




OPEN SOCIETY GEORGIA FOUNDATION  
ფონდი ღია საზოგადოება საქართველო

# European Neighbourhood Policy: Implementation of the Objectives of the EU-Georgia Action Plan



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## Executive Summary

This report was prepared by the Open Society Georgia Foundation in collaboration with its partners in November 2010.

The report addresses and analyzes issues relevant to the current Georgian political agenda and the objectives defined in the following documents: ENP AP; the government of Georgia ENP AP implementation for the year 2010<sup>i</sup>; “new package of democratic reforms” endorsed in the presidential statements in 2008 and reflected in a number of state policy documents in 2009-2010; European Commission midterm progress reports on ENP AP implementation for 2008-2009.

The topics discussed in the report correspond to the following priority goals of Georgia’s democratic transition in 2010:

- adoption of the new constitution that ensures institutionalization of checks and balances of the state political system; increasing the role of the Parliament and level of independence of the Judiciary;
- adoption of the amendments to the election code and administration of May 2010 local election
- reforming the public finance management system, ensuring macroeconomic stability, establishment of the new tax code, addressing competition policy and trade issues
- changing social services’ provision system and promoting poverty reduction, sustainable development including environment and climate change issues
- supporting reforms that promote free and independent media
- promoting EU-Georgia cooperation for the settlement of Georgia’s internal conflicts .

The report defines challenges that might impede efficiency of the reforms and hamper implementation of the ENP AP.

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## **Political Context in 2010:**

The reforms implemented in 2010 were aimed at modernization of the state administration system and creation of favorable environment for liberal market economy. Nevertheless, the country did not demonstrate significant progress in strengthening democratic institutions or introducing democratic procedures. State efforts in the field of social and sustainable development policy were even less successful.

Considering the above, strengthening of executive power at the expense of weakening the authorities of Parliament, restriction of the environment for free media, interference in the media market; and in general in the relationships of actors in the field of economy (facts of violating the rights to property), indicate the tendency that the country's modernization and democratic consolidation of the political system are separate from each other.

In this context we need to consider the background that provided frameworks for the ongoing changes. Unlike 2009, the year of 2010 in Georgia was marked with internal political stability and favorable conditions for the government to implement reforms. Environment was favorable for coherent performance of the tasks determined within the frameworks of the Georgia-EU Action Plan of the European Neighborhood Policy. In this respect, one could say that drafting of a new Constitution and local government elections of May 10, 2010 were significant events, as the markers of relevance of the country policy with the ENP priorities. Nevertheless international and internal public concerns remain with regards to these developments and number of policies in areas such as: sustainable development; social-economic policies; good governance and rule of law; etc. These concerns affect general public attitudes towards current reforms and may fuel the social discontent in the country.

This report aims at showing changes that took place during 2010 and gaps created by the challenges which make the civil society organizations/activists speak about separation of the country development from the priorities of the ENP Action Plan.

## **Main Findings**

Expectation of civil sector representatives towards the execution of the Georgia-EU Action Plan of the European Neighborhood Policy is expressed by what steps the Georgian Government may take for overcoming the democracy deficit and ensuring the rule of law so that to follow the course towards the country's modernization with the same pace. Below are the key issues, which are identified and listed in the report:

- 1) Power balance between the different branches of the government is a subject of criticism. New draft constitution, leaves many questions including the distribution of power open,
- 2) Judiciary independence remains problematic, which is crucially important for ensuring the rule of law;
- 3) Independent media, which is crucial for creation of environment for functioning the accountable government and the informed society, is still fragile. In this respect, there is an important issue of transparency of media-owners and the financial interference in the media market by the state;
- 4) Despite implemented reforms, the electoral system, which has been modified many times since independence, still is far from being a system that ensures politically competitive environment in equal conditions;
- 5) The institutes of state administrative system do not perform in compliance with democratic principles. Decision-making and policy implementation often violate the procedures that regulate the functioning of public service. In this respect, the non-transparency of public finance management and the weak control over the reasonability of implemented activities are especially evident.
- 6) Improvements in connection to doing business and investment conditions, which are priority directions for the Government of Georgia, leave many questions open with regards to the transparent process of privatization and fight against the elite corruption. Besides, the current economic policy does not pay due attention to the issues of poverty reduction and incentives for social integration;
- 7) Sustainable development policy requires more efforts with regards to getting the legislative and administrative practice closer to each other, and introduction of standards that are adopted in the European Union;
- 8) Considering that there are no significant advancements in peaceful resolution of conflicts in Georgia, the social-economic integration of internally displaced people in broader civil process is becoming an issue of increased concern. In this respect shortcomings are revealed in policies aimed at improving the subsistence and living conditions of IDP communities and elaboration of security mechanisms (and for the communities neighboring the conflict zone). Considering all these, maintenance of sustainability and providing guarantees for the peaceful process remains a major issue of concern.

## **Recommendations:**

### **Democracy, Human Rights and Good Governance**

- Revisit some of the provisions of the new constitution in order to ensure full compliance with the final recommendations by the Venice Commission;
- Continue reforms to ensure independence of judiciary through introduction of adequate amendments to the Constitution and relevant legislation;
- Amend the Criminal Procedural Code in order to make it fully compliant with the Council of Europe experts' recommendations.
- Implement the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, notably to improve detention conditions and adopt policies designed to limit or modulate the number of persons sent to prison;
- Conduct prompt, impartial, independent and effective investigation in cases of disappearances described in the Report by the COE High Commissioner for Human Rights.

### **Elections**

- Election campaign rules to be changed, and stricter regulations introduced regarding the use of administrative resources in order to ensure the impartial competitive environment for all political parties;
- Regular trainings to be held for the representatives of election administration;
- Election campaign rules to be amended for the day of elections, and the election administration and the court to consider the complaints in an objective, transparent, professional and impartial way.

### **Public Service Reform – Accountability and Transparency**

- Freedom of information to be exercised based on the law, the cases of restricting the information to be reduced and clearly defined;
- Public service sector to be depoliticized and isolated from the political influence of any of the parties;
- Classification of privatization contracts in regards to the commercial secret to be investigated fairly;
- Capacities of civil monitoring agencies to be strengthened.

### **Freedom of the Media**

- Full transparency to be ensured concerning the media ownership;
- To improve the situation from the viewpoint of financial transparency of the media, access to public information and simplification of the licensing process;
- The Georgian National Communications Commission to be depoliticized.

### **Economic and Social Reforms**

- A clear system to be developed to ensure that the country's economic and social policy meets the international obligations;
- A more detailed schedule to be developed for implementation of obligations undertaken within the frameworks of the European Neighborhood Policy, and the supervision on the processes should be strengthened.

### **Transport and Energy**

- Development of a sustainable development strategy to cover the issues related to environment and health;
- Conditions of the application filed by Georgia concerning the membership in European Energy Community to be performed.

#### On United Nations Economic Commission of Europe (UNECE)

- A forum to be created on the issues of climate change.

## **Cooperation for Resolving the Internal Conflicts of Georgia**

- It is necessary that every internally displaced person or family is considered separately and a more flexible approach be instituted towards them;
- The process of improving the social-economic conditions of IDPs to be speeded up;
- IDPs to have an access to the job market, respective medical aid and education, provision of which represents the state prerogative.



## 2010 Evaluation of the European Neighborhood Policy EU-Georgia's Action Plan Implementation

<p><b>ENP AP Priority Area 1. Strengthen the rule of law through reform of the judicial system, including the penitentiary system, and rebuilding state institutions. Strengthen democratic institutions and respect for human rights and fundamental freedoms in compliance with Georgia's international commitments (PCA, Council of Europe, OSCE, UN)</b></p>		
<p><b>1. Strengthen Democratic institutions</b></p>		
<p><b>- 1.1 Institute constitutional reform to ensure effective checks and balances between political institutions, effective parliamentary oversight over the executive, a proper separation of powers and an independent judiciary. Ensure protection of HR and fundamental freedoms.</b></p>		
<p><b>- Institute constitutional reform to ensure effective checks and balances between political institutions, effective parliamentary oversight over the executive, a proper separation of powers</b></p>	<p><b>Implemented, concerns remain</b></p>	<p><b>2010 Developments</b></p> <p>On 11 May 2010 members of the Constitutional Commission voted for the first consolidated draft of the new constitution. This was the draft that was sent to the Venice Commission on 17<sup>th</sup> May 2010<sup>ii</sup>.</p> <p>The draft was adopted by the Commission on 19 July 2010. Parliament approved the draft amendments following their third reading on 15 October, 2010. Most of the amendments will come into force in 2013.</p> <p>The newly amended constitution aims to move from a mostly presidential system of government to a mixed model where the government is formed by Parliament. The president loses his leading role in foreign and domestic policy and becomes an arbiter between state institutions.</p> <p><b>Challenges:</b></p> <p>Constitutional reform failed to accomplish two major declared goals:</p>

	<p>1. The consolidation of Georgian society;          2. The restoration of a system of institutional checks and balances by increasing the role of Parliament and measures to ensure the independence of the judiciary.</p> <p><i>Shortcomings of the process governing the elaboration and adoption of the draft constitution</i></p> <ul style="list-style-type: none"> <li>- By failing to define clear rules for the adoption of the draft text of the constitution, the government failed to offer a real incentive to the non-parliamentary opposition to be involved in the work of the Commission.</li> <li>- Both Parliament and the Commission failed to take the major recommendations of the Venice Commission<sup>iii</sup> into consideration.</li> <li>- The mandatory public hearings on the draft amendments were conducted in August and the first week of September 2010 – often seen as a dead season in Georgian politics as many people are on holiday during this time of year - thus limiting participation in the process.</li> <li>- The media coverage of the constitutional reforms was mainly one-sided. National TV channels failed to offer the public substantive discussions on the issue. The public, particularly in the regions, were not given an opportunity to listen to alternative or critical opinions about the process and the draft constitution.</li> <li>- Despite numerous calls from the Venice Commission, the international community and domestic NGOs, Parliament refused to delay the date of the adoption of the draft constitution. Ironically, the draft text was adopted by Parliament immediately after the Venice Commission adopted its final opinion on the text thus making it a mere formality.</li> </ul> <p><i>Changes and amendments to the constitution</i></p> <ul style="list-style-type: none"> <li>- Under the amended constitution, the executive branch retains dominance over Parliament. Though the powers of the president have been significantly decreased, most of his functions have been transferred to the prime minister.</li> <li>- The amended text provides a completely new role for Parliament in the formation of the government. However, the oversight function of the legislative branch over the government's activities is not supported by constitutional guarantees. Once the Parliament declares confidence in the government, the prime minister is entitled to change the whole composition of the government without consulting the legislature.</li> <li>- Under the new amendments, Parliament cannot force the prime minister to dismiss any individual cabinet member.</li> <li>- The only mechanism in the hands of Parliament to hold the prime minister and his government to account is through a vote of no-confidence that can potentially result in the dissolution of Parliament. Despite numerous requests from the Venice Commission to reconsider and revise the rules on the vote of no-confidence, the</li> </ul>
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		<p>procedure remains extraordinarily long and complicated (the procedure could last up to three months) which makes it nearly impossible for Parliament to overcome it.</p> <ul style="list-style-type: none"> <li>- The amendments failed to strengthen the legislative power of Parliament. A provision that allows the government to ‘veto’ any draft law that increases budgetary expenses was kept in the draft.</li> <li>- The role of Parliament in the budgetary process remains extremely weak and was a matter of concern for the Venice Commission.</li> <li>- Despite the fact that the life time appointment of judges is a welcome development, the three year probation period appears problematic. In addition, the Constitutional Commission and later, Parliament refused to include additional safeguards (e.g, not relocating judges without their prior consent) which would strengthen the independence of the judiciary.</li> </ul>
<p><b>- Strengthening the independence of the judiciary</b></p>	<p><b>Not Implemented</b></p>	<p><b>2010 Developments</b></p> <ol style="list-style-type: none"> <li>1. The amended constitution provides for the life-long appointment of judges. The provision will enter into force from 1 January 2011;</li> <li>2. Amendments to the Law on Rules of Communication with Judges in Common Courts were adopted by Parliament on 26 February 2010;</li> <li>3. In terms of bribe-taking, the judiciary remains one of the least corrupt institutions in the country;</li> </ol> <p><b>Challenges</b></p> <p>Opinion polls show that the public perceives the level of judicial independence to be low. This problem is recognized by high ranking officials, including the president of Georgia and chairman of the Supreme Court. To address the issue, the president promised a ‘new wave of democratic reforms’ in 2008. However, actions proposed under the ‘wave’ were either insufficient or superficial. Two major developments in that direction - (1) The life-long appointment of judges and (2) amendments to the Law on the Rules of Communication with Judges in Common Courts – have failed to address the core problems.</p> <p>These problems include:</p> <p>(1)The fact that the amended constitution introduces a probationary period for judges of “not more than three years”. According to the Venice Commission “this proposal appears to be problematic . . . [as] setting probationary periods can undermine the independence of judges, since they might feel under pressure to decide cases in a particular way.”<sup>iv</sup> Accordingly, the Venice Commission recommended that Parliament</p>

		<p>remove the proposal. However, Parliament did not follow the recommendation.</p> <p>(2) Problems related to amendments to the Law on the Rules of Communication with Judges in Common Courts passed in February 2010. These amendments increase the fine for illegal correspondence with a judge and clarify the scope of the law, extending it to officials serving in political positions. However, this initiative cannot be effective without a more comprehensive approach to the issue. Even though the law has been in force for more than three years, official records show that the number of prosecutions for illegal communication with judges is extremely low. It is very unlikely that the increased fine will increase the number of prosecutions.</p> <p>(3)The fact that the High Council of Justice is often perceived as being a major source of pressure on judges. The Council is responsible for disciplinary matters within the judiciary and is also the main body dealing with the appointment and dismissal of judges. The Council is highly politicized body comprised of four parliamentary appointees, two candidates nominated by the president and the rest representing the judiciary (there are currently seven judges serving on the High Council of Justice, although this will later become nine). Six of the 13 serving members of the Council previously served in high ranking positions within the Prosecutor’s Office. The government has so far shown little willingness to reform the High Council of Justice.</p> <p>In most cases the Council takes decisions with a simple majority vote except when appointing judges. In the latter case it is necessary that at least one representative of the executive, legislature and judicial branches agrees on the candidate. It is thought that this procedure allows political institutions, namely the president and Parliament to ‘veto’ candidates perceived to be ‘politically unreliable’.</p> <p>(4) The Law on Disciplinary Responsibility and Disciplinary Prosecution of Judges in Common Courts which regulates the basis for determining disciplinary action and dismissal of judges. The law defines the grounds for disciplinary responsibility so broadly that the law could cover a great variety of judicial conduct engaged in while a case is being decided. The law has been heavily criticized by the Venice Commission, according to which “[the Law] rather than clearly restricting the scope of a judge’s disciplinary responsibility, actually poses a threat to the principle of judicial independence.”<sup>v</sup> Nevertheless, there appears to be no will in the government to amend the law in accordance with the Venice Commission recommendations.</p> <p>(5) Another mechanism allowing the Council to exert pressure on judges is moving a judge to a different court for an unidentified period without his/her prior consent. According to official statistics, around 70<sup>vi</sup> judges have been moved to different locations. Requests from domestic NGOs and representatives of the Venice Commission to introduce constitutional safeguards to ensure that judges cannot be moved to another location without their prior consent, have been declined by the Constitutional Commission and later by the Parliament of Georgia.</p>
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<p><b>- Adopt a new Criminal Procedural Code (by 2007)</b></p>	<p><b>Implemented</b></p>	<p><b>2010 developments</b></p> <p>The new Criminal Procedural Code (CPC) adopted after the significant delay on October 9 ,2009 (this originally envisaged in 2007) entered into force on October 1, 2010.</p> <p><b>Challenges</b></p> <p>Concerns of domestic NGOs that the CPC is not fully compliant with European human rights norms were also shared by Council of Europe experts. The experts highlighted several key areas of concern: victims' rights under the new CPC; equality of parties to the criminal proceedings that is the defendant and the Prosecutor's Office in the process of collecting evidence and the abolishment of the institute of witnesses. As for the latter, the experts noted that "without being the absolute guarantee, the presence of witness [during search and seizure] is an additional guarantee in a fair trial"<sup>vii</sup></p> <p>The rules governing the questioning of a witness – meaning that a witness can only be questioned in court - will enter into force after two years on October 1, 2012. The only justification that Parliament presented for this delay was that prosecutors are not ready to investigate a case without witness statements collected during investigation.</p> <p>One week before the enactment of the CPC, Parliament amended the CPC in violation of Parliament's Rules of Procedure. The amendments were passed with two readings instead of the mandatory three readings. The secrecy of the voting procedure deprived experts, domestic NGOs and the Bar Association of the opportunity to voice their concerns over the draft which lowered the burden of evidence required for a guilty verdict. In addition, the amendments lowered the obligatory number of jurors necessary to reach a guilty verdict.</p>
<p><b>- Improve access to justice notably through the establishment of an effective legal aid system</b></p>	<p><b>Implemented, concerns remain</b></p>	<p><b>Achievements</b></p> <p>Legal Aid System established in Georgia in 2007 currently covers the most part of Georgia through its 11 legal aid bureaus and 2 consultation centers. Legal Aid Service provides assistance in criminal proceedings free of charge.</p> <p><b>Challenges</b></p> <p>Since February 2009 the Legal Aid Service was transferred to the Ministry of Penitentiary, Probation and</p>

		<p>Legal Assistance. Subordination of the legal aid system to the Ministry of Penitentiary causes serious concerns as to its independence and potential conflict of interest. Moreover that it is under the mandate of the legal aid system to provide legal assistance to disciplinary sanctioned prison inmates. This also goes against the concept of legal aid system elaborated in 2004 that envisaged provision of the legal aid through an independent entity.</p> <p>The Legal Aid Service Monitoring Council envisaged by the Law on Legal Aid is still to be created. According to the Law, the Council should have been created from February 1, 2009.</p> <p>Although the initial intention had been to provide comprehensive legal aid from January 1, 2009, this has been delayed until January 1, 2011. In the Action Plan for 2009-2013 on Legal Aid elaborated within the Criminal Justice Reform Inter-Agency Coordination Council, provision of state legal service in civil and administrative cases is not stipulated. Therefore, it is unlikely that the state will be able or willing to deliver the services in civil and administrative cases (except for cases implying administrative imprisonment as a sanction) starting from 2011.</p>
<p><b>- Implement the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, notably to improve detention conditions.</b></p> <p><b>- Meet the obligations under the Optional Protocol to the UN Convention against Torture (OPCAT)</b></p>	<p><b>Implemented, serious concerns remain</b></p>	<p><b>2010 Developments</b></p> <p>Pursuant to Georgia's obligations under the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment National Preventive Mechanism (NPM) was set up. Since July 2009, this task has been assigned to the Public Defender and a special body was set up under him (the prevention and Monitoring Mechanism).</p> <p>Some of the Penitentiary Institutions and Temporary Detention Isolators have been renovated and refurbished that resulted in better material conditions for many prisoners.</p> <p><b>Challenges</b></p> <p>- Georgia continues to have one of the <i>highest imprisonment rates</i> by international standards that according to the CPT's report, published on 21 September 2010<sup>viii</sup>, cannot be convincingly explained by a high crime rate. The CPT repeatedly pointed to the government, that "if no steps are taken to limit the number of persons sent to prison, all attempts to improve conditions of detention will inevitably founder."<sup>ix</sup></p> <p>- High imprisonment rate contributes to the <i>overcrowding</i> in some of the prison institution that in itself contributes to the deplorable conditions in the penitentiary institutions. Despite the repeated</p>

		<p>recommendation from the CPT to redouble their efforts to combat prison overcrowding by adopting policies designed to limit or modulate the number of persons sent to prison, authorities continue to pursue 'zero tolerance' policy with rate of acquittals below 0,07%<sup>x</sup> and prison population of more than 21,000.</p> <p>- According to the CPT report published on 21 September 2010, out of 20619 persons detained in the course of 2009, 5,901 had lesions and 77 lodged complaints against police officers for alleged <i>ill-treatment</i>. None of the cases have been referred to the Prosecutor's Office allegedly due to the absence of elements of crime. The same trend has been upheld by the Chief Prosecutor's Office, when out of the 79 criminal cases initiated against police officers on allegations of torture, ill-treatment and exceeding official powers, none had led to convictions. Despite the CPT's recommendation to bring those responsible to justice through <i>effective investigation</i> and prosecution, Prosecutor's Office was unable to present any data that could have ascertained that any of the law enforcers had been convicted for crimes of torture or ill-treatment<sup>xi</sup>.</p> <p>- Some of the temporary detention isolators are in <i>deplorable conditions</i> (Temporary Detention Isolator #2 in Tbilisi, isolator in Kutaisi, isolator in Zestaphoni, etc). According to the CPT, cells in Zestaphoni isolator have no access to natural light, are poorly ventilated, unheated and unhygienic.</p> <p>- According to the amendments introduced to the Law on Assemblies and Manifestation and to the Code of Administrative Offences, administrative detainees can be held in temporary detention isolators for up to three months without basic guarantees secured for criminal convicts. In particular, they are not allowed to have visitors from their families or have outdoor activities.</p>
<p>- Ensure protection of HR and fundamental freedoms.          - Create conditions of safety and security for the civilian population, including respect for property rights, focusing on those areas which are mostly populated by Georgian citizens of various ethnic origins.</p>		<p><b>Achievements</b></p> <p>The Government of Georgia gave consent to the Council of Europe High Commissioner for Human Rights to send fact finding mission of international experts to inquire into the fate of persons that disappeared during or after the August conflict. Commissioner Thomas Hammarberg released the report<sup>xii</sup> on 29 September 2010 that was prepared by two experts, recruited by Council of Europe (CoE) Human Rights Commissioner. The report, highlighted "serious shortcomings" in the process of clarifying the fate of persons missing since the August, 2008 war.</p> <p><b>Challenges</b></p> <p>After August 2008, there has been increasing number of illegal detention and hostage taking in the vicinity of the so-called administrative border. As a result of it both, the Georgian authorities and representatives of Tskhinvali regime, engaged in illegal practice of exchange of hostages.</p>

		<p>Lavrenti Kaziev, Ibragim Laliev and Vladimir Eloev, inhabitants of Tskhinvali, after being released from the court rooms disappeared for three months at the hands of the Georgian authorities. All three have been released and handed over to the Ossetian side due to the efforts of the CoE High Commissioner for Human Rights in December 2009. However, the Georgian authorities declined the request to start criminal investigation on the illegal detention of Ossetian nationals due to the 'absence of elements of crime'.</p> <p>The Georgian authorities failed to take effective measures to investigate the case of Khachiev, Khugaev and Pliev, three South Ossetians who disappeared in the aftermath of the August war. According to a report issued by CoE High Commissioner for Human Rights, though there have been serious allegations implicating the involvement of Georgian law enforcement officials in the disappearance, no measures were taken to ensure that the officials implicated did not participate in the investigation.</p>
<p><b>1.2 Ensure the local elections in Georgia are conducted in accordance with international standards, through implementation of OSCE/ODIHR and Council of Europe recommendations, notably regarding the need for a reliable voter registry and a functioning and transparent electoral commission</b></p>		
<p><b>- Amendments to the Election Code of Georgia</b></p>	<p><b>Implemented, concerns remained</b></p>	<p><b>2010 Developments</b></p> <p>The Election Code Working Group, comprised initially of parliamentary and late, non-parliamentary political parties, has been working on the amendments of the election code since January 2009. Final changes in the Election Code were introduced on December 28, 2009.</p> <p>Unfortunately, the group addressed only the specific part of the code regulating the local self-government elections, and did not manage to address all shortcomings of the Election Code.</p> <p>In addition, the composition of the Central Election Commission was changed and the amendment extended the deadline for complaint submission by one day.</p> <p>Furthermore, the direct election of the Tbilisi mayor was introduced, however the explanation why other self-governing city mayors could not be elected directly lacked strong argumentation from ruling party representatives.</p> <p><b>Challenges</b></p> <p>The reform of the electoral system for Tbilisi city council has to be evaluated positively as it accords with the recommendations of OSCE/ODIHR on the equality of votes for each elected majoritarian seat (meaning the</p>



		<p>number of constituencies for each majoritarian seat should be equal). Even though important amendments were passed to the Election Code before the 2010 local self-government elections, the recommendations of domestic and international observer organizations related to pre-election campaigning were not taken into consideration, especially those regarding the usage of administrative resources and campaigning.</p> <p>Improving the electoral legislation was one of the major challenges that both ruling and opposition parties faced before the 2010 local self-government elections.</p>
<p><b>- Pre-election environment and cases of misuse of administrative resources</b></p>	<p><b>Not implemented</b></p>	<p><b>2010 Developments</b></p> <p>The pre election environment rules and procedures related to the misuse of administrative resources were not addressed while amending the Unified Election Code. Consequently the same shortcomings that were observed during the last elections (2008) were again observed.</p> <p><b>Challenges</b></p> <p>The signing of a memorandum between 11 political parties and the CEC can be considered as a positive step. By signing the memorandum, the organizations committed themselves to a homogeneous interpretation of election code articles that regulate the use of administrative resources. Additional efforts are needed from the election administration in order to better address shortcomings related to the usage of administrative resources.</p>
<p><b>-Election Day and procedures</b></p>	<p><b>Implemented, concerns remained</b></p>	<p><b>2010 Developments</b></p> <p>On May 30, 2010 local elections took place in Georgia.</p> <p><b>Challenges:</b></p> <p>Wide-scale campaigning by activists of political subjects on election day in the surrounding areas at polling stations aroused extreme concern on Election Day. This action can be considered an attempt to influence voters' free will.</p> <p>Inadequate qualification of precinct level election administration employees and logistical problems (lack of materials, technical equipment out of order) on the election day was again observed;</p>

		In addition, an insignificant number of severe violations of polling procedures were observed (such as observers not allowed entry into the polling station, pressure and intimidation of observers, voting with ID cards belonging to others, etc).
<b>- The Process of Complaints Deliberation</b>	<b>Not implemented</b>	<p><b>No developments in 2010</b></p> <p>In analyzing the complaint deliberation process three major trends can be outlined. The agencies (CEC, DEC Courts) reviewing complaints failed to thoroughly examine the cases, for making the decision based on actual circumstances. When discussing violations committed by officers of lower levels of election administration, the CEC was found to be subjective and biased: explanation was not demanded from witnesses summoned by applicants/claimants, evidence was not examined properly, additional information was not sought; information submitted by lower-level electoral bodies was not verified.</p> <p>In certain cases one and the same provision was differently interpreted and tailored to interests of certain political parties. During the review of one case, the election administration was keen on finding errors in complaints submitted in order to avoid review of the case, instead of determining the actual circumstances and holding the offenders responsible.</p> <p>In the cases when complaints were upheld, sanctions imposed on offenders were inadequate to the violations committed. Commissions reviewing cases imposed minimum sanctions on members of lower-level commissions who had committed violations.</p> <p><b>Challenges:</b></p> <p>Frequently members and chairpersons of electoral commissions, including the CEC, treated applicants as their opponents and in certain cases their confrontation grew into personal insults. During such reviews, parties failed to examine and evaluate factual circumstances, making inadequate decisions. Unaddressed election violations risk having multiple effects in future elections.</p>
<b>- Development of Voters list</b>	<b>Implemented, concerns remained</b>	<p><b>2010 Developments</b></p> <p>The Unified Voters Lists (VL) of Georgia is compiled on the basis of data received from different state agencies; the major part of the Voters Lists is based on data received from Civil Registry Agency of Georgia (CRA).</p>

		<p>In December 2009, based on the new amendments to the Unified Election Code of Georgia (UEC), 11 political parties were given the opportunity to conduct door-to-door verification of the voters' lists throughout the country.</p> <p><b>Challenges</b></p> <p>Lack of strategic vision in the voters' lists improvement process from the very beginning caused problems for the following:</p> <ul style="list-style-type: none"> <li>- voters changing their registration address and moving to Tbilisi,</li> <li>- voters whose registration was cancelled at the request of their landlords, and</li> <li>- voters without address.</li> </ul> <p>In order to resolve the shortcomings for the abovementioned groups of citizens, the CEC voted to issue a decree changing the relevant regulations so that all types of citizens are given the opportunity to participate in the local self-government elections.</p> <p>On the Election Day in the VLs there were cases when individuals whose registration at the specified an address had long been invalidated (according to the CEC) were included in the unified list of voters. Meaning that while indicating name of specific citizen in the search system, individuals whose registration had been removed remained registered at the former address and frequently landlords were not aware of that.</p> <p>Although the unified voters' list had been improved, political parties were given access and financial resources to verify the lists and this contributed to an increase the voters' confidence in the VLs, significant work remains to be done to ensure the further development of the Voters' Lists. The joint efforts of the CEC, Civil Registry and Public Registry are important in this regard, as these agencies are responsible for addressing and registration of citizens. In addition, the other agencies (Ministry of IDPs and Settlement, Ministry of Interior, etc.) need to structure the lists of their respective voters in order to achieve compatibility with the CEC and CRA electronic databases.</p> <p>The compatibility of all relevant agency electronic databases still has not been achieved. Problems regarding the data of groups of citizens - such as those without permanent address as those who were removed from registration - need to be addressed and resolved.</p>
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**ENP AP Priority Areas 2 and 3**

**Improve the business and investment climate, including a transparent privatization process, continue the fight against**

**corruption.  
 Encourage economic development and enhance poverty reduction efforts and social cohesion, promote sustainable development including the protection of the environment; further convergence of economic legislation and administrative practices. (Priority areas 2, 3).**

**2.1 Improve the business and investment climate**

<p><b>- Improve business climate</b></p>	<p><b>Under implementation</b></p>	<p><b>2010 Developments</b></p> <p>According to the IFC and World Bank's Doing Business Index for 2011, Georgia progressed to 12th place globally from 13th the previous year after the methodology was changed<sup>xiii</sup>. Georgia remains the only East European country in the top 15, setting the pace for business regulatory reforms. Over the past year, Georgia improved its ranking in the following indicators: Closing a business, Enforcing contracts, Getting credit (legal rights), and Protecting investors.</p> <p>In particular, Georgia improved insolvency proceedings by streamlining the regulation of auction sales. It made the enforcement of contracts easier by streamlining the procedures for public auctions, introducing private enforcement officers, and modernizing its dispute resolution system. In addition, Georgia improved access to credit by implementing a centralized collateral registry with an electronic database accessible online. Georgia also strengthened investor protection by allowing greater access to corporate information during a trial.</p> <p><b>Challenges</b></p> <p>There is still lot to be done to create a healthy business environment. It is necessary to improve transparency and strengthen the rule of law to ensure that private property rights are respected. It is also necessary to prevent government interference in business activity, improve law-enforcement and reform judicial system.</p> <p>A recent report by Georgia's human rights ombudsman showed that there are clear problems with judicial independence. This is despite the fact that reform of judiciary is among the state priorities.</p> <p>According to the Association of Young Financiers and Businessmen, property rights are another important issue affecting the business environment in Georgia<sup>xiv</sup>. According to Transparency International Georgia, property rights violations have increased in Georgia<sup>xv</sup>. Perhaps the most</p>
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		<p>striking example is that of property owners in Anaklia – the site of a showpiece resort currently under construction – who found that property that had for years been registered in their names in the public registry had been suddenly transferred to state ownership.</p> <p>This new wave of property rights violations follows previous “waves” of property rights violations that were also connected with the implementation of government initiated projects on tourism development. For example, in 2006/07 violations were documented concerning a series of restaurants in the Rikhe district of Tbilisi (high-value property due to its proximity to Tbilisi’s old town) and in Signaghi.</p> <p>The adverse effects of such problems have offset advantages created by simplified procedures to start up a new business.</p>
- Customs Reform	Under implementation	<p><b>2010 Developments</b></p> <p>The new Tax Code, coming into force from 2011, will integrate the provisions of Customs Code, which is currently in force as separate legislation. Rates of customs tariffs remain between 5% to 12%, but the 0% tariff of customs duty, applied to some categories of goods since September 2006, is no longer envisaged. The government has simplified the criteria for importers/exporters of goods to be included in the “Gold List” – a mechanism for simplifying customs checks for importers/exporters deemed to be trustworthy.</p> <p><b>Challenges</b></p> <p>Opponents of the unification of the customs and tax codes think that tax and customs regulations need to be separate. According to I&amp;N Audit, there are artificial hurdles in the law, which complicate matters for businesspeople. I&amp;N Audit argues that merging the two codes does not necessarily make for a better law.</p> <p>The absence of necessary legal acts and regulations hinders the implementation of the Customs Code and makes customs rules less transparent for economic actors. More attention should be paid to pricing and post-customs control</p>
- Tax Reform	Under implementation	<p><b>2010 Developments</b></p> <p>In September, Parliament approved the new Tax Code, which will come into force in 2011.</p> <p>The new Tax Code keeps rates of most taxes unchanged, although it broadens the tax base.</p>

		<p>The new Tax Code increases some excise taxes and, unlike most of the new law, this amendment has already been in force since August 1, 2010. Increased penalties for various violations of tax regulations also came into force on this date.</p> <p>The new Tax Code introduces the new categories of “small business” and “micro business”.</p> <p>The new Tax Code means that income tax for NGO staff will be 20% instead of the current 12%.</p> <p>According to the new code, a tax ombudsman will be created. The prime minister will appoint the ombudsman in agreement with chair of Parliament. The ombudsman will have to present an annual report on taxpayers’ rights to the parliamentary committee for finances and budgetary affairs.</p> <p>In 2010, double taxation treaties were signed with several EU countries. Similar treaties with other European countries are also expected to be finalized soon.</p> <p>In November, Parliament decided to delay passing a constitutional amendment, which will stop the government increasing taxes – apart from excise duty – without putting the increase to a referendum.</p> <p><b>Challenges</b></p> <p>Some independent auditors and businessmen (Small Entrepreneurs Association, I&amp;N Audit<sup>xvi</sup>) believe that the new Tax Code will worsen rather than improve business environment. They point to serious weaknesses in terminology, concepts and definitions given in the legislation.</p> <p>Definitions in the law are sometimes so broad that it creates serious problems. Local experts and business representatives have repeatedly pointed to outstanding problems in the taxation system, including the possibility of double interpretation of certain articles and complicated procedures.</p> <p>The tax authorities will retain their main role and have greater rights than the customer. The customer will have to submit to sanctions but the state is not held responsible for the non-fulfilment of its duties and the tax authorities are entitled to demand cash in return for discharging their liabilities.</p> <p>This runs in contravention of the constitution as these clauses decrease the rights of local government institutions, which have the constitutional authority to decide the rates of property tax in their areas. I&amp;N Audit concluded that the government is given too much power in the new Tax Code.</p>
<p><b>- Macroeconomic Stability</b></p>	<p><b>Under implementation</b></p>	<p><b>2010 Developments</b></p> <p>Georgia’s macroeconomic policy stance includes a commitment to maintaining a flexible exchange rate,</p>

		<p>which provides a key anchor of external sustainability in the face of uncertain capital inflows.</p> <p>The reform of the National Bank (NB) stands out from other financial reforms. The oversight functions of the NB were restored and strengthened (since 2010 NBG has had the power to monitor and control commercial banks, credit unions of non-bank depository institutions, microfinance organizations, the stock market and insurance companies) and the level of its independence was increased.</p> <p>The authorities have taken a number of steps to enhance bank supervision and, with bank lending still constrained, measures to stimulate credit growth have also come into effect. During 2010 there was a move to risk-based supervision, with new amendments approved in September 2009 to the law on commercial banks providing the supervising authority with the power to adjust regulatory requirements based on bank-by-bank risk assessments<sup>xvii</sup>.</p> <p><b>Challenges</b></p> <p>According to a recent World Bank survey (Operation and program summary, Georgia, second development policy operation<sup>xviii</sup>), Georgia faces a number of significant but manageable macroeconomic risks and vulnerabilities.</p> <p>First, given the uncertain global economic outlook, the external environment could suffer renewed deterioration, which would have a negative impact on exports, remittances, FDI, and other private capital inflows.</p> <p>Secondly, renewed domestic and regional tensions could have an adverse impact on investor and consumer confidence.</p> <p>Thirdly, domestic investor sentiment could fail to improve, which would constrain the recovery of credit availability to the private sector as the banking sector continues to exercise caution in lending.</p> <p>Should these scenarios materialize, they would impede any economic recovery. The effects of this would require further external adjustment, possibly including further real exchange rate realignment, cuts in planned public expenditure and additional official financing, preferably on concessional terms to safeguard debt sustainability.</p>
<p><b>- Public Finance Management</b></p>	<p><b>Under implementation</b></p>	<p><b>2010 Developments</b></p> <p>A priority reform implemented under the PFM Reform Strategy is development of a new Budgetary Code,</p>

		<p>which came into force in January 2010<sup>xix</sup>.</p> <p>One of the key directions of public finance reform was the introduction of international accounting standards in the public sector and the implementation of internal audits in compliance with the newly adopted Law on State Internal Audit and Inspection. The adoption of this law led to the establishment of the National Centre of State Internal Control in May 2010.</p> <p>The financial sector suffered a setback due to the government's decision not to use the Medium Term Expenditure Framework (MTEF) in the budgeting process during 2008-2010 and 2009-2011. The Georgian budget has not used this scheme at all in recent years, largely due to quick and unjustified changes in budgetary priorities rather than any need to make significant amendments to the budget.</p> <p>The government prepares an annual strategy document called <i>Basic Data and Directions (BDD)</i>, which outlines its medium term reform program and objectives, provides the medium-term macroeconomic framework, including the fiscal resource envelope and fiscal allocations, and includes detailed descriptions of the individual sectoral strategies for achieving these objectives. <i>Basic Data and Directions 2011-2014<sup>xx</sup></i> has been submitted to Parliament for approval.</p> <p><b>Challenges</b></p> <p>According to World Bank forecasts<sup>xxi</sup>, Georgia's debt burden indicators are projected to remain well below the relevant prudential thresholds, but debt management will be required to smooth out a 2013 spike in the debt service schedule. The present value of public external debt is projected to rise from 25.8 percent of GDP in 2009 to 34.4 percent in 2011.</p> <p>The public external debt service ratio is projected to remain well below the relevant prudential threshold of 25 percent despite the spike in 2013, which is the year when several large repayments are scheduled to coincide. The two predominant repayments due in 2013 are the \$500 million Eurobond and the IMF SBA program.</p> <p>The ratio of public external debt service to exports is expected to rise from 5.2 percent in 2009 to 7.9 percent in 2012 and then peak at 18.8 percent in 2013.</p> <p>The debt service to revenue ratio also follows a similar pattern. Georgia will, therefore, have to evaluate its options to manage the debt service schedule ahead of the amortization spike in 2013. The government is indicating that they intend to tap the markets to refinance the Eurobond.</p>
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<b>2.2 Economic and Social Reform</b>		
<p><b>- Social Security</b></p>	<p><b>Under implementation</b></p>	<p><b>2010 Developments</b></p> <p>A quarter of the 2010 Georgian state budget is earmarked for social programs<sup>xxii</sup>. This clearly illustrates the fact that the government sees this area as a key priority.</p> <p>In 2010, the government conducted a number of important activities to reform the social security system and foster a fall in poverty. Institutional reforms were also undertaken, namely the institutionalization of social workers' service and regional councils of the Social Service Agency.</p> <p>In February 2010, the government approved minimum standards for medical service providers participating in state insurance programs;          A document and action plan outlining the state strategy on the promotion of health for 2010-2015 has been prepared. Both documents have been submitted to the Parliament of Georgia for review.</p> <p><b>Challenges</b></p> <p>Georgia will need to continue improving the effectiveness of its social safety net to protect the vulnerable and ensure that the benefits of growth in the medium term are more equally shared. This will require both continued improvement in the effectiveness of social transfers, as well as improved access to health care through a strengthening of the health care financing system. In the area of social transfers, the reforms support a two-pronged strategy, on the one hand continuing to improve the effectiveness of the targeted social assistance (TSA) program while, on the other hand, adopting a strategy on the social safety net which includes measures to consolidate untargeted social transfers into the TSA program. In health care, the reforms also support a two-pronged strategy to improve coverage of medical insurance programs for the poor and the new, partly state-funded, health insurance program while also strengthening public stewardship of the health insurance sector.</p>
<p><b>- Poverty Reduction</b></p>	<p><b>Under implementation</b></p>	<p><b>2010 Developments</b></p> <p>The medical insurance program aimed at citizens living below the poverty line was reformed to force private insurance companies participating in the scheme to build or repair hospitals in the Georgian regions in addition to providing medical care.</p>

		<p>In June 2010, the targeted social assistance system was established. At the same time, the system of means testing was revised, with new criteria being adopted to define families (households) whose social-economic conditions are deemed to be below the poverty line.</p> <p>The Georgian government also adopted new rules governing the creation of a unified database of socially vulnerable families, the evaluation of the social-economic conditions of socially vulnerable families and their registration.</p> <p><b>Challenges</b></p> <p>The Welfare Monitoring Survey undertaken by UNICEF estimates a poverty headcount rate of 25.7 percent (20.1 urban and 31.5 rural), and an extreme poverty rate of 9.9 percent; 50.9 percent of households reported that their economic situation had worsened during the past year, while only 2.3 percent said that it had improved. Job loss was one of the most commonly cited reasons for deterioration in economic conditions<sup>xxiii</sup>.</p> <p>Unemployment is estimated to have increased from 13.3 percent in 2007 to 16.5 percent in 2008 and 18.5 percent in 2009.</p> <p>The World Bank's Global Monitoring Report 2010 figures show that Georgian levels of extreme poverty (people living on less than \$1.25 a day) are higher than all its neighbors<sup>xxiv</sup>. For example, less than 2% of Azeris were assessed as being in extreme poverty as opposed to more than 10% of Georgians.</p>
<p><b>- Labour Code</b></p>	<p><b>Not implemented</b></p>	<p><b>No developments in 2010</b></p> <p>There has been no progress in improving labour laws or the observance of employees' rights, such as the right to strike. The 2006 Labour Code, which was created without any preliminary consultations with trade unions, does not comply with International Labour Organisation (ILO) standards<sup>xxv</sup>. For instance, it does not include provisions on the right to unionise and on negotiations between trade unions and employers to protect employees' interests, though such provisions are required by ILO conventions.</p> <p>The current labour legislation falls short of EU standards and does not meet the requirements of the European Social Charter, ratified by Georgia in July 2005, in fundamental aspects like overtime work remuneration and dismissal procedures.</p> <p><b>Challenges</b></p>

		<p>The Labour Code violates the European Social Charter in the areas of overtime work remuneration and dismissal procedures. The Charter was ratified by Georgia in 2005, the same year in which Georgia promised to respect the international ILO conventions in order to benefit from the GSP+ trade agreement</p> <p>As the Georgian Trade Union Confederation has highlighted, a report by the European Commission about Georgia's progress in fulfilling the ENP gave a very clear warning to the Georgian government that the Labour Code will have to be amended if Georgia wants to continue enjoying the trade benefits granted under GSP+<sup>xxvi</sup>.</p> <p>The Georgian Labour Code is widely recognized as being a hindrance for the development of social dialogue between all engaged stakeholders.</p>
<p><b>- Competition Policy</b></p>	<p><b>Under Implementation</b></p>	<p><b>2010 Developments</b></p> <p>There has been little progress with regard to competition policy in 2010.</p> <p>In April 2010 the State Anti-Monopoly Service, which was abolished 5 years ago, will begin functioning again. The new service will form part of the Free Trade and Competition Agency .</p> <p><b>Challenges</b></p> <p>Despite the reestablishment of an anti-monopoly agency, significant hurdles remain before a competitive business climate can be said to exist in Georgia.</p> <p>The scope of current competition legislation is rather limited. The protection of consumer rights and the creation of a fair competitive environment are named as the aims behind the restoration of the Anti-Monopoly Service, but the Agency has not been endowed with the necessary regulatory tools.</p> <p>The law has so far appeared unable to protect consumer interests, prevent firms from exploiting their market dominance or regulate company mergers. It is vital to ensure the independence of the Free Trade and Competition Agency.</p> <p>No legal mechanisms (e.g. antitrust law, a system of anti-monopoly control, notifications or penalties) are in place to enforce decisions of the Anti-Monopoly Service.</p>

<p><b>- Trade Issues</b></p>	<p><b>Under implementation</b></p>	<p><b>2010 Developments</b></p> <p>In January, 2010 amendments to the Georgian <i>Law on Free Trade and Competition</i> were adopted and a presidential resolution on the establishment of new independent competition authority was issued in February.</p> <p>From March 2010, amendments to the Tax Code came into force according to which customs tariffs have been brought in line with WTO bound tariffs. Also excise tax on domestically produced and imported tobacco has been equalised. This will mean that Georgia's customs tariffs will be in line with its WTO commitments.</p> <p><b>Challenges</b></p> <p>The efficiency of the new law and regulations on free trade and competition need to be evaluated in 2011, when its implementation begins</p>
<p><b>2.3 Public Service Reform</b>  <b>Continue to develop and implement reform of public administration with a view to its modernization, accountability and transparency</b></p>		
<p><b>- Adopt a public service reform strategy and legislation for the civil service in order to improve good governance and transparency.</b></p>	<p><b>Not implemented</b></p>	<p><b>2010 Developments</b></p> <p>There were no significant changes in the civil service legislation in Georgia in 2010. No strategy for public service reform has been adopted yet.</p> <p><b>Challenges</b></p> <p>The Civil Service Bureau (CSB) has published the main principles for the reform and the draft of the new Civil Service Code on its web page. However, neither has been officially put through the legislative process yet, although the CSB has indicated it plans to do so by the end of 2010.</p> <p>There has been no public discussion of the draft of the new Civil Service Code, despite the fact that it proposes a dramatic break from the current system, introducing the New Public Management approach. While stressing the increased managerial freedom and deregulation and marketization of state services, the draft fails to provide for clear transparency and accountability mechanisms, as well as for the mechanisms ensuring political insulation for the management in practice, not only in the law.</p>

<p><b>- Continue to develop and implement reform of public administration with a view to its modernisation, accountability and transparency</b></p> <p><b>- Reform performance appraisal and bonus system.</b></p>	<p><b>Not implemented</b></p>	<p><b>2010 developments</b></p> <p>In 2010 the number of concerns on the level of accountability and transparency of the civil service has remained high.</p> <p><b>Challenges</b></p> <p>There is no performance appraisal system in Georgian civil service, however bonuses are paid at all levels of administration, and account for a sizable portion of civil servants' income. The grounds for the rewards are never clear, and the bonuses appear to be paid on monthly or as a regular addition to the salaries.</p> <p>The freedom of information requests to the ministries to provide sums of the bonuses paid within a given calendar year have yielded uneven results – some ministries have given annual totals of the bonuses paid to high officials, while others (Defense and Interior Ministries) have refused to specify the amounts of bonuses paid to officials, claiming the secrecy of such data. Rather than maintaining that data on bonuses is public and should be treated as such, the Justice Ministry officials have indicated that guidelines will be developed to ensure common practice throughout the civil service.</p> <p>This issue remains unaddressed in the new draft of the civil service code. The performance appraisal is suggested to be done by the manager of a given institution, according to his/her own views, without guidance or oversight by the state.</p> <p>While modernization continues to be the mantra of public administration reform ideas in Georgia, there remains a lack of policy planning and realistic assessment of the risks and feasibility for many initiatives</p>
<p><b>- Public procurement</b></p>	<p><b>under implementation</b></p>	<p><b>2010 developments</b></p> <p>Before the introduction of an new e-procurment system, public procurement was regarded as one of the key sources of corruption in Georgia. A popular narrative among businesspeople suggests that lucrative contracts have been rewarded to companies that are linked to high- ranking officials and that kickbacks or close relationships with high-ranking officials are often a precondition for winning contracts from some specific, powerful state entities.</p> <p>On December 1, 2010, Georgia will to introduce a new, ambitious electronic procurement system, in line with</p>

		<p>new procurement legislation (the Law on State Procurement was amended on October 26, 2010). All entities of public law will be required to use the new online platform to competitively procure goods and services. The threshold requiring a competitive tendering process is sufficiently low. For the first time, all procurement records and data will be stored electronically, and, according to the leadership of the State Procurement Agency (SPA), much of this information will be accessible to the public through an online database, including all announcements, signed contracts and additional tender documentation. Price will be used as the only criteria to determine the winner of a contract.</p> <p>A newly established council that includes several representatives of NGOs will address complaints about alleged irregularities and shortcomings in the procurement process.</p> <p>The reform of the public procurement system will constitute a major step in the right direction and finally create a transparent tendering process which will be automated to a large extent and thus significantly reduce the risks of corruption and abuse.</p> <p><b>Challenges</b></p> <p>The new approach causes certain concerns among international procurement experts: given the SPA's and other state entities' limited resources and expertise defining details and required quality criteria of a tender announcement as well as monitoring the quality of procured goods and services, may become major challenges under this new system. Moreover, funding from the President's, the Prime Minister's and the Tbilisi Mayor's Reserve Funds are exempted from competitive tendering, the spending from these funds remains opaque.</p> <p>The success of the new procurement system will need to be evaluated in late 2011, when a fine-tuning of the system is scheduled to take place.</p> <p>The SPA is also aiming to digitalize procurement contracts signed in past years. Currently, there is no systematic archiving of procurement contracts and the SPA lacks the resources needed to provide comprehensive responses to Freedom of Information requests. As a consequence, contracts are not accessible to the public in practice.</p>
<p><b>- Public internal control and external audit and control</b></p>	<p><b>Under implementation, concerns remained</b></p>	<p><b>2010 Developments</b></p> <p>The Law on Public Internal Audit and Inspection was adopted on March 26, 2010.</p>

		<p><b>Challenges</b></p> <p>The adoption of a single legislative framework regulating the internal audit is a significant step forward, in itself. However, the new legislation fails to address the weaknesses of the internal control system that have previously made it lacking in effectiveness.</p> <ul style="list-style-type: none"> <li>- There is no safeguard guaranteeing the independence of the internal auditors – while the law provides for the independence of the auditors and their full access to the data needed for assessments, including ensuring access of at least one person from the internal audit unit to classified documents, past experience has shown that the heads of the internal audit units change at least as frequently as the ministers. In an environment when the audit unit is not immune from political intervention and depends on the will of the minister rather than actual performance for job security, its actual independence is highly questionable. The issue of the auditor’s independence could have been better protected had the auditors been granted special protection – e.g. a term appointment, a requirement for detailed motivation for dismissing a sitting auditor, etc.</li> <li>- The problems regarding the powers to initiate internal audits also remain. Internal audit may only be commenced upon a written order of the head of the body the internal audit unit belongs to. This, again, leaves the audit unit dependent on the agency executive. The situation can be highly problematic in case of the misuse of power and conflict of interests of the executive. Related to this is the omission of the function many inspectorates (as the audit units were previously called) previously had, of accepting complaints on any aspect of the organization’s work. The complaints needed to be acted upon; however, the investigation/audit could only start upon the order of the executive.</li> <li>- Additionally, the scope of the audit is all encompassing and distinguishes four types of audit. While the suitability, operational, effectiveness and financial audits are distinguished, their scope is almost fully overlapping. (The audits are of the <b>feasibility</b> and legality of the monetary, human, material and other state resource spending; <b>Operational</b> management procedures, output, efficiency and effectiveness; <b>effectiveness</b> of the state program development, investment, financial, human, material and other resource allocation, analysis and assessment of the reasonability, efficiency and effectiveness of the practices and decisions in the management sphere; <b>financial</b> audits checking the books and compliance of the accounting practices with the set standards.)</li> <li>- The addition of the operational audits and the role of the audit unit in risk management, mentioned in the law are more than commendable. The implementation of these provisions, however, will be very difficult unless the audit units are given sufficient human and material resources. The audit units have in the past been cash-strapped and understaffed. Further, the largely accounting profile of the auditors meant that in the past they largely dealt with financial audits. Another major aspect of their work was the regular disciplinary monitoring of the staff, keeping records of those who arrive late or</li> </ul>
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miss work, and suggesting appropriate financial sanctions. Unless the new audit units are reinforced with personnel qualified to take on the new responsibilities, the effect of the new mandate will be minimal.

## 2.4 Fight against corruption

- Ensure progress in implementing the recommendations of the Council of Europe Group of States Against Corruption (GRECO).

**Under implementation**

**No developments in 2010**

### Challenges

Several GRECO recommendations remain partially met, according to the latest compliance report (2009).

While Georgia's Law on Conflict of Interest and Corruption in Public Service contains a chapter on whistleblower protection, the main challenges that remain are with regard to implementation. The National Anti-Corruption Strategy of Georgia, adopted in February 2010, seems to recognize this, saying that: "it is necessary that the existing legislation on whistle-blowing is implemented in practice to protect the rights of whistleblowers and witnesses and that legislative norms regarding whistle-blowing be elaborated further."

The National Anti-Corruption Action Plan adopted in September 2010 sets out targets in whistle-blowing to be achieved by 2012:

- Training of public servants in the new legislation, by the Civil Service Bureau (however the AP states that there are insufficient funds to carry this out)
- Enhancement of existing legislation and development of further guidelines on whistle-blower protection

These, however, are still quite vague.

The law on the Audit Chamber empowers it to carry out financial and effectiveness audits of budgetary expenditures, though it still does not have the capacity or expertise to effectively do this. Instead, its audits are limited to simple checking of receipts against stated expenses, and it does not go as far as to ask whether the goods or services paid for were actually received, or whether they were necessary or of adequate quality. Therefore its ability to identify fraud or hold other government institutions accountable remains limited. The Chamber's 2009-2011 Strategy admits a lack of established methodology for conducting these types of audits and the Chamber has stated that it will not start conducting effectiveness (performance) audits until 2012 at the earliest. Some of the delay is related to the lack of human resources,



		<p>expertise and time required to develop in-house capacity for more meaningful audits. A further weakness of the Chamber is its lack of political clout to hold government agencies to account for implementing recommendations it makes on the basis of its audits.</p> <p>While Georgia has a good Freedom of Information law on paper, its implementation varies considerably according to agency, and the type of information requested. Traditionally, the party requesting the information can sue the body denying access to public information and can then usually win the case in court. By this time, however, the information is no longer of much use.</p> <p>While the judiciary is to be the guarantor of the full implementation of the legislation, the courts themselves have not been faithful to the law in the past year. A new alarming trend has emerged whereby courts of all levels refuse to provide requested public information, citing the same reason - that mobilizing the administrative resources for fulfilling the request does not, at this time, “constitute a necessity for the Court’s activities”.</p>
<p><b>- Protection of property rights</b></p>	<p><b>Not Implemented</b></p>	<p><b>2010 Developments</b></p> <p>In the World Bank’s 2010/2011 Global Competitiveness Index, Georgia ranks 120 out of 139 countries regarding protection of property rights. In late 2009 and 2010, a “new wave” of property rights violations took place, in which numerous cases of state seizure of private property were recorded and documented</p> <p><b>Challenges</b></p> <p><b>Protection of property rights</b> remains a serious issue in Georgia. Most of cases are observed in relation to the development of tourism infrastructure in locations such as Svaneti (Mestia) and Anaklia on the Black Sea coast.</p> <p>This new wave of property rights violations follows previous “waves” of property rights violations that were also connected with the implementation of government-initiated projects on tourism development. For example, in 2006/07 violations were documented concerning a series of restaurants in the Riqe district of Tbilisi (high-value property due to its proximity to Tbilisi’s old town) and in Signaghi.</p>
<p><b>- Transparency in public spending (including the Reserve Funds for the</b></p>	<p><b>Not implemented</b></p>	<p><b>2010 Developments</b></p> <p>Despite sustained criticism from the civil society organizations, the government of Georgia shows no sign of</p>

<p><b>President, the Mayor of Tbilisi and the Government</b></p>		<p>addressing the issue of Transparency of spending from the Reserve Funds of the President, the Government and the Mayor of Tbilisi. Further still, despite significant budget cuts for 2011, the amount for the reserve funds is to be actually increased next year.</p> <p><b>Challenges</b></p> <p>Transparency of spending from the Reserve Funds of the President, the Government and the Mayor of Tbilisi continues to be a problem. While these are to be treated as contingency funds used in case of an emergency, in reality they are used at a whim, for example, to provide additional funds for Georgia's Eurovision participation. Additionally, the spending from the funds is not fully covered by general state procurement regulations, making the procurement non-competitive and more expansive, than they would otherwise be. The possibility of making the expenditures secret, making them inaccessible under Freedom of Information law and thus completely concealing them from public scrutiny, further adds to the opaqueness of the funds.</p>
<p><b>- Issue of grand corruption among top-level officials</b></p>	<p><b>Under implementation</b></p>	<p><b>2010 Developments</b></p> <p>A number of high-profile investigations and arrests took place in autumn 2010. This represents a departure from previous years, as no similar cases of prosecution of high-level officials on corruption charges took place in 2009 or early 2010.</p> <p>In September, the Prosecutor's Office arrested a former deputy minister of healthcare following the Audit Chamber's inquiry into the procurements made under the ministry's vaccination program. In October, the former Deputy Minister of Education and Science was arrested following an inquest conducted by the ministry's Internal Audit Department and the subsequent investigation by the Prosecutor's Office. He was charged with accepting a bribe in exchange for awarding a private company a procurement contract. Several other former officials of the ministry had been arrested earlier as part of the same investigation. The Audit Chamber also published information regarding procurement-related violations at the Ministry of Finance, although these are apparently still being examined by the Prosecutor's Office.</p> <p><b>Challenges</b></p> <p>It is widely accepted that petty corruption is not a major problem in Georgia any more. The biggest concern remains <i>grand corruption</i>, which is much more difficult to document. Procurement and major investment deals have been argued as the main avenue for this.</p>

		<p>The 2010 cases might demonstrate an improved ability of public agencies to detect and prosecute corruption, but with so few cases it is not possible to make this conclusion with any certainty. And the effects of the new e-procurement system remain to be seen.</p>
<p><b>- Civil society involvement in the planning and execution of public policy</b></p>	<p><b>Under implementation, concerns remained</b></p>	<p><b>2010 developments</b></p> <p>While civil society organizations are often invited to participate in public policy planning that seldom leads to meaningful participation in actual policy elaboration processes.</p> <p>For example, in early September 2010, the Anti-corruption Coordination Council approved an Action Plan for State Anti-Corruption Strategy. There was very little opportunity for CSOs to be involved in the development of this document. The process started and stopped several times during the summer of 2010, and finally the draft was developed without input from CSOs. The Plan was approved after two days following a meeting between the Council's Secretary and CSOs to review the draft. Thus, even if CSOs had time to raise concerns or suggestions regarding the draft document, it is unlikely that they would have been considered before the approved.</p> <p>With specific reference to the CSO involvement in the fight against corruption, CSO engagement improved in 2010 over previous years, although the opportunities for CSOs to contribute are still ad hoc and fairly superficial. Since late 2009, the National Anti-Corruption Coordination Council has had two permanent civil society members: GYLA (Georgian Young Lawyers' Association) and Transparency International (TI) Georgia. In early 2010 the Council developed and approved a new Anti-Corruption Strategy. Some feedback from TI Georgia and GYLA was included in the final document, and the Council provided enough time to do so. Still, several substantial recommendations were not included and CSOs were not involved in drafting of the strategy, only in commenting on the final version.</p> <p>Changes to the Constitution in 2010 were conducted in a similar fashion. While the process was long and quite open, it was also quite messy.</p> <p><b>Challenges</b></p> <p>Civil society involvement in planning of public policy continues to have limited impact. While the government increasingly tries to engage civil society in the planning of public policy, it frequently fails to find effective and efficient ways to do so. Instead, many of the initiatives to pull CSOs into planning processes seem to be designed for the purpose of claiming civil society involvement, rather than to contribute to meaningful policy development. Sometimes officials cite the fast pace of reforms and the desire to avoid long, drawn-out</p>

		<p>consultations as reasons for skipping the step of civil society consultation. The possibility of civil society's involvement in the development and reform of government policies is also negatively affected by the political environment. NGO recommendations generally have little impact on policy decisions since the ruling party's total dominance of parliament and its considerable influence over the media makes it easy to ignore NGO criticism of draft legislation. Additionally, draft bills are not always made public in a timely manner, which limits the possibility of NGO input. The dialogue between the government and CSOs is not institutionalized and the organizations that are more critical of the authorities tend to be excluded from this dialogue. (Source: The National Integrity System Assessment, Chapter on Civil Society, Transparency International Georgia, Forthcoming Report (February 2011).</p> <p>The recent development of new legislation on media transparency demonstrates the complicated nature of CSO involvement in government work. The Georgian Media Association (GMA) began drafting legislative amendments early in 2010 in response to rumors about the creation of a monopoly on print media distribution. GMA submitted one draft of the legislation to Parliament in March. Throughout the year, they put together eight different draft amendments, and arranged a press conference on October 26 to introduce these laws to the wider public. Surprisingly, a day before the scheduled conference the Chair of the Parliament, Davit Bakradze, announced a new (and welcome) government initiative to amend the law on media ownership to increase transparency – one of the issues covered by the Association's proposed changes. Parliament's Legal Issues Committee was tasked with drafting this specific legislation, and it claims that it met with several CSOs during this process – information confirmed by some of those CSOs. However, the GMA group claims that it was never consulted. On the same day in early November, two different versions of media legislation were separately submitted to Parliament – one from the Parliamentary majority (drafted by the Legal Issues Committee) and one from GMA's working group. The story shows the complicated process of planning policy. Ultimately, we think it is a positive sign that GMA was allowed to submit their version of legislative amendments.</p>
<p><b>- Pursue transparent privatization process both as regards divestiture and use of privatization proceeds</b></p>		<p><b>2010 Developments</b></p> <p>Despite the numerous amendments of privatization regulatory legislation, none of these changes ensured transparency of the privatization process; The majority of changes were aimed at increasing the number of privatization objects, which is not surprising if the desire of Georgian government to boost the budget is taken into account.</p> <p><b>Challenges</b></p> <p>As a result, public access to privatization-related information is still an issue and no efforts have been made</p>

		<p>to address this problem. The state agencies do not promote availability of information for the public; on the contrary, they are creating all possible barriers to block public information for interested parties as well as established the practice of “selective openness” on a case-by-case basis. Such “selective openness” gives ground to think that confidential privatization contracts that usually address the objects like large municipal infrastructure (Tbilisi, Mtskheta, Rustavi water supply and sewage systems) and/or extractive industry (ChaiturManganese). The confidentiality of the above-mentioned contracts raises the doubt that it included some illegal obligations or/and obligations which are against public interests.</p> <p>Furthermore, quite interesting trends have been revealed: if the contract is a commercial secret from the beginning, state agencies also try to conceal information about the fulfillment of contract obligations (if they have such information). However, there are cases when the contract is open to the public, but information on performance is inaccessible (or hardly accessible)<sup>xxvii</sup>.</p> <p>A non-transparent privatization agenda aims to attract short term cash inflows for the state budget, rather than prompting investors to develop new, credible – even sustainable – business</p>
<h2>2.5 The Statistics Reform</h2>		
<p><b>- Reform of the National Statistics Office</b></p>	<p><b>Under implementation</b></p>	<p><b>2010 Developments</b>          In April 2010, the National Statistics Office of Georgia (Geostat) was established to replace the Department of Statistics, which existed as part of the Ministry for Economy. The Department of Statistics initiated reforms in order to enhance territorial offices of the Department of Statistics with relevant number of personnel.</p> <p><b>Challenges</b></p> <p>There are still doubts as to whether the Geostat is really an independent body. At the same time, the effectiveness of Geostat has been also called into question. Budget funding for Geostat decreased from 4,5 million GEL in 2009 to 3,2 million GEL in 2010.</p> <p>There have been repeated cuts in staff at Geostat in recent years as its budget was slashed. This has had a serious negative impact on the sustainability of the national statistics system, resulting – most importantly – in a shortage of experienced professional cadres</p>

**2.6 Ensure freedom of the media. Encourage proper implementation of the Law of Georgia on Broadcasting and the Law of Georgia on Freedom of Speech and Expression**

<p><b>- Transparency of media ownership</b></p>	<p><b>Under implementation</b></p>	<p><b>2010 Development</b>          Media ownership continues to be opaque in Georgia. In many cases, the identities of individuals and interest groups controlling and funding Georgian media outlets are unknown to the public. For example, companies registered in off-shore tax havens control the country's most popular national TV channels – Rustavi 2 and Imedi.</p> <p>However, this may be about to change. In November 2010, two draft laws concerned with improving transparency of ownership in the media were initiated in Parliament. One was initiated by the ruling United National Movement (UNM) party and the other was drafted by a group of civil society and media activists.</p> <p>Representatives of civil society and other interested parties, including the international community, were invited to participate in discussions about the proposed draft law.</p> <p><b>Challenges</b></p> <p>The two drafts differ significantly from one another. The draft proposed by the ruling party envisages limiting the direct or indirect ownership of broadcast media outlets by offshore firms to 10%, while the draft put together by the civil society group envisages a blanket ban on offshore firms owning media outlets.</p> <p>The civil society draft also includes a raft of changes to several laws affecting the media and aims to improve the media environment as a whole, addressing not only ownership transparency but also other issues such as improving access to public information, the process for obtaining a broadcast license, introducing fast and cheap court appeals in cases when journalists are denied access to public information and clear-cut regulations for media advertisements. Discussions on the drafts will last until June 1 2011, the deadline announced by the ruling party for adopting the present draft law.</p>
<p><b>- Diversity and pluralism of media voices</b></p>	<p><b>Under implementation, concerns remained</b></p>	<p><b>2010 developments</b></p> <p>The ongoing consolidation of ownership in broadcast media outlets continued to limit the diversity of Georgian broadcast media during 2010.</p>

		<p><b>Challenges</b></p> <p>High levels of concentration in the ownership of media outlets limit media pluralism. Such concentrations are prohibited by Article 60 of the Law on Broadcasting. However, this law does not prevent an individual from holding shares in different companies that hold broadcasting licenses. This allows for the concentration of various media companies in a single owner's hands. For example, GIG Group (one of the founders of which is the brother of the head of the Georgian Foreign Intelligence Department) owns 30% of Rustavi 2, 45% of Mze TV, and 65% of Stereo TV. Also, the offshore Degson Limited LLC owns 55% of Mze, and 70% of Rustavi 2<sup>xxviii</sup>. This loophole potentially allows the government to gain control of the Georgian media sector.</p> <p>Georgian TV channels tend not to air a broad range of opinions or news. In their news bulletins, the main national TV stations cover similar stories often in the same order following similar editorial lines.</p> <p>Alternative opinions can only be heard on weekly talk shows. Although TV companies that are more critically disposed towards the government do exist, their broadcasts only cover the area around Tbilisi. Journalists and experts generally focus on the editorial policies of newsrooms rather than the freedom of opposition politicians to appear on talk shows when complaining about the lack of media freedom on Georgia.</p>
<p><b>- Independent regulator of media environment</b></p>	<p><b>Not implemented</b></p>	<p><b>2010 developments</b></p> <p>The Georgian National Communications Commission (GNCC) the state regulator for electronic communication, enjoys little trust from independent media outlets and is perceived to be politicized. The regulator has not granted any new television broadcasting licenses in the last two years and has done little to enforce existing rules.</p> <p><b>Challenges</b></p> <p>In March 2009, the GNCC ratified the Code of Conduct for Broadcasters, which requires broadcasters to create mechanisms of self-regulation, meaning that they have to determine and uphold their own ethical and professional standards. No national broadcaster has developed such standards yet. The only exception is the state-funded Georgian Public Broadcaster, which already had an internal code of ethics before the GNCC directive was passed. Nevertheless, the Code of Conduct remains on paper and has not had any tangible effect. An explicit example of this was the fake report aired on Imedi TV on 13 March 2010 when a news bulletin was broadcast depicting Russian troops advancing on Tbilisi without any subtitles warning viewers they were watching staged events. The 30 minute report was aired by Imedi TV's weekly program Special Report, which started just couple of minutes before 8pm – the time when Imedi TV runs its usual</p>

		<p>news bulletin Kronika. Article 13 of the Code of Conduct states that any staged stories are prohibited, unless viewers are clearly informed of this fact and have a clear understanding that they are watching a staged event. The staging of news stories is absolutely prohibited in news bulletins and political talk-shows. Despite this violation of the Code and significant protests from civil society and the international community, no sanctions were imposed on Imedi by the GNCC. This lack of reaction regarding Imedi TV's fake report is widely regarded as evidence that the GNCC is not an independent institution, but rather one that takes politically biased decisions</p>
<p><b>- Financing the media</b></p>	<p><b>Not implemented</b></p>	<p><b>2010 Developments</b></p> <p>In 2010, Georgia's Parliament approved a tax amnesty for all those television stations which had a debt of unpaid taxes which amounted to GEL 36 million (about USD 20.6 million). Media watchdog organizations found that the unpaid taxes of all regional TV stations amounted to about GEL 3 million while the Georgian Public Broadcaster claimed GEL 9 mln of debt. Therefore, media watchdog organizations assume that about GEL 24 million was spent subsidizing Rustavi 2 and Imedi, TV channels loyal to the government.</p> <p><b>Challenges</b></p> <p>Since 2009, pressure from state authorities has become indirect and more sophisticated: Firstly, they have owners of media companies who are loyal to the ruling party. Secondly the owners of media outlets hide not only their names, but also the financial flows of these channels by registering their companies in offshore zones. Thirdly, the small size of the advertisement market in Georgia is shrinking further still as advertisement revenue is channeled towards pro-government media outlets. Fourthly, the GNCC regulatory body, big advertisement companies and media owners are not only linked to each other but also are loyal to the ruling party. For example the heads of GNCC and Rustavi-2 are also cofounders of the Magistili advertising company.</p> <p>The owners of media outlets - both broadcasting and print - that are critical of the government believe that state officials pressure businesses against advertising in their media outlets. Many companies shy away from advertising on independent, outspoken media outlets, because business owners are concerned that such activities will have a negative impact on their relationship with the government and, as a consequence, on their business activities. According to a widely believed rumor, advertisements published or shown on media outlets that are highly critical of the government and the ruling United National Movement party are likely trigger increased scrutiny from the Revenue Service (the state body charged with tax collection).</p> <p>In addition, the Ministry of Economy publishes information about tenders exclusively in the pro-government</p>



		<p>newspaper 24 Saati (24 Hours). The editors say this is one way of channeling money to a newspaper loyal to the ruling party, while discriminating against others and depriving them of the possibility to compete in an open and free competition for the state money.</p> <p>Claims that key newspaper distribution companies, advertising companies and advertising sales houses (selling advertising time on national television) are closely linked to high-ranking government officials and the UNM are, again, widely believed among observers of the media sector, but are difficult to substantiate (due to the widespread use of straw men in order to hide the identity of a company's de facto owner). Media outlets that are allegedly closely linked to the government receive significant advertising revenues from other companies that are regarded as close to the government such as the Georgian Lottery Company.</p> <p>There is a clear lack of journalistic as well as commercial competition between the three national TV channels – Rustavi 2, Imedi and the Georgian Public Broadcaster's Channel 1. In the advertising sales market, there is also concern about the emergence of a single actor with monopoly market power.</p> <p>There are no investigative journalism programs focused on investigating corruption cases on national TV. The print media suffers from a lack of resources and/or journalistic professionalism and, with a few exceptions, does not investigate high-level corruption cases. Georgia also lacks an active blogosphere that could bring corruption cases into the public domain.</p>
<p><b>- Free access to information</b></p>	<p><b>Partly Implemented</b></p>	<p><b>2010 Developments</b></p> <p>Sixteen regional newspapers organized a protest on 3 May, publishing the slogan “Provide Us with Public Information” on their front pages. Journalists and lawyers share concerns regarding access to public information in Georgia. Organizations often do not provide a name of the person responsible for public information. Often journalists do not get the information they request or only get partially part of it. Lawyers at the Georgian Young Lawyers Association say that they never practice that administrative complaint to the superior official or a body after a public agency denied to provide information at the first demand. Another concern is that orders given by the President of Georgia are not public any more.</p> <p>A journalist from the Gori-based regional newspaper Kartlis Khma was, on several occasions, denied free access to sessions of the municipal council. Another journalist from the independent investigative journalism group Studia Monitori said that she also experienced problems gaining access to sessions of Tbilisi City Council.</p> <p><b>Challenges</b></p>

		<p>In 2008, two amendments were made to General Administrative Code that limited access to information. Firstly, the fee payable to the state for bringing a case to court was raised from 30 lari to 100 lari. Secondly, before submitting a court appeal, it is mandatory to first appeal to a superior official or body within the public institution which failed to provide the public information in question. These two amendments have meant that more time and money are required to obtain public information.</p> <p>Georgian journalists also allege that the General Administrative code – which theoretically ensures free access to information – is often interpreted unfavorably in terms of freedom of speech and that the definition of what constitutes a personal or state secret is unclear.</p> <p>According to the General Administrative Code, every December, all central and regional public institutions are required provide annual reports to the president and Parliament on how often they are requested to provide information and how they handle these requests. According to reports from civil society institutions that monitor the process, the president’s office does not look at the reports and Parliament reviews them only superficially.</p>
<p>- Promote the use and exchange of views on new technologies and electronic means of communications by businesses, government and citizens in areas such as e-Business (including standards for e-signatures), e-Government, e-Health, e-Learning, e-Culture;</p> <p>- Switch over process from analogue to digital systems</p>	<p><b>Not implemented</b></p>	<p><b>No developments in 2010</b></p> <p><b>Challenges</b></p> <p>The Georgian government is committed to completing the switch-over from analog to digital TV by the end of 2014. However, neither the government, nor any other institutions, including the GNCC, have taken any steps to prepare the legal framework for the digital switchover process. There is no legal or political commitment to ensure public access to digital platforms. Also, nothing is known about the costs that must be met before analog signals can be switched off. Shops that sell TV-sets often do not stock digital TV sets and still sell analogue models. The public are not informed about the switchover and that they will have to adjust their TV-sets to the new requirements. Analogue TV-sets are cheap and Georgians buy them without knowing that in four years they will be of no use. So far, no financial or technical aid for the public has been discussed or proposed.</p>
<p>- New technologies</p>	<p><b>Partly implemented</b></p>	<p><b>No developments in 2010</b></p> <p><b>Challenges</b></p>

		<p>E-government is at a very early stage of development in Georgia. Often the websites of government institutions are under construction, or suffer from a number of problems. For example, many websites do not list the email addresses of employees, include a calendar of events or answers to frequently asked questions. Interactive forums are rare. Websites are often out of date and lack up to date information. Website interfaces are often not user friendly. However, an exception to this rule is the National Agency of Public Registry at <a href="http://www.napr.gov.ge">www.napr.gov.ge</a></p> <p>A deficit of political will alongside a lack of professionalism as well as financial and technical support are amongst the factors hindering the development of e-governance. Also not all regions of Georgia have access to internet.</p>
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## 2.6 Environment - ensure that conditions for good environmental governance are set and start implementing them

<p><b>- Strengthen administrative structures and procedures to ensure strategic planning of environment issues and co-ordination between relevant actors</b></p>	<p><b>Under implementation</b></p>	<p><b>2010 Developments</b></p> <p>Plans and programmes that were developed in certain areas during 2007-2010 are still not formally adopted; their role in the planning system for the country's development still remains unclear.</p> <p>Two processes deserve special mention in this area: the development of the second National Environmental Action Plan (NEAP) and development of the Strategy and the Action Plan for Regional Development of Georgia for 2010-2017.</p> <p>During 2010 a new version of the second NEAP was being developed<sup>xxix</sup>. It is claimed by the Ministry of Environment Protection and Natural Resources (lead agency) that this time the plan was being developed with the broad participation of a number of ministries, NGOs and various stakeholders, though the real picture is not as claimed to be. The draft version of the second NEAP was made public only in mid-July 2010 (during the holiday season) and the NGOs were invited to present comments within a three-week period. No other drafts were made public, nor have any public consultation meetings taken place so far. It is expected that the second NEAP will be finalized by the end of 2010.</p> <p>Certain steps have been taken to ensure the integration of environmental issues in other sectors. For instance, the Strategy for Regional Development of Georgia for 2010-2017 (approved on 25 June 2010) includes priorities for improvement of municipal waste management system, as well as actions directed at the protection and sustainable management of water and land resources, forests, etc.</p> <p><b>Challenges</b></p>
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<p><b>- Adopt legislation and establish procedures regarding access to environmental information and public participation, including implementation of the Aarhus Convention</b></p>	<p><b>Not implemented</b></p>	<p><b>No developments in 2010</b></p> <p><b>Challenges</b></p> <p>No steps have been undertaken to improve legislation and procedures for access to information, public participation in the decision-making and access to justice in environmental matters.</p> <p>Public participation in the decision-making process is still sporadic and inconsistent. The provisions of the law on Normative Acts and the amendments made in the General Administrative Code of Georgia (adopted in 2009) are in violation of the requirements of articles 8 (public participation during the preparation of executive regulations and/or generally applicable legally binding normative instruments) and paragraphs 5 and 6 of Article 3 of the Aarhus Convention. .</p>
<p><b>- Continue preparing regular reports on the state-of-the-environment</b></p>	<p><b>Under implementation</b></p>	<p><b>2010 developments</b></p> <p>Progress was achieved in this area: with the EU financial assistance, the Ministry of Environmental Protection and Natural Resources (MEPNR) drafted a revised presidential decree on the rules for the preparation of state-of-the-environment reports. Also a state-of-the-environment report for 2007-2009 was developed during 2009-2010 (not yet finalized, approved or published). Unlike other state-of-the-environment reports (prepared during 2000-2005) the process of drafting the last report was open to input from NGOs and other stakeholders.</p> <p><b>Challenges</b></p> <p>It is believed that the drafting process has strengthened the Ministry's capacity to produce high quality reports; however, this can only be proved when the Ministry produces reports independently, without external</p>

		assistance.
<b>- Reinforce structures and procedures to carry out environmental impact assessments</b>	<b>Under implementation</b>	<p><b>2010 Developments</b></p> <p>The Environmental Impact Assessment (EIA) system is still ineffective in Georgia, both in terms of providing the public with information and opportunities for public participation, or in terms of helping decision-makers take informed decisions on activities that might have a significant impact on the environment and human health. Public (state-owned) projects remain exempt from EIA procedures, as do mining and forest use projects (mining and forest use licenses are auctioned off without any prior environmental and social assessments). The public remains uninformed about both, applications for receiving ministerial (environmental) consent for the development projects and the final decisions taken by the ministry (MEPNR).</p> <p><b>Challenges</b></p> <p>The EIA system is not in compliance with the requirements of the Aarhus Convention and with relevant EU directives.</p>
<b>- Ratifying international environmental conventions and protocols</b>	<b>Not implemented</b>	<p><b>No developments in 2010</b></p> <p>There has been no progress in the ratification of UNECE Conventions since 2007.</p> <p><b>Challenges</b></p> <p>The Georgian government tries to avoid the responsibility that Convention ratification would bring to the country, especially in relation to Kura river management. The avoidance of the problem just delays its solution. In addition, as the ESPOO Convention is not ratified, Georgia cannot ask Armenia to fulfill its obligation and do a transboundary impact assessment of the Tegut mine operation; that facility's dam is widely thought to have major impact on the Derbed River.</p>
<b>2.7 Promotion of sustainable development</b>		

<p><b>- Ensure strategic planning of sustainable development and coordination between relevant actors - Energy sector:</b></p>	<p><b>Under implementation</b></p>	<p><b>2010 Developments</b></p> <p>In 2009 the Georgian Government considered application for full membership (“Contracting Party”) in the European Energy Community (In 2007 Georgia was granted observer status). The commitments of the EEC Treaty include implementation of specified EU legislation to environmental protection and management, as well as the Kyoto Protocol and IPPC Directive.</p> <p><b>Challenges</b></p> <p>According to a discussion paper prepared by GEPLAC, a number of legal, institutional and administrative steps should be undertaken in order to harmonize Georgian environmental legislation subject to the EEC Treaty<sup>xxx</sup>.</p> <p>Meanwhile, according to the Ministry of Energy of Georgia, elaboration of a law on energy efficiency and renewables, has been postponed until 2012, due to the low capacity in that particular sector.</p>
<p><b>- Take steps to improve integration of environmental considerations into other policy sectors</b></p>	<p><b>Under implementation</b></p>	<p><b>2010 Developments</b></p> <p><b>Integration in Transport Sector</b> The UNECE Second Environmental review acknowledges that “Tbilisi has severe air quality problems. Furthermore, its specific geography does not allow for the operation of a large number of vehicles. Other parties, referred to above, are working on fuel and vehicle quality (i.e. technological issues), but little attention has been given to one very important component of a sustainable transport system: demand management”.</p> <p><b>Challenges</b></p> <p>While Tbilisi City Hall’s move towards introducing electric transport could be considered a move in the right direction, overall the city lacks a comprehensive transport management plan/program. This involves increased emissions due to the lack of a properly planned public transportation system.</p> <p>The absence of a concept for sustainable transport development for a country that prioritizes its transit function and seeks to take advantage of all possibilities to increase passenger turnover, including developing airports, railway and ports is an issue of great concern. The integration of environmental issues, including health issues, in transport policy is still far away.</p>

<p><b>- Implement provisions under the Kyoto Protocol and the UN Framework Convention on Climate Change including through the active cooperation under the Clean Development Mechanism</b></p>	<p><b>Under implementation</b></p>	<p><b>2010 Developments</b></p> <p>Government of Georgia makes substantial progress regarding the Climate Change in 2009 -2010. Taking into account the acute nature of climate change consequences, Georgia has identified climate change and adaptation to its consequences as a national priority in the field of Climate Change Policy. The National Adaptation Programs of Activities (NAPA) which is under development will assist the country in undertaking the necessary measures and in finding the necessary funds. Two from three adaptation programs develop under the Second National Communication Report is under implementation with support of International donors. It includes the replacement of windbreaks, recultivation of destroyed forests areas in Dedoplistskaro region through GTZ support and rehabilitation of Black Sea Coastal Zone between Adlia and Batumi.</p> <p>Georgia associates itself with “Copenhagen Accord” in 2009 and is ready to conduct appropriate measures to reduce GHG emissions notwithstanding its low share in the overall global emissions. Government officials start negotiations with UNDP and number of other international donors to support the NAMA (Nationally Appropriate Mitigation Action) strategy elaboration. The funds for elaboration of Third National Communication is allocated and it is expected that work on project proposals will start in spring 2011</p> <p>In May 2010 Tbilisi Mayor signed Covenant of Mayors and takes commitment to reduce CO<sub>2</sub> emissions through enhanced energy and cleaner energy production and use. By March 2011, Tbilisi City Hall is planning to elaborate a baseline study on current energy consumption and CO<sub>2</sub> emissions in the relevant sectors of the city and in parallel elaborate strategies for energy efficiency in areas of municipal infrastructure, transportation and housing. The working groups are open for participation for all interested parties.</p> <p>In autumn 2010, the second Climate Change week supported by local delegation and facilitated by FOE Georgia takes place in Georgia. It aims to raise awareness on Climate Change and includes lectures, seminars, street activities and etc.</p> <p><b>Challenges</b></p> <p>“Kaztransgaz” project will be the first that brings some benefit to Georgia from CDM (Clean Development Mechanism). The issues regarding the registration and validation is still problematic, e.g. after few years of preparation the Enguri Project was not registered in UNFCCC, as project account some problems.</p>
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<p><b>Transport</b></p> <p><b>- Continue implementation and refinement of the national sustainable transport policy for the development of all modes of transport and related infrastructure in order to identify the priority infrastructure projects in various sectors;</b></p>	<p><b>Under implementation</b></p>	<p><b>2010 Developments</b></p> <p>Georgia continues its extensive program on roads rehabilitation based on funds provided by the International community after the August 2008 war, including the ADB-backed Ajara Highway, and the East-West Road supported by World Bank. As with most IFI funding of infrastructural projects, public participation and consultation gives quite important input, which is reflected in the redesigning of the projects, like the World Bank financed Vaziani-Gombori road, and/or further defining a route that would avoid biodiversity hotspots, like in the case of ADB Ajara Highway.</p> <p><b>Challenges</b></p> <p>However, on national level the public participation, especially in urban transportation development, schemes is still missing. This leads to the construction of city roads without any environmental and social impact assessments, or introduction of public transport schemes that increase the promotion of private car usage.</p> <p>Despite some improvements in intermodal services and the rehabilitation of the railway system in Georgia, there are a number of controversial issues related to the railway. They include EUR 300 million Tbilisi Bypass project, which has been supported by EUR 100 million Loan by the EBRD and EUR 100 million Loan by EIB in March 2010. The Tbilisi Railway bypass project aims to improve the efficiency and safety of rail operations within the city of Tbilisi, while the planned construction of a new railway line through one of the capital city's densely populated districts the splitting of passenger railway systems into two parts and ensuring safeguard measures to protect the city's drinking water supply among other things are widely regarded as being far from sufficient as presently conceived. The project development has been characterized by a poor public consultation process, despite the involvement of EBRD and EIB.</p> <p>It should be noted the government of Georgia, in September 2010, declined to take the approved subsidized loan from EIB and instead decided to issue bonds on international market. This behavior raised a number of concerns, taking into account the EIB environmental and social standards that should adhere to EU standards.</p>

**Priority Area 6. Cooperation for the Settlement of Georgia's Internal Conflicts**



<h3>3. Cooperation for the Settlement of Georgia's Internal Conflicts</h3>		
<h4>3.1 Prevent the renewal of armed conflict</h4>		
<p><b>- Stabilization –outcomes of Geneva Discussions and EUMM</b></p>	<p><b>Under implementation</b></p>	<p><b>2010 Developments</b></p> <p>In 2010 the <i>Geneva Discussions</i> remained the one international forum in which all parties agree to participate. Increased tensions on the ground and deadly incidents disrupted the process several times and only six rounds of the Discussions took place during 2010 (the next one is scheduled on December 16, 2010).</p> <p>On July 27, 2010 Abkhaz participants suspended participation in scheduled the 12<sup>th</sup> the round of Geneva Discussion. Proposals on a possible non-use of force agreement and associated international security arrangements were the topics of discord at the session. The Geneva Discussions renewed regular meetings on October 14, 2010. At that same meeting Russia announced that their checkpoint in Perevi, Georgia, was dismantled and removed. This fact was later confirmed by the EUMM. According to EU officials, EUMM has been liaising with Russian and Georgian authorities to ensure that the withdrawal is carried out in an orderly and peaceful manner.</p> <p>On July 26, 2010, the EU foreign ministers agreed in Brussels to extend the mandate of the European Union Monitoring Mission in Georgia (EUMM) by twelve months, until September 14, 2011. So, the EUMM continue its presence on the territory of Georgia, its mandate covers the entire territory of Georgia within its internationally recognized borders, but the de facto authorities of Abkhazia and South Ossetia/Tskhinvali Region still deny the EUMM access to their sides of the administrative boundary line and territories occupied by Russia in 2008. At present the EUMM is the only international mechanism to observe and promote stability in Georgia.</p> <p>In 2010 the EUMM remained the main player in facilitation of direct contacts and information exchange between the Georgian authorities on the one hand and representatives of the Russian authorities and the de facto governments of South Ossetia and Abkhazia on the other. These communication mechanisms have mainly been developed in the framework of the Incident Prevention and Response Mechanisms (IPRM).</p> <p>- On October 28, 2010, after an interruption of over one year, IPRM for the South Ossetian theatre</p>

	<p>reconvened its 7th meeting with the active engagement of EUMM. The proceedings were co-facilitated by the OSCE and EUMM. The next IPRM meeting was scheduled for December 10, 2010.</p> <p>- On October 8, 2010 the EUMM, together with the UN participated in the IPRM's 21<sup>st</sup> meeting in Abkhazia. In 2010 the IPRM continued functioning for the Abkhazia theatre without any interruption.</p> <p>During 2010 a very useful telephone "hotline" system, facilitated by the EUMM, continued functioning in both theatres. Several destabilizing incidents occurred near the South Ossetia and Abkhaz Administrative Boundary Lines (ABL), and each of these incidents had the potential to lead to conflict escalation. Since it appeared the "hotline" system has repeatedly helped to de-escalate rising tensions, especially in the absence of the IPRM.</p> <p>On July 2, 2010 the EUMM amended the Memorandum of Understanding with the Georgian Ministry of Defense, (first signed on January 26, 2009), which limits the MOD's right to deploy troops and heavy equipment in the areas adjacent to the Administrative Boundary Lines. This document also served as another factor contributing to the de-escalation of tension along the ABLs.</p> <p><b>Challenges</b></p> <p>There is a fear that IPRM regular meetings for South Ossetia and Abkhazian theatre might be suspended due to human security-related incidents, such as detention, abduction and abuse of the local population. In particular, some communities along the ABL regularly face shooting incidents, stealing of agricultural goods or detention of community members by South Ossetians. In a number of communities people find their lives so untenable that they leave, further depopulating the area<sup>xxxii</sup>. It is important for the escalation of the situation to be avoided through regular exchange of information on IPRM meetings under the auspices of the EUMM. The positive engagement of the OSCE and UN family agencies in IPRM meetings would further decrease the possibility of the suspension of talks.</p> <p>In October 2010 the EUMM and official Georgian sources (MIA) acknowledged that an overview of the incidents since the beginning of 2010 indicates a decrease of general tension in the regions, But, at the same time, a household survey that studied perception of insecurity of the population living close to the South Ossetia ABL describes the situation on the ground slightly differently. According to the report in many contexts criminal incidents may be decreasing on paper, but people continue to feel the same levels of insecurity in some areas adjacent to the South Ossetia ABL<sup>xxxii</sup>.</p> <p>All international observers working in Abkhazia agree that Georgian returnees fall victim to criminal acts and that situation of protracted displacement should not continue, as the right of the return has to be recognized and the conditions for return have to be created<sup>xxxiii</sup>.</p>
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<b>3.2. Fulfillment of the rights of IDPs to fully participate in political, social and economic life</b>		
<p><b>- Normalization - Implement</b>          State Strategy on IDPs          Implementation Action Plan          2009-2012</p>	<p><b>Under implementation</b></p>	<p><b>2010 developments</b></p> <p>According to the Georgia Ombudsman's Report on 2010 January-July, the Georgian government has registered 15,912 IDPs from the 2008 war. In total, as of June 2010 Georgia accommodates 249,365 IDPs from Abkhazia and South Ossetia.</p> <p>Cooperation on the drafting and implementation of the State Strategy on Internally Displaced Persons (IDPs) in Georgia for 2009-2012 was largely driven by international donors, whose substantial funding played an enormous role in the government's ability to implement the Strategy. Major international agencies such as UNHCR and the Danish Refugee Council led the process of updating the Action Plan and driving multi-stakeholder discussions about issues such as education and livelihoods.</p> <p>On 11 May 2010, in response to the EU requirements, the Georgian government approved additional amendments to the State Strategy on the IDPs Implementation Action Plan 2009-2012<sup>xxxiv</sup>. Two major points have been addressed by the amendments:</p> <p>1) The new AP defined criteria for provision of permanent accommodation for IDPs through dividing them into the four following categories: (a) need housing rehabilitation; (b) do not need housing rehabilitation; (c) need to be provided with alternative accommodation; (d) IDPs that are part of IDP-related state programs.</p> <p>2) The AP sets out the measures on IDPs' awareness building through:</p> <ul style="list-style-type: none"> <li>- improving the level of transparency of the AP implementation process</li> <li>- better engagement of civil society and media in AP implementation,</li> <li>- ensuring IDP access to legal consultation,</li> <li>- improving communication between IDPs and municipalities on the one hand and territorial units of the Ministry of refugees and accommodation on the other.</li> </ul> <p><b>Challenges</b></p> <p>Even though the amendments to the State Strategy on IDPs' Implementation Action Plan had been developed and approved in 2010 they did not secure the rights of Georgian IDPs not to be expelled from</p>

		<p>collective centers where they had been living for several years.</p> <p>Between June 14 and August 5, 2010, about 5000 IDPs were forcefully evicted from Tbilisi collective centers<sup>xxxv</sup>. The measures taken by the Georgian authorities were not in line with international standards and contradicted the principles defined in the IDP Strategy and Action Plan (Task 1) approved a month earlier.</p> <p>First of all, the authorities violated IDPs' right (national law on IDPs 1996, IDP strategy) to continue living in collective centers until he/she officially signs an agreement and accepts alternative accommodation provided by the government. During the June-August 2010 events the authorities did not consult family members of IDPs, in some cases the advance notice was not delivered to IDPs and without real alternative offered collective centers that were not suitable for living.</p> <p>Secondly, the June-August 2010 IDP forced eviction was conducted in violation of Georgia's own national regulations for internally displaced people; in particular, a law saying that internally displaced people cannot be moved to accommodation inferior to their current residence and without their written agreement. In June-August 2010 most IDPs were forced to move from Tbilisi to regional collective centers, with very poor living conditions. So IDPs' living conditions have become worse than before<sup>xxxvi</sup>.</p> <p>One of the biggest problems in this respect concerns the process of relocation of IDPs from collective centers (CC) or temporary shelters to "durable accommodation". As a matter of principle, these IDPs are moved within the municipality or region where they are registered. In many cases, people fall victim to administrative problems or past failures: a number of IDPs who have been living in Tbilisi with relatives or in CCs (and had livelihoods there) are actually registered in the regions and are being sent "back" to their regions of registration. Consequently they can end up in distant villages such as Potskho-Etseri, a village in the middle of nowhere in the Tsalenjikha region, where they have no economic prospects. IDPs should, at the very least, be offered accommodation in places where they have some prospect of engaging in economic activity and where there are schools for children and other basic social infrastructure. More attention should be paid to each individual case in the process of IDPs' relocation even if individual choice is not possible.</p> <p>International observers called the eviction of people who have been moved from Tbilisi to the regions - as "second displacement"<sup>xxxvii</sup>. The evictions themselves demonstrated lack of will in the highest levels of government to protect the most vulnerable IDPs and to provide ways for them to become fully integrated into Georgian society. According to a TI Georgia report some IDPs evicted have been lost and it is not possible to know where they ended up, while others were relocated to far-away housing with no opportunities for employment or social integration.</p> <p>In addition, the August eviction of thousands of IDPs from their temporary shelters in Tbilisi, which was in breach of national and international standards, caused an outcry from all relevant stakeholders including</p>
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		<p>local NGOs, UNHCR and the Council of Europe. The evictions demonstrated a complete lack of cooperation with other actors, as they took all stakeholders by surprise. They also demonstrated the lack of authority of the Ministry of IDPs, Refugees and Accommodation vis-à-vis other government agencies/individuals who are driving policy. It was only upon a meeting with the prime minister himself that international agencies were able to suspend the evictions until more clear and fair procedures for the rehousing of IDPs have been elaborated.</p> <p>The efficiency of the implementation of the other objectives assigned in the Action Plan (improving socio-economic condition and awareness building of the IDPs) needs to be evaluated in 2011, when specific measures, identified in the AP, will be implemented</p>
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### 3.3. Confidence Building - Promote Conflict Transformation through Confidence Building Measures

<p><b>- the Law on Occupied Territories</b></p> <p><b>- Regulation on Modalities for Engagement of Organizations Conducting Activities in the Occupied Territories</b></p>	<p><b>Under implementation</b></p>	<p><b>2010 Developments</b></p> <p>On October 23, 2008 the Georgian Parliament adopted the “Law on Occupied Territories” which raised a number of concerns among international organizations interested in promoting the conflict transformation process.</p> <p>On February 26, 2010, following to the Venice Commission’s second and final assessment report, the Georgian parliament adopted revised amendments to the law on Occupied Territories<sup>xxxviii</sup>.</p> <p><b>On October 23, 2010</b> the government of Georgia approved the regulation on “Modalities for Engagement of Organizations Conducting Activities in the Occupied Territories of Georgia”, under the law of Georgia “On Occupied Territories”. The regulations clarified provisions of the law that raised additional questions posed by the Venice Commission at the end of 2009</p> <p><b>Challenges to the new edition of the Law on Occupied Territories and the Modalities for Engagement</b></p> <p>According to the Venice Commission’s final comments, the “Law on Occupied Territories” of Georgia raises several issues which need to be addressed in order to ensure the compatibility of the law with international law. The questionable issues relate to the following: (1) vagueness of the wordings of “<i>emergency humanitarian aid</i>” (Article 4, Article 6); (2) very broad wording on restrictions of legal sanctions for performing forbidden economic activities in the occupied territories (Article 6.3); (3) vague definition of legal consequences, if an organization fails to provide the requested information (Article 4, para 4) (Article 6).</p>
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		<p>The provisions of the Regulations on “Modalities for Engagement” clarify quite strict procedures for coordination of activities of international and local organizations working in Georgia’s Occupied Territories. Regulations require the establishment of a “constructive dialogue” between the Georgian government and the parties involved and limit the goals of available programs to humanitarian assistance and confidence building only.</p> <p>It is expected that the regulations will delay and limit participation of foreign partner organizations in delivering humanitarian assistance as well as confidence-building activities. The following factors are why:</p> <ul style="list-style-type: none"> <li>– The Regulations define three types of modalities that might have the most important impact on the engagement of organizations in the conflict transformation process. These modalities require implementing partners to work jointly with the SMR during the whole cycle of planning, programming, budgeting, implementation and evaluation stages, almost on the same level as donors of the partners. These regulations change already established procedures of cooperation between the Georgian government and the donor community.</li> <li>– According to the Regulations on Modalities, all potential partners planning to work in the occupied territories has to apply for registration to the SMR. The document grants the SMR the right either to object or approve the submitted project. If the SMR issues an objection to a project, it will confer with the donor organization(s) to resolve the matter.</li> <li>– The Regulations directly state the criteria against which each of the projects will be assessed. These criteria seriously limit the number of organizations and projects eligible to apply. In particular, the SMR will scrutinize and study:       <ul style="list-style-type: none"> <li>a) goals of the organization (limited to the promotion of conflict transformation);</li> <li>b) proposed project objectives (are limited to the assistance in peaceful conflict resolution, or promotion in confidence building and cooperation between communities divided, protection of human rights, promotion of repatriation of IDPs, restoration relationship between people or to improve livelihoods of war-affected populations)</li> <li>c) expected results and detailed plan of activities.</li> </ul> </li> <li>– Any application to be submitted to the SMR requires partners to report the project’s budgetary details, which means that financial constraints might become an additional issue of discussion between the Georgian government and the donor organization. It is also obligatory for any organization carrying out activities in the occupied territories of Georgia to provide a progress report to the ministry every six months.</li> <li>– The regulation addresses the question of travel outside of borders of Georgia of those people who are involved in the project activities and residing in the occupied territories. The number of eligible travel documents are limited to Foreign Passports of Georgia or Neutral Travel Documents (to be introduced by Georgian government in the future). This restriction will complicate the participation of Abkhaz and South Ossetian community members in multilateral dialogues and meetings to be organized in a foreign country.</li> </ul>
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<p><b>- State Strategy on the Occupied Territories- engagement through cooperation.</b></p> <p><b>- Action Plan for Engagement</b></p>	<p><b>Under implementation</b></p>	<p><b>2010 Developments</b></p> <p>Since 2009 the Georgian government seems to have reached consensus that there should be no short-term solution to the problems of Abkhazia and South Ossetia. The government officially accepted the recommendation given by the US government and supported by the EU that the best way forward is to maintain strategic patience. The new concept was publicly discussed in more detail during 2010. According to official statements, in the current circumstances Georgia plans to show itself as an attractive place, a stronger, democratic country that recognizes the need to de-isolate the breakaway territories, and develop a smart policy of engagement with the population of Abkhazia and South Ossetia<sup>xxxix</sup>.</p> <p>In response to the new strategic concept, the government launched several policy initiatives in 2010:        On January 27, 2010 - the State Strategy on Occupied Territories: Engagement Through Cooperation.        On July 6, 2010 an Action Plan for Engagement.</p> <p><b>Challenges</b></p> <p>Georgian commentators do not believe that implementation of the State Strategy and the Action Plan could have immediate impact on the conflict transformation process. The local and international stakeholders are ready to cooperate with the Georgian government and participate in the implementation of a policy of active engagement with the populations of Abkhazia and South Ossetia, but it is expected that legal constraints put in place by the law On Occupied Territories and Regulation on the Modalities of Engagement will hamper the process and complicate possible dialogue and confidence-building efforts between communities residing on the territories adjacent to the ABLs in Abkhazia and South Ossetia.</p> <p>Moreover, additional procedural complications would also make obstacles for the timely participation of international organizations in the process that might also negatively affect their will to become mediators and neutral players in the long run.</p> <p>Several other problem areas might hamper the AP's implementation in the future:</p> <ul style="list-style-type: none"> <li>- The main principles and rationale behind the new Strategy and Action Plan were developed by the Georgian government unilaterally without consultation or discussion with international partners, those from the EU, UN, OSCE as well as the forces in control of Abkhazia and South Ossetia<sup>xl</sup>. This approach gave de facto leaders of Abkhazia and South Ossetia additional motivation to distance</li> </ul>
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themselves from the initiative and refuse communication on the issue.

- The objectives and measures proposed in the Strategy and the Action Plan mainly addressed the Western audience and stakeholders that are perceived by other sides of the conflict as unacceptable. This is visible through the language of the document. The forces in control of Abkhazia and Tskhinvali Region/South Ossetia as well as society express their serious concerns about the direct references to the word – occupation; they oppose calling their territories as “occupied”, as well as calling the Russian military presence an “occupying power”. The Abkhazian and South Ossetian de facto leaderships also consider the policy of de-isolation in the context of Georgia’s efforts to reintegrate the regions. Currently it is in the interest of Georgian government to prevent every step that could legitimate the status quo but this approach makes it difficult to overcome opposing interests and ensure the engagement of people residing in Abkhazia and South Ossetia.
- The forces in control of Abkhazia and South Ossetia refuse to accept any assistance to the residents of conflict regions unless the providers are international institutions. In fact they refuse to receive direct international aid channeled through Georgia<sup>xii</sup>. This means that any attempts for engagement or the beginning of the implementation of the Action Plan will probably be blocked for some time to come.
- The Action Plan envisages the establishment of seven instruments of engagement in order to implement four program dimensions (**humanitarian, human oriented, social and economic dimensions**). According to the document the idea of the establishment of ‘instruments of engagement’ aims at promoting communication and coordination between Tbilisi and the forces in control of Abkhazia and Tskhinvali Region/South Ossetia. But on the other hand these institutions cannot become operational unless international involvement is guaranteed. So it would be impossible to launch the implementation of the Action Plan until Abkhazia and South Ossetia accept assistance to the residents of the conflict regions from international institutions provided via Georgia or until the Georgian government amends its approach towards the main principles of implementation of the Action Plan.
- Russia, having direct influence over the Abkhazian and South Ossetian political leadership, as well as public perceptions, might also sabotage the implementation of the Action Plan for Engagement. Its implementation will be delayed for an indefinite period if Russia does not contribute in finding mechanisms for participation of international institutions in the implementation of the Action Plan.



## Recommendations

### **On strengthening rule of law especially through reform of the judicial system, including the penitentiary system, strengthening democratic institutions and respect for human rights and fundamental freedoms**

- Revisit some of the provisions of the new constitution in order to ensure full compliance with the final recommendations prepared by the Venice Commission. (Taking into account that most of the provisions of the newly amended Constitution will enter into force in December 2013).
- Continue reforms to ensure independence of judiciary through introduction of adequate amendments to the Constitution and relevant legislation. Focus on following issues:
  - 1) Abolishment of the probation period for judges;
  - 2) Reformation of the High Council of Justice;
  - 3) Provision of constitutional guarantees to ensure immovability of judges for the tenure of their term without their prior consent;
  - 4) Amendment of the law on Disciplinary Responsibility and Disciplinary Prosecution of Judges to ensure its conformity with the Venice Commission recommendations.
- Improve the level of independence of the State Legal Aid system through following measures:
  - 1) Separate the agency from the Ministry of Penitentiary, Probation and Legal Aid and subordinate it either to the Public Ombudsman or make it an independent entity of public law.
  - 2) Establish an independent monitoring council composed of experts and representatives of the civil society;
  - 3) Provide adequate funding in order to ensure state legal service in civil and administrative law.
- Amend the Criminal Procedural Code in order to make it fully compliant with the Council of Europe experts recommendations. Enact the provision related to questioning of witnesses immediately.
- Implement the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, notably to improve detention conditions.
- Implement recommendations of the CPT, particularly in direction of adopting policies designed to limit or modulate the number of persons sent to prison;

- Introduce zero tolerance policy of ill-treatment committed by representatives of the law enforcement bodies, particularly by police.
- Bring those responsible for the illegal detention and subsequent three months disappearance of Lavrenti Kaziev, Ibragim Laliev and Vladimir Eloev and stop illegal practice of exchange of peaceful population
- Conduct prompt, impartial, independent and effective investigation in cases of disappearances described in the Report by the COE High Commissioner for Human Rights

### **On Elections**

- Change the pre election campaign rules so that the articles introduce stricter regulations on the use of administrative resources, draw a clearer line between the state and ruling party and regulate clearly the campaigning procedures for civil servants
- Amend thoroughly the election code, well ahead of the next elections
- Regularly provide trainings for election administration representatives that should take place regularly between elections
- Amend the Election Day campaigning rules, the aggressive campaigning in the surroundings of the polling stations need to be prohibited.
- Ensure that the election administration and the courts deliberate complaints in an objective, transparent, professional and impartial manner.

### **On Public Service Reforms, Accountability and Transparency**

- Ensure implementation of the Freedom of Information law requirements, limiting and clearly defining the instances when the right to information may be limited. This is crucial for accountability of the civil service, transparency of public finances and transparency of media ownership and finances, among others.
- Foster effective separation of administration and politics, with real independence for judiciary and the civil service from political influences.
- Investigate the legality of the privatization process in relation to many state-owned companies. Due to the huge number of such enterprises, the Audit Chamber can start an investigation with “large-scale” productions. The scope of production impact on the environment and human health shall be taken as a sampling indicator.

- Investigate the legality of the classification of privatization contracts as a commercial secret (defined by these contracts themselves). Ensure fulfillment of legislative norms in regard to the confidentiality of information. Parliament of Georgia to strengthen oversight over the adherence to legal requirements
- Strengthen capacities of public oversight agencies that promote development of human and technical resources and ensure empowerment of these agencies with relevant authorities.

### **On Media Freedom**

- Ensure complete transparency of media ownership by complete ban to registration of a media owner in any of the off-shore zones;
- Prevent concentration (direct or indirect, through a third party, etc.) of the media services by amending the Law on broadcasting accordingly;
- Ensure improvement of media environment by starting transparent public discussions on the whole complexity of issues outlined and advocated by civil society representatives and media activists, including financial transparency of media, easing access to public information, licensing process, fast and cheap court appeals and clear-cut regulations for media advertisement.
- Depoliticize the Georgian National Communication Commission (NCC) by starting transparent public discussions about the mechanisms and models of electing members of GNCC; create explicit criteria necessary for becoming a member of GNCC; let the non-governmental organizations and other interested groups to nominate the candidates in a public transparent process; make election procedures transparent and public. .
- Take timely steps to prepare the legal framework for the digital switchover process and ensure public access to digital platforms.

### **On Economic and Social Reforms**

- Develop a clear framework for economic policy compliant with the country's international obligations (including ENP AP) and fulfill the deadlines for these obligations.

- Harmonize national legislation in the field of social and economic policy with all European charters and conventions European laws and impose strict control over the enforcement of laws.
- Prepare a more detailed schedule for the implementation of obligations under ENP AP and strengthen oversight of the process.

### **On Transport and Energy**

- Develop a new National Energy Strategy and National Transport Strategy that covers demand-side management issues, environment and health and which form the basis for the elaboration of a sustainable development strategy.
- Increase cooperation between the Ministry of Energy and Ministry of Environment Protection and Natural resources, in order to address gaps in Environmental legislation and fulfill the terms of Georgia's application to the European Energy Community.
- Fulfill commitments and develop the legislation on energy efficiency and renewables, and produce a financial action plan.

### **On UNECE**

- Along with the adoption of the Convention, ensure the development of related national legislation and bylaws, as well as an action plan agreed with relevant parties and adopted by the government.

### **On Climate Change:**

- Strengthen competent authorities' human and institutional capacities in order to ensure development and implementation of legislation covered by the EU directives in the Climate Change Sector.
- Establish National Forum on Climate Change open to all interested stakeholders in order to ensure the flow of information, as well as increase the public participation in climate change related decision-making processes and follow up activities.

### **On Cooperation for the Settlement of Georgia's Internal Conflicts**

- Address concerns on livelihood, accommodation conditions and the security situation for the population living in the areas adjacent to the administrative borderlines, ABL, more effectively: The Georgian government together with the international donors, mainly the OSCE, UN and other international actors, can play a valuable role in reducing tensions, resolving problems, providing humanitarian assistance, and monitoring and improving human rights and humanitarian conditions on the ground
- Promote democratic institution-building and establishment of democratic governance principles in the Georgian government that contribute to the peaceful transformation of the conflict and lay the groundwork for conducting humanitarian and reconstruction projects sponsored by Western governments or international organizations including OSCE, UN and EU.
- Introduce a more flexible approach and consider each individual and family of IDPs separately, meet all requirements of internal and international law while managing their housing problems.
- Speed up the process of improvement of IDPs' socio-economic conditions as is defined in the State Strategy and Action Plan on IDPs.
- Precisely implement the AP activity which relates to awareness-building among IDPs about ongoing governmental and international programs. Primary responsibility to provide IDP access to the labor market, to proper medical support and to education, rests with the national authorities. Without full knowledge of their rights, entitlements and policy options, the displaced population will find it even harder to fully utilize available services and become integrated into Georgian society.
- Ensure deliberation and meaningful participation of the civil society and other stakeholders in policy elaboration. This would be crucial in success of the civil service reform and particularly the decent resettlement and integration of the IDPs, among others.

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<sup>i</sup> Government of Georgia Action Plan 2010 for the ENP AP Implementation. <http://eu-integration.gov.ge/uploads/ENPAP-Plan-2010-geo-Total-7-FINAL.doc>

<sup>ii</sup> In response to the continuing street protests in spring 2009, the president created a State Constitutional Commission (hereinafter "the Commission") in Presidential Decree #348 of 23 June 2009. The Commission was comprised of 56 members majority of them representing the government, the ruling party or experts associated with the ruling party. The non-parliamentary opposition (the New Rights, the Republican Party, Labour Party, Conservative Party, People's Party and others) declined a formal invitation from the president to be involved in the Commission allegedly due to the lack of mechanisms that would have ensured that their opinion was duly reflected in the final text. Shortly after the local municipality elections of 30 May 2010, the non-parliamentary opposition, namely the New Rights expressed an interest to be involved in the process. However, their request has been ignored.

<sup>iii</sup> Final Opinion # 543/2009 of the Venice Commission on the Draft Constitutional Law on Amendments and Changes to the Constitution of Georgia, adopted on 15-16 October, can be found at [http://www.venice.coe.int/docs/2010/CDL-AD\(2010\)028-e.pdf](http://www.venice.coe.int/docs/2010/CDL-AD(2010)028-e.pdf), last accessed on 30 November, 2010

- <sup>iv</sup> *ibid.* para.891, p.13-14
- <sup>v</sup> Opinion #408/2006 of the Venice Commission on the Law on Disciplinary Responsibility and Disciplinary Prosecution of Judges of Common Courts of Georgia, adopted on 19 March, 2010, para.17, p. 4, can be found at [http://www.venice.coe.int/docs/2007/CDL-AD\(2007\)009-e.pdf](http://www.venice.coe.int/docs/2007/CDL-AD(2007)009-e.pdf), last accessed on 30 November, 2010
- <sup>vi</sup> source of the information: the website of the High Council of Justice [www.hcoj.gov.ge](http://www.hcoj.gov.ge)
- <sup>vii</sup> Expert meeting on the Draft Code of Criminal Procedure of Georgia, Paris, 28-29 January 2009, conclusions provided by the experts: Olivier de Baynast, Pierre Cornu
- <sup>viii</sup> The CPT's visit report is available in English on the Committee's website <http://www.cpt.coe.int>, para. 46, p.24
- <sup>ix</sup> *ibid.*
- <sup>x</sup> source of the information: the website of the Supreme Court of Georgia, [http://www.supremecourt.ge/default.aspx?sec\\_id=129&lang=1](http://www.supremecourt.ge/default.aspx?sec_id=129&lang=1)
- <sup>xi</sup> Note: until now, GYLA was unable to get names of police officers who according to the Deputy Minister have been disciplinary sanctioned for violent dispersal of peaceful demonstrators on June 15, 2009 from the Ministry of Internal Affairs.
- <sup>xii</sup> Monitoring of Investigations into cases of missing persons during and after the August 2008 armed conflict in Georgia, <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1675137> , last accessed on 30 November, 2010
- <sup>xiii</sup> [http://www.doingbusiness.org/reports/doing-business/~/\\_media/fpdkm/doing%20business/documents/annual-reports/english/db11-chapters/db11-ct.pdf](http://www.doingbusiness.org/reports/doing-business/~/_media/fpdkm/doing%20business/documents/annual-reports/english/db11-chapters/db11-ct.pdf)
- <sup>xiv</sup> <http://www.humanrights.ge/index.php?a=main&pid=12484&lang=eng>
- <sup>xv</sup> <http://www.humanrights.ge/index.php?a=main&pid=12484&lang=eng>
- <sup>xvi</sup> [http://www.messenger.com.ge/issues/2131\\_june\\_21\\_2010/2131\\_salome.html](http://www.messenger.com.ge/issues/2131_june_21_2010/2131_salome.html)
- <sup>xvii</sup> [http://www.nbg.gov.ge/uploads/publications/annualreport/2009/annual\\_report\\_eng\\_web.pdf](http://www.nbg.gov.ge/uploads/publications/annualreport/2009/annual_report_eng_web.pdf)
- <sup>xviii</sup> [http://www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2010/08/20/000334955\\_20100820032915/Rendered/PDF/549720revised01ecord100R20101018411.pdf](http://www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2010/08/20/000334955_20100820032915/Rendered/PDF/549720revised01ecord100R20101018411.pdf)
- <sup>xix</sup> [http://mof.ge/show\\_law.aspx?id=419](http://mof.ge/show_law.aspx?id=419)
- <sup>xx</sup> [http://www.mof.ge/common/get\\_doc.aspx?doc\\_id=8113](http://www.mof.ge/common/get_doc.aspx?doc_id=8113)
- <sup>xxi</sup> [http://www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2010/08/20/000334955\\_20100820032915/Rendered/PDF/549720revised01ecord100R20101018411.pdf](http://www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2010/08/20/000334955_20100820032915/Rendered/PDF/549720revised01ecord100R20101018411.pdf)
- <sup>xxii</sup> [http://www.mof.ge/common/get\\_doc.aspx?doc\\_id=7372](http://www.mof.ge/common/get_doc.aspx?doc_id=7372)
- <sup>xxiii</sup> [http://www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2010/08/20/000334955\\_20100820032915/Rendered/PDF/549720revised01ecord100R20101018411.pdf](http://www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2010/08/20/000334955_20100820032915/Rendered/PDF/549720revised01ecord100R20101018411.pdf)
- <sup>xxiv</sup> <http://issuu.com/world.bank.publications/docs/9780821383162?mode=embed&layout=http%3A%2F%2Fskin.issuu.com%2Fv%2Fcolor%2Flayout.xml&backgroundcolor=CD7474&showFlipBtn=true>
- <sup>xxv</sup> [http://www.parliament.ge/index.php?lang\\_id=GEO&sec\\_id=69&kan\\_det=det&kan\\_id=1909](http://www.parliament.ge/index.php?lang_id=GEO&sec_id=69&kan_det=det&kan_id=1909)
- <sup>xxvi</sup> [http://www.gtuc.ge/cms/index.php?option=com\\_content&view=article&id=419:2010-11-08-19-41-58&catid=12:front-page-items&lang=en&Itemid=&date=2011-02-01](http://www.gtuc.ge/cms/index.php?option=com_content&view=article&id=419:2010-11-08-19-41-58&catid=12:front-page-items&lang=en&Itemid=&date=2011-02-01)
- <sup>xxvii</sup> Aggressive State Property Privatization Policy or “Georgian-Style Privatization” -2 , [www.greenalt.org](http://www.greenalt.org)
- <sup>xxviii</sup> TV in Georgia - Ownership, Control and Regulation // [http://www.transparency.ge/index.php?lang\\_id=ENG&sec\\_id=215&info\\_id=545](http://www.transparency.ge/index.php?lang_id=ENG&sec_id=215&info_id=545)
- <sup>xxix</sup> The elaboration of the second NEAP for 2008–2012 was initiated in 2006 and the draft was finalized in mid-2007 to cover the period 2008–2012. The methodology used, the lack of procedures and the unclear decision-making framework, as well as the final draft document itself, received criticism by stakeholders.
- <sup>xxx</sup> On compliance of Georgian environmental and climate legislation to required EU legislation, including the Wild Bird directive, EIA directive and number of relevant Energy directives, including Kyoto Protocol, Directive 96/61 - Integrated Pollution Prevention and Control (IPPC Directive) codified as Directive 2008/1/EC , Directive 1999/32 - Sulfur in Fuels Directive, Directive 2001/80 - Large Combustion Plants Directive, as well as the Emission Trading Directive (ETD) (2003/87/EC) , The Electricity from Renewable Energy Directive (RED) (2001/77/EC) , The Energy Performance of Buildings Directive (EPBD) (2002/91/EC) , The Directive 2004/8/EC of the European Parliament and of the Council of 11 February 2004 on the promotion of cogeneration based on a useful heat demand in the internal energy market. [http://geplac.ge/newfiles/Environmental%20Implications%20vs%20ECC\\_JSarnacki%20May%202010.pdf](http://geplac.ge/newfiles/Environmental%20Implications%20vs%20ECC_JSarnacki%20May%202010.pdf)
- <sup>xxxxi</sup> Life on Boundary Line, M. Viefhues, D. Wood, Saferworld, October 2010,
- <sup>xxxii</sup> Life on Boundary Line, M. Viefhues, D. Wood, Saferworld October 2010
- <sup>xxxiii</sup> Statement of the Representative of the United Nations Secretary General on Human Rights of IDPs, Walter Kaelin, September 16, 2010.
- <sup>xxxiv</sup> The first attempt to settle the IDP issue in a long run perspective was made in 2007 when the State Strategy on IDPs was adopted. On July 28, 2008 the government endorsed the consequent Action Plan for implementation of the State Strategy on internally Displaced Persons (IDPs) for 2009-2012, which was amended in May 2009.
- <sup>xxxv</sup> Amnesty International, EUR 56/005/2010 Georgia, Urgent Action, August 20, 2010,
- <sup>xxxvi</sup> Georgia Ombudsman's Report January-June 2010)
- <sup>xxxvii</sup> Statement of the representative of UNHCR, Peter Nicolaus, on the issue of unemployment at the meeting in Courtyard Marriott Hotel, 16 September 2010

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<sup>xxxviii</sup> In October –December 2009 Venice Commission prepared and submitted the first and second Opinions on the law to the parliamentary Assembly. It recommended that further changes were to be made to this law.

<sup>xxxix</sup> Statement made by Philip H. Gordon, the assistant secretary of state for European and Eurasian affairs, September 22, 2009 <http://www.civil.ge/eng/article.php?id=21485> ; supported by the statements of Benita Ferrero-Waldner, December 2009

<sup>xl</sup> 'Power forces in control of Abkhazia and Tskhinvali Region/South Ossetia' (term defined in the strategy)

<sup>xli</sup> For example *Abkhaz government coherently denies the possibility of economic ties and cooperation with Georgia, but favors EU direct involvement and cooperation*