ADHERENCE TO THE ANTI-CORRUPTION RECOMMENDATIONS OF THE OECD'S ANTI-CORRUPTION NETWORK (ACN) RECOMMENDATIONS BY THE GOVERNMENT OF GEORGIA

ALTERNATIVE REPORT

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TRANSPARENCY INTERNATIONAL GEORGIA (TI GEORGIA)
YOUNG LAWYERS' ASSOCIATION OF GEORGIA (GYLA)
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Organization for Security and Co-operation in Europe
Mission in Georgia

In the past two years since the November 2003 Rose Revolution the new government has carried out several high-profile anti-corruption campaigns, including the prosecution of several high-ranking corrupt officials from the former government, the introduction of a new patrol police force, the optimization of licensing and permission regulations, a reform of the university entrance system, etc. that have contributed to increased public confidence in the government's anti-corruption efforts. According the 2004 Transparency International Global Corruption Barometer, a public opinion survey that assesses the general public's perceptions and experience of corruption, Georgia made the biggest leap in its perceptions about corruption. It ranked as one of the three most optimistic countries in regards to eradicating corruption. In comparison, the 2003 Barometer showed that Georgia was one of the countries topping the list of pessimists, with 55.2% of the surveyed population expecting corruption to increase.

In 2005 the overall rate of optimism related to the future decline of corruption dropped by 22%. In 2004, 60 % of respondents expected corruption levels to decrease over the next three years. According to the 2005 Barometer, only 38% of respondents believed that corruption levels would decrease. While part of the explanation for this decline could be attributed to the end of the post-revolution euphoria, it is obvious that in spite of a number of reform benefits, the public remained concerned about the consistency of the government's anti-corruption campaign. Reforms targeting sectors such as law enforcement, education, and business development were well received by the general population; however, people recognized the need for future changes.

One Georgia's major concerns regarding the government's anti-corruption strategy involved its rather ad-hoc nature. Oftentimes it tended to be more curative than preventive in focus. The changes initiated by the government addressed individual cases of corruption, fighting it on case-by-case basis, while comparatively few systemic measures were taken to analyze and address the root causes of corruption. Without a single anti-corruption strategy initiated at the level of the central government, the individual ministries worked in isolation, choosing their own pace and strategy of institutional reform, and in some cases failing to reform at all.

The Government's failure to implement a state-wide anti-corruption campaign, coupled with the absence of a comprehensive reform strategy, resulted in a tendency to institute ad hoc reforms on the level of individual ministries. This issue was often highlighted as among the major concerns of both the Georgian and international communities when assessing Georgia's anti-corruption efforts.

In 2004-2005 Georgia signed a partnership agreement with G8 to promote transparency and combat corruption, and committed to following the recommendations received from Council of Europe's Groups of States against Corruption (GRECO) and the Organization for Economic Co-operation and Development (OECD) Anti-Corruption Network for Transition Economies. These three documents all stressed the importance of a national anti-corruption strategy to guide the new government in its struggle for transparency and accoutability. Additionally, there were extensive conversations with the World Bank that stressed the government's dedication to initiating a strategy and action plan, particularly with regard to the delivery of social services and civil service reform.

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

1. Anti-Corruption Strategy and Action Plan Elaboration

On January 18, 2005, the President of Georgia set up a Working Group composed of government and NGO representatives in order to develop Georgia's National Anti-Corruption Strategy and Action Plan. The work of the Group was coordinated by the National Security Council of Georgia, and the Strategy and Action Plan was to be completed by June 1st. However, according to the assessment of the NGO members of the Working Group, the action taken by the Government of Georgia to develop a carefully considered and constructed national anti-corruption strategy was insufficient:

(a) Although set up on January 18th and charged with the responsibility of completing their work by June 1st the Working Group held its first meeting on March 4th , and only after prompting by the NGO members of the group, who publicly drafted a letter to the government members urging a meeting.

(b) The efforts of the Working Group were not organized. At its first meeting on March 4th the participants agreed that the Group would meet on a bi-weekly basis to review the work carried out during the past two weeks and to plan tasks for the next two-week period. However, due to the lack of commitment from the government's side, the bi-weekly meetings did not take place. In order to support the sustained activities of the Working Group, the Deputy Ministers involved in the Group were asked to nominate an expert from each respective ministry to take part in day-to-day activities of the Group and to participate in its bi-weekly meetings. Nevertheless, the government's participation in the meetings of the Working Group remained lethargic throughout the whole process. An assortment of representatives appeared at different meetings, and the discussions rarely went beyond the main purposes of the Strategy and its overall structure.

(c) The National Security Council requested that the ministries submit their strategies for fighting corruption within their particular institutions and sectors. The NGOs were then supposed to complete the process by providing their recommendations for improving these strategies. However, only few ministries presented their documents. None of these documents were longer than three pages and they provided almost no useful information for further elaboration of the national anti-corruption strategy.

(d) The working process in-between the meetings were non-existent until the last weeks before the deadline. This was partly due to the lack of necessary resources (human, infrastructural, and financial) within the National Security Council in order to coordinate the Strategy elaboration, however, poor participation and lack of commitment from the government's side also affected the working process.

(e) There was no effort put into publicizing the drafting process and soliciting public input into the anti-corruption strategy. This was again due to the lack of necessary finances, and to the de facto absence of an actual working process in which public could become involved.

In the end, the outcome was a hastily prepared document by the National Security Council and government representatives. The President approved this document as Georgia's National Anti-Corruption Strategy on June 24th of 2005 (Annex 1. Presidential Decree # 550), shortly before the GRECO assessment group's review of Georgia's compliance with GRECO recommendations. The final document identified corruption prevention and institutional reform, liberalization of the business environment, ratification and implementation of international anti-corruption conventions, and promotion of public participation in anti-corruption activities as main priorities of government's future anti-corruption campaign.

The Presidential Decree by which the Strategy was approved stated that within two months from approval of the Strategy the government of Georgia would develop and submit to the president for approval an Action Plan for the Implementation of the Strategy. The Action Plan had to define specific actions to be taken to achieve the Strategy's objectives, as well as entities responsible for the implementation of these actions and implementation timeframes, which were all important details that the Strategy itself did not include.

The Action Plan implementation was coordinated by the State Minister for Reform Coordination. The Working Group set up to elaborate the Strategy was not involved in the development of the implementation Action Plan. The State Minister presented the first draft of the Action Plan to the government on August 31st of 2005. On September 12th of 2005 the government approved the Action Plan (Annex 2. National Anti-Corruption Strategy Implementation Action Plan). The Action Plan was presented to civil society representatives on September 20th at a roundtable attended by Georgian and international non-governmental organizations, the diplomatic corps accredited in Georgia and the mass media. The roundtable was organized on the initiative of the State Minister for Reform Coordination.

Although not approved until September of 2005, the Action Plan outlined government's priorities in fighting corruption during 2005-2006. The priority areas were defined as follows:

Increasing the Efficiency of Anti-Corruption Activities through: (a) improving anti-corruption legislation; (b) developing a special anti-corruption oversight system for monitoring high officials; (c) reducing and optimizing the regulatory and oversight functions of the state and reducing administrative barriers in order to diminish corruption; and (d) speeding up the privatization of state property and enterprises, as well as ensuring the maximum transparency of this process, so that state ownership is maintained only where it is necessary to carry out state functions.

Strengthening Mechanisms for Fighting Against Corruption through: (a) reforming the judiciary; (b) reforming law-enforcement institutions; (c) structural, personnel and administrative optimization of public entities to improve human resource management; (d) improving internal and external auditing and financial accounting of state institutions; (e) improving the state procurement process and mechanisms; (f) further improvement of tax administration and improving treasury service reporting; (g) reforming political party financing; (h) strengthening the ombudsman's institute; (i) transferring targeted social protection; and (j) supporting media development.

Increasing International Cooperation through: (a) implementing the recommendations of international organizations; (b) ratifying international conventions; (c) recognizing and establishing the principles of EITI; and (d) consolidating WB PIUs and their further integration into governmental structures.

The priority areas set out in the Action Plan address some of the most important problems faced by Georgia, and their resolution would contribute a great deal to the reduction of corruption in the country. The civil service and judiciary reforms are especially vital to the government's declared objectives to create an accountable and transparent state administration and a favourable investment climate. However, for these important goals to be achieved and the documents prepared by the government to be successfully implemented, the following considerations should be taken into account:

(a) The Action Plan needs to specify realistic timeframes for implementing the actions listed in it, as well as the entities responsible for fulfilling the actions. This will allow interested groups and individuals to communicate with the controlling institutions in a timely manner and support and/or monitor their efforts.

(b) Some of the objectives included in the Action Plan, such as the criminalization of acts that are considered crimes of corruption by international standards, requiring that heads of large state enterprises and legal entities of public law complete declarations, and preparing a state procurement manual in order to increase awareness of procuring organizations are quite specific, however, other objectives, such as developing effective mechanisms for monitoring civil servants, ensuring transparency in the privatization process, ensuring transparency of the courts, and creating a witness protection system, etc. only set general objectives in their targeted areas and lack important details concerning their exact implementation. In the cases when the measures presented in the Action Plan require further elaboration, special emphasis should be placed on ensuring public awareness of, and input into, the elaboration process. The public should be able to comment on a draft plan and present

their comments and suggestions for consideration, as well as participating in public discussions around the issues addressed in this paper.

(c) The Government Ordinance by which this Action Plan was approved charged the State Minister for Reform Coordination with the responsibility of monitoring the implementation of the Plan. It was also requested that the line ministries to create internal (ministerial) anti-corruption action plans and submit them to the government, as well as sending monthly reports to the government on the fulfilment of the national Action Plan. Neither the Action Plan nor the Ordinance by which it was approved included any provisions to ensure the publicity of the Action Plan's implementation or the promotion of public input into this process.

In order for the Strategy and Action Plan's implementation to be successful, it is essential that the process be widely publicized from the start. This should be done in three steps: (a) publicizing the adopted documents and the process of coordinating their implementation, (b) publicizing the fulfilment of the actions described in these documents by the involved government institutions, and (c) the involvement of journalists, non-governmental organizations and other actors. The active involvement of civil society groups will help to keep ordinary Georgians informed about this process and eventually build public support for its successful enforcement, as to date there has been no significant efforts from the government to inform citizens about the National Anti-Corruption Strategy and Action Plan's priorities and implementation progress.

In addition to an effective publicity campaign, there should be clearer guidelines for the internal coordination of the Strategy and Action Plan's implementation by the government. The government has designated the State Minister for Reform Coordination to oversee this process; however, the process by which the State Minister's office will be expected to enhance inter-agency cooperation between the involved government players has not been laid out. This office should develop clear guidelines for cooperation between the agencies responsible for the implementation of the actions included in the Strategy and Action Plan documents, as well as soliciting reports on the progress in their areas and publicizing these reports to the wider audience.

Now that the new government of Georgia has produced its first National Anti-Corruption Strategy and Action Plan, it is of great importance that its implementation is broadly supported by the executive, parliament and the public, and that said public enjoys a wide ownership of the Plan. Georgia's fight against corruption will be more successful if this process is well-planned and inclusive, allowing the public to actively participate in eliminating corruption instead of remaining an isolated spectator. In the past year the Georgian government has developed various anti-corruption documents. The process of development, however, was often donor-oriented and left the Georgian public un-informed about the initiatives and un-involved in their implementation. Without public involvement democracy-building occurs in vacuum, and lacks the constituent confidence that is fundamental for a successful enactment of the necessary changes.

2. Anti-Corruption Campaign Enforcement, Maintaining and Publicizing of Anti-Corruption Statistics

Currently the Georgian government's anti-corruption campaign is composed of two main dimensions: 1) policy formulation (i.e. prevention) and 2) investigation/prosecution. While the formulation process is fairly centralized, prosecution is more decentralized and requires the involvement of several law enforcement agencies and other state institutions.

2.1. Policy Formulation

Until October 3rd of 2005 anti-corruption strategy formulation and coordination was the function of the National Security Council and of the State Minister for Reform Coordination. On the basis of Presidential Decree #815 a special Anti-Corruption Policy Division was created within the newly formed Department of State and Public Security that was charged with the responsibility of formulating country's anti-corruption policy, permanently monitoring the activities carried out by state institutions in the field of anti-corruption, and analyzing levels of corruption in different sectors of state life, etc. The position of the State Minister for Reform Coordination was created on the basis of the Presidential Decree #597 issued on December 17th of 2004. The Minister became responsible for coordinating economic, legal, structural and institutional reforms. On October 3rd of 2005 the Decree #815 was issued, which eliminated the Anti-Corruption Division of the National Security Council, and consequently the responsibilities of this division were transferred to the office of the State Minister for Reform Coordination.

Currently the State Minister for Reform Coordination is involved in developing the government's medium-term activity plan for 2006-2009, assisting the ministries in elaborating their own activity plans, coordinating implementation of Georgia's National Anti-Corruption Strategy and Action Plan, developing structural reforms to be implemented in various sectors, and formulating reform policies to strengthen Georgia's economy, etc. The office consists of twenty-four persons, as approved by the Government Decree #134 issued on December 31st of 2004. All employees of the State Minister's office are public officials and the Minister is authorized to personally appoint and dismiss them.

Since the abolishment of the Anti-Corruption Policy Division of the National Security Council, the office of the State Minister for Reform Coordination is the only state entity responsible for the overall coordination of Government's anti-corruption policies. However, individual state entities are also charged with the responsibility of formulating and implementing anti-corruption mechanisms within their fields of influence.

2.2. Anti-Corruption System

Anti-corruption activities involving the investigation and prosecution of corruption crimes are carried out by a number of state institutions. Some of them existed before the Rose Revolution, while others were created after the formulation of the new government to tackle different types of corruption. At present this system unites following agencies:

General Prosecutor's Office: In October 2003, a special unit was created within the Office to investigate the matters of illegal income and unjustified property. This department deals with bribery issues, illegal donations, misuse of property, usage of public position for private purposes, and the non-payment of taxes, etc.

Financial Monitoring Bureau collects information on suspicious transactions and agreements in order to prevent terrorism and financial fraud, which includes money laundering. The Service reports to the National Bank of Georgia.

Ministry of Internal Affairs: This ministry has gone through the major reforms and now incorporates the former Ministry of State Security. The ministry is authorized to perform actions preventing crimes of corruption, to predict state threats and provide recommendations to the government, and to provide criminal expertise.

The organizational division of the Ministry of Internal Affairs called the *Department of Constitutional Security* (inherited but later largely transformed from the former ministry of State Security) has become a major unit working on both detection and assistance in the investigation of crimes of corruption. Over a short period of time this entity has turned into a key institution for fighting corruption in high, middle and low-level public servants.

Ministry of Finance: Another structural unit in the fight against corruption is Ministry of Finance, with its newly formed *Financial Police* as a structural unit of the Ministry. Its functions are prevention, detection, preclusion and pre trail investigation of economic crimes. The Financial Police has shown itself to be a strong state organ, conducting its function successfully in the sphere of economic crimes. The Police are especially effective in detecting hidden tax liabilities and attempts to erode the accountability of Georgian state authorities.

Chamber of Control: Chamber of Control is an independent body reporting to the Parliament of the country. It controls budgetary expenditures and monitors relevance, effectiveness and reasonability of public funds. When necessary, the Chamber coordinates its work with the law-enforcement agencies of the government. In cases where the corrupt actions of public officials/entities are revealed, the Chamber of Control sends the respective materials for pre trail investigation to the General Prosecutor's Office. Besides, the Chamber of Control is authorized to provide recommendations for the optimization of the budgetary process with regard to reducing and preventing corruption in the spending process.

Public Defender (Ombudsman) and Public Councils: the Ombudsman functions as a legislative officer and the Public Councils' occupationis the application of principles of direct public access to the government's activities. Ombudsman help defend the rights and freedoms of the citizens of the country. In the future, the office will create the institute of "specialized ombudsmen", a measure which will further increase the role and effectiveness of this institute. Public Councils consist of NGO representatives and selected members of the society. They exist at different Ministries and local government bodies, controlling expenditures, study claims and statistics as well as advising relevant state representatives.

General Inspections: General Inspections are set up within ministries and the General Prosecutor's Office to carry out internal administrative control. The Inspectors and other support staff are appointed by, and report to, the ministers/prosecutor general. They are responsible for inspecting infringements by officials within the ministry/prosecutor's office and the fields administered by their respective offices. General Inspections carry out inspections on the basis of annual and quarterly action plans which are approved by the ministers/prosecutor general in response to the complaints submitted by citizens or other entities.

Information Bureau on Property and Finances of Public Servicemen: This bureau was set up to track the property dynamics of public servants. The Bureau reports to the Ministry of Justice of Georgia.

Many of these state agencies are actively involved in the fight against corruption; however, the system is characterized by a number of defficiencies. These are mostly caused by poor inter-agency coordination. During the last two years various new agencies were created without an initial analyzation of the holistic fight against corruption (as well as other crimes), which would have allowed the indentification of the systems's strengths and weaknesses and ensured optimization. Consequently, a clear distribution of tasks necessary for the eradication of redundancy and the streamlining of a system of investigation and law enforcement remains underdeveloped. .

Currently, through financial assistance from the "Open Society Institute" and "Open Society – Georgia", Georgian NGOs working with international experts from Australia and Great Britain are carrying out a project named "Integrity System Mapping in Georgia" that aims to assist the government in addressing the problem of inter-agency cooperation. Within the framework of this project the involved organizations and experts research the integrity of institutions active in Georgiaand compile a document describing Georgia's current system of promoting integrity and reducing corruption, as well as identifying major pitfalls and providing recommendations for their eradication. The project is expected to be completed by June of 2006. The research is being carried out with the support and in cooperation with the government of Georgia.

In future the authorities also plan to carry out a structural reform of the Prosecutor's Office through a set of amendments to the relevant organic law. According to the reform blueprint, the main function of the Prosecutor's Office will be to oversee the conduct of criminal prosecution and pretrial investigation. It will also coordinate the efforts of the law-enforcement bodies toward combating crime. Specifics of how the Prosecutor's Office will enhance inter-agency cooperation between a number of law-enforcement, security and financial control bodies have not yet been decided.

As stated in the Anti-Corruption Strategy Implementation Action Plan, the Government also intends to set up special units within General Prosecutor's office and Interior Ministry to focus on corruption crimes committed by high officials.

In conclusion, it should be mentioned that the most problematic issue that the government needs to address in order to reduce corruption in Georgia is strengthening the judiciary. According to the Global Corruption Barometer of 2005, the Georgian public considered the judiciary to be the most corrupt institution in Georgia. Fifty-one percent of Georgians surveyed this year identified the judiciary as the most problematic sector. In order to affect democratic change, Georgian citizens need to be able to count on the judiciary as an effective instrument for challenging corruption. For this to occur the judiciary must be reformed to guarantee the independence and accountability of judges, thus increasing public confidence in this institution.

2.3. Maintenance and Publicity of Anti-Corruption Recommendations

In early 2004 the government carried out a number of high-profile arrests to address the allegations of widespread corruption in the former government. According to the official data, some 300 public officials were charged in 2004 and during the first six months of 2005. Some 60 million lari and 40 million dollars were seized and transferred to the state budget. This trend has continued and law-enforcement institutions continue detecting and prosecuting corruption crimes committed by public officials in central and local governments. However, even though these measures brought success and have made considerable improvement in the reduction of corruption in Georgia, the current structure of fight against dishonesty is far from perfect.

One of the major issues of concern is the way state institutions involved in the anti-corruption campaign communicate with the public. Currently there is no periodic systematic assessment of the government's progress- and regress -in fighting against corruption where and when it occurs. Systematization and publication of corruption related statistical data is also missing. Although electronic and print media often cover the facts of the criminal prosecution in corruption cases, systematized gathering and publication of corruption case statistics is absent. Statistical data posted on the website of the Ministry of Internal Affairs (http://www.police.ge/index.php?lang_id=GEO&sec_id=200&info_id=98) is as follows:

THREE-MONTH PERIOD, 2004	*THREE-MONTH PERIOD, 2005*
Seize of Property	
83 cases	*63 cases*
Tax Evasion	
45 cases	*14 cases*
Violation of Customs' Procedures	
68 cases	*112 cases*
Bribery	
15 cases	*11 cases*

The website of the Statistics Department (www.statistics.ge) presents only cumulative data on crimes registered during 2000-2004, including the total number of registered crimes, heavy crimes among them, and crimes committed by minors.

The General Prosecutor's Office, which has been playing one of the most important roles in prosecuting corruption crimes is also falling short on maintaining and releasing corruption data.

The practice of plea bargaining that was instituted after the period of the Rose Revolution allowed the Prosecutor to dismiss the defendant's indictment in exchange for his/her cooperation with the prosecution. Defendants would provide information on crimes committed by public officials, a practice which has turned into a powerful tool for confiscating funds from allegedly corrupt officials, and fighting the wide-spread "syndrome of impunity". In addition to advancing the prosecution, this tool has increasingly been seen as a mean to provide additional funds to the state budget as the amounts paid by the defendants to reimburse the damage caused to the state budget by their illegal acts, as well as their payments made in the form of fines are transferred to said budget.

What is of concern is that presently the system for tracking this money remains unsatisfactory. There is no specific revenue item in the budget classification to account for the so called "plea bargaining" proceedings as a whole. These funds are received by the Ministry of Interior and by the General Prosecutor's Office as deposit amounts (meaning that parts of these funds are subject to refunding). These deposit amounts are transferred to the special funds' account of the State Treasury Office. Only a portion of them are destined for the budget as non-tax revenues. The remaining funds are returned to the respective law-enforcement agencies on the basis of court ruling to be used as their own non-budgetary funds, or they can be returned to the payer (detainee) if, again, the final court ruling allows this, although the latter cases are said to be relatively infrequent.

In many cases, it is not easy for the State Treasury Office to pinpoint how much has been transferred to the state budget from plea bargaining proceedings because the so called "transfer documents" submitted by the Ministries of Interior and Security, and the General Prosecutor's Office do not mention the origin of the transferred amounts (i.e. are the funds being transferred from plea bargaining, tender fees, service fees, etc.). It is therefore, complicated to track the plea bargaining proceedings. Furthermore, in the majority of cases, the deposit amounts transferred to the treasury contain not only plea bargaining revenues from arrested high level officials but also various others administrative and criminal fines and penalties.

In addition, neither the General Prosecutor's Office nor the Ministry of Interior maintain unified records of plea bargaining proceedings. According to the General Prosecutor's Office, "Procuracy units carry out transfers (of non-tax revenues) to the state budget after the full completion of instigated criminal cases. At this time there is no unified database for accounting such transfers; therefore, obtaining complete information on these transactions is complicated. A monthly breakdown of non-tax revenue transfers to the state budget is also nonexistent (General Prosecutor's Office of Georgia, Letter #01/14/1-05/7620).

(B) ANTI-CORRUPTION LEGISLATION: CRIMINALIZATION OF CORRUPTION

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

During the last two years no significant measures were carried out to provide a more precise definition of (and clarify distinctions between) various corruption crimes and sanctions.

Currently, Georgia's legislation does not give a clear and explicit definition of corruption. Consequently, the following terms - "corruption crime", "corruption infringement" and "corrupt act" can cause uncertainty as to their exact meaning. In the legal system the term "corruption" is open to various

interpretations, which constitutes a serious problem to both the social and the jurisprudential systems, especially regarding criminal legislation, which should certainly not be subject to ambiguity and misinterpretations.

The only legal act that defines corruption is the Georgia's law on "Corruption and Conflict of Interests in Civil Service". According to this law, "corruption in civil service is an abuse of authority by a public official in order to obtain legally restricted or other privileges, also granting him/her this privilege, or assisting him/her in obtaining and legalizing this privilege". Corruption infringement is "an act that involves elements of corruption and for which there are legally defined disciplinary, administartive and criminal sanctions".

The Criminal Code of Georgia does not include a separate chapter defining and systematizing corruption infringements and crimes. As in the Criminal Code, the Code of Administrative Offences of Georgia has no separate corruption related chapter.

4. Harmonization of Active and Passive Bribery with International Standards: Increasing Sanctions against Bribery and Increasing the Limitation Period

To date no changes have been made to ensure harmonization in regulations related to active and passive bribery with internationally recognized standards.

One significant discrepancy between the law of Georgia on "Corruption and Conflict of Interests in Civil Service" and the Criminal Code of Georgia relates to a civil servant's acceptance of a gift. According to the law on "Corruption and Conflict of Interests in Civil Service" public officials and their family members are prohibited from accepting certain gifts, while the "Criminal Code" provides sanctions for accepting these gifts for public officials only. As of the present date, this discrepancy has not yet been addressed..

The sanctions related to active and passive bribery have not been adapted either. Acceptance of a bribe and the giving of a bribe are regulated by Article 338 and Aricle 339 in Chapter XXXIX (Crimes of Public Servants) of the Criminal Code of Georgia. According to this Code, the crime defined by Article 339 (giving of a bribe) is considered to be a minor crime and accordingly no criminal responsibility arises in case of committing this act.

As for an increase in the limitation period, the Criminal Code sets only general limitation periods and exclusive provisions regarding corruption related crimes are currently nonexistent in Georgian legislation.

5. Definition of Public Official in Criminal Legislation

The Criminal Code of Georgia does not contain a definition for the term 'public official'.

According to the paragraph 47 of Article 44 of the Criminal Procedural Code: "The Public Official (against whom the criminal proceedings are conducted) for the purposes of this law is the public official, civil servant, the head of the legal person of public law or his/her deputy as defined by Article 2 of the Law of Georgia on "Corruption and Conflict of Interests in Civil Service" or in the enterprise, of which the State owns 50% or more than 50 % of shares, the person holding the managerial and/or representative authority, which has allegedly committed the crime directed against the interests of the office, legalization of illicit income, extortion, appropriation or embezzlement while being in the office whether he/she still holds the position or not". According to paragraph 1 of Article 6 of the Law of Georgian Public Service: "The civil servant is the person appointed or selected for the permanent staff position of the budgetary institution".

The Georgian legislation, as opposed to the international standards, does not consider part-time civil servants (official – as per Law on Civil Service) who are appointed for a specific period as the subject of crimes. It is therefore necessary that the Georgian legislation be amended to this effect.

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

The recommendation related to imposing criminal responsibility for the corrupt acts committed by foreign and international public officials has not been yet implemented by the government of Georgia.

Definitions of foreign and international public officials are provided for by the "United Nations' Convention Against Corruption", which stipulates that a foreign public official is "any person holding a legislative, executive, administrative or judicial office of a foreign country, whether appointed or elected; and any person exercising a public function for a foreign country, including for a public agency or public enterprise" and the official of a public international organization is "an international civil servant or any person who is authorized by such an organization to act on behalf of that organization".

The Criminal Code of Georgia does not consider the responsibility of the above stated persons in the performance of crimes of corruption.

7. Expanding Confiscation Regime to all Corruption Related Crimes and Infringements

Georgian legislation contains weak regulations for the application of confiscation. The Criminal Code of Georgia does not provide for confiscation as a type of penalty. This is partly determined by one of the first decisions of the Constitutional Court of Georgia, which declared confiscation as an additional type of penalty to be unconstitutional.

The current Code of Administrative Offences of Georgia contains certain provisions concerning the legal nature of confiscation. The general part of the Code (articles 24 and 25) establishes the possibility of using confiscation as a basic or additional form of administrative penalty.

Article 52 of the Criminal Code also provides for the seizure without reimbursement of the object or instrument of a crime when part of the property or legal possession of the convict. Under the stated article the convict is deprived of the property owned on the legal basis. In order to avoid a violation of the right to property guaranteed by article 21 of the Constitution of Georgia, paragraph 2 of the stated article of Criminal Code established that the question of seizure shall be determined by the court. The legislature strictly defined the circumstances in which this article is applicable. These are: the interests of the state or society, the protection of rights and freedoms of particular persons, and the prevention of the commission of a new crime.

As for the expansion of the confiscation regulations to third persons, as mentioned earlier, although the law of Georgia on "Corruption and Conflict of Interests in Civil Service" prohibits accepting certain gifts from public officials and their family members, the Criminal Code provides corersponding sanctions only for public officials and not for their family members. Therefore, despite of the fact that by Georgian legislation, illegal gift may become subject to confiscation, if the gift is accepted by the public official's family member, this same law need not apply.

It is obvious that the legislation of Georgia and its courts, including the Constitutional Court, practice inconsistent and chaotic confiscation guidelines, which do not correspond to international standards.

Therefore, bringing the respective legal acts into conformity with international norms through developing and passing necessary legal changes remain a necessary step in ending corruption.

8. Liability of Legal Persons

With regards to this issue, the government of Georgia has prepared a concept paper and a draft law on Amendments to the Criminal Code of Georgia which introduce the criminal liability of legal persons. However, the current consideration of this concept paper and draft law are suspended and thus this recommendation remains unimplemented.

When discussing this issue it should be noted that imposing liability on legal persons will require complex changes to the Criminal Code of Georgia and its entire criminal system. Therefore, before taking any measures in this direction, it is important to thoroughly review Georgia's criminal legislation and to properly analyze the necessary and most probable outcomes of the initiated changes.

(C) CIVIL SERVICE TRANSPARENCY

9. Ensuring Transparency in the Employment and Promotion of Civil Service Officials

According to the Georgian Law on Civil Service, appointing officials into the civil service should be executed through open competition, based on passing a selective procedure, although in actuality this law might often be a mere formality due to distinct legislative gaps. Given below are analyses of some of these legislative gaps:

(a) Candidates for civil service positions are required to meet the following requirements (paragraph 15, 16): a minimum age of 21 for government officials, corresponding knowledge and experience, and fluency in the state language. For local self-government officials, requirements include a minimum age of 18, a secondary education, and fluency in the state language.

The phrase "corresponding knowledge and experience" is not specifically defined in the legislation, which allows for different interpretations. Accordingly, it is necessary to specify the kind of knowledge and experience the person interested in a vacancy should have, which in turn requires a clearly formulated system of qualification requirements for each position.

(b) The age qualifications for civil service positions also need to be reviewed (age 21 for government officials and age 18 for local self-government officials). The age qualification in both cases is too low (special instructions indicating which positions can be taken by the candidates of this age would be acceptable). It is practically impossible for a 21-year-old person, having just graduated from college, to have the experience required for a civil service position. A 21-year-old candidate can only have some experience related to one of the lower civil service positions.

The standards are vague in the case of local self-government officials as well. The law does not restrict the positions which can be held by an 18-year-old, so it is possible for an 18-year-old with only a secondary education to be appointed as an executive assistant or an executive.

(c) Apart from the main requirements, the Law on Civil Service also sets additional requirements detailing which additional qualifications can be required by the head of the organization or the chief of the institution (paragraph 19).

This question is closely related to issue of defining qualification requirements according to individual positions. There are no distinctly formulated qualification requirements in many of the institutions. Additional requirements are set at best according to the requirements for the position's duties and at worst to the decision of the head of the institution. There is a risk of employing unqualified personnel in one case and a risk of corruption and protectionism in the second case. This is the situation as it exists today.

(d) According to paragraph 30 of the Law on Civil Service, officials proposed by the President or Parliament can be appointed without competition, in addition to deputy ministers, assistants, counselors, individuals from the so-called patronage service, acting officials, acting officials for vacant positions in civil service, and individuals placed on reserve.

It would be more expedient to appoint officials based only on competition, except for so-called "political" positions. For this to happen it is necessary to determine what constitutes both political and nonpolitical positions. Some consider these positions to be ministers, deputies, counselor positions, and heads of structural units, while others think the category of political officials is even narrower and therefore should only be determined by ministers and their deputies. The rest, outside of the category of political officials, should be specialists in one of the specific fields and should be appointed based on competition.

(e) The question of appointing acting officials is also significant. The Law on Civil Service provides an opportunity to avoid competition. Candidates are appointed outside of any competition, as acting officials and the institution need not announce a competition at all. As a result, the appointed officials are only "acting officials" throughout their period in power. Thus, it would also be reasonable to determine a time limit for acting officials to remain in power and to mandate the announcement of competitions.

(f) The procedure involved in the creation of certification committees also needs to be reviewed; currently it is determined by the Law on Civil Service in paragraphs 84-86. The head of the certification commission is appointed by the Bureau of Civil Service. As a rule, the person appointed to this position is the head of an institution or is the chief assistant. Appointing members of the commission is the chairman's prerogative, and the risk of corruption and protectionism increases when members of the commission hold the same political views as the chairman, as the current system allows chairmen to choose candidates based on political affiliation.

To avoid this problem certification committees should be determined for all positions. A certifying institution with corresponding qualifications is necessary for conducting competitions and testing. The most suitable for this would be a nongovernmental institution given the right by the government to carry out certification and competition. The institution itself can carry out the competition, but in this case members of the certification committee should be independent experts or members of the nongovernmental sector. Transparency and social monitoring would then be guaranteed, although in this case a mechanism would still have to be determined as to who creates the committee, who will choose the sector representatives and according to which principles the committee will be based, etc.

(g) According to paragraph 24 in the Law on Civil Service, a probationary period of not more than six months can be given to a newly appointed official. According to the same paragraph, the probationary period might not be used when an official is appointed by the president, parliament, competition, promotion, or was an acting official.

There have been cases when, after meeting all of the competition requirements, an appointed official cannot respond to the imposed responsibilities in a real working situation. This means it is only possible to determine whether the candidate meets the qualifications for a position while fulfilling the duties of this position. It is more reasonable to have a post-competition probationary period for all of

the candidates except those filling in for a temporarily absent official. The law also should determine not only the maximum probationary period but the minimum as well, so that the heads of institutions would be restricted in subjectively appointing candidates to positions after an insufficient period.

(h) According to the Law on Civil Service paragraphs 81-82, the testing period for an official is 3 years. Officials to be promoted, individuals from reserves and candidates who have to meet the competition requirements must all obey the rules of certification. The goal of the certification process is to determine whether officials' professional habits, qualifications, capabilities, and personal habits correspond to the requirements for the acquired position. This process is carried out by a certification committee.

Certification, while required by law, is seldom followed. Often, when there are no distinct qualification requirements, certification has only a formal character and is hardly ever carried out in the regions. One of the main problems of a certification committee is the nonexistent rules of its work and evaluation. Creating a corresponding legislative basis is key in this matter. The more precise the requirements and evaluation criteria are, the more effective the committee's work will be. It must also be determined whether or not the qualification requirements include only professional skills or some additional criteria, such as experience. Qualification requirements are very important in determining the functions for different positions.

(i) According to the Law on Civil Service paragraph 48, an official may be sent to attend qualification raising courses for a period of three months to improve his or her qualifications. According to the same law (paragraph 130), one of the functions of the Civil Service Bureau is to coordinate and provide systematic help in training, retraining, and improving the qualifications of civil service officials.

Despite all the aforementioned issues, the role of the government in improving officials' qualifications remains passive. There are several training centers (notary training programs in the Ministry of Justice and the Tax Department) which are successful, but they are exceptions. This question is not currently being addressed.

The government should take responsibility for civil service officials and play a more active role in retraining officials and improving their qualifications. This function can be added to the Civil Service Bureau when it involves management or management skills, but it should be the responsibility of the particular institution in the case of retraining staff in more specific fields.

Solving this problem is closely connected to the existence and duties of corresponding financial resources.

10. Preparing a Civil Servants' Code of Ethics

Preparing the civil servant's code of ethics was determined to be a priority according to the Anti-Corruption Strategy Implementation Action Plan approved on June 24th of 2005.

As the legislative basis for civil service stands today, the ethical norms for civil service officials are scattered throughout laws concerning "Conflict of Interests and Corruption in Civil Service" and "Civil Service".

In particular, the norms of behavior for civil service officials are determined in the Law on Civil Service which defines: keeping a secret (paragraph 59); restrictions on industrial and political activities and also about service surveillance (paragraphs 60, 61, 62); limits on commercial activities for civil service officials (paragraph 63); service incompatibility (paragraph 64); limits on making agreements (paragraphs 65, 66); and cases of participating in mass actions (paragraph 67). The law also gives the opportunity to

set duties and limitations not mentioned above according to specific service requirements (paragraph 68).

The duties and limitations of civil service officials are also determined in the Law on Conflict of Interests and Corruption in Civil Service. This law gives more detailed regulatory rules for an officials' behavior and more clearly sets limits for their activities and obligations to declare their economic interests. The law, however, only affects government officials.

Ethical norms for officials in some of the institutions are also regulated by the ethics and behavior codes, which set additional requirements according to specific fields of service. There is, for example, a "Judicial Ethics Code" for the judicial branch and an "Ethics and Behavior Code for Georgian Judicial Branch Officials". These norms determine the main principles of ethics, rules, and standards of behavior for judges and officials in the judicial branch that the judiciary must obey while carrying out their duties, when being involved in other activities, and even in their private lives. Disobeying the code holds the violator responsible.

There are rules for officials of the Ministry of Finance and codes for customs officials which were set based on the request of the Georgian government and International Monetary Fund during 2001-2003 in a memorandum about economic and financial politics. The rules of conduct for officials of the Ministry of Finance determine their service duties, and set limits on their activities. Customs is one of the organizations which work under the Ministry of Finance, but due to their specialized activities, they have their own special norms of service behavior. The ethics code for custom-house officials determines their principles of behavior, forms of public relations, rules about gifts and about using specific information, limits on interfering in financial matters, and means of avoiding conflict of interests, etc. Violating any of these rules necessitates disciplinary punishment if it is not an administrative or a criminal case.

The Ethics Code for the members of parliament sets distinct standards and principles, including carrying out public interest, financial transparency of members' activities, declaring private interests, restriction of corruption, and creating a precedent of defending the rule of law. However, there are no sanctions set for violations according to this code. The main reason for the creation of this code was making parliament members' activities, values, and main principles of decision making available to the public.

Currently there is no general code of ethics for all civil servants that would be common and obligatory for all of the civil service institutions in Georgia

Initially it was part of the National Security Council's authority to create a united National Policy in the field of civil service and to work on other important related questions. The Civil Service Bureau was commissioned to support the Council and assure that all of the Council's decisions were carried out. The newly amended Law on Civil Service made the Bureau an independent body of government that was accountable to the President through the Civil Service Council. The concrete functions of the bureau were determined by the Law on Civil Service article 130 " The Civil Service Bureau will study and analyze the civil service field and report to the President on issuing the corresponding normative acts".

At this stage the Bureau has established contacts with the personnel departments of relevant state institutions and is arranging periodic meetings with the aim of making the heads of these departments more familiar with the modern system of personnel managment. The Bureau has prepared a draft document describing human resource management systems. The draft document has been distributed to all of the personnel departments in the civil service and the final version will be approved after receiving and incorporating the comments of these departments. The document will then be enforced in every department.

The Civil Service Service Bureau, in close cooperation with the United Nations' Association, has also created a concept paper on revising existing civil service legislation. To summarize the innovations proposed by the concept paper, below are some of the main issues:

- Making the civil service "regulating legislative act" a code and uniting and systematizing the laws within it;
- Formulating the general idea of civil service and changing its governmental inclinations to accentuate civilian service;
- Improving civil service principles so that they are constantly developing and never lapsing;
- Gathering organizations which were created based on governmental or local self-governmental acts into the sphere of civil service;
- Regulating the procedures and creating a basis for reorganization and liquidation of treasury organizations and those organizations similar to them;
- Separating public services, civil defense services, and additional administrative services systematically within the civil service;
- Repealing the independent category of non-staff civil servants;
- Elaborating on the idea of staff departments;
- Holding discussions concerning the necessity of implementing methodologies so as to form staff departments;
- Regulating and delineating detailed procedures and creating a basis for reducing and increasing the number of staff members;
- Increasing the importance of an age limit for civil service position applicants;
- Using qualification requirements which will be the same for all civil service positions;
- Creating a special regulatory system for written and oral exams during the competition;
- Forming rules to appoint competition judges and increasing their independence and degree of objectivity by means of legislative power;
- Decreasing the certification frequency by two years;
- Integration of the evaluation given by the head of committee and prediction of certification results;
- Detailed and precise legislative regulation of the possible results of certification;
- Demanding a complete ranking system of civil service positions, including the highest ranked civil service position;
- Establishing the tradition of awarding with appreciation from the President, honorary titles, or national awards as part of a stimulation program for the staff;
- Legislative regulating of the basis and rules of the encouragement program;
- Regulating the civil servants' medical insurance question;
- Establishing a salary net;
- Connecting civil service salaries to the customer basket and market changes;
- Integrating an ethics code with the civil service code and giving the ethics code required power;
- Forming an united informational bank for civil service;
- Formulating active and reserved categories within the civil service reserves;
- Creating obligatory and optional rules for improving qualifications and retraining;
- Simplifying the system of measures for disciplinary responsibilities and establishing the means of reproofs;
- Establishing different terms for different measures of disciplinary responsibility;
- Classification of discussed arguments and creating a legislative base for creating administrative boards to discuss relevent issues;
- Determining the new rule for the formation of the Supreme Council of civil service;
- Regulating the periodic accountability of the Supreme Council of civil service;
- Changing the bureau status into a government organization and awarding it additional rights;

- Increasing the independence of the staff departments and also their degree of influence over staff policies,and establishing a double coordination system for staff services;
- Submitting the property and financial status of officials to an informational bureau and implementing its jurisdiction on every civil service official;
- Rewarding the informational bureau for property and financial status of officials with more authority.

The government has set up a special coordination council that will work on developing a Civil Service Code on the basis of the above mentioned concept paper to systematize the regulations related to the civil service. Among the members of this council are: the president's parliamentary secretary, representatives of the legal department of the State Chancellery, members of the legal and procedural committees of the Parliament of Georgia, representatives of the Judicial Branch, the General Prosecutor, the Civil Service Bureau, and the United Nation's Association.

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

There is currently no structure in Georgia for accomplishing a full monitoring of conflict of interests legislation.

The only structure that receives and maintains the officials' property and financial declarations is the legal entity of public law by the name of the Information Bureau of Public Officials' Property and Financial Status. This bureau, however, is only responsible for ensuring the timely submission of asset declarations by public officials and their storage. The legislation does not require the Bureau to verify if the information submitted in the property declaration is truthful.

Currently there is a draft law which can increase the functions of the bureau, including reactions on violations; improving the means of discovering and eradicating them; regulating the process of giving and receiving gifts and all the questions around this matter; as well as establishing the mechanisms for studying, monitoring and analyzing the resources that can be found inside bureau itself, simplifying the forms of property and financial declarations, completing the means of conservation and registration, and implementing effective measures for revealing positional incompatibility and activity restrictions etc. The draft law has not yet been considered by the Parliament.

The Ministry of Justice is also planning to carry out the reform of the informational bureau with the financial assistance of the UN Development Program and with the participation of the United Nations' Association and other invited experts.

12. Transparency of Public Information

The implementation of the Georgian General Administrative Code and one of its chapters about the freedom of information is presently is an extremely nebulous state. There are some issues which have been resolved with the participation of various Georgian and international non-governmental organizations (designating the responsible party for giving out public information, reducing the demand for determining the motives and reasons, etc.), although there is still a lot of work that needs to be done in these areas. The picture becomes more complicated in cases such as carrying out the civil register according to code requirements, ensuring the publicity of meetings, providing information on time, and establishing additional procedural barriers, etc.

(a) It must be noted that the Government itself hardly ever participates in promoting access to public information regulations. Non-governmental organizations and groups of journalists are behind all of the

attempts to ensure enforcement of these regulations by civil institutions. However, as soon as these organizations and journalists divert their attention from the state institutions, said institutions immediately return to ignoring the requirements of the General Adminsitrative Code of Georgia with regards to providing access to public information.

(b) The habit of the previous government of placing special boxes near permit bureaus in the Ministries of Inteior and of Defense and in the President's administration and the General Prosecutor's office for citizens to put in their letters, complaints and any kind of documents is still unfortunately in existence.

No one has the responsibility of assuring that these letters/complaints reach the right official and that the reaction to it takes place in a timely mannar. The letter/complaint can get lost and its sender will never be able to prove that s/he had sent in the letter/complaint as they do not get registered. This mode of communication violates citizen's rights as determined in the law concerning receipt of public information.

(c) According to the law, the requested information must be given out at once (no later than the next day), although the institution may use the period of ten days if the required information needs to be consolidated. This article is often misinterpreted and civil institutions use ten days for responding to nearly any request received from the citizens and/or public organizations through FOIA request. In addition to this issue, providing public information in the regions is often hindered due to technical reasons (such as not having a copying machine or disorganized information from the previous years).

(d) According to the General Administrative Code article 37, it is not necessary to indicate the motive or reason in the request while seeking public information. According to the 2005 data from the public poll conducted by United Nations' Association, the number of cases of state institutions requiring reasons behind requesting public information has reduced in comparison to previous years; however, such incidences have not been fully eradicated.

(e) According to the General Administrative Code, the information existing in an institution should be included and systematized in special civil registries. The number of state entities that maintain the civil registries has increased compared to previous years, but there are still some organizations that keep fabricated journals or no records at all.

(f) The General Administrative Code determines the obligations for appointing a person responsible for issuing public information, which will receive the request for the information and take the corresponding actions. According to 2005 statistics revealed through the public poll conducted by United Nations' Association, the number of appointed responsible officials has increased, although not all of the civil institutions have a responsible official yet.

(g) An effective implementation of the regulations about public information is hampered by the gaps in the sytem of administrative litigation. According to the General Administrative Code, an administrative complaint may be submitted to the upper entity/official in the case of a violation of a specific legal requirement by the subordinate entity/official. As current practice shows, administrative complaints hardly ever yields results, and almost never considered by the responsible person/entity. In the best case scenario, the complaint serves as a reminder for the state institutions to release requested public information, and no sanctions have ever been used against the wrong-doing person/entity for delaying the issuance of this information without legal grounds.

Taking into consideration that court proceedings are usually lengthy in nature, administrative complaints should have a larger role and should become an effective mechanism for guaranteeing the availability of public information. Therefore, it is very important to formalize and strictly regulate administrative complaint procedures.

(h) According to Georgian legislation, in the case of an argument over the freedom of information, any interested individual has the right to appeal to the court, however, courts also seem to violate procedural dates. Although cases of ignoring procedural dates have been reduced in comparison to previous years, in 2005 there were still many instances of bypassing the legal timeframes. It should also be noted that the current legislation does not provide the courts with any instruments through which to oblige state institutions to provide the requested public information in time or to punish them for violating the set deadlines. This impediment limits the ability of courts to effectively enforce the freedom of information regulations.

(D) LIBERALIZATION OF BUSINESS ENVIRONMENT

13. Improvement of the Law on State Procurement

On April 20th of 2005 the Parliament of Georgia passed a new law on State Procurement, the main goals of which, according to the Government, were to ensure a rational spending of the money allocated for state procurements, develop fair competition in the production of goods and the delivery of services, and performance of construction works for public needs, and the ensured publicity of this process. The enactment of the new law considerably changed the procedure and form of state procurements: the best bidder identification procedure was simplified under the statutory criteria, the opportunity for the commission members to make a biased decision was minimized; closed tenders were completely abolished, and applicability area of the law was expanded to organizations established with at least more than 50% state shareholding, etc. However, some problems still remained, in particular:

(a) Paragraph 4 of Article 4 of the new law put the Ministry of Finance of Georgia in charge for controling the activity of the State Procurement Agency. Under the previous law, however, the Ministry of Economic Development of Georgia controlled the activity of the Agency. The explanatory note attached to the law adopted in April of 2005 did not justify or substantiate any reasons for such an amendment. Considering the aims and functions of the Agency and the fact that the Ministry of Finance is currently the largest procuring state institution, questions arise about how effective it would be for the Public Procurement Agency to be under the control of this Ministry. Taking into international practice on this issue, it is hoped that the State Procurement Agency would instead operate independently.

(b) Article 6 of the Draft Law of Georgia on State Procurements outlined the rights and obligations and order of activity of the supervisory council of the State Procurement Agency. However, the adopted law gave no rules or regulations for the formation of a supervisory council. Presumably, the procedure for the formation of the supervisory council will be formulated under a council bylaw; however, taking into consideration the role and importance of the council's activities, it would be advisable that its formation procedure be given in the law rather than a subordinate legal act.

(c) The new law did not specify effective mechanisms for monitoring the state procurement process. In order to ensure transparency and fairness in the procurements performed by the governmental entities, the monitoring function should be outsourced and the respective procedures and requirements specified in the state procurement legislation.

(d) It is also problematic that the current state procurement legislation does not provide any regulations regarding the procuring of intellectual services. Now that Georgia is in the process of formulating and

implementing reforms in various sectors, the state should be provided an opportunity to procure necessary intellectual services and this opportunity should be provided for by law.

Along with pitfalls in the state's procurement legislation, there are also problems in the execution of the legislation. One important problem relates to the use of force majeur exemptions in state procurements. According to the law of Georgia, in the case of force majeur the state is allowed to procure goods without open tenders. Force majeur must be approved by the State Procurement Agency upon the respective request of the procuring state agency. During the past two years the government procured various goods without announcing open tenders and claiming that it was done due to force majeur, although the force majeur did not exist. For example, the government procured 12 million liters of diesel without an open tender in order to distribute purchased diesel for free such that village populations could carry out their spring agricultural works.

With regards to the government's future plans in the sphere of state procurement, according to the Anti-Corruption Strategy Implementation Action Plan, during the next year the authorities intend to prepare changes to the law on state procurement in order to define a new status and principles for the procurement agency; prepare a state procurement manual in order to increase awareness of procuring organizations; rationalize procurement list of secret procuremen; and develop so called "black lists" in order to prevent the participation of previously corrupt and wrong-doing companies in state tenders.

14. Revision and Optimization of Tax Legislation

The Parliament of Georgia adopted a new Tax Code in December of 2004. As stated by the Government, the reform of the tax legislation aimed at improving tax administration and promoting business development. The new Code introduced significant innovations as compared to its previous counterpart. In particular: (a) the types of taxes were reduced from 21 to 7; (b) some tax rates were also reduced (social tax was reduced from 33% to 20%, VAT was reduced from 20% to 18 %), income tax was reduced from 20% to 12%); the rule for the calculation of the income tax was simplified; business registration rules were also made simpler, and some tax administration procedures were also streamlined. However, similarly to the new law on State Procurement, some significant problems still remained. Georgian business representatives and independent experts note the following major deficiencies of the new tax legislation:

(a) The complexity of the Tax Code and the ambiguity of its provisions continue to be a problem. The new Tax Code still includes some unclear and intricate terms and provisions that create an opportunity for their different interpretations, thus causing problems to business representatives in terms of fulfilling their tax obligations. In addition to this issue, the Code misses some important definitions and also includes various inconsistencies in between its different articles.

(b) The new legislation improved conditions for big businesses, however, the same cannot be said about small and medium business owners and beginners. Small and medium businesses are under the same tax regime as large businesses. Decreasing VAT by two percent is an effective incentive for big businesses, but it does not affect the beginner and small businessman. Additionally, in the case of a violation of the various requirements of the tax legislation, small business entities have pay the same fines as for example, oil products traders.

(c) The Tax Code does not define sanctions towards tax officers if they provide false information or poor consultation to taxpayers. Aditionally, there are no procedures considering the possibility of evaluation of tax inspection protocols by other administrative bodies.

(d) The rule of formation of tax inspections is rather unclear in the new Tax Code. There is no particular paragraph giving an explanation about which body is authorized to form inspections –

whether it be the government or the Ministry of Finance. But Article 49 says that "Minister of Finance, in separate cases, shall be authorized to create a tax inspectorate according to specific features, operation of which will cover the entire territory of Georgia." This article creates an uncertain environment for the taxpayer and administration of taxes itself.

(e) The new Tax Code granted the taxpayer the right to resolve tax related disputes in three official bodies: the Ministry of Finance, by independent arbitrary and through the courts. However, the timetable set for taxpayers' dispute resolution was very limited and inflexible. In addition to this, in some cases the dispute resolving agency was not obliged to immediately inform the taxpayer about the result of the dispute and thus limited the ability of the taxpayer to appeal decisions in a timely fashion.

(f) One very important problem related to tax disputs concerns the suspension of the newly introduced institute of independent arbitrary. As mentioned above, the new tax legislation allowed the taxpayer to resolve a dispute either to the Ministry of Finance, or to an independent arbiter or to the court. By the law, one member of the independent arbiter had to be appointed by the state, one member had to be nominated by the taxpayer, and one member had to be selected by both the state and the taxpayer. Out of the three alternatives proposed by the Tax Code (Ministry of Finance, courts and independent arbiter), the business representatives tended to trust independent arbiter the most. In their opinions, the Ministry of Finance would always favor tax inspections over taxpayers, and the courts, due to the pressure from the government, either ruled against taxpayers or took an unnecessarily long time to resolve the dispute by creating extra problems for business representatives. Following the enactment of the new Tax Code, various big business owners took their disputes to the independent arbiter. The state lost these cases and was obliged to reimburse relevant losses to the respective businesses. After that the Parliament, on the initiative of the government, suspened the provisions on independent arbiter and thus the taxpayers were deprived of this useful instrument to defend their business interests.

(g) The new Tax Code created a difficult financial situation for local self-government budgets (particularly, village, community, and town). In particular, it annuled the registration of local enterprises and their obligation to pay taxes was imposed on the head offices. Since most of the head offices of the Georgian enterprises are located in the capital city, all of their social and income taxes are paid to the capital city budget and thus tax incomes of local budgets decrease significantly.

(h) Yet another deficiency of the new tax legislation is that it imposes strict criminal sanctions towards tax evasion and inproper calculation of tax obligations by the taxpayer, instead of differentiating tax infringements and setting out corresponding sanctions – in the case of minor discrepancies in calculations the payments of fines, and in the case of more significant discrepancies and larger crimes – imposing bigger fines or respective criminal sanctions.

In conclusion it should be noted that even though the new Tax Code is an improvement over the old one, as recent practice has revealed its shortcomings, it is necessary to further analyze and revise the tax legislation. However, it is important that this revision be thorough and the Tax Code be fully optimized to avoid continuous changes and amendments. Stability of the tax legislation is as important for business development, as it is for simplicity and precision.

For the purpose of strengthening tax administration it is also essential to create and maintain a unifed taxpayers' database, what is not yet the case in Georgia's tax system.

15. Eradicating Administrative Barriers to Business Development

The World Bank's Doing Business in 2006 highlighted Georgia as one of the top global reformers in improving its business environment. The report placed Georgia among the top 12 performers worldwide. Georgia was listed among the top five countries in the region in terms of time needed to

register property (9 days). It was also praised for the number of procedures needed to start a business (eight procedures) and the number of days needed to open a new business (21 days).

One of the most important recent steps towards improving the business environment is the reform initiated in the field of licensing and permissions. For years the sphere of licesing was poorly regulated in Georgia, often governed by ministerial orders or by presidential decrees. The introduction of new licenses and permissions was so chaotic and unprepared that entrepreneurs were not always informed about new regulations and were often unaware about what activities required licensing and what activities could be carried out without obtaining the state permission.

In June of 2005 the Parliament passed the new law on "Licensing and Permissions" that thoroughly reformed the license and permit system and significantly reduced the number of administrative barriers to conducting business in Georgia, in particular:

(a) The law introduced two new principles practiced in European countries: the "One-Stop Shop" principle and the principle of "Silence Means Consent". The "One-Stop Shop" principle means that the state agency is responsible for processing all applications for licensing. The businessman sends all the necessary documents to this agency and this agency in turn deals with other agencies as necessary to process the application. The licensing or permitting administrative authority must on its own ensure the confirmation by another administrative authority of additional license or permit terms and conditions. According to the second "Silence Means Consent" principle, if submitted registration documents are not processed within three business days and the applicant is not given a written notice of a defect or reasonable rejection, the business enterprise is deemed registered.

(b) Other important innovations of the new law included the reduction of licenses and permissions categories from 909 to 156, and their rational classification. The law defined concrete goals and principles for regulating activities controlled through state licensing and permissions, and set licenses and permissions accordingly. The law defined such concepts as "license of use" and "license of activity", and "general license" and "special license". Differentiation between license of use and license of activity was based on classification of license issuing rules. The license of use is granted by auction and the license of activity by administrative proceedings. A general license (necessary only for the activities in the field of education, healthcare and forestry) allows an entrepreneur to carry out their activities on the basis of this general license without acquiring additional licenses for separate activities within the respective sector, while a special license must be obtained for every activity in a separate sector.

(c) The law also stated that a business or an activity is regulated by the state through a license or permit only if the business or activity is immediately related to human life, health,. or national and public interests. Thus, the main goals of this law are to ensure the security of human life and health, preserve life and the cultural environment, and to protect state's interests.

(d) According to the new law the fulfillment of licensing and permission requirements will be based on random inspections and require annual reporting. In cases where the provided reports are incomplete, the license/permit issuing authority is authorized to inform the respective entrepreneur about this deficiency and allow him/her to fix it within a reasonable timframe.

(e) The law changed procedures for imposing the responsibility of violations of licensing/permission requirements. By the old legislation, in cases where the respective entrepremeur failed to fulfill these requirements in a timely manner, the license/permission of the organization would be suspended. In the new law the suspension is replaced with fine. If the entrepreneur again fails to fulfill the requirements, the fine is increased threefold. Finally, if the requirement remains unfulfilled, the entrepreneur loses their license/permission. This mechanism provides prevents the violation of licensing/permission requirements and fosters the eradication of such violations in a shorter time period.

The new law optimized the licensable/permissible types of business but much has to be done to administer it effectively. The first thing to do is to make the relevant changes in a series of laws, especially to bring the Law on License and Permit Fees in line with the new law. Special emphasis must be placed on such spheres whose regulation falls within the competence of local government authorities. Some of these spheres, for example construction and transport, must be adapted to be appropriate to local conditions and community and business interests. At this time, however, almost no self-government has developed adequate permit terms or regulatory instruments.

Achivement of the set goals in this field also requires the adoption of secondary legislation. It is important that after some time the government analyzes the outcomes of the newly passed law on licensing and permissions, and in the case of complications, takes proper measures to address them.

It is also essential that in the future the government continues taking measures to liberalize business environment in Georgia. Existing drawbacks in the fields of customs legislation and system, the tax administration, independence and objectivity in the court system, and a lack of business security remain problematic.