



საერთაშორისო გამჭვირვალობა – საქართველო
TRANSPARENCY INTERNATIONAL GEORGIA

WORK CARD

Winter 2011-2012

This is Transparency International Georgia's third Work Card on Georgia. It provides updates on the issues covered by the previous card and gives a summary assessment of the key areas in the country that are crucial importance to the development of a transparent, accountable and democratic state. The Work Card will be published quarterly, covering different issues that are crucial for that specific period. At present, the key areas are the Open Government Partnership, legislative changes introduced in Georgian legislation on financial regulation and party financing.

All our research and analysis, including blog articles on current developments, are available online, at www.transparency.ge/en

You can also follow our work on:

Twitter: [www.twitter.com/TIGeorgiaEng](https://twitter.com/TIGeorgiaEng)

Facebook: www.facebook.com/TransparencyInternationalGeorgia



Update on previous Topics

Freedom of Assembly

- Court hearings related to seven persons arrested during manifestation in Batumi on 22 of May 2011 continue to date and represent an example of the complex problems in the judiciary. The participants of the protest rally are accused of having blocked access to the building of Adjara TV, a broadcaster that is part of the local government in Batumi. If sentenced under Article 222 of the Georgian Criminal Code, the protesters could face two to four years in prison for having blocked access to a broadcaster. Under Article 353 of the men could face four to seven years in prison for resistance against police.

Chamber of Control

- In November, Georgian Parliament passed amendments to the Law on Chamber of Control, introducing a number of important changes in the institution's operation. The CCG chairperson will determine the salaries of CCG auditors based on remuneration levels in the country's top audit firms. The CCG will establish a legal entity of public law - the Public Audit Institute - that will provide training to the CCG auditors and issue relevant certificates, while also offering research/analysis and expert services in the field of public sector audit. Only certified auditors that complete special training courses will be allowed to conduct audits in public institutions.
- CCG acquired new functions on the basis of the new political party financing regulations, namely monitoring political party financing.



In Focus

1. Open Government Partnership

Background

- The Open Government Partnership (OGP) is a new international initiative, spearheaded by the United States and Brazil, aimed at securing concrete commitments from governments to promote transparency, increase civic participation, fight corruption, and harness new technologies to make government more open, effective, and accountable. The Georgian government expressed its intent to participate in the OGP in a letter to Hillary Clinton, on August 30, 2011.

The OGP in Georgia

- The commitments action plan of the Georgian Government was drawn primarily from Georgia's pre-existing Anti-Corruption Action Plan, thus violating the OGP Common Expectations, which require that OGP action plans "stretch[] the country beyond current practice." TI Georgia delivered feedback suggesting that elements of the action plan incompatible with the Common Expectations be removed, provided numerous suggestions for expansion and enhancement of the action plan. The Ministry of Justice revised the draft action plan, but incorporated very few of our suggestions, and added further provisions which were incompatible with the OGP Common Expectations, or unrelated to the purposes of the OGP.
- The Ministry has not held public consultations except through ad-hoc meetings with a limited group of NGOs, thus violating the requirement from the OGP that details of the public consultation process and a timeline be published in advance. TI Georgia raised this issue with Ministry representatives at an Anti-Corruption Council, but so far, no timeline or consultation details have been published.

Recommendations

- Immediately take steps to fulfill to the public consultation requirements for the OGP, including: make a timeline and details of the public consultation process available online; consult with actors other than NGOs, such as the private sector and individual citizens; undertake OGP awareness-raising activities to raise public awareness of the OGP; identify a forum through which regular consultation regarding the OGP can take place.
- Fully incorporate feedback from civil society into Georgia's draft action plan, or if this is not done, publish a comprehensive written response to civil society feedback explaining which suggestions were not incorporated and why they were not.
- Publish a revised draft action plan in response to feedback from civil society far enough in advance that a second round of feedback can be provided before the final action plan is due.



2. Georgian Legislation on Financial Regulation

Background

- Georgian legislation on financial regulation was revised in December 2011 to enhance the powers of the National Bank and Financial Monitoring Service. The legislation put further emphasis on the right of the National Bank to both request and receive any information (including confidential information) from commercial banks and other players in the financial market. This allows for excessively broad interpretation and carries the risk of making any beneficiary liable to explain the origin of the money they received. It is possible that a recipient of the money, who could not be aware of the fact that his/her partner's money had been generated through illegal means, might be held accountable, which conflicts with the principle of bona fide entity.
- The National Bank was equipped with a new power to trade in gold exchange-traded products outside the law on Securities. The Georgian securities market being markedly underdeveloped, its improvised regulation will only further aggravate the situation (while the procedure requesting information from currency exchange booths may be detailed in a bylaw, the securities market has to be regulated by law).
- The Financial Monitoring Service is now allowed to request information on attempted rather than just finalized deals. Under the law, a failure to inform the Financial Monitoring Service (FMS) is a crime, if the FMS or law enforcement bodies later detect elements of crime in an unconcluded agreement through their own channels and find out that the parties to the agreement attempted to carry out transactions through a commercial bank or other actors.
- The EU countries, where banking is subject to more advanced regulation, do not resort to such far-going measures of supervision. National banks are not entitled to request any information from all players in the financial market or private persons either in the post-socialist Europe (the Czech Republic, Estonia, Slovenia, Slovakia) or the old Europe (Finland, Germany). Moreover, neither is the European Central Bank entrusted with such power.

Recommendations:

- The National Bank and the Parliament of Georgia should examine whether or not the possible effect of economic crime outweighs the effects of possible decrease in the business confidence. Such strict supervision may be justified if the former outweighs the latter. As far as we know, such examination has not as yet been attempted.
- The National Bank and the FMS should detail how commercial banks and other players in the financial market should monitor attempts to conclude deals. This is the case when the provision in the law has to be matched up with a detailed technical description of applicable procedures in the bylaw(s).
- The law on Securities should outline the framework within which the National Bank will be trading in gold exchange-traded products, while NBG regulations should detail major sets of terms and conditions that will apply to NBG's trade in gold exchange-traded products as well as NBG's discretion.



3. Political Party Financing

Background

- In December 2011 the Georgian Parliament adopted amendments to the Law on Political Unions of Citizens. Some of these changes are deemed unacceptable, as they: limit civic activity, property rights, freedom of expression and political activity; impede the democratic development of the country; impose severe and unjustified responsibilities on the voters; assign unlimited and unconstitutional powers to the Chamber of Control of Georgia, who is the main monitor body of party funding in Georgia; pose grave threats to both citizens and civil society, including the media; deteriorate the election environment within the country.
- The new provisions include banning donations from any legal entity; delivering broad and vague list of persons (legal and natural) that have undergone same financial limitations as political parties; distributing broad rights and capabilities to Chamber of Control as a monitoring body of political parties; unfairly imposing criminal sanctions on individuals for simply requesting some benefit for political purposes etc.

Recommendations:

- TI Georgia in collaboration with several other active organizations started a campaign to advocate for more clarity and fairness in Party Finance Regulations. We requested the legislator to undertake further improvements of the legal environment to ensure foreseeability of the law.
- Parliament of Georgia should consider the fears raised by the civil society and deliver a specific list of the possible cases where limitations or sanctions should be applied; tailor narrowly what functions Chamber of Control has and how they are used; abandon unfair and unjust criminal sanctions for party requesting or receiving some benefits from parties and consider lowering the sanctions for providing irrelevant benefits by parties; reconsider existing bans in the party finance legislation in a way that political parties can easily follow up imposed rules and have no difficulties when fundraising.
- Chamber of Control should elaborate detailed and specific procedures related to its legal rights and obligations and how it will exercise its powers.