Globethics Repository



european neighbourhood policy

This page was generated automatically upon download from the Globethics Repository. More information on Globethics see https://www.globethics.net. Data and content policy of Globethics Repository see https://repository.globethics.net/pages/policy.

Item Type	Preprint
Authors	Transparency International
Publisher	Transparency International Georgia
Rights	With permission of the license/copyright holder
Download date	2026-11-14 00:02:04
Link to Item	http://hdl.handle.net/20.500.12424/177326

Transparency International Georgia

საერთაშორისო გამჭვირვალობა - საქართველო



EUROPEAN NEIGHBOURHOOD POLICY:

MONITORING GEORGIA'S ANTI-CORRUPTION COMMITMENTS

www.transparency.ge

Table of Contents

I. Foreword 2
II. Acknowledgements 3
III. Executive Summary 4
1. Judicial reform 4
2. Public Sector reform 5
3. GRECO implementation 5
4. Recommendations 6
IV. Background to the Study 8
V. Findings: Implementation of Governance & Anti-Corruption Commitments of the EU – Georgia Action Plan 9
1. Objective1: Strengthening the Judiciary 9
2. Objective2: Civil Service/Public Sector reform 27
3. Objective3: Implementation of Georgia - GRECO Recommendations 37

Cover photo: © Flickr/Davide_Cassenti

© 2010 Transparency International Georgia. All Rights Reserved

Foreword

The European Neighbourhood Policy (ENP) is intended to provide a structure through which the European Union (EU) can help encourage and facilitate ENP member states to engage in a wide range of political and economic reforms.

Following on from the EU-Georgia Partnership and Cooperation Agreement, the ENP Action Plan was adopted by the Georgian government in 2006. The Action Plan set targets for reform for the years 2006-2011 in a wide range of areas. Georgia's reform agenda is closely connected to its European and Euro-Atlantic aspirations. The reforms aim to push Georgia towards a more democratic and lawful society, to align the Georgian economy and legal system with European and international standards, and to make Georgia a better neighbour, and a more likely future member, of the EU.

By accepting and formulating a specific Action Plan, the Georgian government accepted a set of goals for the reform process and a benchmark against which that process could be judged. As such, continuous assessment of Georgia's implementation of the Action Plan has been essential to the proper working of the ENP process and the reform agenda itself. Georgian civil society organisations (CSOs) have been at the centre of that process, through monitoring the Action Plan implementation. The European Commission also published assessments in April 2008 and April 2009.

This report considers three main elements of the Georgian reform agenda: (1) the legal and judicial process; (2) reforms to the civil service; and (3) implementation of international anti-corruption conventions.

The first two of the reforms are considered here because they continue to be a particular source of concern in Georgia. A well-functioning judiciary is vital for its impact on democracy, human rights and economic growth. Reforms in the judiciary and the rule of law are at the core of a functioning liberal democracy because they protect individual liberties. These reforms are essential to economic development because they protect property rights and make entrepreneurial activities possible. Yet, despite many changes undertaken in Georgia's judicial system in the past years, it continues to be one of the least-trusted institutions in the country.

The civil service is similarly important, as it is at the core of the government's ability to deliver on its promises. Reforms to the civil service are key to the operation of all branches of government and make government social services and social protections possible. While those working in the system prior to the 2003 revolution have been significantly, if not dramatically, replaced by the current government, the rules governing the civil service and much of the culture they produced have remained.

Finally, since corruption acts as a poison to any reform process and is corrosive to efficiency and equality in public and private life, the anti-corruption strategy was central to the Action Plan. While many aspects of the government's anti-corruption strategy have been successful, it is clear that continued vigilance is essential. Therefore, the ENP Action Plan's requirement to implement the recommendations of the Council of Europe Group of States Against Corruption (GRECO) remains highly relevant.

Acknowledgements

Transparency International Georgia wishes to gratefully acknowledge the valuable input of all those individuals and representatives of state and non-state institutions who contributed to the development of this report. The project team at TI Secretariat and TI Brussels Office is also grateful to TI staff members in Yerevan, Baku, Tbilisi and Berlin for their continuing support. Finally we wish to extend our appreciation to the Norwegian Ministry of Foreign Affairs who provided the financial support for this project.

Executive summary

This monitoring report assesses the degree to which the Georgian government has complied with the 2006 ENP Action Plan. It monitors particular aspects of the judiciary and rule of law (part of Priority 1), the reform of the civil service (also part of Priority 1), and the continuation of the fight against corruption (part of Priority 2) through compliance with the recommendations made by GRECO.

From our analysis, the weakest governance link exposed is the insufficient independence of the judiciary and of the civil service. Judicial independence was rated at 71%, although its rating is significantly higher when discussing the legal framework than when addressing its practical enforcement and public attitudes toward the system. Much progress also remains to be made in terms of the independence, accountability and transparency of the civil service, which received a low overall rating of 50%. This is mainly due to the lack of effective mechanisms for enhancing civil service independence and accountability (rated at 38%) and the lack of proper training of civil servants (rated at 50%). Compliance with GRECO's pending recommendations received a 64% approval rating, as most of them still remain at the level of "partially implemented".

Judicial reform

There have been clear steps forward in the legal protection of judicial independence. Judges require formal training before they can be considered. The High Council of Justice (HCJ), which selects, promotes and disciplines normal judges, is made up of judges and parliamentarians, and must include at least one opposition Member of Parliament (MP). Judges are appointed for fixed terms, although they can be removed by the HCJ, which has considerable flexibility in its area. Interference or even communication with judges about sitting cases is legally prohibited.

On top of that, the Supreme Court is recommended by the president and appointed by the Parliament, and the Constitutional Court is appointed by the president, Parliament and the judges themselves. They have generous salaries by Georgian standards, and court budgets have generally been increasing.

Nonetheless, commentators inside and outside the country agree that the judiciary is still not practically independent. In Transparency International's 2009 Global Corruption Barometer (GCB) survey, Georgian citizens identified the judiciary as the least trusted state institution and, most recently, the US State Department's Human Rights Report: Georgia highlighted failures in judicial independence as one of the country's greatest weaknesses.

At their core, these problems continue to reflect a difference between legal requirements and common practice. For example, the law on communication with judges precludes any attempt to talk to a judge about a decision while the judge is sitting. However, there is a strong sense both amongst CSOs and the public at large that this kind of influence still occurs. Only four cases have been brought for inappropriate communication with judges since the enactment of the law in 2008. In addition, many believe the judiciary simply acts as a rubber stamp for the prosecutor's office, as the rate of acquittals in criminal cases is less than 1%. This is particularly problematic because the impartiality of the public prosecutor's office has been questioned by a wide variety of international monitors, including Human Rights Watch and Amnesty International.

The weakness of the judiciary has also been felt in politics. In its report on the 2008 presidential and parliamentary elections, the Office for Democratic Institutions and Human Rights (ODIHR) monitoring mission stated that the courts lacked impartiality in considering the appeals submitted to them by opposition parties and election monitoring organisations. As a result, suspicions remain, particularly in high-profile and political cases, that the ruling party still exerts enough control over the High Council of Justice and the prosecutor's office to exert pressure with impunity.

Public sector reform

Our analysis also suggests that the civil service lacks independence because of the influence ministers can exert in hiring, promoting and, particularly, firing civil servants. While there are some legal hurdles to arbitrary dismissal, they are rarely put into practice. It is still commonplace for new ministers to demand significant changes in staffing, even among fairly junior staff.

The main problem behind this continuing weakness is a conviction within the Georgia government that flexibility in the civil service is more important than independence, security or long-term professional development. Ever since the so-called Rose Revolution of 2003, out of a combination of ideological attachment to free-market values and political attachment to ministerial autonomy, there has been little desire to centralise reform in the civil service. While considerable reform has taken place in different ministries, any attempts to centralise the process, standardise human resource management and training, or limit the powers of ministers have been quashed.

This undermines the effectiveness of the civil service by increasing turnover of civil servants, so that the service is continually losing experience, training and so-called "institutional memory". It also makes them less politically neutral. Civil servants, who are often members of the ruling party, are often complicit with the government in utilising government programs and resources for political ends. This proved particularly problematic around the last presidential and Parliamentary elections, as observed by ODIHR at the time.

Even now, as Georgia is moving through the "second-wave" of the post-revolution reforms, there is little prospect of increased independence in the civil service. Unfortunately, this will not change as long as ministerial autonomy is considered more important than civil service independence, since for the civil service to be more independent, some of the powers of ministers will have to be curbed.

GRECO implementation

The overall assessment of the fulfillment of GRECO requirements is very positive, according to GRECO's own report released in 2009. Out of the 14 recommendations that the GRECO made in 2006/7, eight were deemed to have been fully implemented and six partly implemented. The six different recommendations that this report evaluates relate to those that had been deemed by GRECO to be partly fulfilled, or where full completion had generated additional recommendations.

Of these reforms, weaknesses in the Chamber of Control continue to be the greatest source of concern. This analysis confirms the GRECO finding that, while the new law regulating the Chamber of Control has now been passed, it has brought few practical changes. The Chamber of Control continues to combine limited compliance auditing with selectively applied policing. Besides, it is currently responsible mainly for ensuring that government funds are properly accounted for, rather than spent efficiently or effectively. Problems also remain in terms of enforcing effective whistleblower regulations and a lack of systemic training for all civil servants concerned in the area of criminal liability of legal persons.

Recommendations

1. Increase judicial independence and effectiveness through:

1.1. Setting clear and objective criteria for appointing judges through the interview process, in order to exclude the possibility of appointing judges on the basis of loyalty to the ruling party or nepotism;

1.2. Enhancing transparency of the interview process by inviting independent actors to attend/monitor it and by providing a public explanation as to why interviewed judges are appointed or refused appointments;

1.3. Enhancing transparency of disciplinary sanctioning of judges by providing a public explanation about whether or not sanctions were imposed, on what grounds, and if they were imposed what the sanctions were;

1.4. Limiting the possibility of “punishing” judges by reassigning them to new courts far from their homes without their consent, as well as the possibility of “awarding” them by the currently applied bonus system, which is vague;

1.5. Reducing delays in court hearings and ensuring adherence to legal deadlines by filling the existing judicial vacancies and setting the maximum limit of cases allocated to individual courts;

1.6. Drawing special attention to and enhancing transparency of high-profile and political cases heard by the courts in order to promote public confidence in the judicial system;

1.7. Increasing the technical capacity of courts to publish their decisions on the Internet, as well as developing a comprehensive system of data management;

1.8. Expanding the coverage of state-funded legal aid for the eligible groups to civil and administrative cases.

2. Increase transparency, accountability and efficiency of the civil service through:

2.1. Developing and adopting a comprehensive national strategy for reforming the civil service at all levels through an open and participatory process of consultations;

2.2. Ensuring that civil service appointments and promotions are transparent and merit-based, and dismissals are fair by involving independent actors in these processes and publicising the applied appointment/promotion/dismissal criteria;

2.3. Expanding civil service regulations and restrictions to the employees of legal entities in public law (LEPLs);

2.4. Developing a comprehensive, national system for increasing qualifications of civil servants through systematic trainings and consultations;

2.5. Ensuring the neutrality of the civil service by restricting the right of civil servants to participate in pre-election campaigning and restricting the right of political parties and candidates participating in the election to use state-funded and municipal material/technical resources;

2.6. Improving the system for scrutinising civil servants' financial and asset declarations by obliging the Civil Service Bureau or another government agency to verify the declarations submitted by the selected groups of civil servants (such as top government officials, employees in corruption-prone sectors, etc.) in order to identify potential flaws in the system, as well as to reveal cases of corruption;

2.7. Improving the system for maintaining and publicising the information on submitted financial and asset declarations by developing an electronic database that is easy to search and analyse, to replace the current system of posting scanned versions of the declarations on Internet;

2.8. Increasing access to public information by setting minimum standards for the data to be posted on the websites of government agencies, as well as by imposing stricter sanctions against violating Freedom of Information (FoI) regulations, and reducing the court fee of GEL 100 (US $58) for FoI appeals.

3. Increase transparency and efficiency of public expenditures through:

3.1. Improving the public procurement system by limiting the number of exceptions to the rule of procuring goods and services through competitive tenders, as well as by providing sufficient time for the interested applicants to submit their bids, developing clear criteria for selecting the winning bids, maintaining a comprehensive and public electronic database of conducted procurements, enforcing an effective complaint review process, and improving the capacity of the State Procurement Agency to fulfill its functions;

3.2. Enhancing the capacity of the Chamber of Control by developing and applying a more detailed methodology for conducting the audits under its authority, as well as by training its auditors and promoting public access to its audit conclusions via posting them on the Internet and organising public discussions with the participation of interested independent actors.

Background to the Study

The ENP is a framework for bilateral agreements between the EU and its neighbours to the south and east.[1] It has the stated objective of 'avoiding the emergence of new dividing lines between the enlarged EU and our neighbours and instead strengthening the prosperity, stability and security of all concerned'.[2] Within the framework of the ENP, certain states[3] have signed Action Plans, which are designed to outline the specific commitments of that state in the context of its relationship with the EU. Amongst many other policy areas (e.g. environmental and energy policies, immigration and border control, human rights, economic development, conflict resolution, etc.), anti-corruption and good governance feature prominently in all of the Action Plans signed to date.

While the European Commission (EC) carries out periodic reviews of the implementation of ENP Action Plans, many civil society organisations, including TI national chapters, have also been actively monitoring their government's work in relation to the Action Plans. The impact of this work has generally been somewhat limited, due to the lack of an analytical monitoring framework, clear benchmarks and timelines. This report is part of a regional project funded by Foreign Ministry of Norway, currently being implemented in Armenia, Georgia and Azerbaijan, which aims to monitor ENP implementation. It seeks to maximise the impact of monitoring work by using a solid indicator-based framework to assess progress in the ENP areas related to anti-corruption, namely the judiciary, the public sector and the implementation of international conventions.

The TI Secretariat developed the indicators in consultation with TI national chapters in Armenia, Georgia and Azerbaijan. The wording of each Action Plan was analysed and common objectives related to governance and anti-corruption were identified. Three core areas emerged, which all of the Action Plans address to a greater or lesser extent – judicial reform, reform of the public sector and implementation of international conventions. For each of these objectives, specific sub-objectives were identified related to principles of independence, transparency, accountability and integrity. Relevant indicators were developed (using international standards and best practices) to measure progress in these areas. Each indicator was scored on a three-point scale of compliance from 0 to 2 (where 0 is non-compliance and 2 is full compliance) based on the collected information, which is summarised in an adjacent note. The scoring systems allows for aggregation across indicators to obtain an overall score for each dimension.

The data on which the assessment is based was collected using a desk review of legislation and relevant policy documents, as well as through key informant interviews between November 2009 and March 2010, and covers progress made in ENP implementation through the end of 2009. This study also used media publications on related topics as a source of reference.

---

[1] Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, the Palestinian Authority, Syria, Tunisia, Ukraine.
[2] See 'The Policy: What is the European Neighbourhood Policy ?' ec.europa.eu/world/enp/policy_en.htm.
[3] All ENP countries except Algeria, Belarus, Libya and Syria have signed an Action Plan.

Findings: Implementation of Governance & Anti-Corruption Commitments of the EU – Georgia Action Plan

Objective 1: Strengthening the Judiciary					
Sub-objective	Indicators	Scale of compliance			Notes and sources
		Full	Partial	None	
		2	1	0	
Ensure independence of judiciary	To what extent are there legal provisions in place requiring that the selection and promotion of judges be based on merit?		1		Selection of Judges is regulated by the "Organic Law on the Common Courts of Georgia", adopted 4 December 2009. This new Organic Law replaced previous laws on common courts, Supreme Court and the social protection of judges of these courts. All new candidates, having passed the judicial qualification examination, must complete a 14-month training course at the High School of Justice (HSOJ). After completing the course, candidates who achieve the highest grades are interviewed by a panel composed of members of the High Council of Justice (Law on HSOJ, Art. 19). This interview process is not regulated by law, but according to a representative from the appellate court it is sometimes attended by independent experts, as well as international legal specialists.[4] Selection and promotion of ordinary judges is overseen by the Higher Council of Justice (HCOJ). The HCOJ is a 15-member body chaired by the head of the Supreme Court. Eight members are elected from the Conference of Judges, upon nomination from the Supreme Court chair. Two members are nominated by the president, and three members are MPs, at least one of whom must not be from the ruling party. The last member is the Chair of the Parliamentary Legal Affairs Committee (Georgian Constitution, Article 86.1).

[4] Interview with Irakli Adeishvili, Judge of the Appellate Court, 18 March, 2010

Objective 1: Strengthening the Judiciary - continued					
Sub-objective	Indicators	Scale of compliance			Notes and sources
		Full	Partial	None	
		2	1	0	
					Parliament appoints the judges of the Supreme Court by a majority vote, upon nomination by the president (Law on the Supreme Court, Art. 21). The president appoints three of the nine judges of the Constitutional Court, Parliament elects three judges by a three-fifths majority vote, and the Supreme Court appoints the other three (Law on the Constitutional Court, Arts. 6.1, 71, 72.1, 73.1). Provisions on the promotion of judges require that they can be considered for promotion after three years (or one year in exceptional cases). According to a representative of the Supreme Court, promotion is based on an assessment of judges' performance and record by the Higher Council of Justice.[5] By decree, the criteria are the following: a) Ranking in the qualification list in justice students b) Moral reputation c) Qualification d) Professional skills e) Skills of argumentation and expression f) Skills of analytical-logical thinking and making decisions g) Manners of a judge h) Skills to conduct court hearings However, neither selection nor promotion takes place in public, which makes it difficult for the public or CSOs to evaluate the true meritocracy of the system (see below).

[5] Interview with Besik Begianishvili, Head of the Bureau of the Chair of the Supreme Council, 18 March, 2010

Objective 1: Strengthening the Judiciary - continued					
Sub-objective	Indicators	Scale of compliance			Notes and sources
		Full	Partial	None	
		2	1	0	
	In practice, to what extent is the selection and promotion of judges based on merit?		1		According to an analysis conducted by the American Bar Association (ABA), the interview process for judges could be susceptible to the introduction of subjective criteria. Some interviewees who had become judges told the ABA that interview criteria seemed vague, and suggested that "reliability" is an important factor for appointment, as well as contacts and personal relationships.[6] The US State Department's 2009 Human Rights Report also noted the concern of several NGOs that felt that recently appointed judges lacked the skills and experience to act independently.[7] In addition, it was felt that the interview process, which is held behind closed doors, was not sufficiently transparent. In the opinion of the Georgian Young Lawyers Association (GYLA), prior to the new process many appointments were spontaneous rather than merit-based.[8] Tamar Chugoshvili of the GYLA further argues that too little time has passed since the amendments in the law were made to assess whether they have been effective. Chiora Taktakishvili, Deputy Chair of the Parliamentary Legal Affairs Committee, recognises there have been concerns about the interview process. Nonetheless, she stresses the impartiality of the process is ensured by the fact that interviews are conducted by members of the HCOJ, a body mainly composed of judges and which also has one opposition MP.[9]

[6] American Bar Association *Judicial Reform Index 2008*, (http://www.abanet.org/rol/publications/georgia_judicial_reform_index_volume_ii_2009_en.pdf) p 16
[7] US State Department (2009) *Human Rights Report: Georgia (*http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136032.htm),accessed 26 March, 2010
[8] Interview with Tamar Chugoshvili, GYLA Parliamentary Secretary, 18 March, 2010
[9] Interview with Chiora Taktakishvili, Deputy Chair of Parliamentary Legal Affairs Committee, 23 March, 2010

Objective 1: Strengthening the Judiciary - continued					
Sub-objective	Indicators	Scale of compliance			Notes and sources
		Full	Partial	None	
		2	1	0	
	To what extent are there legal provisions which provide for security of tenure (to prevent judges from being threatened with arbitrary termination of their contract)?		1		The Law on Common Courts and the Law on the Supreme Court specify that judges are appointed for a term of exactly 10 years; common court judges may serve additional terms (Law on Common Courts, Arts. 49.1-49.2; Law on the Supreme Court, Art. 21.1). Unlike common court judges, Constitutional Court judges are limited to serving one term (Law on the Constitutional Court, Art. 8). According to the US State Department's Human Rights Report for 2009, many observers see the 10-year term as mitigating against the independence of judges. President Saakashvili and other top officials have announced their intention to change the system to allow judges to be appointed for life. According to the Parliamentary Legal Affairs Committee, this issue has been discussed in Parliament but is now being considered by the State Constitutional Reform Commission.[10] The Constitutional Reform Commission is in the process of drafting a new Constitution and will release its findings in summer 2010. However, according to a report prepared by a coalition of Georgian NGOs this process must take place with full public scrutiny in order to build trust in the judiciary.[11] According to representatives from the Supreme Court, the law regulating disciplinary procedures for judges was amended in September 2009, in line with Venice Commission recommendations.[12] Written complaints against judges are submitted to the HCOJ, which conducts an investigation. Decisions taken by the disciplinary panel of the HCOJ can be appealed at the Disciplinary Plenum of the Supreme Court. Judges facing disciplinary action are entitled to be present throughout all proceedings.

[10] Interview with Chiora Taktakishvili, Deputy Chair of Parliamentary Legal Affairs Committee, 23 March, 2010
[11] Georgian NGO Coalition, *Report on the Implementation of Georgia's European Neighbourhood Policy Action Plan,* 2009, p13
[12] Interview with Besik Begianishvili, Head of the Bureau of the Chair of the Supreme Council, 18 March, 2010

Objective 1: Strengthening the Judiciary - continued					
Sub-objective	Indicators	Scale of compliance			Notes and sources
		Full	Partial	None	
		2	1	0	
					The disciplinary panel is composed of three judges of the common courts elected by the Conference of Judges, and the three members of the HCOJ elected by the HCOJ itself.
	In practice is it the case that judges are not removed from office for anything other than misconduct or incapacity to carry out judicial functions?		1		The 10-year tenure is guaranteed by the Constitution, but disciplinary charges can be applied when internal rules are violated (for example, such as being late for work) (Law on Disciplinary Proceedings, Article 2). According to GYLA, this makes judges potentially vulnerable to pressure, as internal rules are formed and maintained by court chairs.[13] Several Georgian NGOs have called on the Law on Disciplinary Proceedings to be revised in order to further safeguard judges from arbitrary dismissal.[14] Reorganisation of the court system has led to the closure of many courts. Judges not reappointed elsewhere are placed on a reserve list with a GEL 500 (approx. US $290) stipend per month. The decision either to reappoint judges or place them on the reserve list rests with the HCOJ. Some respondents interviewed by the American Bar Association in 2008 felt that this was a threat to the independence and tenure of judges. Judges were not given the reasons as to why the HCOJ had decided to reassign them, or place them on the reserve list.[15]

[13] Interview with Tamar Chugoshvili, GYLA Parliamentary Secretary, 18 March, 2010
[14] Georgian NGO Coalition, Report on the Implementation of Georgia's European Neighbourhood Policy Action Plan, 2009, p14
[15] American Bar Association Judicial Reform Index 2008, (http://www.abanet.org/rol/publications/georgia_judicial_reform_index_volume_ii_2009_en.pdf), p.35

Objective 1: Strengthening the Judiciary - continued					
Sub-objective	Indicators	Scale of compliance			Notes and sources
		Full	Partial	None	
		2	1	0	
					GYLA has received complaints that judges are sometimes reassigned to new courts far from their homes in cases where they have reached politically undesirable verdicts, forcing them out of the profession. In addition, the appointment and disciplining of judges is not open to public scrutiny, which makes it hard to assess the process.[16]
	To what extent are there legal regulations in place to ensure that judicial salaries are comparable to those of other high level government employees?		1		The salaries of common court judges are stipulated by law (Law of Georgia on Wages of Common Court Judges, Article 1). They currently range from GEL 2,300 to GEL 5,650 (US $1,350 to US $3,324) per month. This is a high salary in local terms. The law does not specifically tie in judicial salaries with those of any other officials, though they are generally rather more generous than government salaries.
	In practice, are judicial salaries comparable to the salaries of other high-level government employees?	2			Recent years have seen dramatic increases in judicial salaries, and judges are paid amounts comparable to other top officials. The Chairs of the Supreme Court and Constitutional Court are both paid more than the president. However, GYLA has pointed out the “bonus” system that exists amongst judges is a potential mechanism for influencing judges. The salary bonuses are distributed to judges based on how many “complicated” cases they had, but since there is no objective criteria for evaluating the level of complexity, this introduces considerable flexibility in the application of bonuses.[17]

[16] Interview with Tamar Chugoshvili, GYLA Parliamentary Secretary, 18 March, 2010
[17] Interview with Giorgi Burjanadze, GYLA Lawyer, 18 March, 2010

Objective 1: Strengthening the Judiciary - continued					
Sub-objective	Indicators	Scale of compliance			Notes and sources
		Full	Partial	None	
		2	1	0	
	Is the judiciary legally entitled to propose, allocate and manage its own budget?	2			Legislation stipulates that the budget for the judiciary is not permitted to decrease year-on-year without the consent of the Conference of Judges (Law on Common Courts, Art. 81.4). The Department of Common Courts, part of the HCOJ, drafts the part of the state budget related to the courts other than the Supreme Court. This is submitted to the HCOJ and then the Ministry of Finance (Law on Common Courts, Art. 81.3). The department is also in charge of allocating funding granted from the state budget. The Chairs of the Supreme and Constitutional courts submit individual requests to the Ministry of Finance for the financing of these two courts.
	In practice, does the judiciary propose, allocate and manage its own budget?	2			All observers agree that in practice the judiciary is fairly autonomous in proposing, allocating and managing its own budget.
	To what extent are there regulations regarding the assignment of cases to judges by an objective method administered by the judiciary?	2			According to representatives from the Supreme Court, the law requires that cases be assigned to judges on an alphabetical basis, with the judge whose name is first in the alphabet receiving the first case and so forth.[18] In some circumstances court Chairs can reallocate cases if judges become over-burdened, and Chairs themselves can defer their participation in the system if workloads are heavy (Law of Georgia on Assigning Cases in Common Courts and Recusing Responsibility to Other Judges, Articles 4-12). Legal provisions are also provided for the recusal of judges, set out in the Civil, Criminal and Administrative Codes (Civil Procedure Code, Arts. 29 and 31, Criminal Procedure Code, Art. 105). If a judge is recused, the Chair of the court can reallocate the case at his or her discretion.

[18] Interview with Besik Begianishvili, Head of the Bureau of the Chair of the Supreme Council, 18 March, 2010

Objective 1: Strengthening the Judiciary - continued					
Sub-objective	Indicators	Scale of compliance			Notes and sources
		Full	Partial	None	
		2	1	0	
	In practice, are judges assigned to cases by an objective method, in a process administered by the judiciary?		1		The American Bar Association has found that this system works well in practice, although some suspicion remains, especially surrounding high-profile cases being given to judges who are former prosecutors.[19] GYLA also reported that this system works well, but pointed out that court Chairs often defer themselves in practice because of heavy managerial workloads.[20]
Freedom from Interference	To what extent is there a specific legal framework or constitutional provision to protect judges from external interference or improper influence by public officials or private interests?	2			The Law on Rules of Communication with Common Court Judges, adopted in July 2007, defines the rules of communication with judges in the matter of sitting cases. This excludes communication with the judge by the case participants, interested persons, public employees and persons with political positions. If the rule of communication is violated, the judge has to inform the court. If the communication rule is violated by the Chair of the court, the judge must inform the Chair of the higher instance court (or the HCOJ if the Chair of the Supreme Court violates the rules). The relevant judge who receives the appeal can apply two measures: 1) a fine of up to GEL 5,000 (approx. US $2,900) for regular citizens and up to GEL 10,000 (approx. US $5,800) for civil servants; 2) raise the issue at the HCOJ for disciplinary punishment.
	In practice, to what extent are judicial proceedings and decisions free of bias or improper influence by public officials or private interests?		1		While the law on communication with judges precludes any attempt to talk to a judge about a decision while the judge is sitting, there is a strong sense amongst civil society organisations and the public at large that this kind of influence (mainly coming from the Prosecutor's Office and the Executive) still occurs. Only four cases have been brought for inappropriate communication with judges since the enactment of the law in 2008.

[19] American Bar Association Judicial Reform Index 2008, (http://www.abanet.org/rol/publications/georgia_judicial_reform_index_volume_ii_2009_en.pdf), p.43
[20] Interview with Tamar Chugoshvili, GYLA Parliamentary Secretary, 18 March, 2010.

Objective 1: Strengthening the Judiciary - continued					
Sub-objective	Indicators	Scale of compliance			Notes and sources
		Full	Partial	None	
		2	1	0	
					In addition, many believe that the judiciary simply acts as a rubber stamp for the prosecutor's office.[21] The rate of acquittals in criminal cases is less than 1%.[22] In its report on the 2008 presidential election and 2008 Parliamentary elections, the ODIHR monitoring mission stated that the courts lacked impartiality in considering the appeals submitted to them by the opposition parties and election monitoring organisations. As a result, suspicions remain, particularly in high-profile and political cases, that the ruling party still exerts enough control over the High Council of Justice and the prosecutor's office to exert pressure with impunity.[23]
SCORE (Judicial Independence)		17/24 (71%)			

[21] US State Department (2009) Human Rights Report: Georgia (http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136032.htm),accessed 26 March, 2010
[22] Georgian NGO Coalition, Report on the Implementation of Georgia's European Neighbourhood Policy Action Plan, 2009
[23] OSCE/ODIHR (4 March 2008) Election Observation Mission Final Report, Extraordinary Presidential Election, 5 January 2008 and OSCE/ODIHR (9 September 2008), Election Observation Mission Final Report, Parliamentary Elections, 21 May 2008

Objective 1: Strengthening the Judiciary - continued					
Sub-objective	Indicators	Scale of compliance			Notes and sources
		Full	Partial	None	
		2	1	0	
Improve training of judges, prosecutors and officials in the judiciary (Human Resource Management)	To what extent are there legal provisions to ensure that judges, prosecutors and officials are regularly trained in new judicial practices and procedures and new and/or changing laws?		1		There is no legal requirement for judges, prosecutors and officials to participate in trainings on new judicial practices and procedures, or new laws. However, the Judicial Ethics Rules (Art. 14) urges judges to continually improve their skills and keep up with developments in the field. According to Chiora Taktakishvili of the Parliamentary Legal Affairs Committee, a new concept paper for a revised law on the legal profession might well include legal provisions that would ensure judges, prosecutors and other professionals are regularly retrained. [24]
	In practice, is it the case that judges are regularly trained and given access to new judicial practices and procedures and new and/or changing laws?	2			In practice, judges frequently attend trainings and seminars to keep up with new practices and changes to the law. These are organised by the HCOJ, as well as international organisations such as the German Gesellschaft für Technische Zusammenarbeit (GTZ), US Agency for International Development (USAID) and many others. According to Shota Rukhadze, Director General of the High School of Justice, almost all of the approximately 300 judges in the country have at least five days of training per year at the HSOJ. Trainings are usually on weekends and last 1-3 days. Last year the HSOJ conducted 70 trainings in total.[25]
SCORE (Judicial Human Resources Management)		3/4 (75%)			

[24] Interview with Chiora Taktakishvili, Deputy Chair of Parliamentary Legal Affairs Committee, 23 March, 2010
[25] Interview with Shota Rukhadze, Director General of the High School of Justice, 30 March, 2010

Objective 1: Strengthening the Judiciary - continued					
Sub-objective	Indicators	Scale of compliance			Notes and sources
		Full	Partial	None	
		2	1	0	
Improve access to justice	To what extent are there legal provisions which provide for free public defense for persons without means to cover procedural costs?		1		According to an official Georgian government report, there are currently 10 legal aid centres in the country, and a website has been set up to enhance public access.[26] The Ministry of Corrections and Legal Assistance provides a legal aid lawyer's service in criminal cases for persons who are defined as socially vulnerable by the Social Service Agency. In addition, certain categories such as large families and veterans can also use this service.[27] This does not currently apply to civil or administrative cases, but according to a representative from the appellate court, legal aid should be available in these cases from 2011.[28] A coalition of Georgian NGOs has warned that the government may not be able to meet its commitment for rolling out comprehensive legal aid by 2011, pointing out that legal aid for civil and administrative cases is not stipulated in the Legal Aid Action Plan for 2009-13.[29]
	To what extent are there adequate interpretation services (e.g. for non-native language or deaf court users) in place in the court system?		1		According to Georgian legislation, all judicial proceedings and documents must be in Georgian. However, the law requires that translation services be provided to non-native language speakers throughout criminal trials, and that legal documents such as indictments be translated (Code of Criminal Procedure, Articles 17, 100, 101). The Georgian Ombudsman's Office reported cases where these translations were of poor quality.[30]
SCORE (Access to Justice)		2/4 (50%)			

[26] Government of Georgia, January-June 2009 Progress Report on ENP Action Plan Implementation, 2009, p. 4
[27] Legal Aid Service of Georgia http://www.legalaid.ge/en/legal-aid/faq/36-2008-07-19-13-40-05 accessed on 25 March, 2010
[28] Interview with Irakli Adeishvili, Judge of the Appellate Court, 18 March, 2010
[29] Georgian NGO Coalition, Report on the Implementation of Georgia's European Neighbourhood Policy Action Plan, 2009, p 16
[30] Interview with Tamar Zubashvili, Deputy Head of Justice Department, Georgian Ombudsman's Office, 22 March,2010

Objective 1: Strengthening the Judiciary - continued						
Sub-objective	Indicators		Scale of compliance			Notes and sources
			Full	Partial	None	
			2	1	0	
Ensure judicial sector has adequate resources to carry out its functions	Financial Resources	To what extent are changes in the overall judicial budget commensurate with the growth of the national budget and also reflect changes in demands for judicial services?		1		In practice, the courts received the budget amount they requested in 2006, 2007 and 2008. Between 2007 and 2010 there was a 7% increase in overall government expenditures. During that time the Constitutional Court budget went up 2%, the Supreme Court budget went up 7%, and the Common Court budget went up 9%, though the 2010 budget for the Common Court represents a 12% reduction from 2009.
	Human Resources /Capacity	Are there procedural rules in place to discourage excessive adjournments; ensure judges have adequate time to hear cases and prepare judgments; and ensure that appeals are heard without undue delay?	2			Civil cases are required by law to be heard within two months, or in exceptional circumstances, five months. The Criminal Code stipulates that cases must be heard within nine months of charges being filed. Detainees may be held for two months in pretrial detention, which can be extended to a maximum of four months. According to a coalition of Georgian NGOs, the government has failed to fulfill its pledge to reduce the use of pretrial custodial measures.[31] According to a representative from the Supreme Court, appeals in criminal cases must be heard within one month of being filed, and the court of cessation itself must reach a verdict within six months of cases being referred to it.[32]

[31] Georgian NGO Coalition, Report on the Implementation of Georgia's European Neighbourhood Policy Action Plan, 2009, p15
[32] Interview with Besik Begianishvili, Head of the Bureau of the Chair of the Supreme Council, 18 March, 2010

Objective 1: Strengthening the Judiciary - continued						
Sub-objective	Indicators		Scale of compliance			Notes and sources
			Full	Partial	None	
			2	1	0	
		In practice, are cases heard and judgments handed down without lengthy delays and excessive adjournments?		1		According to the US State Department's Human Rights Report for Georgia, all courts strictly adhered to the time limits set.[33] However, in city courts large numbers of cases can often cause delays in the system, which according to representatives from GYLA means that legal deadlines for hearing cases can be missed.[34] The Supreme Court reported that judges in Tbilisi had an average of 70 pending cases at any one time. There is no legal maximum for the number of cases judges can have.[35] The US State Department has said that the high number of judicial vacancies at the trial court level might have contributed to increasing delays.[36]

[33] State Department (2009) Human Rights Report: Georgia (http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136032.htm), accessed 26 March, 2010
[34] Interview with Tamar Chugoshvili, GYLA Parliamentary Secretary, 18 March, 2010
[35] Interview with Besik Begianishvili, Head of the Bureau of the Chair of the Supreme Council, 18 March, 2010
[36] http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136032.htm, checked 26 March, 2010

Objective 1: Strengthening the Judiciary - continued						
Sub-objective	Indicators		Scale of compliance			Notes and sources
			Full	Partial	None	
			2	1	0	
		To what extent does each judge have the basic tools necessary to do his or her job, e.g., sufficient office space, adequate support staff, word processing equipment, a law library (whether physical or online), etc?	2			Interviewees were unanimous in their recognition that the situation in Georgian court buildings has radically improved in recent years.[37] Judges are entitled to request equipment from court Chairs. Ongoing rehabilitation throughout Georgia's courts has resulted in much better court conditions for most judges. According to information provided by the Supreme Court, all court buildings will be fully refurbished by the end of this year.[38] The law requires that judges are provided with assistants and court secretaries (Law on Common Courts, Art. 75). All judges, judges' assistants and courtroom secretaries throughout the country have personal computers. Court buildings have access to the Internet. According to American Bar Association findings, judges have adequate support staff and basic tools to perform their duties.[39]
SCORE (Judicial Resources)			6/8 (75%)			

[37] Interview with Besik Begianashvili, Head of the Bureau of the Chair of the Supreme Council, 18 March 2010; interview with Tamar Chugoshvili, GYLA Parliamentary Secretary, 18 March, 2010; Interview with Irakli Adeishvili, Judge of the Appellate Court, 18 March, 2010; Interview with Tamar Zubashvili, Deputy Head of Justice Department, Georgian Ombudsman's Office, conducted 22 March,2010, interview with Chiora Taktakishvili, Deputy Chair of Parliamentary Legal Affairs Committee, 23 March, 2010

[38] Interview with Besik Begianishvili, Head of the Bureau of the Chair of the Supreme Council, 18 March, 2010

[39] American Bar Association Judicial Reform Index 2008, (http://www.abanet.org/rol/publications/georgia_judicial_reform_index_volume_ii_2009_en.pdf), p55, p 33

Objective 1: Strengthening the Judiciary - continued					
Sub-objective	Indicators	Scale of compliance			Notes and sources
		Full	Partial	None	
		2	1	0	
Improve transparency of judiciary	To what extent are courtroom proceedings required by law to be open to the public and the media?		1		Except in "circumstances provided by law" (in cases involving state or commercial secrets, underage defendants, adoption, etc.), court proceedings are required to be open to the public and the media (Organic Law on Common Courts, Art. 13.1-13.3). Judges may close the courtroom to the public and the media during a trial if he or she thinks any forthcoming proceedings will meet the criteria for a closed trial. Video recording equipment is forbidden from courtrooms by law, except when it is done by the court (Organic Law on Common Courts, Art. 13.4). Audio recording equipment is allowed at judges' discretion.
	In practice, are courtroom proceedings generally open to, and can accommodate, the public and the media?		1		According to interviewees, courtrooms can accommodate both the public and the media, though the absence of television cameras creates particular difficulties, as most of the citizenry relies upon television for news. Tamar Chugoshvili, GYLA's Parliamentary Secretary, argues that the lack of video of court proceedings has significantly hampered judicial transparency.[40]
	To what extent does the law require that judicial decisions be published and open to public scrutiny?	2			Judges are required by law (General Administrative Code, Ch. 3) to read their judgments publicly in open court. In closed trials, judges read their judgments only to the parties involved.
	Are judicial decisions published?	2			Written copies of judgments are sent to the parties but are not made available publicly. However, because judgments are read in open court, the American Bar Association considers they are essentially a matter of public record.[41] In addition, parties to a case have the right to review case materials and judgments[42] (Civil Procedure Code, Arts. 83.1, 259; Criminal Procedure Code, Arts. 76.1, 76.3, 514). Parties appealing court decisions have the right to view the judgments of the courts of lower instance online through a password-protected system. All Supreme Court decisions are published and available on the Internet.

[40] Interview with Tamar Chugoshvili, GYLA Parliamentary Secretary, 18 March, 2010
[41] American Bar Association Judicial Reform Index 2008, (http://www.abanet.org/rol/publications/georgia_judicial_reform_index_volume_ii_2009_en.pdf)p52
[42] Interview with Chiora Taktakishvili, Deputy Chair of Parliamentary Legal Affairs Committee, 23 March, 2010

Objective 1: Strengthening the Judiciary - continued					
Sub-objective	Indicators	Scale of compliance			Notes and sources
		Full	Partial	None	
		2	1	0	
	To what extent does the law require that a transcript of courtroom proceedings be maintained and made available to the public?		1		The law requires that minutes of trials be taken, rather than a full transcript (Civil Procedures Code, Arts. 287-291; Criminal Procedures Code, Arts. 54, 454-455, 545, 573; General Administrative Code, Art. 112). Although these minutes are not automatically published, they are considered public information under the General Administrative Code and therefore are at least available to the public upon request (Gen Admin Code, Arts 10, 28).
	Is a transcript or some other reliable record of courtroom proceedings maintained and available to the public?		1		There is no requirement to make the minutes of trials available to the public, except in administrative cases. However, copies are available to parties involved. According to a representative of the Appellate Court, audio recordings are made of many trials, which are available to the parties involved on request.[43] According to Chiora Taktakishvili of the Parliamentary Legal Affairs Committee, Common Courts do not publish their decisions because they do not currently have the technical capacity. She said that as individual courts build their own websites, this material will be readily available.
SCORE (Transparency)		8/12 (67%)			

[43] Interview with Irakli Adeishvili, Judge of the Appellate Court, 18 March, 2010

Objective 1: Strengthening the Judiciary - continued					
Sub-objective	Indicators	Scale of compliance			Notes and sources
		Full	Partial	None	
		2	1	0	
Increase the effectiveness of enforcement of judicial acts (Am, Ge)	To what extent are there provisions in place which describe the role, organisation, status and training of enforcement agents, i.e. those responsible for carrying out the enforcement process (e.g. bailiffs, enforcement judges, sheriffs, court executors and court or judicial officers)?	2			The status and responsibilities of enforcement officers are regulated by the Law of Georgia on Enforcement Proceedings. Also there are internal regulations of the enforcement agency approved by the decree of the Minister of Justice.
	In practice, to what extent are enforcement agents well trained in enforcement practices and procedures?		1		There are regular trainings mainly organised by the Training Center of the Ministry of Justice. However, Lasha Maghradze of the enforcement agency noted that more extensive training is necessary. This is planned for 2010-2011.[44] Together with GTZ, Swedish International Development Cooperation Agency (SIDA), British Council, UNDP and the European Commission, there is an extensive training program put together to train enforcement agencies in management issues, amendments in legislation, management of conflict situations and other relevant topics.
	To what extent are enforcement agents bound by ethical and professional standards as outlined in a written code of ethics?		1		There is no specific code written for enforcement agencies. However, there is a plan to develop one in 2011. Also, the general code of conduct for public employees applies to enforcement agents.
	To what extent is this code followed in practice?	-	-	-	N/A
SCORE (Enforcement)		4/6 (67%)			

[44] Interview with Lasha Maghradze, Deputy Chairman of the National Enforcement Agency, 26 March, 2010

Objective 1: Strengthening the Judiciary - continued					
Sub-objective	Indicators	Scale of compliance			Notes and sources
		Full	Partial	None	
		2	1	0	
Establishment of a code of ethics for prosecutors and judges (Am, Ge)	To what extent are judges and other relevant actors governed by written codes of ethics which cover issues such as conflicts of interest, inappropriate political activity etc?	2			Judges and prosecutors are governed by Judicial Ethics Rules, which is overseen by the HCOJ. According to the ABA, the ethics rules, in addition to procedural rules, address major issues such as conflict of interests and ex parte communications. Judges are required to undergo trainings to familiarise themselves with the rules.[45] According to Taktakishvili, any future law on the legal profession would likely include codes of conduct applicable to all relevant actors.[46] The Law on Rules of Communication with Common Court Judges, adopted in 2007, specifically addressed ex parte communication. The law bans any party involved in a case, person concerned with a case or civil servant from contacting the judge. Judges must inform their superiors of any attempt to make such contact or face a fine and disciplinary procedures.
	To what extent is this code of ethics applied in practice?		1		According to GYLA, there have been proceedings launched as a result of the code being breached, but these have been rare.[47]
SCORE (Code of Ethics)		3/4 (75%)			
TOTAL SCORE (Judicial Reform)		43/62 (69%)			

[45] American Bar Association Judicial Reform Index 2008, (http://www.abanet.org/rol/publications/georgia_judicial_reform_index_volume_ii_2009_en.pdf)p 43
[46] Interview with Chiora Taktakishvili, Deputy Chair of Parliamentary Legal Affairs Committee, 23 March, 2010
[47] Interview with Giorgi Burjanadze, GYLA Lawyer, 18 March, 2010

Objective 2: Civil Service/Public Sector Reform					
Sub-objective	Indicators	Scale of compliance			Notes and sources
		Full	Partial	None	
		2	1	0	
Independence, Accountability and Transparency of Civil Service	To what extent are there regulations which prevent undue political interference in the appointment and promotion of civil servants?		1		The Civil Service Code provides some of the rules on the recruitment and promotion of civil servants. The detailed rules on recruitment are explained under the February 2009 Presidential Orders 46 and 47 on Approval of the Rules for Holding Competition for Recruitment and Appointment on Positions in Civil Service, and on Approval of Appraisal Rules of Civil Servants, respectively. However, neither the code nor the orders include legal entities in public law (such as the public procurement agency, public registry, civil registry, etc.) or any position that relates to secret information. The rules of recruitment call for selection based on a vacancy job description. All vacancies and the results of all selections should be published. Appraisal is undertaken by a commission comprised of people chosen by the institution in question. A head or deputy head of the institution is usually the chairman of the commission (Civil Service Code, Art. 85), and he can select the other members of the commission and the rules by which it is governed.
	To what extent are recruitment and promotion regulations effective in preventing political interference (e.g. are selection committees able to work without political interference)?		1		According to a recent assessment by the OECD Anti-Corruption Network (ACN), the discretionary license allowed to ministers for appointment and promotions is considerable, which can lead “to the politisation of public administration”.[48]

[48] Anti Corruption Network for Eastern Europe and Central Asia (Report, April 2010), Istanbul Anti Corruption Action Plan: Second Round Monitoring, Georgia OECD Paris, France

Objective 2: Civil Service/Public Sector Reform - continued					
Sub-objective	Indicators	Scale of compliance			Notes and sources
		Full	Partial	None	
		2	1	0	
					That said, in a poll of civil servants conducted by the Council of Europe, 74% said that human resource decisions had been made in accordance with the stated policy and had been done so transparently. Two-thirds said they felt secure in their jobs.[49]
	To what extent are there comprehensive regulations regarding political activities of existing civil servants (e.g. political party membership, expression of political views)?		1		There is no restriction to civil servants being members of political parties. In fact, Irakli Kotetishvili, Head of the Civil Service Bureau, said that membership of political parties can be a good thing for civil servants.[50] In the Civil Service Code, the reference to party activities is simply limited to: "State servants may not use his/her work for party activities" (Article 61). Mr. Kotetishvili further points out that there are also provisions in the election code and party financing laws that preclude government officials from campaigning at particular times. However, Article 76, Part 1 of the Unified Election Code (UEC) allows civil servants to participate in campaign activities while they are not fulfilling their official duties. There is no clear definition of what should be regarded as "fulfilling their official duties". Also, Article 76 of the UEC allows use of state-funded buildings, communication means and vehicles, provided that equal access is given to all election subjects. This is seen as a privilege to the ruling party. In regard to these provisions, the OSCE/ODIHR said in its final report on the 2008 parliamentary elections: "While the UEC is generally conducive to conducting democratic elections, it contains new provisions which created an unequal playing field in favour of the ruling party, the United National Movement (UNM), especially with

[49] Anti Corruption Network for Eastern Europe and Central Asia (Report, April 2010), Istanbul Anti Corruption Action Plan: Second Round Monitoring, Georgia OECD Paris, France

[50] Interview with the Irakli Kotetishvili, Head of the Civil Service Bureau, 22 March, 2010

Objective 2: Civil Service/Public Sector Reform - continued					
Sub-objective	Indicators	Scale of compliance			Notes and sources
		Full	Partial	None	
		2	1	0	
					regard to administrative resources and campaigning by "political officials".[51]
	To what extent are these regulations enforced?			0	Transparency International Georgia has documented the involvement of civil servants in electioneering.[52] The activity documented by TI Georgia includes presenting ruling party's majoritarian candidates, agitating for the ruling party and accompanying the ruling party's majoritarian candidates during their campaign events. As for enforcement, since the regulations are fairly minimal, there has been little legal recourse to enforce them.
	To what extent are there legal requirements for the disclosure/declaration of personal assets, income, financial interests for public sector employees?		1		Currently there are two levels of asset declaration required for public officials. An income declaration is required annually from anyone in civil service, though this is undertaken mainly for tax purposes. A broader asset declaration is undertaken by any high official, and the number of people undertaking this has expanded.[53] However, an assessment by TI Georgia of the content of the material showed that it is partially and inconsistently fulfilled and of little effectiveness. The main reason for this is that no government agency is responsible for checking the material. The government says that taking into account the number of civil servants who are obliged to submit the financial and asset declarations, it would be impossible for the Civil Service Bureau to verify all of the declarations it receives. Therefore, it sees its role as making sure the declarations are publicly accessible (it posts the scanned version of all declarations on its website) so that any

[51] OSCE/ODIHR (9 September 2008), Election Observation Mission Final Report, Parliamentary Elections, 21 May 2008
[52] For example, TI Georgia, (December 2007), Monitoring the Use of Administrative Resources for Election Campaign, Tbilisi, Georgia, p 9
[53] Anti Corruption Network for Eastern Europe and Central Asia (Report, April 2010), Istanbul Anti Corruption Action Plan: Second Round Monitoring, Georgia OECD Paris, France

Objective 2: Civil Service/Public Sector Reform - continued					
Sub-objective	Indicators	Scale of compliance			Notes and sources
		Full	Partial	None	
		2	1	0	
					interested individual/group can scrutinise them. The problem with this approach, according to TI Georgia, is that any interested individual/group does not have access to all the information it would need to verify the declarations.[54]
	To what extent does disclosure of personal assets, income, financial interests of public sector employees occur in practice?		1		While declarations of assets are a requirement, particularly for high officials, there is no review of the content of these declarations, except as part of a criminal prosecution.
	To what extent are there legal regulations protecting civil servants against arbitrary dismissals or political interference?		1		The Civil Service Code requires that under normal circumstances a state employee must be given a reason for his/her dismissal. However, even in law the civil service code allows for dismissal due to downsizing or dismissal due to "liquidation of the agency". Therefore, even within the law considerable flexibility exists for the dismissal of civil servants.
	In practice, are the regulations protecting civil servants from arbitrary dismissal effective?			0	According to Khatuna Gogorishvili, Chairperson of the Parliamentary Committee of Rules and Procedures, in practice the law offers no protection, as people are often simply asked for their resignation and give it. Almost all of the people who have left the civil sector in recent years, she argues, have done so by their own request.[55]
SCORE (Independence, Accountability and Transparency)		6/16 (38%)			

[54] Original research on this subject provided by TI Georgia (February 2007), Assessment of the Organic Law of Georgia on Conflict of Interest and Corruption. Tbilisi, Georgia

[55] Interview with Khatuna Gogorishvili, Chairperson, Parliamentary Committee of Rules and Procedures, 23 March, 2010

Objective 2: Civil Service/Public Sector Reform - continued					
Sub-objective	Indicators	Scale of compliance			Notes and sources
		Full	Partial	None	
		2	1	0	
Human Resources	To what extent are wages in the public sector competitive enough to sustain an appropriate standard of living for public sector employees, in accordance with the country's economic situation?		1		There is no law regulating civil service salaries (unlike in the judiciary). Salaries are negotiated by ministers and approved by the office of the president. Salaries therefore vary considerably from ministry to ministry, and there is no centralised oversight of comparability across ministries. That said, partly through downsizing of the ministries since 2003, salaries have improved significantly in recent years, though they are usually lower than the equivalent positions in the private sector. In Parliament, salaries range from GEL 500 (US $294) to GEL 2000 (US $1,176) per month.[56] Informal discussions have suggested that GEL 500 (US $294) would also be fairly average for the lowest rank in a ministry, with heads of department receiving around GEL 2,000 (US $1,176) and deputy ministers receiving as much as GEL 4,000 (US $1,352).[57]
	To what extent are there legal provisions to ensure that civil servants are regularly trained to improve their technical and managerial competencies?		1		There are no legal provisions that stipulate the regularity of training or the structure of it. However, there are considerable opportunities for training that is financed and supported by the government in different ministries. These range from day-long courses to two-year, funded, foreign master's degrees. For example, in the Ministry of Education, the Soros Foundation has financed two-year master's degrees in education from Harvard University for qualifying senior civil servants.
	In practice, is it the case that civil servants are regularly trained to improve their technical and managerial competencies?		1		In the absence of any central planning, the level of training offered or received varies considerably across the ministries. There is no guarantee of training, and opportunities often depend on the determination and luck of individuals in finding opportunities. That said, considerable training is also offered by international organisations under varying technical assistance efforts. Among the more extensive programs, the Georgian Foundation for Strategic and International Studies has offered public policy training night courses across the civil service since 2003; USAID has just concluded a three-

[56] Interview with Khatuna Gogorishvili, Chairperson, Parliamentary Committee of Rules and Procedures, 23 March, 2010
[57] Discussions with employees of a range of ministries

Objective 2: Civil Service/Public Sector Reform - continued					
Sub-objective	Indicators	Scale of compliance			Notes and sources
		Full	Partial	None	
		2	1	0	
					year Civil Service Development Project that worked with multiple ministries; and the EU, USAID, UNDP, World Bank and many national governments have offered technical assistance and training that has involved every aspect of the Georgian government, as well as offering many aimed at the Georgian Parliament.
	To what extent are there provisions to ensure that civil servants are regularly trained about ethics, integrity and codes of conduct in the public sector?		1		The Civil Service Code does include a chapter on the Code of Conduct for Civil Servants (Chapter VI), however this does not amount to a unified code of ethics since the ethical requirements of different ministries may differ significantly, according to Irakli Kotetishvili, the Head of the Civil Service Bureau.[58]
	In practice, is it the case that civil servants are regularly trained about ethics, integrity and codes of conduct in the public sector?		1		According to a recent OECDACN report, the biggest problem with the ethical standards is the lack of an implementation process, and as a result there is no coordinated training on ethics in the civil service.[59]
SCORE (Human Resources)		5/10 (50%)			

[58] Interview with Irakli Kotetishvili, Head of the Civil Service Bureau, 22 March, 2010
[59] Anti Corruption Network for Eastern Europe and Central Asia (Report, April 2010), Istanbul Anti Corruption Action Plan: Second Round Monitoring, Georgia OECD Paris, France

Objective 2: Civil Service/Public Sector Reform - continued					
Sub-objective	Indicators	Scale of compliance			Notes and sources
		Full	Partial	None	
		2	1	0	
Integrity	To what extent are there legal provisions in place to protect whistleblowers in the public sector?	2			Legal provisions to protect whistleblowers are included in the Law on Conflict of Interest and Corruption in Civil Service (Section 20). As long as whistleblowing is done honestly, the law requires that whistleblowers may not be subject to any criminal, civil, administrative or disciplinary sanctions. In March 2009 a new amendment was passed on the protection of whistleblowers. This prohibits exerting pressure on whistleblowers or dismissing or temporarily discharging them from their positions. In exceptional cases, whistleblowers can request special protection. Section 2 of Article 20[7] stipulates that the identity of a whistleblower and a witness may remain secret to the person about whom the whistleblower revealed information.
	To what extent are whistleblowers in the public sector protected in practice?		1		The OECD ACN analysis of this issue, which was largely based on government interviews, suggests that no information was provided about internal awareness-raising on the protection of whistleblowers and no evidence was offered to demonstrate its effectiveness.[60]
	To what extent are comprehensive codes of conduct regarding conflicts of interest, rules on gifts and hospitality, post-employment restrictions etc for public sector employees in place?	2			The rules on conflict of interest are laid out in the Civil Service Code (particularly Article 73) and the Law on Conflict of Interest and Corruption in Civil Service. The rules on gifts were clarified by an amendment to the Law on Conflict of Interest and Corruption in June 2009. This details the upper limit for the value of a gift and the exceptions to these rules (such as scholarships and symbolic souvenirs).
	To what extent are these codes of conduct followed in practice?	-	-	-	There is no formal code of conduct for the civil service, so issues regarding the implementation of it cannot be judged.

[60] Anti Corruption Network for Eastern Europe and Central Asia (Report, April 2010), Istanbul Anti Corruption Action Plan: Second Round Monitoring, Georgia OECD Paris, France

Objective 2: Civil Service/Public Sector Reform - continued					
Sub-objective	Indicators	Scale of compliance			Notes and sources
		Full	Partial	None	
		2	1	0	
SCORE (Public Sector Integrity)		5/8 (63%)			
Public Procurement	To what extent do public procurement regulations exist requiring open competitive bidding as a general rule with exceptions regulated in the law kept to a minimum?		1		The procurement process is regulated by the Law on Procurement, but details of the process are prescribed in the Rules of State Procurement approved by the head of the agency. This currently allows for three types of procurement: an open tender, a comparative price quotation and a single source negotiation. The main governing principle of the different categories is price, though under a new law that is currently in the process of coming into effect, the ceiling above which an open tender is required has been substantially lowered. In November 2009 the Georgian government adopted a new law on public procurement. This will significantly lower the value of procurement that can be awarded with no bidding procedure from GEL 50,000 (US $29,410) to GEL 2,000 (US $1,180) for goods and services, and from GEL 100,000 (US $58,820) to GEL 5,000 (US $2,940) for works. According to GYLA, competitive tenders currently are required for most public procurement. However, there is a significant number of exceptions to this rule.[61] For example, open tenders are not necessary in emergency situations (such as the 2008 war), or when time pressure is a factor. The State Procurement Agency says that of funds allocated to 680 organisations in 2009, 75% was spent through tenders, 20% on price quotations and 3% on sole source procurement.[62] However, GYLA also argues that the practice allows significant abuse to the general idea of “open” tender. For example, it is fairly

[61] Interview with Tatia Todua, GYLA, 19 March, 2010
[62] Email exchange with the State Procurement Agency, 30 March, 2010

Objective 2: Civil Service/Public Sector Reform - continued					
Sub-objective	Indicators	Scale of compliance			Notes and sources
		Full	Partial	None	
		2	1	0	
					commonplace for tenders to be released with a very short time window for application.[63]
	In practice, to what extent is open bidding the general rule for public contracts, with exceptions regulated in the law and kept to a minimum?		1		GYLA argued that the system is open to abuse, and although most procurement is done through competitive bidding, the many exceptions undermine the primacy of the tender system.[64] (See above.)
	To what extent are there detailed formal rules (weighting evaluation criteria, use of price lists, certified quality standards, awards set by committees, etc.) to ensure objectivity in the contractor selection process?	2			There is a highly detailed and adequately elaborated set of rules and procedures governing objectivity in the contractor selection process.[65]
	To what extent are these rules followed in practice?		1		GYLA has highlighted a number of problems with the tender process. These include altering selection criteria for tenders after applications have already been received, and not releasing defined selection criteria at all. Tender committees are obliged to publish justifications of their decisions, but this often does not happen.[66]
	To what extent does the law provide for a procedure to request a review of and appeal against a procurement decision?		1		Parties can request a review of the procurement process from the head of the state agency involved. On completion of this review, or if a criminal prosecution is possible, the case can be taken to court. However, according to a recent OECD ACN report, one of the problems with the current system is that there is currently no independent review body for assessing complaints. This is also

[63] Interview with Lina Ghvinianidze, GYLA, 18 March, 2010
[64] Interview with Lina Ghvinianidze, GYLA, 18 March, 2010
[65] Interview with Lina Ghvinianidze, GYLA, 18 March, 2010
[66] Interview with Tatia Todua, GYLA, 18 March, 2010

Objective 2: Civil Service/Public Sector Reform - continued					
Sub-objective	Indicators	Scale of compliance			Notes and sources
		Full	Partial	None	
		2	1	0	
					intended to be corrected by the new law by setting up a complaint review panel, but since the law is only just coming into effect it is too soon to assess the new law's effectiveness.[67]
	To what extent are these review mechanisms effective in practice?		1		The review process in the State Procurement Agency has been in operation since 2005. According to the State Procurement Agency, 10 complaints were received in 2009: four were denied, four were reviewed and two were overturned.[68]
	To what extent is there a system in place to monitor public procurement as well as to detect misconduct and apply sanctions accordingly?		1		The State Procurement Agency is responsible for monitoring public procurement. Although, as elaborated above, the old law was not considered to have sufficient oversight, as it did not offer an independent process for reviewing complaints. In 2009 the State Procurement Agency brought nine cases of administrative infringement to the court, all of which were satisfied.
	To what extent does this monitoring system function effectively in practice?		1		Only nine complaints were brought to the State Procurement Agency in 2009, though 69 were taken to court.[69] This seems to suggest that the formal complaint process in the form of the SPA is not trusted as a place where changes can be affected.
TOTAL SCORE		9/16 (56%)			

[67] Anti Corruption Network for Eastern Europe and Central Asia (Report, April 2010), Istanbul Anti Corruption Action Plan: Second Round Monitoring, Georgia OECD Paris, France

[68] Interview with Tamar Buadze, Head of the Legal Departments, State Procurement Agency, Interviewed 23 March, 2010.

[69] Interview with Tatia Todua, GYLA, Interviewed 18 March, 2010

Objective 2: Civil Service/Public Sector Reform - continued					
Sub-objective	Indicators	Scale of compliance			Notes and sources
		Full	Partial	None	
		2	1	0	
TOTAL SCORE (Public Sector Reform) included.		25/50 (50%)			

Objective 3: GRECO Recommendation Implementation					
Objective	GRECO Recommendations	Scale of compliance			Notes and sources
		Full	Partial	None	
		2	1	0	
Public Sector Audit	Has the GRECO recommendation on the (i) development and implementation of a common methodology and standards for carrying out audits in respect of the public sector, bearing in mind the particularities of its various components; (ii) strengthening the auditing of local authorities, and (iii) ensuring effective auditing of state enterprises been implemented?		1		The Chamber of Control continues to be the main external audit body for the Georgian government. The Chamber of Control operates under a new law adopted in December 2008 that expands its responsibility to include local government audit. The law also foresees the introduction of performance audit, but this provision will enter into force in 2012. However, the law provides little information on methodology and auditing standards, and for the time being the institution continues to combine the role of limited compliance audit with an investigatory component. Currently the Chamber of Control and the Ministry of Justice are in the process of developing a more detailed methodology and standards. It is not yet known when this work is going to be completed. Meanwhile, there has been little movement to develop the institution or the skill sets necessary to create a fully fledged National Audit Office.[70]
Public Sector Access to Information	Has the GRECO recommendation on assessing the implementation in practice of the provisions of the		1		There have been no major changes in the implementation of the Freedom of Information Act (FOIA). While officially there is certainly a commitment to it in principle, officials still demonstrate considerable discretion in their interpretation

[70] George Welton (2009) The Role of the International Community in Facilitating Financial Reform in Georgia. Budgetary Planning and Oversight, International Budget Partnership

Objective 3: **GRECO Recommendation Implementation** - continued					
Objective	GRECO Recommendations	Scale of compliance			Notes and sources
		Full	Partial	None	
		2	1	0	
	General Administrative Code on access to information to ensure that the public's right to access information is not unduly limited, and to provide training to those civil servants designated to respond to requests for information been implemented?				of what information is privileged and often fail to respond in a timely manner or acknowledge requests for information at all. According to the Administrative Code of Georgia, Chapter 3, in order to obtain public information an interested individual/group must submit a written request. The applicant is not required to specify purpose for requesting the information. The government agency that receives the request must respond to it within a maximum of 10 days. The 10-day maximum can be used if the requested information is not readily available and the agency needs time to put it together. If the information is readily available, then the response must be given immediately. If the government agency does not have the requested information, it still must say so in a response to the applicant. If the requested information is within the mandate of a different government agency, then the agency that received the application must forward it to the respective agency and inform the applicant about it. If the government agency fails to respond, the applicant may appeal to a higher body or to a court. In practice it is common for government agencies to wait 10 days to respond even if the information is readily available, to ask applicants to explain why they need the requested information (this is particularly common in regional offices), or to provide incomplete answers to the requests, even if the request is very detailed, and then ask for another request for additional information. Some government agencies fail to respond to the requests without giving any explanation; this is especially true for the following agencies: Ministry of Interior, Ministry of Defense, Ministry of Economic Development (requests on privatisation contracts) and the Tbilisi Mayor's Office. Court appeals are possible, but at GEL 100 (US $58) they are expensive in local terms, take considerable time and even favourable decisions may be hard to execute.[71]

[71] Interview with Tamuna Karosanidze, Board Member, TI Georgia 28 March, 2010

Objective 3: **GRECO Recommendation Implementation** - continued					
Objective	GRECO Recommendations	Scale of compliance			Notes and sources
		Full	Partial	None	
		2	1	0	
Public Sector – Code of Ethics	Has the GRECO recommendation to have code(s) of conduct adopted for all employees in the public sector, both at local and state level, in order to clarify and complement the rules on inter alia conflicts of interests, gifts and reporting of corruption been implemented?		1		The Civil Service Code lays many ethical requirements for public officials. This includes elaboration of rules on gifts and conflict of interest (Civil Service Code, Article 73). However, there is no general code of conduct for the civil service as a whole.
Public Sector – Conflict of Interest	Has the GRECO recommendation to introduce clear rules requiring all employees in the public sector to report suspicions of corruption in public administration and to ensure that those who report such suspicions in good faith whistleblowers) are adequately protected from adverse consequences been implemented?*		1		There is no rule that requires public sector employees to report suspicions of corruption. Legal provisions to protect whistleblowers are included in the Law on Conflict of Interest and Corruption in the Civil Service (Section 20). As long as the whistleblowing is done honestly, the law requires that the whistleblower may not be subject to disciplinary sanction. In March 2009 a new Chapter 5^{1} was added on the protection of whistleblowers. This prohibits disciplinary or other types of prosecution against whistleblowers. In exceptional cases whistleblowers can request special protection. Section 2 of Article 20^{7} stipulates that the identity of a whistleblower and a witness may remain secret to the person about whom the whistleblower revealed information.

Objective 3: **GRECO Recommendation Implementation** - continued					
Objective	GRECO Recommendations	Scale of compliance			Notes and sources
		Full	Partial	None	
		2	1	0	
Anti-bribery legislation (Individual Liability)	Has the GRECO recommendation to amend the provisions on corporate liability in the Criminal Code to ensure that legal persons can be held liable in cases where lack of supervision or control by a natural person has made possible the commission of active bribery, money laundering or trading in influence been implemented?	2			In February 2008 amendments were passed to Article 107 of the Georgian Criminal Code, which now allows for the prosecution of legal persons for bribe-taking, trading in influence and money laundering. These provisions have been tried in multiple cases but have never gone to court. As a result some uncertainty exists over how interpretation of the law will work out in practice.[72]
Public Sector Human Resource Management (Criminal Liability)	Has the GRECO recommendation to provide appropriate training on criminal liability of legal persons to all officials concerned with a view to ensuring that full use of these provisions is made in cases of active bribery, trading in influence and money laundering been implemented?	2			According to a representative of the Ministry of Justice, fighting money laundering and corruption has been one of the priorities of the government since 2006.[73] Based on the information provided by the Ministry of Justice, after the provision on criminal liability of legal persons was added in 2008, there were two trainings supported by the Council of Europe. The trainings, which covered issues related to the new provisions in the Criminal Code, included a total of up to 85 prosecutors/investigators, as well as 12 Ministry of Internal Affairs employees.
Public Sector Human	Has the GRECO recommendation to		1		According to the Income Service of the Ministry of Finance, the Minister of Finance adopted specific guidelines in 2009 on measures

[72] Anti Corruption Network for Eastern Europe and Central Asia (Draft Report, 16 March 2010), Istanbul Anti Corruption Action Plan: Second Round Monitoring, Georgia OECD Paris, France

[73] Interview with Tamar Tomashvili, Head of Public International Law Department, Ministry of Justice, 24 March, 2010

Objective 3: **GRECO Recommendation Implementation** - continued					
Objective	GRECO Recommendations	Scale of compliance			Notes and sources
		Full	Partial	None	
		2	1	0	
Resource Management (Tax)	develop guidelines and effective training to improve the ability of tax inspectors to detect corruption offences, in particular as regards bribes concealed as legitimate expenses, been implemented?				against corruption offences. However, no trainings have been conducted on this matter.[74]
Overall Score GRECO Implementation		9/14 (64%)			

[74] Interview with Davit Chedia, Head of Department at the Income Service of the Ministry of Finance, 29 March, 2010

Transparency International Georgia
26 Rustaveli Avenue
Tbilisi 0108, Georgia

Phone: + (995 32) 92 14 03; 99 93 35
Fax: + (995 32) 92 02 51

info@transparency.ge
www.transparency.ge