, so that they do not contradict each other. This will enable business to predict state policy over a long-term period and to make bolder decisions for pursuing economic activities in the country.

# 19. OPEN GOVERNANCE

Institute for Development of Freedom of Information (IDFI)



## **THE SITUATION BEFORE THE 2012 PARLIAMENTARY ELECTIONS**

Regardless of the extremely important and successful initiatives implemented by the former authorities over the years in the fight against corruption (e.g. introduction of online systems of property declarations of officials and state procurements), prior to 2012, Georgia experienced serious problems in terms of open and accountable governance. There was a lack of transparency in state projects, and systemic limits on access to public information raised legitimate doubts among the public as to the development of democratic governance.

Following political changes resulting from the 1 October, 2012 Parliamentary Elections, remarkable positive trends were identified in terms of access to public information. The civil society sector expressed hopes that the trend of greater openness of information in public institutions would be maintained in the future, but studies<sup>240</sup> carried out by IDFI in 2014 clearly demonstrated that in a number of public institutions, the positive trends that emerged in the aftermath of political changes were linked to the new authorities only being in office for a short period of time and hence lacking information to hide. This was upheld by IDFI statistics. Before the 2012 elections, only 39% of responses to freedom of information requests were provided in full. This indicator considerably improved during the period between October 2012 and September 2013, reaching 85%. Yet, since October 2013, the percentage of full responses has declined to 71%. In 2014, the Ministry of Interior and the Ministry of Finance did not provide information that they had themselves publicized in detail at the initial stage of political changes, in the beginning of 2013.

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<sup>240</sup> IDFI, *Access to Public Information in Central Public Institutions from October 2013 through March 2014* – [https://idfi.ge/ge/sajaro\\_informaciis\\_xelmisawvdomoba\\_centraluri\\_2013\\_2014](https://idfi.ge/ge/sajaro_informaciis_xelmisawvdomoba_centraluri_2013_2014); IDFI, *Access to Public Information in LEPLs and Sub-agency Institutions – 2013-2014 Report* – <https://idfi.ge/ge/access-to-public-information-in-lepls-and-state-sub-agencies-in-georgia-report-2013-2014>

## **SINCE THE ELECTIONS**

As already noted, with respect to access to information, the recent period has witnessed a decline in the transparency of administrative authorities compared to last year. However, key changes carried out by the new authorities in the open government sector should be highlighted. In particular, the GoG resolution on the Approval of Procedure and List of Public Information to be Published Proactively was adopted. Further, the General Administrative Code of Georgia was amended, and the law explicitly stipulates that public information can be requested electronically, online resources from a public institution. The number of persons submitting property declarations has expanded, and for the first time includes heads of non-commercial legal entities and limited liability companies founded by the state. Information on simplified procurements is published online on the system of procurements webpage. Information on monies allocated from the reserve funds are proactively released.

Equally important is the Government of Georgia's continued and active work in the Open Government Partnership (OGP) initiative. In September 2014, the Government of Georgia approved Open Government – Georgia's second action plan for 2014-2015, which reflects proposals proposed by civil society including the development of an online platform for petitions, proactive publication of statistics on secret surveillance, introduction of a monitoring mechanism for property declarations, and enactment of an open data portal.

Most importantly, as part of the Open Government Partnership, the Government of Georgia has taken the obligation to elaborate a new Law on Freedom of Information. Adopting this Law is of vital importance for avoiding current and future statutory and practical problems and for introducing high standards of transparency and accountability.

## **RECOMMENDATIONS**

1. Georgian authorities should adopt a Law on Freedom of Information, which will be consistent with international best practice and standards. To this end, opinions and recommendations of NGOs and other interested parties should be taken into account throughout this process;
2. It is important that administrative agencies fulfill their obligation to proactively publish public information, as envisioned under Resolution #219 of the Government of Georgia. In addition, given that the Resolution is not sufficiently thorough, it is preferable that administrative agencies set high standards of transparency and accountability at their own initiative and proactively publish information, which will include more details than required by a relevant legal act and will meet public interests in a proactive manner;
3. The authorities should support the development of mechanisms of effective communication with citizens to secure their participation in the decision-making process. In this respect, it is necessary to strictly fulfill obligations taken as a part of the Open Government Partnership, provide legislative and practical support to petitions, discussion and public consultation mechanisms, and to support a permanent partnership format with civil society and experts.

## 20. MEDIA ENVIRONMENT

Transparency International Georgia



## THE SITUATION BEFORE THE 2012 PARLIAMENTARY ELECTIONS

Prior to the 2012 Parliamentary Elections,

- Georgian media outlets were clearly polarized by political orientation. The country's leading TV companies were owned by individuals associated with the authorities, hence affecting their editorial independence;
- Cases of obstructing journalistic activities and pressuring media outlets were reported, with an especially bitter media environment during the pre-electoral period.

## SINCE THE ELECTIONS

### Positive trends

- In the aftermath of parliamentary elections, the level of polarization in media subsided and the population has access to more diverse and impartial information. Obstruction of media related activities by the authorities has significantly declined. The change in authorities led to changes in ownership of media outlets. Imedi TV was returned to Badri Patarkatsishvili's family;
- Following legislative amendments in July 2013, Adjara TV, which was a governmental department, was transformed into a public broadcaster and thus subject to the corresponding legislative framework. Legislative changes have affected the Board of Trustees of the Public Broadcaster. The changes aimed to introduce more pluralistic rules for electing the Board. This was a positive step. The changes also included Must Carry and Must Offer regulations which prevent the selective carrying of channels by cable and satellite providers stemming from political considerations. This should also be considered a positive step forward.

### Worrying trends

- Representatives of the authorities, including the former Prime Minister Bidzina Ivanishvili and the current Prime Minister Irakli Gharibashvili, often criticize journalists publicly for materials they publish. This can be perceived as an attempt to pressure media representatives. Garibashvili's criticism of journalists for not covering a criminal case involving the underage brother of a Rustavi 2 journalist in October 2014 is a good example.<sup>241</sup> State representatives also reportedly pressured journalists in relation to Samkhretis Karibche newspaper and Guria News web portal;<sup>242</sup>
- Leading journalists left Maestro TV in December 2014,<sup>243</sup> citing the owners interference in the TV station's activities. Said interference is incompatible with the principles of freedom of journalistic activities. Journalists claimed the owners of Maestro TV were attempting to maintain their relations with the authorities;
- The process of staffing the Board of Trustees of the Public Broadcaster experienced significant disruptions. Parliament did not vote for candidates nominated by the parliamentary minority several times, thus staffing the Board with seven instead of nine members. The independence of the Public Broadcaster is undermined by the representative of the Ministry of Interior (the so-

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<sup>241</sup> Transparency International Georgia, *Prime Minister's Position Jeopardizes Independence of Media and Courts*, October 2014, <http://goo.gl/fHZGSd>

<sup>242</sup> Transparency International Georgia, *Reports of Pressure on Journalists in Akhaltsikhe and Ozurgeti Require Inquiry and Response*, December 2014, <http://goo.gl/wm8xxR>

<sup>243</sup> Transparency International Georgia, *Civil society organizations respond to ongoing events at Maestro TV*, December 2014, <http://goo.gl/ltgDbO>

called “ODR”), who is permanently stationed in the Public Broadcaster. An “ODR” is also present at the National Communications Commission;

- In May 2014, secret recordings of Rustavi 2's offices were discovered. The Prosecutor's Office released interim investigation results soon after,<sup>244</sup> but the authorities failed to inform the public about subsequent developments. Several days after the scandal, “Rustavi 2” aired secretly recorded telephone conversations. This case once again attests to the alarming situation in the country with respect to wiretapping;
- In the spring of 2014, the Revenue Service inspected the company “TV MR Georgia”, which measures television ratings. As part of an inventory exercise, the Revenue Service requested the company to disclose confidential information, hence causing a threat to the company's operations and trust in it. Accordingly, the stability of the advertising market was put at risk;
- Regulations on social advertising were amended in 2014, and the role of the National Communications Commission increased in this regard. Broadcasters and civil sector representatives submitted their comments on this draft law numerous times, but they were disregarded;
- Based on criteria we are unaware of, the Government Administration and a majority of the ministries fund information agencies, including Interpressnews. Often information agencies do not indicate whether a concrete piece of information is advertising or not;
- The process of switchover to digital broadcasting remains one of Georgia's key challenges. Georgia is obligated to switch to digital broadcasting by 17 June, 2015. Timely completion of the process is a major challenge for the authorities.

## **RECOMMENDATIONS**

1. State representatives should refrain from criticizing journalists and media, irrespective of their feelings about materials produced by a journalist. The Government's critical tone towards media representatives is unacceptable and could be perceived as attempted interference in editorial independence;
2. The authorities should investigate cases of interference in media activities reported during the previous as well as current authorities' rules;
3. All branches of government should secure maximum media involvement in examination of legislative initiatives directly affecting media and its operations;
4. The authorities should take further efforts to timely complete the process of switchover to digital broadcasting. They should effectively coordinate their activities and proactively inform society about this process;
5. The Ministry of Interior should remove the “ODRs” from the National Communications Commission and the Public Broadcaster. The presence of representatives of the Ministry of Interior infringes upon the independence of these institutions, which is guaranteed by Georgian legislation.

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<sup>244</sup> Civil.ge, Rustavi 2 Says its Office is Bugged, May 2014, <http://goo.gl/QpHW4g>



## 21. HEALTHCARE

Georgia's Reforms Associates (GRASS)



## **THE SITUATION BEFORE THE 2012 PARLIAMENTARY ELECTIONS**

By 2012, the State was implementing targeted healthcare programs aimed at management of infectious diseases, tuberculosis, HIV/AIDS, diabetes, drug addiction, and programs for dialysis and kidney transplantation, emergency assistance, and village doctors, among others.

In addition, by 2012, the citizens who could least afford healthcare could use the State Healthcare Program. The program provided assistance to the population living below the poverty line, internally displaced persons living in compact settlements, children without caretakers, children aged 0 to 5, pensioners, students, and children with disabilities.

## **SINCE THE ELECTIONS**

### **Universal healthcare**

On February 28, 2013, the Universal Healthcare program was launched. The Universal Healthcare Program extended health insurance to all Georgian citizens who did not use other health insurance packages. The program includes in-patient and out-patient services, surgeries, treatment of oncological diseases, and reimbursement of childbirth expenses. The program provides for planned care as well as emergencies. Persons who had used the State Program of Health Insurance previously were incorporated into the Universal Healthcare Program with unmodified insurance packages.

It should be noted that the beneficiaries of the old state insurance programs provided for in Resolutions 165 and 218 of the Government were not content with the programs. The Universal Healthcare Program is of a higher quality. At the same time, the extremely low insurance premiums made a large share of insurance companies unprofitable. However, the solution was not the abolishment of these state insurance programs and the launch of the universal healthcare, but revision of insurance premiums and the optimization of programs.

Considering that medication prices have consistently increased and medication costs exceed 50% of total healthcare expenses, the Universal Healthcare Program does not envisage reimbursement of medication costs outside in-patient clinics.

State healthcare programs account for the largest share of the health insurance market. At the same time, after the Universal Healthcare program was launched, the number of people who use private insurance decreased. The Universal Healthcare Program is implemented by the Social Service Agency and private insurance companies are not involved in it, which reflects negatively on the development and existence of the health insurance market. The International Monetary Fund (IMF) has paid particular attention to this fact. The concluding statement of the IMF mission, released on June 10, 2013, reads that the “takeover of key services from existing private health insurers by a public entity, the Social Service Agency, will reduce the market for private insurance significantly.”

Financial risk is the main challenge of universal healthcare. The people who had paid their healthcare expenses themselves have gradually joined the Universal Healthcare Program, which increases state expenses. In addition, healthcare is characterized by a high level of inflation, which will increase state expenditures. Extending the Universal Healthcare Program to 100% of the uninsured population has caused an increase in spending. At the same time, since the launch of the Universal Healthcare Program, people insured through corporate and individual insurance have continued to migrate to the program, which increases spending.

### **The Village Doctor Program**

Starting May 1, 2014, funding of village doctors and doctors' assistants increased by 30% within the Village Doctor Program – a positive change. They were also given medications necessary for emergency out-patient services and medical items. At the same time, in 2014, 82 new out-patient clinics were built in villages. Village doctor service providers had been private insurance companies, but since January 2014, the Village Doctors Program has been funded by the Social Service Agency.

### **Introduction of prescriptions for medications**

From September 1, 2014, medicines are only sold with prescriptions. The change was motivated by the desire to protect the population from the negative consequences of pharmaceutical addiction and self-treatment.

The introduction of prescriptions was followed by the emergence of “pharmacy doctors”. Doctors hired by pharmaceutical companies write prescriptions in the pharmacy, without any laboratory analyses or examination of the patient. This fails to protect the population from the negative consequences of self-treatment.

### **Management of Hepatitis C**

The Ministry of Health is launching a large-scale program for the management and elimination of Hepatitis C. The program aims to prevent the disease, ensure the availability of treatment and medication, and exercise a high level of supervision over facilities at high risk of Hepatitis C transmission (dental clinics, beauty salons, etc.). At this stage, the program is assessed positively by experts and the public. The program will be launched at the end of February 2015.

## **RECOMMENDATIONS**

1. Despite the fact that universal healthcare has solved many of the problems that were unresolved in the framework of the state insurance programs, the government should do a cost-benefit analysis, in order to decide whether the obvious improvement brought about by this program was worth the cost. The health insurance market has significantly shrunk as insurance companies incurred large capital expenditures to build hospitals, which they would not have done had they known about the Universal Healthcare Program. Thus, it is important to revise the Universal Healthcare Program;
2. The Universal Healthcare Program should be targeted and extend only to people with more than a specific number of rating points, who cannot afford healthcare. A large share of the population is ready to share financial responsibility for their healthcare together with the State.<sup>245</sup> This would enable the Government of Georgia to replace its equalizing approach with a differentiated approach and use the resources freed up both for the socially vulnerable population and in general for better healthcare;
3. Insurance companies should be involved in the implementation of state healthcare programs. This will ensure the development of the insurance market, on the one hand, and protect the state budget from unjustified financial risks, on the other hand;
4. Expenses for medications should be co-funded in the framework of the state healthcare program. The introduction of a prescription system for specific groups of medicines was a positive change, although the State should ensure that medications are not prescribed without examining a patient and conducting laboratory analyses.

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<sup>245</sup> TI Georgia's public opinion poll: Your healthcare rights, April 4, 2014: <http://transparency.ge/en/blog/ti-georgia-s-public-opinion-poll-your-healthcare-rights>

## 22. MIGRATION

Civil Development Agency (CiDA)



## THE SITUATION BEFORE THE 2012 PARLIAMENTARY ELECTIONS

Initial steps towards improving migration processes in Georgia were taken in 2010 when the Governmental Commission on Migration was created. The first tangible result of the Commission's activity was the Migration Strategy of Georgia for 2013-2015 which was approved in March 2013. An Action Plan was also later approved. These documents set migration policy and establish the format and goals of migration management in Georgia. The purpose of the Migration Strategy is to "improve the management of migration processes, which implies providing for national security, fighting irregular migration and human trafficking, ensuring the defense of migrants' rights and their social protection and state development through the positive impact of migration." On October 2012, the Secretariat of the Governmental Commission on Migration was formed with the support of the European Union. Its sole purpose was to strengthen the activities of the Commission technically and analytically.

## SINCE THE ELECTIONS

The steps taken in the area of migration management over the past two years influenced the EU-Georgia Visa Liberalization Action Plan. Out of the four stages of visa liberalization, one is related to migration/asylum. The fact that Georgia already had an institutional mechanism and a vision for migration management accelerated the process, and as a result, on February 25, 2013, Georgia was officially provided a Visa Liberalization Action Plan.

The Law of Georgia on the Legal Status of Aliens was developed, with the aim of legally regulating migration. With the aim of uncovering and responding to deficiencies in the Visa Liberalization Action Plan process, a task force was created in the framework of the Governmental Commission on Migration, and a number of guidelines for preferential treatment of applicants were introduced in relation to several changes made to the law. Nevertheless, the law was problematic both legally and in practice. Several NGOs assessed the law critically from the very beginning. The law created problems for foreign students in Georgia, businessmen as well as persons working in Georgia. From September 1, 2014, amendments to the Law of Georgia on Aliens and Stateless Persons entered into force. Towards the end of 2014, the Government began work on a draft law on labor migration.

### Positive trends

- By the Government of Georgia Resolution of June 17, 2014, seven international<sup>246</sup> and five non-governmental organizations<sup>247</sup> were requested to take part in the work of the Governmental Commission on Migration Issues. The meetings of the Commission received publicity, and non-governmental organizations were involved in decision-making;
- The Secretariat of the Commission on Migration has improved migration management. The Secretariat has created a common platform which brings together representatives of both the State and international and non-governmental organizations. The platform meets twice a year to share information. A matrix of migration projects was created;
- In the framework of the Secretariat of the Commission on Migration of Georgia, a dictionary of migration terms in the Georgian language was created, which serves to organize Georgian language terminology on the topic of migration;

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<sup>246</sup> International Organization for Migration (IOM), Danish Refugee Council (DRC), International Labor Organization (ILO), EU Delegation to Georgia, The Office of the United Nations High Commissioner for Refugees (UNHCR), The International Centre for Migration Policy Development (ICMPD), and The German Agency for International Cooperation (GIZ).

<sup>247</sup> Innovations and Reforms Center, Migration center, Georgian Young Lawyers Association, UN Association of Georgia, the Civil Development Agency.

- The Secretariat of the Governmental Commission on Migration has developed a universal document – the Migration Guide – which contains information both for potential emigrants and migrants. The aforementioned document is available in all agencies responsible for migration related issues;
- In 2014, a Memorandum of Understanding was concluded between the Secretariat of the Commission and Ivane Javakhishvili Tbilisi State University. The Manual on Migration is being developed within the Memorandum's framework. The manual is intended as lecture material for students;
- Georgia has become actively involved in migration processes that are under way in the world and are aimed at creating a well-developed and sustainable system for well-ordered migration (the Budapest Process), deepening cooperation among participants in the area of migration (the Prague Process), responding to challenges that EU's Eastern Partners face, contributing to the enhancement of coordination in relation to migration and asylum issues (the Migration and Asylum Panel) and bringing together the interrelationship of migration and development by practical and action-oriented methods (the Global Forum on Migration and Development);
- It is important to encourage new initiatives on migration, such as the common initiative of Georgia and Germany regarding contributions to circular migration which started at the beginning of 2013;
- On May 2, 2014, the Parliament of Georgia adopted the Law on Elimination of All Forms of Discrimination, which took place against a tumultuous background, and, despite criticism of the final version, the law's passage was significant. Passage of this law was one of the requirements of the Visa Liberalization Action Plan;
- On October 8, 2014, a center for temporary accommodation of illegal migrants, which is designed for 80 persons staying illegally in Georgia, opened in Tbilisi;
- In 2015, GEL 400,000 was allocated from the state budget to support the reintegration of returning migrants. The Project will be implemented by the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia;
- In January 2014, a new structural unit – the Division for Obtaining Information on the Country of Origin of Asylum Seekers – was created in the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia. This division obtains, processes, analyzes, and renews information about migrants' countries of origin. From 2014, persons with the refugee and humanitarian status were included in the so-called "vertical" program of healthcare.

## Challenges

- Despite the fact that the Action Plan for an information campaign on migration was developed together with the Governmental Commission on Migration and with the involvement of the non-governmental sector, and a number of measures were taken in this regard, practice has shown that the uninformed migration of Georgian citizens still takes place. This increases the risks of trafficking. It is also problematic that the awareness of Georgian emigrants abroad is low. They often do not know whom to approach for help;
- The main problems caused by the Law of Georgia on the Legal Status of Aliens and Stateless Persons of September 1, 2014 include:
  1. The law was applied inconsistently and, in a number of cases, in a discriminatory manner;
  2. Despite several information campaigns carried out by specific ministries, practice has shown that aliens did not have adequate knowledge of the changes, which put them in a legal vacuum;
  3. Despite the fact that the Public Service Hall created a special space to serve aliens, and the operators working there were trained on the law on aliens, serving aliens has turned out to be problematic in practice. When foreigners presented their documents, employees of various state structures provided them with different information, which was caused by a lack of information and coordination;
  4. The law negatively influenced investors' interest in the country.
- Commencement of legal labor migration to ensure both the employment of Georgian citizens abroad and the employment of aliens in Georgia is problematic;

- Georgia has agreed on a draft treaty on circular migration with France, but its approval by the legislative bodies of both Georgia and France has unfortunately been delayed for years;
- The norm of forced return (expulsion) of aliens envisaged by Georgian legislation does not work;
- Measures taken by the State are insufficient for full integration of aliens who stay in Georgia legally.

## RECOMMENDATIONS

1. Implementation of the Action Plan of the Migration Strategy of Georgia for 2013-2015 should be assessed on the basis of indicators developed in advance. The results should serve as the basis of developing the strategy and action plan for 2016-2018;
2. Develop local NGOs services within the reintegration of migrants program, which is supported by the State;
3. The State should develop a reintegration program designed to meet the needs of individual migrants;
4. Strengthen the role of the consular departments of the Ministry of Foreign Affairs in providing Georgian emigrants with consultation, as well as in informing them about reintegration and economic programs;
5. Carry out legislative changes in the area of migration in view of deficiencies revealed in the area of implementation;
6. Strengthen coordination of the state information campaign on migration between the state and non-state sectors. Ensure the simplicity and accessibility of the information campaign;
7. Discuss adding a Labor Attaché to consular departments (especially in countries with large Georgian émigré populations). The LA would study the labor market of the country and provide Georgian emigrants and interested persons with information;
8. Strengthen the role of the State Minister on Diaspora Issues, the Public Defender, and labor unions in the area of migration and use their resources better in the area of migration.

## 23. CULTURAL HERITAGE

Georgian Young Lawyers' Association (GYLA)





## THE SITUATION BEFORE THE 2012 PARLIAMENTARY ELECTIONS

In 2007, the Parliament of Georgia adopted a new Law on Cultural Heritage. The commitment made under the Law to create a corresponding policy document on cultural heritage has not been fulfilled. At the same time, various projects claiming to be rehabilitation-restoration projects have led to largely negative results. A number of heritage sites have been damaged or destroyed as a result of rehabilitation-restoration projects. The non-transparent and irrational spending of finances in the name of rehabilitation-restoration leaves many questions unanswered, which require assessment. For example, during the rehabilitation-restoration of historical parts of Tbilisi and Batumi, multiple instances emerged which were suspicious and at high risk of corruption. Moreover, extremely important heritage sites have been damaged. Nevertheless, the government did not demonstrate consistent conduct and responsibility was not investigated.<sup>248</sup>

## SINCE THE ELECTIONS

Problems in the field of cultural heritage in Georgia have long been a cause for concern locally and internationally. Of the three world heritage sites in Georgia – Mtskheta historical sites, Bagrati Cathedral and Gelati monastery, the former two are classified as endangered.

Unfortunately, problems are not limited to individual cases and instead are of a systematic nature. In addition, individual cases clearly demonstrate the extent of problems in cultural heritage protection. Notably, in March 2014, the government of Georgia presented the Social-Economic Development Strategy (2014-2020) of Georgia to the public. However, this voluminous document does not mention the social value or economic potential of culture, nature, or cultural heritage.<sup>249</sup>

Monuments and monument-like objects entered into the state accounting registry have not yet been re-registered. Unfortunately, in 2013, as a result of an amendment to the Law on Cultural Heritage, the deadline for such a re-registration was once again delayed, this time until January 1, 2018. The negative results of the inadequate fulfillment of this commitment have been described in various research reports:<sup>250</sup>

- There are practically no standard agreements on ownership of heritage items between the Ministry of Culture and Monument Protection and private proprietors (legal owners) of monuments;
- On November 12, 2013, the Georgian government proposed to the Parliament of Georgia an amendment to the Law on Cultural Heritage which provided that in exceptional cases and in cases important to the state, the government would gain the authority to remove the status of ‘monument’ from monuments (except for monuments/sites classified as national monuments and/or world heritage monuments/sites). This would be done at the request of the body with the powers to initiate such an action and if the request was approved by the Ministry of Culture and Monument Protection. Notably, “cases important to the state” are not defined under the law, leaving the issue to the interpretation of the corresponding decision-making body. Although the draft law was halted due to public protest, which was expressed in a variety of forms,<sup>251</sup> it nonetheless remains before the Parliament and may turn into a law at any time;
- The amendments to the Government’s resolution on Rules for Issuing Construction Permits and Permit Terms made on April 4, 2014 should also be assessed negatively. According to the amendment and based on various vague definitions, starting construction of premises or complexes “of great state importance” and for social purposes is “in some cases” possible without the

<sup>248</sup> GYLA, *Rehabilitation Process beyond the Facade*, <http://gyla.ge/eng/news?info=1237>; Report of GYLA, *GYLA Held Presentation of the Report Prepared on Batumi Rehabilitation*, <http://gyla.ge/eng/news?info=1725>; <http://bit.ly/1EY1q1R>

<sup>249</sup> The Georgian Government, *Strategy for Social-Economic Development of Georgia*, <http://bit.ly/19nrzMf> (in Georgian);

<sup>250</sup> E.g.: *Results of Revision of the List of Cultural Heritage*, Nano Zazanasvhili, Sul Khan Saladze, Nino Kordzakhia, Maia Chichileishvili, Tiflis Hamkari Publisher, 2014

<sup>251</sup> *Statement of Civil Organizations on Proposed Amendments to the Law of Georgia on Cultural Heritage*, <https://gyla.ge/eng/news?info=1846>; Georgian Young Lawyers’ Association and “Tiflis Hamkari” assessment of the proposed legislative amendments on removal of the status to the historic monuments, <https://gyla.ge/eng/news?info=1839>, GYLA applied to the UNESCO concerning the pending amendments to the law on “Cultural Heritage”, <https://gyla.ge/eng/news?info=1889>

documentation required under the law. In a short period of time, the abovementioned amendment seems to have been adopted for specific projects. Curiously, the amendment was adopted in the same period when the Panorama Tbilisi project was first announced;

- After 2007 i.e. since the enactment of the Law on Cultural Heritage, no state policy document has been developed on the protection and development of cultural heritage. In this regard, the new government has not taken any real steps. At the same time, in April 2014, it became public that the Ministry of Culture and Monument Protection delegated important authorities to the National Agency of Protection of Cultural Heritage.<sup>252</sup> As a result of the delegation, decisions were made by a council of the Agency and the Director General of the Agency on December 12, 2014. As a result of these decisions, which were made in suspicious circumstances, Sakdrisi-Kachagiani lost its cultural heritage site status.<sup>253</sup> While the state still does not have a policy document on the protection and development of cultural heritage, the large-scale delegation of powers indicates that events developed in a chaotic manner rather than from a systemic vision or policy;
- On June 24, 2014, by the order of the Minister of Culture and Monument Protection, the council of cultural heritage was formed.<sup>254</sup> The council is composed of representatives of the Ministry of Culture and Monument Protection of Georgia, the Georgian government administration, the Ministry of Regional Development and Infrastructure, the Ministry of Finance and the Ministry of Economy and Sustainable Development.<sup>255</sup> This council, given its composition, and the powers granted to it,<sup>256</sup> poses a serious threat to the protection of cultural heritage;
- Intense criticism is merited for the events surrounding the pre-historic mining site of Sakdrisi-Kachagiani and the chain of decisions made by various governmental agencies between 2013 and 2014.<sup>257</sup> It is clear that conflicts of interest existed in the decision-making process on this issue as well as instances of the abuse of office and the issuance of threats by high-ranking officials.<sup>258</sup> Despite strong protests from society, in the end of 2014, the government gave a permit, in suspicious circumstances, to disassemble (to remove) the archeological object Sakdrisi-Kachagiani to RMG Gold LLC. As a result, the company renewed large-scale works at Sakdrisi. Although the renewal of the works by RMG Gold contradicts the legally binding ruling issued by the Tbilisi City Court,<sup>259</sup> the government did not take this into consideration and the company has continued working at the site;<sup>260</sup>
- The Ministry of Culture and Monument Protection and the National Agency of Protection of Cultural Heritage, as the main state agencies in the area of cultural heritage, do not ensure discussion of issues of high public interest with corresponding professional circles or the timely and proactive publication of information.<sup>261</sup>

## RECOMMENDATIONS

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<sup>252</sup> The Ministry of Culture and Monument Protection of Georgia, *Round Table in the Ministry of Culture*, April 2014, <http://www.culture.gov.ge/topicdetails-1.10392.html> (in Georgian)

<sup>253</sup> *The Order N2/271 of the Director of the National Agency for Cultural Heritage of Georgia, dated December 12, 2014; The minute (excerpt) of the session dated December 12, 2014, of the section working on strategic matters of the council of cultural heritage, the National Agency for Cultural Heritage of Georgia*

<sup>254</sup> Order N03/129 of the Ministry of Culture and Monument Protection, dated June 24, 2014

<sup>255</sup> Order N05/83 of the Ministry of Culture and Monument Protection, dated April 16, 2014;

<sup>256</sup> E.g.: The authority of the council includes: granting and removing the status of cultural heritage, determining and changing categories; granting and removing the status of historical settlements; submitting monuments for inclusion of the world heritage sites created under the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage, etc.

<sup>257</sup> E.g.: *Research Paper – Sakdrisi-Kachagiani: From the Cultural Heritage to the Contemporary Gold Mining*, <https://gyla.ge/uploads/publications/researchpaper.pdf>;

<sup>258</sup> Green Alternative, *Ore above the Law*, N. Gujaraidze, 2013, [www.greenalt.org](http://www.greenalt.org)

<sup>259</sup> E.g.: The Court Suspended the Right to Conduct the Broad-Scale Works at Sakdrisi-Kachagiani, available at: <https://gyla.ge/eng/news?info=2137>;

<sup>260</sup> E.g.: Sakdrisi-Kachagiani – the Law is Still Violated. Available at – <https://gyla.ge/eng/news?info=2386> ;

<sup>261</sup> E.g.: Address of NGOs to the Ministry of Culture and Historic Monument's Protection – available at: <https://gyla.ge/eng/news?info=2032>; The Address of the NGOs to the Ministry of Culture and Monument Protection of Georgia and the National Agency of the Cultural Protection of Georgia . available at – <https://gyla.ge/eng/news?info=2375> ;

1. The government should ensure the development of a state policy document on protection and development of cultural heritage as well as its practical implementation. In addition, this process should be transparent and should include interested parties as much as possible;
2. The rules regulating the powers and composition of councils in the area of cultural heritage should be reformed. The government should ensure greater transparency and the council's independence;
3. Monuments and monument like objects entered into the state accounting registry should be re-registered by competent state bodies. This process should be finalized by January 1, 2018,<sup>262</sup> and this deadline should not be delayed again;
4. It is important that the government consider the interests and the spirit of cultural heritage as a value as much as possible while preparing and adopting draft laws and other normative acts that directly or indirectly concern cultural heritage. Furthermore, national regulations should be harmonized with international commitments which Georgia has made under various international conventions;
5. The government should ensure that the country's cultural heritage does not become the victim of economic and investment projects, as was the case in Sakdrisi-Kachagiani.

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<sup>262</sup> According to the Law on Cultural Heritage, this process must be finalized by January 1, 2018