

Implementation of EU-Georgia Action Plan

Progress Report on Georgia 2011

*Open Society Georgia Foundation
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The following briefing gives a summary of trends and a set of overall recommendations to the Georgian government before analysing developments over the past year in the following areas:

- Political Dialogue and Reform; Democracy and Rule of Law
 - Elections; Media; Human Rights; Judiciary
- Cooperation in specific sectors: Environment
- Cooperation in the areas of Freedom, Justice and Security: Visa Dialogue

I. Executive Summary

In 2011 Georgia continued reforms undertaken in the framework of the ENP AP. The government made progress in delivering services to citizens, reforming the judiciary, including introducing jury trials. The political process were largely focused on advancing reforms that had been considered most central for upcoming parliamentary (2012) and presidential (2013) elections and aimed at creating a fair electoral system based on international standards and principles. Despite a dynamic of reform in the country, key obstacles remain to the consolidation of democracy and the practice of good governance in Georgia to insure fulfillment of obligations under the ENP AP. Therefore European Commission should be persistent in requiring from the government of Georgia to fit reforms with EU integration agenda.

The new electoral code drafted unexpectedly by the parliament in September 2011 improved the structure of the old law and simplified certain norms. Georgia also amended its broadcasting regulation, improving media ownership transparency and financial disclosure. Furthermore, off-shore ownership of broadcasters, which has been a major concern in Georgia, is no longer allowed.

However, the government has to take further actions to improve the election environment, by providing adequate legal mechanisms, addressing the problem of inequality of votes, regulating the use of state resources, and ensuring more transparency and accountability in political funding. Concerns also remain about the fact that country's most influential media sector, television, along with the advertising market, continues to be strongly politicized. This might limit the achievements of the newly adopted broadcasting regulations which will be crucial for ensuring pluralism, free access to balanced analysis and information during upcoming parliamentary and presidential elections.

In addition, lack of regard for the rule of law remains one of the most challenging issues for the country's democratic development with the judiciary not capable of providing adequate redress or responding to cases where there are gross human rights violations. Fundamental changes are necessary in the regulations governing appointment, promotion and dismissal of judges for ensuring independence of the judiciary. Besides, the participation of citizens in the policymaking process at the national and sectoral level (with regard to environment in particular) needs to be increased and access to information assured. This might require additional donor assistance.

Overall, the successful implementation of judicial reforms and safeguarding of human rights, as well as ensuring a fair playing field in upcoming elections will be a test of the government's commitment to sustained reform. Progress in the above-mentioned areas should also be important for opening up EU-Georgia visa liberalization prospects. In this area significant steps forward have already been made by the government following the enactment of the Agreement on the Facilitation of the Issuance of Visas (hereinafter Visa Facilitation Agreement) and the Agreement on the Readmission of Persons Residing without Authorization (hereinafter Readmission Agreement) between the EU and Georgia in 2011.

II. Overall recommendations:

The Government should be strongly encouraged to:

Democracy and rule of law

Elections

- Create a fair electoral system based on international standards and principles: ensure equal weighting of votes for all majoritarian districts, and proportionality between share of the vote received and seats gained in Parliament;
- Regulate abuse of state resources: ban high level non-political officials from being involved in pre-election campaign (local executives, governors); ban the use of all material resources except buildings, the latter already being subject to detailed regulation; draft precise definitions of terms to avoid multiple interpretation;
- Regulate political funding: ensure more transparency and accountability via obliging parties to provide detailed information on campaign funding both before and after elections that will be immediately published by a responsible administrative body; regulate ceilings on donations and expenditures; create an effective monitoring body operating according to the principles of independence, transparency and accountability;
- Take active measures to respect the rule of law: resolve impunity issues overall; uphold the requirement of justified and balanced decisions by electoral administration when dealing with lower administration officials;
- Ensure that most important changes and further limitations are not made by smaller group of people and interested parties (political parties, CSOs, etc.) have ability to participate before final decision is made;
- If further restrictions on party financing are introduced, it is necessary to keep in mind the fact that the ruling party currently enjoys almost unrestricted access to the administrative resources of the state and thus has an inherent advantage over all other contestants. Excessively strict limitations (e.g. bans on private donations, etc) could therefore aggravate the disadvantages that the opposition parties presently face and further undermine political competition (unless the use of state resources is also restricted simultaneously). All further changes in this area must be designed with the ultimate goal of ensuring equal starting conditions and a level playing field for contestants.

Media

- Ensure proper enforcement of the improved media ownership transparency rules from 2012;
- Ensure the protection of reporters and media workers and hold those who threaten or attack journalists accountable;
- Distribute advertisement funds owned by government agencies and state-owned companies in a fair and transparent manner and not allow to fund selected outlets, distorting the market;
- Improve conditions for court-room reporting as well as access to court documents and other public information;
- Present a strategy and timeline for the switch-over to digital broadcasting that allows for an inclusive transition process;

Human Rights and Fundamental Freedoms

- Hold accountable those responsible for ordering, planning and execution of operations that entailed infringement of the right to freedom of assembly and demonstration, bodily injuries or moral damages to the demonstrators;
- Create a special investigative temporary Committee at the Parliament due to the legitimate concern of the public to investigate the circumstances of the dispersal of the demonstration on May 26, 2011;
- Objectively and timely investigate cases of the abuse of power and disproportionate use of force by the police officers; Open up criminal cases in the death of demonstrators during the May 26 demonstrations and ensure adequate, objective and timely investigation;
- Stop persecution of the political opponents on political grounds; Stop persecution of Trade Union members because they support the right of workers to strike;
- Improve conditions in penitentiary institutions;
- Investigate all the reported cases of ill-treatment and unexpected deaths in penitentiary institutions and adequately punish those responsible for illegal acts.

Judiciary

- Ensure the political neutrality of the High Council of Justice (HGOJ): The HCOJ should include members who are not part of the judiciary, non judicial members of the Council are to be elected by the Parliament and proposed by the Bar Association and/or University/academic circles;
- Amend the law that gives the Parliament and the President an ability to indirectly veto the judicial candidates for the HCOJ: The HCOJ should take decisions on the appointment of judges by simple majority;
- Ensure that criteria for the admission to the High School of Justice are regulated by the law and contain objective safeguards against arbitrariness;
- Ensure that criteria for the promotion of judges are elaborated by the High Council of Justice: The criteria must be objective and should limit the margin of discretion of the HCOJ;
- Ensure that the transfer of judges/their assignment to another court is an exception rather than a rule;
- Introduce relevant safeguards to ensure that judges are protected against arbitrary assignment to other courts without their free consent ;
- Ensure that the transfer of judges serves a legitimate aim exhaustively enumerated in the law and is limited to cases, when a) transfer is carried out as a disciplinary sanction; b) in the case of lawful alternation of the court system c) for the reinforcement of a neighbouring court;
- In case of temporarily assignment strictly limit maximum duration of assignment of judges by the legislation that serves the legitimate aims listed in the law.

Environment

- Revise the EIA framework law and system based on EU directive 85/337/EEC and Aarhus Convention on access to information, public participation and access to justice on environmental matters;
- Take actions to increase the capacity and administrative potential of Ministry of Environment to ensure real and effective functions of environmental permitting and controlling;
- Assess the reforms undertaken by the government during 2005-2011 in major directions of environmental protection (Forestry, waste, structural changes and permanent reorganization of ministry of Environment Protection and staff) and its compliance with EU directives. On the basis of lessons learned prepare a detailed Action Plan that would give real grounds for

implementation of ENP AP obligations as well as any further obligations to be undertaken under the Association Agreement. .

EU-Georgia Visa liberalization perspectives

- Launch a comprehensive information campaign on the provisions of the Visa Facilitation and Readmission Agreements to raise awareness and encourage more informed participation of Georgian citizens;
- Request and collect data on visa issuance/refusal statistics from the EU member states' consulates in order to obtain an additional tool to monitor the visa dynamics, progress achieved or challenges to be addressed in implementation of Visa Facilitation Agreement;
- Mobilize efforts for timely implementation of reforms related to migration management, integrated border management, document security and personal data protection as well as asylum and shelter policies;
- Elaborate effective migration strategy, subsequent action plan and policies aimed to monitor and curb illegal migration, asylum policy. Gear efforts to advance cooperation in setting frameworks for legal migration, including circular migration with the individual EU member states;
- Work towards visa liberalization by studying closely and considering the respective experiences of other countries, in order to utilize the EaP's "more for more" approach and perform successfully in other areas negotiated within the Association Agreement.

Recommendations for the EU on Visa liberalization

- Improve access to information in the Georgian language on visa procedures, regulations and requirements as foreseen by the Visa Facilitation Agreement and in line with the EU Visa Code;
- Increase the capacities of consular services by installing proper infrastructure and services at EU consular posts represented in Georgia where it is currently lacking, in order to ensure the availability and accessibility for Georgian citizens of such services and thereby achieve tangible facilitation of the visa procedures;
- Consider the possibility of indirect consular representation of the three EU member states (Cyprus, Ireland, Slovakia), which serve Georgian citizens from the third countries;
- Cooperate closely with the Georgian government by monitoring and supporting its progress towards visa liberalization and by linking it to reforms in other areas covered by EaP format and the Association Agreement relating to democratization and human rights.

III. Progress/Shortfall in specific issues

Free and Fair Elections

Drafting a new Election Code is in general a step forward for the legal framework; the law that is currently in force was enacted in 2001 and has undergone more than 40 amendments. The draft has a better structure and certain norms are simplified. However, in certain areas, it is a backward

step. For example regarding transparency and accountability, there is no improvement to the regulations on the use of state resources. The amendments to party financing cover only the issues that had been negotiated among the ruling party and several opposition political parties. The draft electoral system does not provide any resolution to the problem of inequality of votes.

The Structure of Georgia's Electoral System. Local NGOs have stated on several occasions¹ that the parliamentary system in Georgia raises two main problems: equality of votes and “winner-takes-all” principles. The first issue concerns Georgia's majoritarian system, according to which districts with populations of 3 000 and 156 000 voters, both elect one Member of Parliament. The political agreement signed in June 2011 addresses this problem somewhat, by allocating one additional MP to districts with over 100 000 voters. However, there is still an order of magnitude difference in population between the largest and smallest districts, while according to international standards the maximum difference should be no more than 15-20%.

The second issue concerns the fact that the candidate with the highest vote share in a majoritarian district can avoid a run-off so long as they receive at least 30% of the vote. This threshold, combined with MPs from the party-list vote, could allow a party to obtain two thirds of the seats in Parliament (a constitutional majority or super-majority) even if they receive only about 35% of the national vote. The draft law makes only minor changes to this situation; a party could still win a constitutional majority with between 35 and 40 percent of the vote under the draft law.

It needs to be underlined that according to the draft, the number of MPs in Parliament will rise from 150 to 190. In 2003 a Referendum decided to decrease the number of MPs in Parliament from 235 to 150. The decision was made part of the Constitution of Georgia in 2008. According to the Georgian law on referenda, a decision made through a referendum can only be changed by holding another referendum. Today, however, the results of the 2003 referendum are considered void by the ruling party. However, overturning the 2003 referendum can only be done on legal grounds by either the Constitutional Court or Supreme Court of Georgia declaring the referendum unconstitutional or void. Since such decisions have not been made in time, the 2003 referendum results are still in force, and changing the number of MPs in Parliament should not be possible at this point.

Misuse of State Resources. The abuse of state resources has always been one of the main issues in the election process. A number of reports have explored the problems with pre-election campaigns regarding the use of state resources.² Regulations in this area contain uncertain or incomplete provisions, which was the motivation for the creation of a memorandum between local NGOs and the Central Election Commission for previous elections³ in order to ensure uniform interpretation of the law.

The Government may have already started several activities funded by state or local budgets that might serve as electoral campaign:

1. A GEL 5 gift to all holders of Tbilisi public transit fare cards.⁴
2. Ads touting the increase of the retirement pension to GEL 100 from September 1, 2011⁵.
3. The Prime Minister and President of Georgia presenting a new project of insurance for pensioners over age 67 (the pension age for women is 60, for men - 65) and children under 5,⁶ which will start only in September 2012.
4. The Prime Minister and President of Georgia presenting a plan to raise the retirement pension to GEL 140 starting from September 2012⁷.
5. Ads from the Tbilisi Mayor's Office about a new initiative to allow citizens to help plan the 2012 city budget, and activists (some of them previously United National Movement party activists) visiting each family in the city to study what population needs mostly to be in the 2012 budget.⁸

These activities are all state financed, yet they mostly are linked to activities organised by the ruling party, which often blurs the line between state and party. For instance, in the case of giving out GEL 5 vouchers for transit riders, the number 5 is associated with electoral number “5,” which the UNM use has used since 2003;⁹ ads are used to remind the public of promises from the United National Movement electoral programme; similar social programmes have been used to gain more votes during previous

elections;¹⁰ numerous concerns have been raised regarding the insurance project, it is considered to be ineffective and is linked to previous similar project of GEL 5 insurance for the socially vulnerable population, which failed and was merely a pre-election campaign tactic;¹¹ the Tbilisi city budget has already been drafted and was proposed to City Hall before November 1; the project of planning the budget by citizens started only afterwards, which seems rather strange.

Political Party Financing. Party Finance is an issue that has never been studied thoroughly in Georgia before and has been considered one of the most corrupt areas.¹² Transparency International Georgia conducted the first comprehensive analysis in this sphere and discovered several issues raising questions and concerns about political corruption. Despite this, the Election Code draft prepared by the Parliament of Georgia offered no solutions. On the contrary, it offered expanded funding possibilities (according to political agreement signed in June 2011) such as doubling the ceiling for donations from individuals and legal entities; up to GEL 1 million in state funds to reimburse parties for their pre-election campaign expenses if they cross the 5% voter threshold: GEL 50 for each precinct and GEL 100 for each district in state funding to allow parties to finance precinct representatives, and so on. At the same time, the alternate draft law offered by Ministry of Justice introduces most of the GRECO recommendations relating to political finance and provides for some additional changes too: a monitoring body for finances, a ceiling for campaign expenditures, a ban on donations from all legal entities, a ban on receiving credits for campaign purposes, a ceiling on party membership fees, and others.

Voter lists. In previous years, the problem of voter lists has been considered as rather important. The political parties agreed on creating a special monitoring body in June 2011, however, later when the agreement was incorporated into law, the body (the Commission for the Creation of Voters Lists) became responsible for compiling voter lists and will be made up of at least 21 members –taken equally from the Government, opposition parties, and local NGOs. This regulation has already been amended into the still active 2001 Election Code and is in force. Three NGOs, the Georgian Young Lawyers Association, Transparency International Georgia, and the International Society of Fair Elections and Democracy, have refused to be part of body for several reasons: (a) such an institution must exist permanently and continuously, while this body will finish working on July 1, 2012 and it is still unknown what the future of the Commission might be; (b) the Commission should only have the right to monitor the lists, not create them, such powers should be left to the Civil Registry and Central Election Commission, which have the necessary resources and experience for it; (c) responsibility for the creation of voters lists should not be given to biased political organisations such as political parties.

Election environment and the rule of law, impunity and selective justice towards state officials. On the one hand, there were several coercive resources abused by state during the 2010 local elections which attracted interest from international society,¹³ however, the problems observed then have not yet been resolved, and some officials involved in possible criminal activity in 2010 are still in office or have been promoted.¹⁴ On the other hand, numerous complaints have been brought to the election administration regarding lower administration officials, and the commissions reviewing these incidents always use the weakest measure of disciplinary punishment, justifying this by saying that (a) stricter punishments would include monetary fines, which would be hard to afford; (b) using stricter punishment would create fear and there would be no-one willing to work for the administration in the future. The same people keep working for election administration, and there is no regulation forbidding the rehiring of officials previously sanctioned for violations of the law. Such impunity undermines the rule of law in the state and lowers the trust from society towards the electoral process as a whole.

All this raises questions as to whether the government is dedicated to improving the legal framework for the election process and rule of law in practice to help create of a competitive pre-election campaign with fair and equal opportunities.

Media Freedom

In 2011, Georgia amended its broadcasting regulation, improving media ownership transparency and financial disclosure (starting from 2012). In several cases, media workers were threatened and faced significant pressure from government officials. Only a few outlets engage in investigative

reporting, made possible by the continuing assistance of foreign donors. The country's most influential media sector, television, continues to be strongly politicized. The two major national TV channels continue to provide government-friendly coverage, stations highly critical of the government only reach limited audiences. Large parts of the media are not financially sustainable and thus prone to outside influence, the advertising market is heavily politicized.

Broadcasting. In a step that is hoped will significantly improve media ownership transparency, all broadcasters will be required, starting in early 2012, to release information about their sources of revenue, management and beneficiary owners on their website. The Georgian National Communications Commission will also be required to collect and publish this data. Furthermore, off-shore ownership of broadcasters, which has been a major concern in Georgia, is no longer allowed.¹⁵ Other amendments to the law on broadcasting passed by Parliament in April increased the time limit for advertising per hour, which the national private TV stations Imedi and Rustavi 2 had been systematically violating.¹⁶ The Georgian Public Broadcaster successfully lobbied for it being banned from airing commercials (with a few exceptions).

Concerns remain about the delayed process for the switch-over from analogue to digital terrestrial TV broadcasting, requiring a complex technical and regulatory process. The Ministry of Economy and Sustainable Development has been charged with developing a strategy and timetable for this process but so far has failed to produce any tangible output. Time is running short as Georgia has committed to switching to digital broadcasting by 2015.

The management of Georgia's broadcasting infrastructure was privatized in a surprising and flawed auction in July 2011. Control over the country's TV towers was given to the only participating bidder, a company that had been registered only a week before the announcement of the tender and had no prior experience in this sector, raising questions about potential political backing of the bidder. The inappropriately short bidding period of 11 working days (during the vacation season) and the lack of relevant documentation as well as a major investment requirement discouraged participation by other bidders in the process. Concerns remain that the new operator, Golden Com, might misuse its power and be charged with a major role after the switch-over to digital broadcasting.¹⁷

In an encouraging decision, the Georgian National Communications Commission (GNCC) rewarded a radio broadcasting license to the publishers of the independent news magazine *Liberali*.¹⁸

The Chairman of the GNCC, Irakli Chikovani, continues to face a conflict of interest as he co-owns several companies with the director of the Rustavi 2 TV channel, including one company, MagiStyle Media, which is involved in the advertising sector.¹⁹

The Parliament has yet to address the unresolved issue of Adjara TV, a state outlet that is part of the local government in Batumi and is broadcasting in contradiction to Georgian legislation which bans government agencies from controlling broadcast media.²⁰

The Tbilisi-based Kavkasia TV channel and the opposition-affiliated Maestro TV continue to have limited reach. Maestro can be received via satellite but numerous cable providers, including Silknet, refuse to carry the station's signal, despite significant popular demand.²¹

Protection of media workers. On May 25, anti-government protests in front of the Georgian Parliament were dispersed by police with excessive use of force.²² Several people were killed, dozens were injured and arrested. A number of journalists and media workers were verbally attacked, hit by rubber bullets and beaten by police in a deliberate abuse of power, according to Reporters Without Borders. Several reporters had their photo and video cameras seized and destroyed, journalists were also detained without justification.²³

Several days before, while anti-government protestors occupied a major street in front of the Georgian Public Broadcaster, protest leaders created a hostile environment for reporters. One journalist was attacked by the son of protest leader Nino Burjanadze, who later apologized.²⁴

In the early morning of July 7, police arrested the photographer of the presidential press service and his wife, a photographer working for the Tbilisi-based broadsheet PrimeTime, as well as a photographer working for the European Pressphoto Agency (epa) and a fourth photographer contracted by the Georgian

Foreign Ministry. The four were accused of being Russian spies. Civil society organizations and concerned citizens showed their support for the arrested in peaceful protest rallies, several media outlets printed issues without pictures to show solidarity. After two weeks of detention, the case ended in a plea bargain, as in the majority of Georgian criminal cases. In exchange for pleading guilty to treason, the photographers were released from prison and received conditional sentences of 6 months to three years.²⁵

Reporters working with the newly established Mtskheta-Mtianeti Information Center, an online news outlet based in the city of Dusheti, have been denied access to public local government meetings as well as access to public records.²⁶ The staff of the outlet has been intimidated and threatened on several occasions by individuals associated with the local government.²⁷ Reporters working for the Center told TI Georgia that locals were scared of talking to or being seen in public with them, fearing that they or relatives could be fired from public sector jobs. Gela Mtvlishvili, the center's founder, who also heads an online media outlet in the region of Kakheti, says that he received a death-threat.²⁸

In practice, court-room reporting and access to public court documents for reporters is at times difficult and largely depends on the judge responsible for a case. Many government agencies work hard to provide journalists and the public with responses to public information requests, however a number of powerful ministries as well as regional governments regularly fail to comply with freedom of information legislation.²⁹

A number of media representatives and NGOs have created an informal media coalition to better coordinate advocacy efforts for improvement.

Distribution and advertising. The advertising market – estimated net spending in 2010 was between 43 and 46.5 million USD – remains too small in order to support all existing media outlets. Even many of the country's largest outlets, including Imedi TV, cannot cover their costs in times of strong economic growth. The lack of financial sustainability continues to undermine professionalism and editorial independence of the media.³⁰

In 2011, General Media, a new advertising sales house emerged. The company, which acts as an intermediary between TV stations and advertising agencies/advertisers commands a monopoly on national television advertising, managing more than 70 per cent of all advertising flows in Georgia. Another company, Outdoor.ge, has emerged as the dominant company in outdoor advertising in Tbilisi. Transparency International Georgia found that large parts of the Georgian advertising sector are controlled by a network of friends and family members of former Defense Minister Davit Kezerashvili. A lack of audience data, a lack of competition and opaque ownership pose burdens on growth of the advertising market. In the private sector, a climate of self-censorship persists, as many companies are concerned that advertising with media outlets that are highly critical of the government could trigger problems with tax authorities and other government agencies. Several media outlets that provide government-friendly coverage continue to receive significant amounts of advertising revenue from government agencies and companies with close ties to the government.³¹

In the autumn, the Georgian government was gifted 70% of shares in a network of newspaper kiosks in Tbilisi, with 30% of shares remaining under control of the brother-in-law of Kezerashvili.³² Ownership over this important print distribution network provides the Georgian government with significant leverage. However, this leverage so far has not been abused.

Reform of the Judiciary

Despite the intensive cycle of reforms introduced in the justice sector in the recent years, there is a marked lack of public trust in the independence of the courts from government pressure. The extremely high conviction rate and the failure of the legal system to adequately respond to many high profile 'political' cases leave legitimate concerns over the independence of judiciary. It is believed that for the successful reform of judiciary fundamental changes are necessary in the rules governing appointment, promotion and dismissal of judges.

Independence of the judiciary. According to the survey,³³ 43 percent of Georgians agree that the courts are under the influence of the government.³⁴ US Department of State Human Rights Report for Georgia,

among the main human rights abuses reported during the year of 2010 lists “*lack of due process [and] government pressure on the judiciary.*”³⁵ The courts’ impartiality is most seriously questioned when it comes to the adjudication of cases where it is believed that the authorities have some ‘political interest’.³⁶ The rate of acquittals in criminal cases remains low below 0.04%³⁷ and judges are thought to follow police instructions in high profile cases of administrative detention.³⁸

For the successful reform of the judiciary fundamental changes are necessary in the rules governing appointment, promotion and dismissal of judges.

Composition of the *High Council of Justice* - the body responsible for the **appointment, promotion and dismissal of judges** does not satisfy the basic requirements of the political neutrality. Although the formal requirement of having majority of representatives of the judiciary in the High Council of Justice (hereinafter HCOJ) is met, it is still susceptible to political pressure from other branches of power. There is no provision regulating political neutrality of the HCOJ members. Though political neutrality of the judge members of the Council is ensured by the general provision that “a judge cannot be a member of a political party or participate in political activities”³⁹, nothing obliges other members of the HCOJ to refrain from participation in politics. On the contrary, members of the HCOJ elected by the Parliament from the list of parliamentarians are politicians by definition, representing interests of political parties, including one member appointed by the parliamentary opposition.⁴⁰ As for the members of the HCOJ appointed by the President, according to the Law on Common Courts⁴¹ “President of Georgia is represented by two members of the Council” and “President may the dismiss members appointed by him before expiration of terms of office”. The requirement of political neutrality becomes particularly important, taking into consideration the amendments to the Law on Common Courts passed on 19 June 2007, according to which the election of a judge requires not only an affirmative majority of votes of attending members but also consent of members appointed by all of the branches of power⁴². This provision potentially gives the Parliament and the President the ability to veto judicial candidates indirectly – thereby increasing the probability that political branch officials could be consenting or rejecting a judicial candidate out of political considerations.

Appointment of judges – while admission to the High School of Justice is one of the two ways of entering the judicial position, the criteria for the admission to the School is not regulated by the Law. According to the Law on the High School of Justice⁴³ the criteria for admission to the School is regulated by the Charter of the School. However, the Charter of the School is not publicly accessible.

Promotion - According to the law on Common Courts⁴⁴ the HCOJ is obliged to prepare merit-based, transparent and objective criteria for the promotion of judges. However, the HCOJ failed to elaborate such rules. Accordingly, it is in the hands of the HCOJ to take decisions on the promotion of a particular judge without predictable or clearly defined rules that increases the probability of arbitrary decisions.

Transfer of judges by the HCOJ to another location without a judge’s prior consent and for a period of time not specified by the law remains a matter of concern that has not been resolved.⁴⁵ It is believed that such a wide discretion in the hands of the HCOJ constitutes a problem for judicial independence.

Human Rights and Fundamental Freedoms

During the reporting year the Law on Assembly and Demonstrations has been amended in response to the May 2011 demonstrations. With the judiciary not capable to adequately respond to gross human rights situations, the reporting year was marked with small scale, largely peaceful assemblies and demonstrations on different social and political issues. However, the government failed to handle the protests in accordance with its international commitments. In cases of excessive use of force by police forces or illegal detention of protest participants, the authorities failed to carry out effective investigation and to hold responsible persons accountable.

Contrary to the Constitutional Court ruling the amended **Law on Assembly and Demonstrations** re-introduced blanket prohibition on gatherings in 20 meters from entrances of some of the administrative buildings. Administrative bodies, including courts have been given discretion to limit the right to freedom of assembly in the vicinity of the respective administrative buildings. Newly introduced provision that

authorizes local municipality to strike a balance between the freedom of assembly and expression of demonstrators and those residing, working or having a business in the area where the demonstration is held, is feared to be abused by the authorities in order to avoid demonstrations in the central areas.

On January 3, 2011, **representatives of the law enforcement agencies violently dispersed the protest rally** of war veterans who demanded reinstatement of social benefits. Some of the protest participants were on a hunger strike. Protesters did not occupy the traffic part of the road, did not block the traffic, and did not violate the requirements of the Law. Police detained several participants alleging that they disobeyed lawful orders of the policemen. Domestic NGOs and the Public Defender criticized the authorities considering that policemen abused authority and violated the Law on Assemblies and Demonstrations.⁴⁶ However, the only person administratively punished was a police officer who has been dismissed from the position for **assaulting a woman at the rally**.

On 25 March, police dispersed a small scale peaceful gathering in front of the Ministry of Penitentiary, Probation and the Legal Aid of Georgia. The demonstrators have been demanding better conditions for prisoners. The rally was conducted in compliance with the domestic legislation. Seven participants of the rally have been detained by the police and brought to the Tbilisi City Court. The court proceedings did not meet fair trial standards. Defense lawyers have been given 15 minutes to get familiar with a case; the judge refused the motion to review the video footage showing the factual circumstances of the case; request footage of the CCTV camera in front of the Ministry; take into account witness statements; based her ruling exclusively on the testimony of police officers.

On September 15, 2011, the **police dispersed the strike** of workers of Herkulesi – a metallurgical factory in Kutaisi. The workers on strike demanded improvement of working conditions at the factory. The strike was held in full compliance with the Law of Georgia on Assemblies and Manifestations and the Labour Code. Police violently dispersed the gathering and detained some of the participants of the rally without registering them in the police stations, thus unlawfully limiting their right to liberty. After asking to sign a letter stating that they would not participate in the strike, they have been released. Some other detainees refused a service of a pro bono lawyer and have been sentenced to 10 days administrative detention in court proceedings not meeting fair trial standards.

There has been no investigation in the **violent dispersal of the demonstration of 26 May, 2011** that resulted in the loss of life (four people have been reported dead) and serious bodily injuries of dozens of demonstrators. The operation was planned and executed in a manner that contravened OSCE Guidelines on Freedom of Peaceful Assembly and UN Basic Principles on the Use of force and Firearms by Law Enforcement Officials.

According to witness statements, numerous forces of the riot police blocked all possible exits from the rally site; therefore, the rally participants were unable to follow the instructions of the police on self-dispersal. The police used disproportional number of law enforcement officers that could not have been necessary for dispersal of the protesters. During dispersal the police simultaneously used several special means (rubber bullets, water cannons, tear gas, truncheons) including against protesters already under effective control of the police officers. Domestic NGOs documented several dozen facts of ill-treatment of detained demonstrators including in police stations. The authorities failed to start investigation on the alleged facts of abuse of power, excessive use of force, inhuman and degrading treatment and loss of lives of three demonstrators who have been found dead in the nearby area of the rally site. The only measure taken by the MIA was disciplinary proceedings against 16 police officers; the measure that Public Defender assessed as a necessary but *not enough* for addressing gross human rights violations.

The authorities **put civil society organizations under pressure** when refusing to engage in a constructive dialogue with groups that called for opening investigation into the circumstances of the death of Nika Kvintradze, a deceased protest participant. Attempts of the Georgian Young Lawyers' Association (GYLA), well-respected human rights NGO, to incite authorities to open investigation with an alternative forensic report challenging the official version of the death, turned into a smear campaign against GYLA. Following the publication of the independent forensic findings, the Ministry of Interior accused GYLA of deliberately disseminating false information. Representatives of state authorities made unethical comments towards GYLA blaming the organization for involving itself in "political games".

Another civil society organization that came under attack was the Georgian Trade Union's Confederation. Trade Union members employed at metallurgical company – Hercules have been forced to sign petitions that they will not participate in a strike.

Termination of the citizenship of the Georgian oligarch, Bidzina Ivanishvili and his wife Ekaterine Khvedelidze, 4 days after Ivanishvili declared of his intention to participate in politics raised serious doubts about the political motivation of the President's decision⁴⁷. Bidzina Ivanishvili and his wife were granted Georgian citizenship by the President of Georgia in 2004 when the President exercised his exclusive authority to grant Georgian citizenship to persons already being nationals of another country for having special merit before Georgia.⁴⁸ The seizure of the money from Kartu Bank, which belongs to Ivanishvili; cancellation of large amount of bank accounts in the Bank, including accounts belonging to the State institutions and businesses loyal to the government; and requests that Ivanishvili's bodyguards hand over firearms to the Security Police reinforced the doubts that Ivanishvili became under attack because of his intention to enter politics.

Georgia still maintains the **highest conviction rate in Europe** being on the second place after Russia.⁴⁹ The adoption of the Criminal Procedural Code, though positively assessed by different groups, did not entail liberalization of the criminal justice policy so far. There has been no progress in investigation of facts of **ill-treatment in the penitentiary institutions** reported by the Public Defender. Conditions in some of the penitentiary institutions remain poor, in some cases amounting to inhuman and degrading treatment. The mortality rate at the penitentiary institutions remains high, while in some of the cases bodies of the deceased at the penitentiary institution bear signs of physical violence.⁵⁰

Environment and Sustainable Development

Changes to the governmental structures in 2011 and follow-up legal initiatives show an imbalance between environmental protection and overexploitation of natural resources (both mineral and biological). If the new regulations, initiated in 2011 by newly-created Ministry of Energy and Natural resources, pass through parliament, the existing protected areas will face a threat of heavy degradation. This includes potential for hunting endangered species without regulation; allowing sanitary cuttings in protected areas; changing the protected areas zoning in order to allow implementation of large infrastructural projects in strictly protected zones. The new initiatives overlapped with long-lasting problems in the EIA system and licensing as well as low public participation in decision-making, that makes fully uneffective environmental governance in Georgia. Vital issues such as air and water quality, waste management, sustainable use of natural resources (both biological and mineral) remain to be addressed.

Structural Changes in Government of Georgia. In spring 2011, structural changes in government of Georgia took place⁵¹. A number of functions and responsibilities of the Ministry of Environmental Protection and Natural Resources were distributed among several institutions. The newly-created Ministry of Energy and Natural Resources (MENR) appears to be the major successor to the Ministry of Energy, the Ministry of Environment Protection and Natural Resources and the Ministry of Economy and Sustainable Development in the field of natural resources management. It subordinated the new legal entity of public law, the Agency of Natural Resources (created on the basis of merger of the Forestry Agency and National Agency of oil and Gas). Therefore, almost all functions related to the management of natural resources (minerals, water, fauna objects (hunting, fishing, forest, non-timber resources), including the setting of quotas and terms for using, preparing of license/ lease objects, selling of licenses, controlling of licenses, eradicating illegal use is concentrated in hands of Ministry of Energy and Natural Resources.

EU Georgia Action plan requires to "Enhance administrative capacities, including for the issuing of permits as well as for enforcement and inspection". However, as a result of the reform, the environmental inspectorate together with Investigation Department was transferred to Ministry of Energy and Natural Resources and later abolished. Meanwhile the newly established Ecological Expertise and Inspection Department under the Ministry of Environment Protection (MEP), is responsible through its ecological expertise not only for the issuance of environmental permits, and follow up actions, but also is obliged to

exercise control over the implementation of conditions of permit, as well as implementation of state control over the activities listed under the law on environmental permits. Additionally it got a function to investigate and elucidate violations with regard to the implementation of activities under the permit. However, existing limited resources (both financial and human – only 9 persons are employed by the department) raise quite high concerns about efficiency of the unit.

Environmental Protection in light of commitments of Johannesburg Summit. There is almost no progress in developing framework legislation related to air and water quality improvement. Waste legislation is still pending.

However, 2011 was not exceptional, with regard to pressures to use natural resources for economic purposes. The government has adopted a number of decrees to simplify regulations related to the extraction of minerals and softening the environmental requirements towards leaseholders. In addition, leaseholder's get rights to change the areas covered by license, if an inventory conducted by the leaseholder proves that resources are not enough.

In line with the tradition of previous years,⁵² in mid-summer 2011 MENR announced that a **new forest reform** would be launched by autumn. The issue of public participation in the elaboration of forestry reform was quite acute from the beginning (MENR distributes the New Code and long-term lease agreement in English only). However, due to wider public pressure and the donor community's greater interest, the process went more smoothly. This is despite the fact that MENR is still rushing to submit the law to Parliament, while there are still many issues to be addressed in order to bring the law in compliance with EU directives, national and International Environmental Law⁵³.

The major problematic areas of the forest reform include 1) the imbalance between forest use and conservation, through introduction of clear cuts that would be allowed even in natural, virgin forest⁵⁴ as a result of the proposed strategic zoning. The proposed reform (new law and 49 years leasing agreement) will also make establishment of new protected areas impossible. 2) 49 year lease agreements without prior inventory that creates uncertainty as to how the price would be negotiated. Despite the fact that the forest resources inventory would be done by the leaser, the draft law does not require EIA; 3) as the lease does not apply to forest in narrow sense, but rather the leasing of forest land, there is a risk of land use change and non-transparent privatization.

The positive feature of the reform is that it intends to give the opportunity for local populations to extract an unlimited amount of material timber. However, the state puts obligation to the leaser to ensure provision to the population of material timber and firewood that would not only be commercially not viable for leaser, but also would create double pressure on ecosystems.

Amendments to hunting legislation. In late summer 2011, the MENR initiated amendments to the hunting law that allow for extracting endangered species for commercial purposes. This might take the shape of hunting in protected areas, including the National Parks and legalization of destruction of habitats of rare and endangered species. The draft law contradicts the Biodiversity Convention, Bern Convention, as well as the EC habitats directive⁵⁵, while it leaves uncertainty around issues like rules and procedures for issuing hunting permits, determining the extraction quotas and areas etc. Despite the fact that control over the Red List species should be done through the Ministry for Environmental Protection, it has no means for that, while law does not envisage financial and/or structural strengthening of the ministry for that purpose.

A number of non-governmental organizations, like WWF Caucasus PO, Nacres and Green Alternative have called on the Parliament not to adopt the law. The Parliamentary Committee on Environment and Natural Resources agreed with NGOs that hunting in protected areas is not permissible⁵⁶. The law is not adopted yet in third hearing, however, a number of controversial issues are still on the table (e.g. hunting of Red List Species)⁵⁷.

Implementation of Aarhus Convention. The Implementation of the Aarhus Convention regarding access to information, public participation and access to justice in environmental matters is still problematic⁵⁸ and public rights are permanently violated. Public participation in the majority of cases is diminished both at policy and project level. In some extreme cases, when some positive changes were

achieved (structural changes in Government, Hunting law, Forestry Reform), it was accompanied by strong coordination between civil society actors and international donors (EU Delegation in Georgia, USAID, UNDP, KfW, World Bank) where the activities the government undertook risked the effective implementation and maintenance of ongoing internationally-funded projects and programs, and/or clearly undermine International Environmental legislation.

Access to information is still an issue. Even governmental decrees that should be published in a routine way are sometimes not accessible⁵⁹. Till now information regarding different projects implemented by state agencies financed through financial institutions was more or less available. From 2011 all governmental agencies, including Municipal Development fund refused to provide documentation related to the project to affected people. The explanation given is that according to the General Administrative Code of Georgia (article 3.4.3) this information should not be made public. The Code is not applicable to the information on implementation of International Agreements and therefore the use of this clause by state authorities is senseless with regard to project-related documentation.

Support for implementation of large Infrastructural projects in protected areas. The MEP submitted two draft laws to the Parliament, according to which amendments will be made to the law on Tbilisi National Park and Law on Kolkheti Protected Areas. The initiatives are mostly triggered by the governmental plans to implement Tbilisi Bypass Railway Project and Poti -Anaklia high way project. The draft laws were submitted to the Parliament without holding preliminary public discussions.

The change of zoning will be especially harmful for the Kolkheti National Park. Poti-Anaklia Highway and related infrastructure including two new airports (Poti International and Zugdidi local) is promoted by the president of Georgia⁶⁰. The highway would allow tourists to travel to Anaklia from the regional capital of Batumi in 50 minutes cutting the current drive-time by roughly an hour. As a result, if the law is passed the status of strictly protected area will be changed and it will actually lose a protection regime to ensure that destruction of habitats as a result of project implementation is not qualified as violation of the Law on Kolkheti National Park.

Environmental and Social Impacts of Large Infrastructural Projects. The decision-making process regarding the large infrastructural projects is still top-down based only on financial and economic viability without taking into account associated environmental and social problems.

In 2011 the Georgian government stated that it was to take a decision regarding the construction of a number of large Hydro Plants – Namakvani, Khudoni, Nenskra. The construction of 200 m dam at Khudoni HPP will lead to resettlement of more than 1500-2000 people in the Mountainous Svaneti region flooding around 600 ha of land which in turn would lead to irreversible impacts on biodiversity, facilitate erosion and landslide, negatively impact water change local climate and quicken the degradation of Enguri river beds. Despite protests by the local population and generally negative public attitude towards the project, the government has already signed contract with Trans Electrica LTD, company registered in Virgin Islands with no prior experience in dam building. The contract is beneficial for the company, but gives benefits neither to the State budget, nor does it provide any specific standards and guiding principle for the company in charge of the project regarding the resettlement, rehabilitation and livelihoods needs of the affected peoples. Even more, the government will simply assist Trans Electrica LTD for resettlement, rather than ensure that the quality of life of its citizens is not deteriorated, which is fully against of UN Covenant of social, economic and cultural rights.⁶¹

Another large dam at Namakvani is supposed to flood around 900 ha, and cause resettlement of 800 people, in the Lechkhumi area. As in case of Khudoni, even before essential environmental and social studies are ready government representatives promote it as a done deal and through threatening and marginalization try to suppress CSOs and local peoples acting against the project.

Another problematic project, pushed by Georgian authorities in that way is Tbilisi bypass Railway project which aims to construct a new railway line in the densely populated Avchala region and poses a threat to the neighbouring Tbilisi Drinking water reservoir (at 900m). As a result of a poor environmental and social impact assessment and resettlement action plan hundreds of people experienced the involuntary resettlement (both physical and economic) without adequate compensation that worsen their economic situation⁶². EBRD has accepted Green Alternative's complaint in March 2011 and started an investigation

regarding the project's compliance with EBRD's Social and Environmental Policy⁶³. In November 2011 the Georgian Railway LTD requested the cancellation of EBRD's loan worth 100 million Euro⁶⁴.

Projects without EIA permits. Cases projects carried out without environmental impact permits are becoming quite usual. The case of construction of two hydro power plants in Dariali Gorge of Kazbegi district, in the close vicinity of Kazbegi national park is a good example of this. Despite the fact that in both cases the projects are in the process of environmental impact assessment and no permit has been issued so far, the construction works has already been started. Despite the notification of violation to Ministries of Energy and Natural Protection, as well as to the Ministry of Environment⁶⁵, there has been no response from neither of the Ministries as to what actions have been taken against illegal construction. The project will irreversibly change the Dariali Gorge landscape, as the major river of the region – the Tergi – will actually remain without water. This would fully undermine its historically established cultural-ethnographic and touristic values. Most importantly, the project will lead towards the extinction of the stream trout, which features in the Red List.

Another case of concern represents the construction of Poti airport near the Kolkhety National Park area where the construction works has been activated again in summer 2011, however neither project documentation, nor EIA have been prepared and submitted to the Ministry of Environment for an environmental permit.

Property Rights and Tourism development. As in case of large infrastructural projects, tourism development has been accompanied by violation of the local population's property rights. In the so called Free Touristic Zones (Anaklia-Zugdidi, Kobuleti,) and/or touristic attractive places (Mestia, Gonio) the local population was largely deprived its property rights on lands by the government, including the ones registered in Public registry, as well as owned as traditional property, without any justification, not to speak about compensation of losses. The touristic development of those areas, reveals existing problems and considerable challenges with regard of obtaining and protecting the ownership rights within the country. E.g, on 9 November 2010 the Commission for Recognition of Right to Ownership of the Khelvachauri Municipality Sakrebulo simultaneously revoked the ownership certificates of 271 residents of the village Gonio⁶⁶ issued by itself on land plots, without examining factual circumstances and undertaking compensation measures⁶⁷. The case is still under the scrutiny of Batumi district court.

The situation is even more difficult in high mountainous regions, like Svaneti⁶⁸, where land plots have in fact never been legally registered and for centuries, the local population has owned property by inheritance and disposed land plots as distributed (or re-distributed) based on agreements between ancestors⁶⁹. Land plots in possession of the local population are being massively dissected and decimated due to various construction works.⁷⁰ Citizens are deprived of the possibility to register ownership rights to land plots their families have possessed for centuries on basis of lawful possession.

It should be also mentioned, that in that touristic areas majority of local residents saw little prospect that the development of tourism would improve their lives. In their words, engaging in the tourism business requires certain capital investments, which only certain individual families can afford. Hence, development of tourism for them would be associated with the further strengthening of already wealthy families and not the development of the region in general⁷¹.

Implementation of Visa Facilitation and Readmission Agreements

On June 17, 2010 the European Union and Georgia signed the Visa Facilitation Agreement and a few months later, on November 22, 2010 the Readmission Agreement. The 'twin' agreements, which are set as a pre-condition for Georgia's visa-free future with Europe, came in force on March 1, 2011.

According to Georgian officials, Georgia is ready to mobilize efforts to install effective policies using the existing visa Action Plans for Moldova and Ukraine as a guideline,⁷² articulating that a large portion of 'homework' along those lines is already concluded or in good progress.⁷³ The Georgian side has been successful particularly with measures related to biometric documents (passports and IDs), border management (though problems of border demarcation and delimitation are still present), fighting crime and corruption, trafficking of humans as well as implementation of Readmission

Agreement *per se*. Putting in place effective migration strategy, subsequent action plan and policies aimed to monitor and curb illegal migration, to stipulate asylum policy, to ensure personal data protection and integrated electronic databases, remain in the cluster of issues to be more efficiently addressed in a due course.

On 14 November, 2011 Georgia's plea for **visa liberalization with the EU** was supported by the group of the eight EU foreign ministers, (Lithuania, Latvia, Estonia, Hungary, Romania, Bulgaria, Czech Republic and Poland) initiating a letter to the EU high officials and requesting opening of visa dialogue in the beginning of 2012.

On 16 November, 2011, the EEAS High Representative Catherine Ashton during her visit to Georgia pointed at possibility of starting the visa dialogue next year. According to the Ministry of Foreign Affairs of Georgia, the EU Commissioner on Home Affairs is expected to announce about the start of visa dialogue, following the visit of the special EU mission to Georgia in the beginning of 2012.⁷⁴

As Georgia aspires to visa-free mobility with the EU, the citizens of the EU member states and overall more than 80 countries have enjoyed visa-free entry and up to 90 days stay in Georgia since 2006,⁷⁵ which was further extended up to 360 days since 2009.⁷⁶ Notably, with Georgia's 'open-door' policy in place, the number of visitors from the EU to Georgia more than doubled.⁷⁷ Despite the unilaterally liberalized visa regime, citizens of Georgia encounter visa barriers at quite a number of destinations and the country's ranking by Henley & Partners Visa Restrictions Index stands at 72 (out of 98 positions ranked) in 2010 and at 123 (out of 198 ranked) in 2011, thus, still low down in the list.⁷⁸

Hence, moving to the EU "white list" is set as a priority on Georgia's European agenda. Against the EU's increasing concerns about waves of illegal migration from different countries, President Saakashvili recently hinted that a visa-free regime with Georgia "will not lead to a mass escape of citizens from the country unlike what happened in some other countries," based on the "good" Readmission Agreement already in place.⁷⁹

Implementation of Readmission Agreement. The Readmission Agreement has been effectively implemented since 1 March 2011. The Ministry of Internal Affairs of Georgia (MIA) is in charge of procedural and organizational matters.⁸⁰ A separate international relations unit was formed within the Patrol Police to deal with Readmission issues provisioned by the Agreement.⁸¹ Ministries of Foreign Affairs, Justice and Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees are commissioned to deliver necessary assistance when such need arises. The internal procedures have been initiated to prepare a joint ministerial order which would delimit the obligations and functions of each agency in detail.⁸²

According to the MIA, Georgia received 449 readmission requests from the EU member states as of 17 November, 2011.⁸³ 405 applications (over 90 per cent of requests) have been approved, 37 – declined, whereas 7 applications are being processed. At this stage, even incomplete applications are being considered as long as a person subjected to readmission fulfils the requirements under the Readmission Agreement. The issue of streamlining the readmission requests (e.g. reliable means of evidence, language of applications, etc.) has been raised at the first Joint Committee meeting on 1 June, 2011, while the second meeting took place on 24 November, 2011.

In accordance to Article 19 of the Readmission Agreement, procedures on conclusion of implementing protocols have been initiated with the Republic of Bulgaria, the Republic of Poland, the Republic of Austria, the Republic of Estonia, the Netherlands, Hungary and Czech Republic.

The Operational Agreement with FRONTEX has been in place since late 2008 and the two year Cooperation Action Plan since October 2010 to counter irregular migration and cross-border irregular migration and cross-border crime, strengthen working relations with EU member states.

According to the Civil Registry Agency under the Ministry of Justice of Georgia (MoJ), Georgian consulates represented in the EU member states have been equipped technically and programmatically to adapt to provisions of the Visa and Readmission Agreements.⁸⁴

Georgia participates actively in the Southern Caucasus Integrated Border Management (SCIBM) regional programme and continues to implement the Action Plan on National Integrated Border Management

Strategy adopted in 2009 which promotes cooperation among ministries of finance, agriculture, justice and internal affairs.⁸⁵ Ministry of Internal Affairs and Ministry of Finance's Revenue Service elaborated border crossing rules in August 2011 and launched as a pilot project at the "Red Bridge" border crossing point. Progress has been observed in equipping and modernizing the operational BCPs. According to MIA, as of November 2011 the second line "labs" at all BCPs are fully equipped and operational.⁸⁶ However, the **integrated electronic database** shared between the border units of MIA and the Civil Registry Agency of the MoJ is not yet in place. This creates difficulties in terms of monitoring the migration flows and dynamics. According to Civil Registry Agency, the interagency group works towards accomplishing the task, however, due to limited resources, more time is needed.⁸⁷

This links to another challenge, relating to the absence of **migration strategy** and **the action plan**, along the lines of ENP AP commitments. In May 2011 interagency working group on Migration Strategy (coordinated by the MoJ) under the Governmental Commission on Migration Issues was established. Due to the complexity of the task as well as lack of resources and capacities, the strategy could barely be tabled until the end of 2011, though the group hopes to put in place the working draft. Meanwhile the Ministry of Internally Displaced Persons from Occupied Territories, Accommodation and Refugees developed the draft Migration Profile that was submitted to the Commission.

Implementation of Visa Facilitation Agreement. There is certain progress in implementing Visa Facilitation Agreement since 1 March, 2011 along the provisions that aim to ease the visa procedures for citizens of Georgia travelling to the EU. Progress has been achieved in terms of issuing biometric documents by the Civil Registry Agency. Already 300,000 biometric passports have been released since April 2010 and around 75,000 IDs since August, 2011.⁸⁸ According to the Agency, the personal database has already been brought to a good shape in terms of fixing errors and discrepancies and now biometric parameters are being added.⁸⁹

There are 14 EU member states' embassies in Georgia, out of which 13 have direct consular representations, while 11 member states are represented indirectly. Three remaining consulates are not represented in Georgia and serve Georgian citizens from other capitals (Ireland - from Sofia, Bulgaria, Slovakia and Cyprus from Ankara, Turkey and Kiev, Ukraine).⁹⁰ Thus, the visa acquisition for these countries requires considerable additional efforts and costs for the Georgian visa applicants.

The 12 EU embassies have their webpage, of which seven operate only in own national language and English, thus creating language barrier for citizens of Georgia without foreign language skills in terms of searching and obtaining necessary visa information.

Generally, the **information** on the provisions of the Visa Facilitation Agreement and the specific visa requirements is scarcely available. Websites of only four consulates provide full information on visa provisions, whereas six (including two above) offer the citizens detailed phone consultations. Most of the consulates do not display full information on the show-boards at the spot. Overall, only three consulates provide full information on the provisions of the Visa Facilitation Agreement via all possible means (webpage, phone, show-boards).⁹¹ Notably, the webpage of the EU delegation to Georgia displays the non-exhaustive list of supporting documents for the EU visa application in Georgian language.⁹² However, most of the applicants tend to use the consulates as a primary source of information, (unless specifically guided to the link above). More so, inasmuch as EU member states do not have harmonized lists of additional supporting documents beyond the list of minimum requirements,⁹³ the challenge needs to be addressed by the individual EU consulates.⁹⁴

The information on new regulations related to motivating **visa refusal** as well as applicant's **right to appeal**, provisioned by the Article 34, EU Visa Code could also be better communicated.⁹⁵ More so, according to 2009 and 2010 visa statistics, Georgia is the leader in the region (EaP and Russia) by the rate of visa rejections standing at as high as 17.18 per cent and 14.65 per cent respectively.

Another significant challenge is the lack of access to **full data on visa statistics** (visas issued and visas rejected by visa types and individual EU member states). The data on visa issuance and rejection for Georgia including 2010 can be singled out from Council of European Union statistical information on uniform visas issued by Member States' diplomatic missions and consular posts.⁹⁶ On its part, this information is not easily accessible. Hence, the Georgian government may address the EU member states' consulates to provide the

respective information in detail with the aim to effectively observe the visa dynamics.⁹⁷ The Joint Committee could be a platform for that.

There are a number of other challenges in terms of visa services rendered to the Georgian citizens. Particularly, some of the consulates still have inadequate **infrastructure** (waiting lobbies and conditions, limited reception hours, self-organized long live-queues, difficulties in phone communication, etc.), as well as **language**⁹⁸ (visa application forms, consultations, information in foreign language) **and the quality of service.**⁹⁹

As visa applications are processed now in a maximum of 10 instead of 30 calendar days, another challenge related to timing is still in place. As of September, 2011, out of 13 EU member states' consulates represented in Georgia visa applications are being submitted via live queues at five, while in the remaining eight consulates, the procedure is **waiting lists for visa appointments** for which the waiting time varied from three to eight weeks.¹⁰⁰ The EU member states' consulates may need to consider ways of addressing this challenge in line with the Article 9 of the EU Visa Code, setting a maximum two weeks waiting period as a rule for visa appointments.

The provisions of the Visa Facilitation Agreement *per se* do indeed ease the visa procedures for majority of visa applicants. However, for most of the categories, listed in the Agreement, already before its enactment the same documentary evidence proving the purpose of journey or effective timelines for processing visa applications did apply. Thus, in those cases the existing procedures have been codified rather than additionally facilitated. The categories listed in the Agreement do not include the most requested tourism visas. The issue eventually may become a subject of consideration by the Joint Committee, given Georgian side is progressing with its commitments successfully.

The reduction and in most cases, scrapping of the **visa fees** is undoubtedly the tangible benefit. However, given the cumulative expenses needed for Georgian citizens to travel to the EU, the signatories may need to consider enhancing effective cooperation in other areas (e.g. transportation).

The same positive assessment extends to the increase of the **visa validity** which is exercised effectively by a number of the EU member states' consulates for respective categories of applicants. However, in some particular cases, the applicants who might have been qualified eligible for extended validity, still obtain visas which are restricted to the specific dates of a particular visit, in connection to which the application has been submitted.

The holders of Georgian **diplomatic passports** are the fore-runners in enjoying visa-free mobility with the EU. However, at the initial phase of implementation of the Agreement, individuals with diplomatic passports of Georgia have been long delayed at some EU BCPs on the basis of information verification. Apart from concerns about document security that will need to be ironed out, it is presumably a matter of allowing time for the EU member states to make the provision function efficiently and enhance coordination with the EU border agencies.

Contact details:

Mathias Huter, Analyst
Transparency International Georgia.
Email: mathias@transparency.ge,
mobile: (+995)557 364 023

Nina Khatiskatsi, Programs Director
Transparency International Georgia
Email: nina@transparency.ge
Mobile: +995 599 92 06 00

Tamar Khidasheli
Independent expert
Email: tamarkhidasheli@gyla.ge
Mobile: +995 577 400 744

Manana Kochladze, Regional Coordinator
CEE Bankwatch Network
Email: manana@bankwatch.org
Mobile: +995 599916647

Ketevan Tsikhelashvili, Director
European Initiative - Liberal Academy Tbilisi
Email: ketsikhelashvili@ei-lat.ge
Mobile: + 995 995 145 213

Tamara Pataraiia, Head of the Program
Caucasus Institute for Peace Democracy and Development
Email: tamar-pat@cipdd.org
Mobile: +995 599 583 252

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- ²⁸ Media.ge: ick.ge Editor Alleges being Leveled Life Threats by Former Prosecutor, November 7, 2011. http://www.media.ge/en/content/ickge_editor_alleges, accessed November 17, 2011.
- ²⁹ Transparency International Georgia: Six Questions: Georgia shouldn't rest on its laurels, October 20, 211. <http://transparency.ge/en/blog/psix-questions-georgia-shouldn%E2%80%99t-rest-its-laurelsp>, accessed November 16, 2011; Institute for the Development of Freedom of Information – IDFI (2011): Access to Public Information in Georgia, <http://www.idfi.ge/?cat=researches&topic=40&lang=en>, accessed November 16, 2011.
- ³⁰ Transparency International Georgia (2011): The Georgian Advertising Market.
- ³¹ Transparency International Georgia (2011): The Georgian Advertising Market.
- ³² Ibid.; Media.ge: Monopoly on Press Distribution, September 28, 2011. <http://www.media.ge/en/node/42572>, accessed November 17, 2011.
- ³³ Rule of Law in Georgia – Opinion and Attitudes of the Population, by *Salome Tsereteli-Stephens*, June 27, 2011, http://crrcenters.org/store/files/Reports/Tsereteli_Rule%20of%20Law%20in%20Georgia%20-%20Opinion%20and%20Attitudes%20of%20the%20Population_1.pdf
- ³⁴ Different numbers are presented by the Supreme Court of Georgia, according to which 72% of the court customers interviewed at courts trust the judiciary. For more information visit <http://www.supremecourt.ge/eng/news/id/100>; however, the method of interview that implies questioning of court customers in the court buildings raises questions about the trustworthiness of the court customers' answers.
- ³⁵ U.S. Department of State, Human Rights Report 2010: Georgia, p. 1
- ³⁶ THE GEORGIAN YOUNG LAWYERS' ASSOCIATION, *Legal Analysis of Cases of Criminal and Administrative Offences with Alleged Political Motive, Executive Summary*, June 2011, Tbilisi
- ³⁷ Information obtained from the website of the Supreme Court of Georgia, <http://www.supremecourt.ge/files/upload-file/pdf/3-sisxli.pdf>
- ³⁸ Please see the information under the chapter of Human Rights and Fundamental Freedoms
- ³⁹ Article 39 of the Law on Common Courts
- ⁴⁰ Article 47(5) of the Law on Common Courts
- ⁴¹ Article 47(6) and 48(2) of the Law on Common Courts
- ⁴² Article 50(2) of the Law on Common Courts
- ⁴³ Article 13(2)
- ⁴⁴ Article 41 of the Law on Common Courts
- ⁴⁵ Law on the Assignment of Cases and Imposition of Authority on Other Judges in Common Courts
- ⁴⁶ *The Public Defender's statement about the dispersal of the protest of war veterans*, 4 January, 2011, <http://ombudsman.ge/index.php?page=1001&lang=1&id=1355>
- ⁴⁷ According to the Organic Law on Citizenship of Georgia, it is exclusive authority of the President to grant and terminate citizenship. Civil Registry Agency is in charge of submitting case materials to the President (Article 36 of the Law)
- ⁴⁸ Article 12 of the Constitution
- ⁴⁹ Report of the Public Defender of Georgia on the Situation of Human Rights and Fundamental Freedoms on the territory of Georgia, p.112, <http://ombudsman.ge/files/downloads/ge/ktifezlljkytwmwbpggc.pdf>
- ⁵⁰ Photos of the deceased Murman Kalandia, who has been serving his sentence in Zugdidi Penitentiary Institution and who allegedly died while he was transported to the hospital, reveals signs of physical violence.
- ⁵¹ It follows President Saakashvili criticism regarding the “corruption system” in the Ministry of Environment Protection and Natural Resources, and notable in Forestry Department. www.
- ⁵² The last changes in Forestry Code has been adopted in August 1, 2010, when the Forestry Agency was formed, http://www.enpi-fleg.ge/enpi_fleg/pdf/quarterly_newsletterFLEG_eng_sep.pdf
- ⁵³ EU Habitat Directive, EU bird Directive, Bern Convention, Convention of Biological diversity, and its Forest working program, as well as national laws on Environmental protection and on wildlife.
- ⁵⁴ MCPFE 1st Class forests as defined by the Ministerial Conference on the Protection of Forests in Europe
- ⁵⁵ 92/43/EEC of 21 May 1992 on the conservation of natural **habitats** and of wild fauna and flora
- ⁵⁶ http://www.parliament.ge/index.php?lang_id=GEO&sec_id=266&info_id=33200
- ⁵⁷ Green Alternative has filed a lawsuit to the Board of Administrative Cases of Tbilisi City Court against the Ministry of Energy and Natural Resources demanding the annulment of the Minister's decree No 175 dated September 1, 2011, under which the animal species subject to hunting were approved. Green

Alternative believes that the Minister of Energy and Natural Resources issued the decree through violation of Georgian legislation that provides the basis for its annulment.

⁵⁸ [Implementation of Convention on access to Information, public Participation in decision Making and access to justice in environmental Matters in Georgia](#), - Alternative Report, Green Alternative 2011, www.greenalt.org

⁵⁹ In 13 August 2010, Green Alternative ask Government of Georgia to provide unpublished Governmental Decrees -415-434 (the decrees not available neither on governmental website, nor on specified legal software's). Despite the Governmental staff advise to ask the decrees to the Ministries that initiated decrees, number of Minsitries, including ministry of Finance never provide the decrees to Green Alternative. The new request to Government of Georgia sent 4th February 2011, never has been answered. The Green Alternative initiated court case against the Government of Georgia .

⁶⁰ <http://www.investinggeorgia.org/upload/file/Anaklia.pdf>

⁶¹ The Committee on Economic, Social and Cultural Rights has addressed the issue of human rights impacts by large infrastructure projects including dams in its General Comment No. 7 on the right to adequate housing and General Comment No. 15 on the right to water, both of them relating to art. 11 of the Covenant on the right to an adequate standard of living. In addition, the Special Rapporteur on adequate housing, Miloon Kothari, has established Basic Principles and Guidelines on Development-Based Evictions and Displacement, which reflect on the right to adequate housing as a component of the right to an adequate standard of living and the right to non-discrimination in this context (E.CN.4/2006/41). <http://www2.ohchr.org/english/bodies/cescr/>

⁶² Two other complaints were submitted by Local population affected by Railway.

⁶³ The eligibility report from EBRD's project compliance unit available [http://www.ebrd.com/downloads/integrity/Tbilisi_Bypass_Railway_1 - EAR_final.pdf](http://www.ebrd.com/downloads/integrity/Tbilisi_Bypass_Railway_1_-_EAR_final.pdf)

⁶⁴ <http://www.ebrd.com/pages/news/press/2011/111107d.shtml>

⁶⁵ Letter Association Green Alternative on Dariali River HPP to Ministry of Environment, CC to Ministry of Energy and Natural Resources, 04.06.38, 15th September 2011

⁶⁶ Village of Gonio is a part of the Khelvachauri municipality

⁶⁷ Problems related to the protection of property rights , the case of village Gonio, GYLA, Transparency International Georgia , Green Alternative, Georgian Regional Media Association, 2011, www.greenalt.org

⁶⁸ Svaneti is one of the most beautiful and picturesque alpine regions of Georgia, situated on the southern slope of the main Caucasian range. The Greek geographer Strabo (end of the first century B.C.) describes the Svans as a fierce, warlike mountain people, ruled by a king and a council of 300 elders and capable of fielding an army of 200,000. Svans History and Cultural Relations, <http://www.everyculture.com/Russia-Eurasia-China/Svans-History-and-Cultural-Relations.html>

⁶⁹ The same situation is e.g, in Tusheti and Kevsureti , where government also have plans for tourism development.

⁷⁰ Through support of the Government of Georgia a new airport and runway were built in Mestia, along with an 8 kilometer road to the Hatsvali skiing complex, a 1400 meter ski-run and chairlift ; the center of Mestia center was renovated and the Zugdidi-Jvari-Mestia-Lasdili road was launched, etc. The International Financial Institutions (World Bank, ADB)

In short, major technical and infrastructural problems were solved .

⁷¹ Problems related to the Protection of Property Rights, -Case of Mestia , GYLA, Transparency International Georgia , Green Alternative, Georgian Regional Media Association, 2011, www.greenalt.org

⁷² The EaP Warsaw Summit Declaration points Action Plans for Moldova and Ukraine as models for other partners to bear in mind.

⁷³ Interview with Giorgi Gabrielashvili, the Deputy Head of Civil Registry Agency, 06 October, 2010, EI LAT, work in progress, pending report, December, 2011

⁷⁴ Press and Information Department, the Ministry of Foreign Affairs of Georgia, 16 November, 2011, available at: http://mfa.gov.ge/index.php?lang_id=GEO&sec_id=30&info_id=14493 (in Georgian)

⁷⁵ the Law of Georgia on legal status of foreigners, since 1 June, 2006

⁷⁶ Amendment to the Law, 14 August, 2009

⁷⁷ in 2005 – 48 508; in 2010 – 108 749 visitors, “Visa Facilitation and Readmission Agreements: Georgia’s Visa Liberalization Prospects with the EU,” European Initiative – Liberal Academy Tbilisi (EI LAT), interim report, June, 2011, p. 23 (in Georgian) available at: www.ei-lat.ge

⁷⁸ The list rounds up with Somalia, Iraq and Afghanistan

⁷⁹ Joint press conference record, Rustavi 2, TV news program, 18:00h. retrievable from: www.myvideo.ge (as of 16 November, 2011)

⁸⁰ The Presidential Decree, 26 April, 2011

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- ⁸¹ The Order of the Minister of Internal Affairs amending the Patrol Police Regulations, No. 367, 2 May, 2011
- ⁸² Non-Paper on Measures Implemented by Georgia, Border Management including Readmission, International Department of the Ministry of Internal Affairs of Georgia, on EI LAT request, 16 November, 2011
- ⁸³ Information provided by the International Relations Unit of the Patrol Police, Ministry of Internal Affairs of Georgia on request of EI LAT, 17 November, 2011
- ⁸⁴ Interview with Giorgi Gabrielashvili, 6 October, 2011
- ⁸⁵ EC, ENP AP Georgia, Country Report 2010 , May 2011
- ⁸⁶ Non-Paper, MIA, November, 2011
- ⁸⁷ Interview with civil registry agency official, October, 2011
- ⁸⁸ Information provided by the Civil Registry Agency , 16 November, 2011
- ⁸⁹, Interview with Giorgi Gabrielashvili, 06 October, 2011
- ⁹⁰ The EI LAT interim report, June, 2006. p. 25 (NB. Since October, 2011 the consular services for Austria is provided by the Embassy of Switzerland in Georgia)
- ⁹¹ The EI LAT, work in progress, pending report, December, 2011
- ⁹² Available at: http://eeas.europa.eu/delegations/georgia/documents/news/visa_rules2011_ka.pdf
- ⁹³ The Article 14, EU Visa Code
- ⁹⁴ Compliant to Article 47. EU Visa Code and the respective Joint Declaration of the Visa Facilitation Agreement
- ⁹⁵ Compliant to Article 47, EU Visa Code
- ⁹⁶ The EI LAT, interim report, June, 2011, Annex 3
- ⁹⁷ The visa statistics is collected by the Member States in compliance with the Article 46, EU Visa Code
- ⁹⁸ The availability of visa application form in host country's national language is provisioned in the Article 11, EU Visa Code
- ⁹⁹ Compliant to the Article 38 and Article 39, EU Visa Code
- ¹⁰⁰ The EI LAT, work in progress, pending report, December, 2011