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**Regional Anti-Corruption Action Plan  
for Armenia, Azerbaijan, Georgia, the Kyrgyz Republic, the Russian Federation, Tajikistan  
and Ukraine**

## **Georgia**

### ***Summary assessment and recommendations***

**Endorsed on 21 January 2004**

Due to the new political realities in the country the Status Report compiled by Georgia is considered to be a mid-term report; the final self-assessment report will be subject the second review meeting in Spring/Summer 2004.

## I) NATIONAL ANTI-CORRUPTION POLICY, INSTITUTIONS AND ENFORCEMENT

### General assessment

Georgia has in recent years undertaken a substantial number of anti-corruption measures, aiming at the establishment of specialised anti-corruption bodies and at the adoption of a legal framework in line with international standards. As a result, Georgia has a relatively well developed framework of relevant legislation.

For example, the Anti-corruption Coordination Council and the Anti-corruption Bureau have been established in 2001; a set of recommendations has been developed by the Council, which was adopted by the President, in order to achieve systemic and sustainable change to limit corruption. The recommendations propose changes in the legislation for the civil service, for public access to information, and for public procurement and other legislative proposals.

Georgia has already in 1997 adopted a specific Law on Conflict of Interest and Corruption in the Public Service. Among others, this law regulates in detail conflict of interest situations and requires complex asset declarations to be submitted by officials. However, it is difficult to measure the real impact of these provisions, as no agency is in charge of their enforcement.

The implementation of anti-corruption policies and measures are at the moment constrained by the difficult and challenging economic and social situation.

While specialised anti-corruption bodies with analytical, policy and coordinating powers exist, Georgia does not have specialised law enforcement and prosecutorial bodies focused exclusively on detection, investigation and prosecution of corruption. Neither do the state financial control institutions make a significant contribution to the fight against corruption in the country.

It is therefore the implementation and enforcement of this legislation, and a general lack of capacity of public institutions which present the major challenges and on which Georgian efforts to control corruption should focus in the future.

The current political situation provides a window of opportunity to meet these challenges. Building on the experience of the development of the "shadow" report for this review by the anti-corruption NGO coalition, Georgia should continue to consult civil society and NGOs in the formulation and monitoring of its anti-corruption policy.

It should be noted that Georgia has been a member of Council of Europe's Group of States against Corruption (GRECO) since 1999 and had been evaluated within the first evaluation round in 2001, and is expected to act in line with the recommendations adopted in the framework of GRECO.

### General recommendations

In the framework of the formation of the new government and the forthcoming new the Parliament, the Anti-Corruption Strategy needs to be updated and further focused at specific implementation measures, in order to improve the general social and economic environment and promote investments.

Taking into account the limited financial resources of Georgia, it is important to strengthen the institutional and analytical capacity of the Anti-Corruption Council and the Bureau, and to streamline and consolidate the investigative and law-enforcement bodies involved in the fight against corruption.

Measures should be taken to increase the involvement of the state financial control institutions in the country's overall strategy against corruption, as well as to enhance their capacities to identify corrupt practices. This

could, for example, mean their involvement in the work of the Anti-corruption Coordination Council and the Anti-Corruption Bureau, and an obligation to prepare internal anti-corruption strategies, the establishing of guidelines for exchange of information and cooperation with the law enforcement authorities, and conducting joint trainings with the Anti-Corruption Bureau.

Building agencies with high professional ethics, and conducting vigorous investigations and prosecutions are challenging tasks. It is difficult to tackle corruption in all public agencies at the same time. Focusing efforts at a few selected, possibly corruption-prone institutions could demonstrate the possibility of positive changes. Such focused measures should comprise a review of the regulatory and institutional settings of such agencies, and their operational practices in order to identify and minimise factors which favour a climate of corruption (e.g. by limiting discretionary powers of civil servants, strengthening internal control, introducing preventive measures, recruiting and promoting new staff through transparent procedures, measuring and reporting improvements). The existing anti-corruption bodies should lead this process by example.

## Specific recommendations

1. *Review and update existing anti-corruption policies; in order to demonstrate political will, mobilize civil society and all actors to participate; prioritise and focus on implementation measures. It is very important to review existing anti-corruption laws.*
2. *Strengthen the existing Anti-corruption Coordination Council, which should consist of persons with high moral and ethical standing, including representatives of the general public and from relevant executive bodies (administrative, financial, law enforcement, prosecution) as well as from the Parliament and civil society (e.g. NGOs, academia, respected professionals).*
3. *Establish a Specialised Anti-corruption Agency with a mandate to detect, investigate and prosecute corruption offences, including those committed by high-level officials. Such an agency could be structurally linked to the Anti-Corruption Bureau or to the General Prosecutor's Office, but should be given proper independence in both cases. It is important that the Agency would combine law enforcement/investigative (e.g. the best officers from the existing police Department on Economic Crime and Corruption could be seconded to work in such an agency) and prosecution departments and be headed by a person with the powers of a Prosecutor. Apart from working on actual high-level corruption cases, one of the main tasks of such an Agency would be to enhance inter-agency cooperation between a number of law enforcement, security and financial control bodies in corruption investigations (e.g. by adopting clear guidelines for reporting and exchange of information, introducing a team-work approach in complex investigations).*
4. *Adopt guidelines for increased cooperation, exchange of information and resources between the agencies responsible for the fight against organised crime and those agencies responsible for the fight against corruption.*

## II) LEGISLATION AND CRIMINALISATION OF CORRUPTION

### General assessment

The Georgian Criminal Code includes the main criminal offences relating to corruption, including active (Art. 339) and passive (Art. 338 and 340) bribery of domestic public officials, abuse of official authority, money laundering, private corruption etc.

While more information is needed as to the actual interpretation and implementation of these legal texts, it seems that the definitions of bribery offences fall short of international standards (such as the Council of Europe's Criminal Law Convention on Corruption, the United Nation's Convention on Corruption and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions). For instance, the subject of the bribe offence is limited to material benefits, and thus would not extend to non-pecuniary and non-tangible benefits. Offers or promises of a bribe as well as solicitation of a bribe are only criminalised under the 'attempt', 'aiding' and 'abetting' provisions. Bribery for the benefit of third persons seems not to be covered by the provisions of the Criminal Code and trading in influence is not criminalised.

The Criminal Code does provide for dissuasive sanctions including prison sentences ranging up to 15 years (for grave offences), corrective labour, and fines. However, the basic form of active bribery carries a rather low sanction – a fine or an imprisonment for up to two years; the statute of limitation is only two years, which is not adequate, given the concealed nature of corruption. There is also a concern that Art. 340, which criminalises the accepting of illegal presents (a form of passive bribery) by providing very low sanctions (fines), could be improperly applied also in serious cases of passive bribery.

The Criminal Code also stipulates that the Court shall remit the punishment of the perpetrator of active bribery who promised or gave the bribe after being extorted by the public official to do so, providing that such a perpetrator had reported the act to the competent law enforcement authority before the crime was detected.

The Criminal Code does not define categories of public officials subject to incriminations under corruption offences, and bribery of foreign or international public officials is not criminalised. Money laundering has been criminalized as a separate offence in the Criminal Code, and the Financial Intelligence Unit (FIU) has just recently been established.

Confiscation of property has been prohibited by the constitution, which also reflects negatively on the confiscation of proceeds from crime (Georgia refers to this as 'procedural confiscation'), which is literally non-applicable; as a result, proceeds from corruption offences are not confiscated.

The existing legislation does not provide for criminal liability of legal entities, and there is currently no administrative or civil liability of legal entities for corruption-related cases.

### Specific recommendations

5. *Review the current system of disciplinary, administrative and criminal corruption offences, harmonise and clarify relationships between violations of the Criminal Code and other relevant legislation.*
6. *Amend the incriminations of active and passive bribery in the Criminal Code to meet international standards. In particular, clarify the relationship between the offence of passive bribery (Art. 339), and the offence of accepting prohibited presents (Art. 340). Consider increasing the punishments for active bribery and the statute of limitations for all corruption offences.*
7. *Ensure that the definition of "official" in the Criminal Code encompasses all public officials or persons performing official duties in all bodies of the executive, legislative and judicial branch of the State, including local self-government and officials representing the state interests in commercial joint ventures or on board of companies.*
8. *Introduce the criminalisation of bribery of foreign or international public officials, either through expanding the definition of an "official" or by introducing separate criminal offences in the Criminal Code.*
9. *Consider amending the Criminal Code to ensure that the confiscation of proceeds applies mandatory to all corruption and corruption-related offences. Ensure that the confiscation regime allowed for*

*confiscation of proceeds of corruption, or property the value of which corresponds to that of such proceeds or monetary sanctions of comparable effect, and that confiscation from third persons is possible. Review the provisional measures to make the procedure for identification and seizure of proceeds from corruption in the criminal investigation and prosecution phases efficient and operational. Explore the possibilities to check and, if necessary, to seize unexplained wealth.*

10. *Recognising that the responsibility of legal persons for corruption offences is an international standard included in all international legal instruments on corruption, Georgia should, with the assistance of organisations that have experience in implementing the liability of legal persons (such as the OECD and the Council of Europe), consider how to introduce into its legal system efficient and effective liability of legal persons for corruption.*
11. *Adopt clear, simple and transparent rules for the lifting of immunity and limit the number of categories of persons benefiting from immunity (e.g. candidates for the Parliament) or the scope of immunity for some categories (e.g. judiciary) to ensure that it is restricted in applications to acts committed in the performance of official duties.*
12. *Ensure effective international mutual legal assistance in the investigation and prosecution of corruption cases.*

### **III) TRANSPARENCY OF THE CIVIL SERVICE**

#### **General**

The information which was available under this heading is not sufficient to support an in-depth assessment. Therefore, only a number of specific recommendations on selected sections can be made. For the final report, the expert team will cooperate with the Georgian side to complete the necessary information.

#### **Specific recommendations**

13. *Introduction of a system of merit-based appointment and promotion in the civil service is needed.*
14. *Prepare, and widely disseminate, comprehensive and practical guidelines for public officials on corruption, conflicts of interest, ethical standards, sanctions and reporting of corruption. Consider elaborating specific Codes of Conduct for public officials and work on their dissemination.*
15. *Strengthen the Public Service Bureau to improve the observance of legal requirements in the civil service at large. Provided that the Public Service Bureau is strongly committed to upholding professional and legal standards in the civil service, it should be vested with powers to enforce legislation, in particular with the help of disciplinary actions.*
16. *Ensure a more effective enforcement of the Law on Conflict of Interest and Corruption. Consider strengthening the existing institution that monitors its implementation and provide the institution with the authority to verify the accuracy of submitted asset declarations. All asset declarations have to be available to the public.*
17. *Adopt measures for the protection of employees in State institutions against disciplinary action and harassment when they report suspicious practices within the institutions to law enforcement authorities or prosecutors, and launch an internal campaign to raise awareness of those measures among civil servants; adopt (basic) regulations on the protection of "whistleblowers".*

18. *Review the existing public procurement regulations to reasonably limit the discretion of procurement officials in the selection process. Ensure that the eligibility criteria for bidding in the public procurement and privatisation processes include the absence of a conviction for corruption. Under the condition of the legal protection of fair competition, consider establishing and maintaining a database of companies that have been convicted for corrupt practices to support such limiting eligibility criteria.*
19. *Ensure that the access to information legislation limits discretion on the part of the public officials in charge as to whether the requested information should be disclosed, and to limit the scope of information that could be withheld. Consider steps to reach out to both, public officials as well as citizens to raise awareness about their responsibilities and rights under the access to information regulations.*
20. *Review the Tax Code to make compliance with its provisions simpler, and to reasonably limit the discretion of tax officials.*
21. *Ensure necessary conditions for the effective functioning of the Georgian Financial Intelligence Unit (FIU) and adequate resources and training of the FIU staff.*