

ASSESSING THE FIRST YEAR
OF GEORGIA'S IMPLEMENTATION
OF THE ASSOCIATION AGENDA -
PROGRESS AND OPPORTUNITIES
IN THE POLITICAL SPHERE



OPEN SOCIETY GEORGIA FOUNDATION
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Assessing the First Year of Georgia's Implementation of the Association Agenda - Progress and Opportunities in the Political Sphere



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Introduction

Open Society Georgia Foundation (OSGF) has been working on EU Integration related issues for almost a decade, starting when the European Neighbourhood Policy Action Plan was signed between the EU and Georgia in November 2006. OSGF's first activity was to monitor the implementation of the Action Plan, thereby promoting civil society oversight of the Government of Georgia's actions and increasing the responsibility of the government of Georgia towards its own population. As Georgia's relationship with the European Union develops, OSGF and its partners continue to implement activities that focus on the country's alignment with EU institutions.

OSGF is currently implementing a project called Monitoring of the EU-Georgia Association Agreement and Association Agenda by the NGO Coalition. The NGO Coalition is composed of the Georgian Young Lawyers Association, Transparency International Georgia, Penal Reform International, Article 42 of the Constitution, Union "Sapari" and Partnership for Human Rights. Through the project, OSGF and its partners are evaluating the reforms outlined in the Association Agenda, preparing recommendations to promote compliance with the document and facilitating improved dialogue on European integration issues between civil society and the Government of Georgia

The present report was prepared as part of this project. The report assesses Georgia's implementation of the political section of the Association Agenda, including the judiciary, anti-corruption, administrative and civil service reform, the fight against torture and ill treatment, labour rights and standards, equal treatment and children's rights. The main audience of this report is the relevant state agencies in Georgia, EU institutions and other members of the international community, and civil society organisations in Georgia as well as in the European Union. The report assesses the first year of implementation of the Association Agenda between the European Union and Georgia, covering the period from 1 September 2014 to 1 September 2015. As part of this project, OSGF's partners prepared the policy briefs that were presented on the margins of the Eastern Partnership Riga Summit (available at: http://www.osgf.ge/index.php?lang_id=ENG&sec_id=8).

OSGF hopes that the report will be used by both Georgian and international civil society actors as well as representatives of the Government of Georgia and European institutions to continue the conversation about Georgia's reform efforts.

Vano Chkhikvadze

EU Integration Program Manager

Open Society Georgia Foundation

List of Acronyms:

AA – Association Agreement
CCG – Criminal Code of Georgia
CoE – Council of Europe
CPT – Council of Europe’s Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CSOs – Civil society organisations
DCFTA – Deep and Comprehensive Free Trade Area
DRI – Disability Rights International
ECtHR – European Court of Human Rights
EU – European Union
ENP – European Neighbourhood Policy
GI – General Inspectorate
GoG – Government of Georgia
GRECO – Group of States Against Corruption
GWM – Georgian Women’s Movement
HRMS – Human resources management system
IP – Istanbul Protocol
ILO – International Labour Organization
LEPL – Legal Entity of Public Law
MD – Medical Department
MES – Ministry of Education and Science
MoC – Ministry of Corrections
MoD – Ministry of Defence
MoIA – Ministry of Internal Affairs
MoJ – Ministry of Justice
MoLHSA - Ministry of Labour, Health and Social Affairs
NAP – National Action Plan
OECD ACN – Anti-Corruption Network of the OECD
OECD – The Organisation for Economic Co-operation and Development
OECD SIGMA – Support for Improvement in Governance and Management (joint initiative of the OECD and the European Union)
OGP – The Open Government Partnership
OSCE – Organization for Security and Cooperation in Europe
OSGF – Open Society Georgia Foundation

PRI – Penal Reform International

State Fund – State Fund for Protection and Assistance of (Statutory) Victims
of Human Trafficking LEPL

TDIs – Temporary Detention Isolators

UNCAC – The United Nations Convention Against Corruption

UNCRC – UN Convention on the Rights of the Child

UNICEF – United Nations Children’s Fund

UNODC – The United Nations Office on Drugs and Crime

UNSCR – United Nations Security Council Resolution

Judiciary

By Ana Natsvlishvili

on behalf of the Georgian Young Lawyers' Association (GYLA)

EXECUTIVE SUMMARY

Reforming the justice sector is one of Georgia's commitments under the Association Agreement with the European Union, the corresponding Association Agenda and the Annual Action Plans for 2014 and 2015. This reform includes, *inter alia*, ensuring the independence, efficiency, impartiality and professionalism of the judiciary, the prosecution and law enforcement agencies, which should be free from political or any other undue interference.

Thus, in terms of the justice-related component, the Association Agreement constitutes a rather ambitious document. Its successful implementation therefore requires concerted and well-coordinated effort, strategic planning and regular monitoring and evaluation of the progress achieved, as well as regular revision of the activities and their implementation modalities in the light of the lessons learned, challenges identified and good practices established during the implementation process.

The aim of this report is twofold: first, to assess the state of implementation of the Association Agreement as far as justice sector reform is concerned, and second, to evaluate the working process related to the implementation efforts, identify flaws that impede reform and suggest ways for improvement.

The report shows that while certain reforms have been carried out in these three directions, progress towards the goals identified in the Association Agreement and the relevant agenda remains limited. While the state claims that the reforms have been carried out successfully and in line with European and international standards, experts, watchdog organisations and other civil society actors criticise the reforms as insufficient in scope and incapable of addressing the challenges facing the relevant institutions, particularly the issue of independence and institutional integrity against undue political influence.

Furthermore, the relevant Action Plans as well as the working process for their implementation have a number of shortcomings: e.g. lack of analysis and strategic approach to the implementation process, ambiguous cooper-

ation/coordination or complete lack thereof among the different agencies responsible for the same activities, absence of internal and external monitoring mechanism, and a clear mismatch between the activities set out in the Action Plans and the goals declared in the Association Agenda. These shortcomings inevitably limit the scope of the results achieved; therefore they must be addressed as a matter of priority.

Based on the above analysis, the report suggests specific recommendations on how and what should be done to better accomplish the objectives set out in the Association Agreement and the Association Agenda in a timely manner.

INTRODUCTION

According to the Association Agenda, Georgia has committed to carrying out a number of reforms in the justice sector. Due to the length restriction for this report, it is not possible to cover all the issues listed in the Association Agenda or go into great detail about each of the issues it touches upon. Instead, this report focuses on institutional reforms in three directions: judiciary, prosecutor's office and law enforcement. The report prioritises these areas based on the assumption that successful reform in these areas will facilitate progress toward other goals outlined in the Association Agenda and corresponding documents.

While Georgia has made important progress in promoting judicial independence through multiple waves of judicial reform over the past two decades, legislative gaps, institutional deficiencies as well as problematic practices in this area still remain. Ever since the dissolution of the Soviet Union, law enforcement agencies (except for the Patrol Police in the Ministry of Interior) and the Prosecutor's Office have largely remained resistant to change. Rather, they have continued to function in a non-transparent, non-accountable way, without proper oversight and checks-and-balances in the system. Thus, reform of the judiciary, law enforcement agencies and the prosecutor's office is relevant and important not only in terms of complying with Georgia's commit-

ments under the Association Agreement, but also in the general context of Georgia's transformation into a modern democracy based on the rule of law.

With respect to these three reform areas, the report aims to:

- ▶ Provide a brief overview of the context;
- ▶ Review the 2014 and 2015 actions plans to assess their overall quality and determine whether the activities match with and are relevant to the goals set out in the Association Agenda;
- ▶ Assess the implementation of the action plans in specific selected areas.

This report covers issues only from the perspective of the implementation of the Association Agreement and relevant agendas and does not provide a comprehensive assessment of the situation in the fields discussed.

The report covers the period between 1 September 2014 and 1 September 2015.

METHODOLOGY

This report is based on analysis of information obtained from a number of sources: state progress reports on the implementation of the Association Agreement Action Plans for 2014 and the first half of 2015, public information from relevant state agencies received in response to public information requests, analysis of the relevant laws and draft laws, as well as relevant reports/expert opinion and official statements made by important stakeholders.

Indeed, specific steps taken for the implementation of the activities are important, but in the end, the state will be assessed not according to its efforts, but according to specific results attained. Therefore, unlike state progress re-

ports, which mainly focus on providing a detailed description of the steps taken in relation to each and every activity, this report looks at whether the activity listed in the Action Plan has actually been implemented and completed, not the particular steps (working meetings, negotiations with donors, etc.) taken on the way to their implementation. On the other hand, the report does provide an assessment of how well-planned and coordinated the implementation process is in general and what can be done for its further improvement.

For the sake of space, and in the light of the purpose of the report – to elaborate recommendations for improving state’s performance in implementing the Association Agenda – the report focuses more on the shortcomings, rather than achievements. This should not be seen as underestimation of achievements or a sign of their absence.

ANALYSIS

Tools, modalities and process of implementation

Before going into the details of the reforms undertaken in the course of implementing the Association Agreement, it is appropriate to provide an overall assessment of the Action Plans and the working process carried out in relation to the implementation process. The monitoring has revealed a certain pattern of shortcomings in this respect that will be briefly outlined below:

Shortcomings related to the content of the Action Plans

Vaguely formulated activities: Often, the activities listed in the Action Plans are broadly and vaguely formulated. The unclear wording of the Action Plans makes it impossible to identify precisely what the original commitment was and, consequently, whether or not it has been fulfilled. Hence, it is often impossible to assert whether or not a given activity has been implemented.

Lack of objectively measurable/quantifiable indicators to assess progress:

The Action Plans do not contain measurable indicators or targets that would enable an objective observer to evaluate and measure the progress achieved. The lack of a quarterly breakdown of implementation timeframes is further problematic, making the continuous tracking of progress rather difficult.

Clear mismatch between the activities and the goals: In a number of instances, there is a mismatch between the activities in the Action Plans and the goals set out in the Association Agenda. This suggests a lack of understanding and/or acknowledgement by the Government of Georgia of the real problems, their complexity and the depth of the reforms needed to address the challenges in relevant areas.

Furthermore, some of the activities planned, by their very nature and scope, are incapable of achieving the goals set out in the Association Agenda. Thus, even if these activities are implemented, it will not ensure the achievement of the Agenda's goals and it will be misleading to count such activities in the general statistics of the activities implemented.

Shortcomings of the working process for the implementation of the Action Plans

Absence of analysis and strategic approach to the implementation process:

There is a lack of analysis and strategic approach to the implementation process of the Association Agreement. Progress reports prepared by the state, both on justice-related issues, as well as other issues, are merely descriptive¹ and lack analytical assessment. This may be an indication that the state sees the implementation process as a rather technical one, and, as noted, lacks a strategic vision and approach to it.

A lack of clarity in terms of cooperation/coordination format and modalities: Although the respective agencies have appointed focal points in charge of implementation of the Association Agenda², which is positive, this is not

¹ See e.g., the Progress Report on the Implementation of the Association Agenda in the first half of 2015, last accessed on 13.09.15

² Responses to GYLA's public information requests to the Ministry of Justice, the Chief Prosecutor's Office and the Supreme Court of Georgia (available upon request)

enough to effectively manage the working process. There is a need for cooperation and coordination with respect to the activities that are identified in the Action Plans as the joint responsibility of two or sometimes even three agencies. It was not possible during the monitoring to obtain information about the specific types of joint steps taken, or cooperation/coordination format chosen by relevant actors when the Action Plans clearly obliged them to cooperate. When asked about these issues, the answers provided were general and vague³.

A lack of internal monitoring of the progress achieved: It is further questionable whether and, if yes, how the relevant bodies monitor the implementation process and track their own progress. At least in some cases, for example in the case of the High Council of Justice, the key body in charge of judicial administration in general and one of the key actors in charge of implementing judicial reforms set out in the Action Plans, the results of the activities implemented and indicators have been discussed during one of the Council's sessions. However, the report as well as the subsequent discussion are not available on the Council's webpage and it is impossible to evaluate their contents, hence – relevance and quality. Internal monitoring reports from other responsible agencies are also not publicly available.

A lack of external monitoring (Missing Actor – the Parliament): The role of the Parliament in the implementation of the Association Agreement, as well as in monitoring of this process, is strikingly minimal. Although the majority of the activities outlined in the Action Plans for reform of the justice sector are related to and require legislative changes, Parliament is never mentioned as one of the responsible actors in the Action Plans. Moreover, the Parliament has been completely missing so far as an external monitor over the implementation process, which is its constitutional mandate and an obligation under the doctrine of separation of powers and checks and balances.

³ Idem.

ASSESSMENT OF THE RESULTS ACHIEVED

The Government of Georgia has taken some steps towards implementation of the activities listed in the Action Plans for 2014 and 2015, but few of the important tasks have actually been completed to date. While certain important reforms (of parts of the reform) have been carried out, specific analysis of the content of the reforms and their potential impact on addressing the challenges existing in the relevant areas is unavailable. Overall, one can say that the progress achieved in terms of the justice sector reform as outlined in the Action Plans of the Association Agenda remains limited. This finding will be discussed in detail below.

1. Reforms in the field of judiciary

Judicial independence is an important principle enshrined in the Constitution and the laws of Georgia⁴, however, in the recent past the principle ‘has not been fully respected in practice. Courts have been subject to direct or indirect political pressure and have not always been able to protect their integrity.⁵ Watchdogs have repeatedly raised concerns about the independence of judges in cases where the state or the ruling party had some kind of political interest. The judiciary was largely seen to act as a rubber stamp for prosecutors’ decisions and public trust in the institution has been very low⁶.

Since the change of the country’s political leadership in 2012, important legislative reforms have been carried out. In practice the independence of the judiciary from the Prosecutor’s office has been strengthened and decisions of

4 The Constitution of Georgia (1995), article 7.

5 Georgia in Transition, *Report on the human rights dimension: background, steps taken and remaining challenges*, Assessment and recommendations by Thomas Hammarberg in his capacity as EU Special Adviser on Constitutional and Legal Reform and Human Rights in Georgia, *A report addressed to High Representative and Vice-President Catherine Ashton and Commissioner for Enlargement and European Neighbourhood Policy Stefan Füle*, September 2013, last accessed on 1 August 2014 available at http://eeas.europa.eu/delegations/georgia/press_corner/all_news/news/2013/human_rights_2013/human_rights_report_2013_en.htm [hereinafter Georgia in Transition]

6 Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1 Georgia, A/HRC/WG.6/10/GEO/3 (2010), last accessed on 25 July 2015, available at <http://daccess-ods.un.org/TMP/4266866.44554138.html>

the judges became more substantiated and well-reasoned, etc⁷. Nevertheless, legislative and institutional gaps and deficiencies, as well as some questionable practices still remain, raising questions about undue influence, including political, on certain judicial decisions.

1.1. Assessment of the Action Plans for 2014 and 2015

The activities planned in the area of judicial reform in 2014 and again in 2015 are almost identical. Most of the activities listed in the Action Plan for 2014 were not completed in 2014 and are therefore rewritten in the 2015 Action Plan. Unlike some other issues, e.g. the reform of the Prosecutor's Office, activities in the field of judicial reform are many and are outlined in detail. The shortcomings of the Action Plans, such as vaguely formulated activities, are also relevant for this section of the Action Plans.

1.2 Implementation of the Action Plans for 2014 and 2015

Implementation of the activities set out in the action plans can be divided into three main categories: 1) those which were fully implemented (these are a small portion of the activities planned⁸), 2) those which were not implemented during the reporting period, although some progress has been made towards their implementation, e.g. working meetings have been conducted, some international practice and standards have been researched, etc. (majority of the activities fall into this category⁹) and 3) those which were

7 See e.g., Georgian Young Lawyers' Association (GYLA), Monitoring Criminal Trials in Tbilisi and Kutaisi City Courts, No. 4 and No. 5 (2014).

8 Most importantly, a very progressive piece of legislation – juvenile justice code- has been adopted, which according to UNICEF, constitutes “a significant step towards a modern and child-friendly justice system.” A Statement on the Code of Juvenile Justice Developed by the Ministry of Justice, Coalition for Independent and Transparent Judiciary (2015-04-16), last accessed on 1 August 2015 at <http://www.coalition.org.ge/en/article226/Statement%20on%20the%20Code%20of%20Juvenile%20Justice%20Developed%20by%20the%20Ministry%20of%20Justice>, see further, UNICEF, The new Juvenile Justice Code – significant step towards a modern and child-friendly justice system, last accessed on 2 August 2015 at http://unicef.ge/44/juvenile_justice_code/335/Ingeng

9 E.g., one of the commitments set out in the Action Plans is improvement and implementation of periodic evaluation system of judges and development criteria and procedures for the promotion of judges (2014, 2015). Neither the system of periodic evaluation nor the system of promotion of judges has been introduced as of yet. Certain steps were taken in these directions both in 2014 and 2015, i.e. working meetings and a conference were organised to mobilise expert opinion and an international soft law document have been translated into Georgian.

implemented, but their scope and quality needs further improvement to be able to reach the overall goal set out in the Association Agenda (a few of the activities belong to this category).¹⁰

The shortcomings of the working process identified above, such as the lack of clear modalities for cooperation among different responsible agencies, the absence of internal monitoring, etc, is also relevant for this section of the Action Plans.

2. Reform of the Prosecutor's Office

In Georgia, like in many other post-soviet states, the Prosecutor's Office holds a dominant function in the criminal justice system. Its lack of independence, efficiency and accountability therefore has a detrimental effect well beyond the specific cases in the criminal justice system.

Unlike the judiciary, which has undergone significant reforms over the past two decades, ever since the dissolution of the Soviet Union, the Prosecutor's Office has remained largely resistant to change and inclined to functioning in a non-transparent, non-accountable way, often violating the law and applicable human rights standards. It has established a reputation as one of the least trusted public institutions in the country and was often subjected to fierce criticism by both national and international observers¹¹.

Unfortunately, the change of the political leadership in 2012 has not resolved the problems with independence, political neutrality and efficiency of the Prosecutor's Office.¹²

10 Reforming the system of judicial disciplinary liability and disciplinary proceedings is indicated as one of the activities in both action plans – for 2014 and 2015. In 2015 draft law has been prepared and submitted to the Parliament; however the draft law contains a number of problematic provisions and the scope of proposed amendments remains limited. The system needs fundamental reform in order to be in line with European standards and ensure proper functioning of accountability system of judges without posing any threat to judicial independence. Therefore it would be misleading to consider this activity as implemented by simply referring to the fact that the draft law is already in the Parliament or even approved by the Parliament.

11 See e.g., country reports by the US Department of State in 2006-2015; see further e.g., Georgian Young Lawyers' Association, "Cases of Criminal and Administrative Offences with Alleged Political Motive" (2011), see further Country Risk Assessment – Georgia/ Prosecution Service, ECCU-EaP-9/2013;

12 See e.g., GYLA responds to the statement of the Prime Minister and subsequent actions by the Prosecutor's Office in the case of Giorgi Okropiridze, last accessed on 2 August 2015 available at <https://gyla.ge/eng/news?info=2526> ; The statement on the International Day for the Support of Victims of Torture, 26 June 2015, last accessed on 2 August 2015 available at <https://gyla.ge/eng/news?info=2550> ;

2.1. Assessment of the Action Plans

As far as the reform of the Prosecutor's Office is concerned, the Action Plan for 2014 exclusively focuses on trainings, in particular: training in trial skills to increase the quality of reasoning of procedural documents, training on diversion and mediation, training to promote and raise awareness on human rights and anti-discrimination in the judiciary, law enforcement, and administration.

The Action Plan for 2015 also includes the obligation to improve the qualifications of the officials of the Prosecution System with regards to the fight against corruption, legal writing and reasoning, court skills, professional ethics and other relevant fields, conduct annual monitoring of the support of public prosecution at court hearings and establish a system for evaluating prosecutors.

The Action Plan for 2015, however, does to some extent acknowledge the need for a more comprehensive set of actions. It acknowledges that institutional reform of the Prosecutor's Office needs to be carried out, however it fails to provide further details of what is exactly meant under this commitment and what the sub-activities are that need to be implemented to achieve the goal.

The wording used – 'institutional reform' – is not filled with any particular content indicating the direction and/or priorities of the reform. It is therefore impossible for the purposes of monitoring state's compliance with the Action Plan to determine whether or not the original commitment enshrined in the Action Plan has been complied with.

It is noteworthy that both Action Plans put a nearly exclusive focus on skill's training of employees of the Prosecutor's Office. It is true that trainings are an important tool to improve the overall performance of the staff and thus of the institution - and can therefore contribute to the *efficiency and professionalism* of the Prosecutor's Office. It is questionable, however, whether trainings can address the urgent need to ensure the Prosecutor's Office's *independence and impartiality, transparency and impartiality of investigations and freedom from undue influence of any kind, including political*.

In sum, an exclusive focus on trainings is a clear shortcoming of the Action Plans and suggests a lack of understanding and/or acknowledgement by the Government of Georgia of the real problems in the system of the Prosecutor's Office and the depth of the reforms needed. Furthermore, the actual reform remained limited to amending the appointment/dismissal process of the Chief Prosecutor and failed to offer fundamental changes in the institutional setting of the Prosecutor's Office, such as appointment, dismissal, evaluation and promotion procedures of the city and regional prosecutors, guarantees of their independence and autonomous decision-making, etc¹³.

2.2. Implementation of the Action Plans

At the end of 2014, the Prime Minister announced the start of the reform of the Prosecutor's Office. This was followed by a statement by the Minister of Justice that the reform 'ought to be carried out swiftly, already this year [2015]... and it cannot wait'¹⁴. The reform process did not, however, start with the identification of key concerns or the needs and main challenges facing the system¹⁵ - based on shared views between different national and international stakeholders. Rather, the Council conducted comparative research and prepared a concept of the reform, which talks about the changes to be carried out, but not about the needs facing the system and solutions matching these needs.

In early April the Inter-Agency Council presented a draft new model for the appointment/dismissal of the Chief Prosecutor at the Council's meeting. All of the meeting participants welcomed the reform and most of them made specific comments and recommendations for the revision of important aspects of the proposed model.

Unfortunately, the Ministry of Justice was not very open to recommen-

13 Prosecutor's Office Reform in Georgia: What is at Stake, (2015) A policy brief by Ana Natsvlshvili, last accessed on 24 September 2015 available at <http://www.osgf.ge/files/2015/Publication/EU-Georgia%20Association%20report6.pdf>

14 Minister of Justice: The Reform of the Prosecutor's Office must be carried out already this year and swiftly, last accessed on 1 August 2015 available at <http://www.interpressnews.ge/ge/samar-tali/324076-thea-tsulukiani-prokuraturis-reforma-unda-chatardes-tselsve-da-stsrafad.html?ar=A>

15 For some thoughts about these needs and challenges see Reform of the Prosecutor's Office of Georgia: What is at Stake? (2015) A policy brief by Ana Natsvlshvili

dations and criticism voiced towards the proposed model by civil society actors and experts. Later, the Venice Commission opinion on the draft law noted that, despite changing the selection/appointment procedure of the Chief Prosecutor and introducing certain new actors in the decision-making process, the proposal “is still not fully balanced and that the ‘political element’ in the appointment process still remains predominant¹⁶. Following the Venice Commission opinion, certain changes were made to the initial version of the draft law and a number of recommendations were taken on board. However, the main problem – a lack of sufficient guarantees for merit-based selection procedure of the Chief Prosecutor or protection from political or other undue influences – remained unresolved¹⁷.

In sum, if one looks at the process in retrospect, launching the reform process of an institution that has been resistant to reforms for decades is of huge importance. The government further claims that significant changes have been proposed and adopted in terms of the Prosecutor’s Office reform, yet doubt lingers as to whether these changes can actually qualify as a proper reform of the system¹⁸ and whether these changes can truly ensure meeting the objectives of the Association Agenda and the country’s needs.

First, the adopted model of the appointment/dismissal of the Chief Prosecutor fails to provide sufficient guarantees for a merit-based selection procedure of the Chief Prosecutor, distanced from political or other undue influences. Second, merely the change of how the Chief Prosecutor is appointed/dismissed can hardly qualify as an institutional reform aiming at transforming the Prosecutor’s Office into an independent, professional and accountable institution, as set out in the Association Agenda. Although, the way the Chief Prosecutor is appointed (and dismissed) according to the law is an important guarantee of the overall

16 European Commission for Democracy through Law (Venice Commission), Consultative Council of European Prosecutors (CCPE), OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), Preliminary Joint Opinion on the Draft Amendments to the Law on Prosecutor’s Office of Georgia, CDL-PI(2015)014 (2015)

17 Statement of the Coalition for Independent and Transparent Judiciary on the occasion of adoption of amendments to the law on Prosecutor’s Office by the third hearing, last accessed on 24 September 2015 available at <https://gyla.ge/eng/news?info=2623>

18 Reform of the Prosecutor’s Office of Georgia: What is at Stake (2015) A policy brief by Ana Natsvlshvili

independence of the Prosecutor's Office, genuine independence and professionalism of the institution requires much more than that. Among other things, it takes a proper system of selection, promotion, demotion and dismissal of city and regional prosecutors and guarantees of their individual autonomy, etc.

3. Reform of the Ministry of Interior

The Ministry of Internal Affairs (MIA) was reported in recent past to have been the biggest ministry within the administration with up to 40 000 employees¹⁹, a wide range of powers and no effective system of public or parliamentary oversight, accountability and transparency. Such a reality has led to an institutionalised culture of impunity and the MIA's involvement in serious human rights violation.²⁰ 'Problems were reported in relation to lack of transparency and accountability, to methods of investigation and to deprivation of liberty without respect for procedural standards, as well as to episodes of ill-treatment of persons in custody²¹'. After the change of political leadership in 2012, certain positive developments were noted in the human rights situation in general. These improvements, however, have not been reflected in the work of law enforcement agencies and problems such as ill-treatment and abuse of power²² and infringements of certain fundamental rights²³ are still recorded.

19 Georgia in Transition, note: current number of MIA staff is unknown. According to one source, the number of staff in specific units of the Ministry or the overall number working in the Ministry is not publicly available, see EMC, Policy of Invisible Power: Analysis of the Law Enforcement System, 2015.

20 License to Kill, Human Rights Center 2004-2009, Human Rights Center, 2009, last accessed on 11 August 2015 at <http://humanrights.ge/admin/editor/uploads/pdf/license-to-kill-bolo.pdf>; see further Alarming consequences of crackdown on demonstration in Georgia, last accessed on 11 August 2015 available at <http://humanrightshouse.org/Articles/16521.html>

21 *ibid*

22 See e.g., Annual Reports of the Public Defender of Georgia, available at <http://www.ombudsman.ge/reports/saparlamento-angarishebi>; See further, GYLA's statements on alleged human rights violations by law enforcement officials, last accessed on 11 August 2015 at <https://gyla.ge/geo/news?info=2049> and <https://gyla.ge/geo/news?info=2340#sthash.zLtEUoGr.dpuf> and <https://gyla.ge/geo/news?info=1953> and <https://gyla.ge/eng/news?info=2436>

23 <http://www.radiotavisupleba.ge/content/saemukra-tu-ara-safrtkhe-shekrevisa-da-gamokhatvis-tavisuplebas/27140774.html>

3.1. Assessment of the Action Plans

The Action Plan for 2014 is silent on the reform of the MIA. The only obligation toward this end can be found in the 2015 Action Plan with the following wording: ‘Initiate the procedure of separation of security services from the Ministry of Internal Affairs’.

Although, the separation of the two structures is an important step in itself, it is only one direction of the reform needed to accomplish the goal set out in the Association Agreement Agenda of ‘increasing the accountability and democratic oversight of law enforcement agencies’. Furthermore, there is nothing in the Action Plans related to strengthening internal or external mechanisms of accountability of law enforcement agencies (e.g., parliamentary oversight).

3.2. Implementation of the Action Plans

Preparation of the draft law on the Security Service has been a closed, non-transparent process, without any NGO involvement. The already formulated draft was presented to a number of NGOs with very short notice with one week’s time to provide feedback. It is interesting in this context that the progress report talks about the Cabinet of Minister’s Order that established an Inter-Agency Council composed of representatives of the executive and legislative branches to elaborate recommendations and proposals for reform of the MIA. It is interesting however that the draft bill itself was presented by an MIA representative, rather than the Council or its Secretary. The closed nature of the process was somewhat mitigated by the active debate around the draft law in the Parliament, in particular within the Legal Affairs Committee. Nevertheless, most of the important suggestions made by NGOs were not taken on board²⁴.

Experts have stressed the need for structural reforms in order to increase the accountability and democratic oversight of law enforcement even before

²⁴ Coalition provides an opinion on the process of reform of the Ministry of Interior 29 May 2015, last accessed on 1 August 2015 available at http://www.coalition.org.ge/en/article233/Coalition_provides_an_opinion_on_the_process_of_reform_of_the_Ministry_of_Interior

Georgia signed the Association Agreement²⁵. The mere separation of the two bodies is anything but structural reform and is thus insufficient to reach the goal set out in the Association Agenda.

Speaking in terms of the Action Plans, the obligation set out in the 2015 Action Plan – separation of the Ministry of Interior and Ministry of State Security – was accomplished. It would be misleading, however, to consider that because of this step the obligation set out under the Association Agenda of ‘increasing the accountability and democratic oversight of law enforcement agencies’ was fulfilled. The separation in itself, and particularly the specific model of the Security Service introduced, is far from enough to solve the problems of the concentration of power and ensure independence, transparency, effectiveness and democratic oversight over law enforcement bodies and their activities.²⁶ Both Action Plans fail to provide for other activities in the direction of increasing internal or external oversight, e.g. the obligation of the Parliament or relevant committees to organise regular hearings on the work of law enforcement agencies.

Thus, the part concerning the activities in relation to the MIA reform is yet another example when there is a mismatch between the goal set out in the Association Agenda and the activities in the Action Plans. It is therefore of utmost importance to make sure that the action plans for the upcoming years outline more detailed and comprehensive steps to create an accountable law enforcement system.

4. Independent Investigative Mechanism

The Ombudsman, NGOs and international actors have repeatedly denounced the culture of impunity and the lack of effective investigations into the cases of torture, ill-treatment, abuse of power and other similar crimes where an alleged perpetrator was a law enforcement official. ‘Considering the country’s recent past and the urgent need to build trust between the pop-

²⁵ ibid

²⁶ NGOs call upon the government to undertake real reform of law enforcement system, 13 July 2015, last accessed on 1 August 2015 available at <https://gyla.ge/geo/news?info=2562>

ulation and law enforcement, the introduction of a fully independent investigatory body' has emerged as a necessity among experts, NGO community, ombudsman and international actors²⁷

Unfortunately, in terms of the effectiveness of investigation, not much has changed since the change of the government in 2012. Therefore the need for setting up an independent investigative mechanism remains as relevant as before.

Moreover, the Association Agenda further sets out the obligation of the Georgian Government to consider establishing a fully-fledged independent and effective complaint mechanism to investigate complaints against the police and prosecutors. It is then surprising that the Action Plans limit the mandate of this mechanism to the fight against torture only.

4.1. Assessment of the Action Plans

As noted, the Association Agenda talks about a fully-fledged independent and effective complaint mechanism to *investigate complaints against the police and prosecutors*. The Action Plans mention only one activity related to the implementation of this obligation. Moreover, they both limit the mandate of this mechanism to the fight against torture only.

4.2. Implementation of the Action Plans

The obligation to consider the establishment of an independent investigative mechanism is one of the most ignored among the obligations falling under the justice system reform. In March 2015 a draft law – accompanied by research conducted by international experience – prepared by NGOs was submitted to the Inter-Agency Council for the Fight against Torture. As of writing of this report, the Council has not considered the draft bill and has not organised any meetings or activities on its own initiative regarding the mechanism.

²⁷ Georgia in Transition (2013)

CONCLUSION

Extensive activities have been carried out toward the reform of the justice system over the past three years; however, the Government of Georgia's overall performance in meeting the goals set out in the Association Agreement in terms of the reform of the judiciary, Prosecutor's Office and the Ministry of Interior cannot thus far be evaluated as satisfactory.

One of the few positive examples of what has been achieved is the new Juvenile Justice Code. As for the rest of the reforms, they remain limited in scope and questionable in terms of their effectiveness in developing an independent, politically neutral and professional judiciary and law enforcement bodies.

As for the deficiencies and challenges identified during the monitoring process, the following can be stated:

- ▶ Many of the activities are formulated in very general, broad and vague terms, leaving their exact content wide open to subjective interpretations and making the assessment of their implementation nearly impossible.
- ▶ There is a considerable mismatch between the commitments under the Association Agenda and the corresponding activities listed in the Action Plans. It is therefore questionable whether the implementation of these activities, even if done in complete and comprehensive way, can actually result in fulfilling the goals/commitments set under the Association Agenda.
- ▶ It is often difficult, if not impossible, to measure progress in terms of the implementation of specific activities because the Action Plans lack any assessment indicators, target numbers or expected outputs.
- ▶ Tracking of progress is further complicated by the lack of detailed timeframes for the implementation of each activity.
- ▶ Different parts of the Action Plans vary in terms of detail and depth of the work to be carried out in a particular direction in order to comply with a spe-

cific commitment under the Association Agenda. For example, the Action Plans are rather detailed when it comes to judicial reform, but exceptionally limited and brief when it comes to reform of the Ministry of Internal Affairs.

- ▶ It remains questionable whether all the relevant agencies conduct an assessment of the efficiency of the relevant activities carried out (e.g., assessing the quality of trainings conducted) and their role in achieving the commitments under the Association Agenda.
- ▶ Parliament's role in the implementation and monitoring of the implementation is nearly absent.
- ▶ Last, but not least, some instances of implementing the Action Plans undermine the principles of transparency, accountability and inclusiveness in the process of planning and implementation of the Action Plans.

RECOMMENDATIONS

- ▶ Ensure timely completion of the remaining tasks from the two action plans;
- ▶ Provide assessment indicators, outputs and/or target numbers for every item on future action plans along with at least quarterly breakdown of implementation time frames;
- ▶ Prepare future action plans based on an analysis of the implementation of the previous ones;
- ▶ Make sure that future action plans are as detailed as possible and that the activities planned correspond to the overall objectives set out in the Association Agreement and the Association Agenda;
- ▶ Ensure that civil society's involvement in the reform process is not a mere formality;
- ▶ Ensure that the implementation of the Association Agenda is subject to rigorous internal and external monitoring.

Anti-corruption, Administrative Reform and Civil Service

By Erekle Urushadze

on behalf of the Transparency International Georgia

EXECUTIVE SUMMARY

Anti-Corruption and administrative reforms are among Georgia's commitments under the Association Agreement with the European Union, the corresponding Association Agenda and the annual actions plans for the implementation of the latter. While Georgia has made important progress in terms of fighting corruption over the last decade, some of the more complex types of corruption remain a problem. Meanwhile, the country is yet to establish a truly independent and professional civil service. The relevant commitments in the Association Agenda are therefore important in the general context of the country's development.

The Georgian Government's 2014 and 2015 action plans for the implementation of the Association Agenda include a number of very ambitious reforms and activities such as the adoption of the new National Anti-Corruption Strategy and Action Plan, as well as of a new Civil Service Law, and creation of a monitoring system for the asset declarations of the country's public officials. Other planned reforms within this framework include establishment of transparent procedures for selection, evaluation, promotion and dismissal of civil servants and introduction of electronic systems for the management of human resources in public agencies.

As of 1 September 2015, the Georgian Government had made progress toward implementing most activities listed in the action plans and a number of important tasks had been completed (e.g. adoption of the new National Anti-Corruption Strategy and Action Plan as well as the adoption in the first reading of the new Civil Service Law and the legislative amendments introducing the asset declarations monitoring system). Further progress is needed toward the achievement of a number of important objectives, including the adoption of the freedom of information law and compliance with the recommendations of the Council of Europe's Group of Countries against Corruption (GRECO), as well as strengthening of the Anti-Corruption Council.

Measuring exactly how much progress has been made toward attaining some of the objectives is often difficult because the action plans lack any assessment indicators, target numbers or expected outputs. Tracking of progress is further complicated by the lack of detailed timeframes for the implementa-

tion of each activity. Some of the activities that were not completed in 2014 were, for some reason, not included in the 2015 action plan.

In order to successfully accomplish the objectives set out in the Association Agreement and the Association Agenda, the Georgian Government must:

- ▶ Ensure timely completion of the remaining tasks from the two action plans (including the activities from the 2014 Action Plan that were not fully implemented in 2014 and do not appear in the 2015 document)
- ▶ Provide assessment indicators, outputs and/or target numbers for every item in future action plans along with at least a quarterly breakdown of implementation timeframes
- ▶ Prepare future action plans based on an analysis of the implementation of the previous ones and make sure that the tasks that were not completed are included in the next action plan

INTRODUCTION

The fight against corruption and administrative reforms are among Georgia's commitments under the Association Agreement with the European Union and the corresponding Association Agenda.

The Association Agreement contains a number of provision that refer to the two areas: Both the preamble and the chapter on general principles reiterate the commitment of the parties to reforming public administration and the civil service and combatting corruption, while multiple articles throughout the Agreement (Articles 4, 17, 392, 394, 395 and 396) envisage cooperation between the parties in these two areas, as well as Georgia's commitment to implement reforms and activities toward these goals²⁸.

²⁸ Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2014:261:FULL&from=EN> (accessed on 1 April 2015)

The Association Agenda further identifies the fight against corruption and administrative reform among the main policy directions under its Priority 2.1: Political Dialogue and Reform. The Association Agenda specifically refers to Georgia's commitment to 'take adequate measures at all levels of society to prevent, detect and address corruption especially high level corruption', as well as to 'pursue administrative reform with emphasis on public administration and on building an accountable, efficient, effective, transparent and professional civil service'²⁹. The Georgian Government's 2014 and 2015 action plans contain a list of specific reforms designed to attain the general goals set out in the Association Agreement and the Association Agenda.

METHODOLOGY

The sections below provide a review of Georgia's compliance with its commitments under the Association Agenda in the areas of anti-corruption and public administration/civil service reforms. This paper aims to:

- ▶ Review the 2014 and 2015 actions plans to assess their overall quality
- ▶ Assess the implementation of the action plans

Due to the nature of the objectives set out in the government's 2014 and 2015 action plans, the assessment included a review of both Georgia's legislation and the activities implemented by public agencies in practice.

The assessment is based on information obtained from the public agencies responsible for the implementation of the activities from the government's 2014 and 2015 action plans, and (where available) the opinions of local and international organisations conducting monitoring and policy analysis in the relevant field. Media reports were another source for the assessment.

It is important to emphasise that the assessment looks at the implementation of the government's 2014 and 2015 action plans and attempts to determine

²⁹ Association Agenda between the European Union and Georgia, http://eeas.europa.eu/delegations/georgia/documents/eap_aa/associationagenda_2014_en.pdf (accessed on 1 April 2015)

whether the relevant objectives have been achieved. It does not attempt to evaluate the broader situation and developments in the areas of anti-corruption policy and administrative reform, although these are touched upon in some parts of the report.

The assessment covers the period of time between 1 September 2014 and 1 September 2015.

1. Anti-Corruption Reforms

1.1 Assessment of 2014 and 2015 Action Plans

The Georgian Government's 2014 action plan for the implementation of the Association Agenda includes a number of activities in the area of anti-corruption policy and reforms:

1. Develop the Anti-corruption Strategy and Action Plan
2. Improve the monitoring mechanism of the implementation of the anti-corruption policy
3. Increase the human resources of the Secretariat of the Anticorruption Council and raise the capacity of the staff
4. Facilitate compliance with the recommendations of international organisations (GRECO, OECD, UNODC/UNCAC)
5. Elaborate the draft law on freedom of information
6. Ensure the effective work of the Open Government Partnership Georgia Forum, which is the mechanism for cooperation with civil society within the framework of Open Government Partnership³⁰

The 2015 action plan includes all activities from the 2014 action plan along with a number of new ones:

³⁰ The Georgian Government's 2014 action plan for the implementation of the Association Agenda, http://www.eu-nato.gov.ge/sites/default/files/AA%20Action%20Plan-2014-Final-ENG_0.pdf (accessed on 27 July 2015)

1. Ensure public engagement and raise awareness through implementation of the Voice of the Consumer project
2. Develop international cooperation and ensure the participation of various international organisations in anti-corruption research
3. Attain high quality and transparent public services by supporting the professional development of employees (e.g. by providing regular trainings), simplifying processes and implementing new services
4. Implement a special retraining program for employees of the Anti-Corruption Agency of the Ministry of Internal Affairs and establish an analytical unit within the Anti-Corruption Agency
5. Elaborate proposals to strengthen the institutional capacity of the Anti-corruption Council
6. Monitor the implementation of the Open Government Georgia's Action Plan 2014-2015.³¹

Overall, most of the activities listed in the 2014 and 2015 action plans are relevant and important. One significant problem with both action plans is the lack of clear indicators for assessing whether or not an activity has been completed successfully. The overly general implementation timeframes are another problem. All activities in the 2014 action plan were simply scheduled to be implemented in 2014 without any further breakdown. The same is the case with the 2015 action plan. Provision, at the very least, of quarterly deadlines/timeframes would have rendered more effective monitoring possible.

1.2 Assessment of Implementation of 2014 and 2015 Action Plans

1.2.1 Develop a new Anti-Corruption Strategy and Action Plan and develop a monitoring and evaluation mechanism for their implementation

The adoption of the new National Anti-Corruption Strategy and Action Plan was a major step forward both in terms of the process of their development and the final result. The Ministry of Justice organised an inclusive process of

³¹ The Georgian Government's 2015 action plan for the implementation of the Association Agenda, http://www.eu-nato.gov.ge/sites/default/files/AA%20National%20Action%20Plan%202015%20-%20Final%20GEO_0.pdf (accessed on 27 July 2015)

drafting the new documents whereby CSOs had sufficient time and opportunities to provide input. Parts of the documents were prepared and discussed in nine thematic working groups before the Strategy and the Action Plan were finally approved by the Anti-Corruption Council in February 2014³².

The new National Anti-Corruption Strategy identifies 13 strategic priorities that have a clear anti-corruption focus. The Action Plan lists a number of activities in each of these areas and, importantly, clear timeframes for their implementation are also provided³³.

Since the previous Action Plan lacked a comprehensive monitoring and evaluation component, the adoption of a detailed and clear monitoring and evaluation methodology along with the new Action Plan was an important step forward. The methodology involves both qualitative and quantitative assessment of progress, includes indicators for assessing process as well as outcome, and provides opportunities for inputs from civil society organisations³⁴.

The Anti-Corruption Council's Secretariat produced a progress update on the implementation of the new action plan in July 2015 along with an analysis of the results of its monitoring of the implementation³⁵. In the past, implementation reports were not produced in a timely manner (and sometimes were not produced at all), so the fact that a progress update was prepared by the Secretariat so promptly is a significant improvement. Also, the analysis of implementation produced along with the progress update is an entirely new type of document, which is another welcome development. The progress update was shared with CSOs in advance of the Anti-Corruption Council meeting where it was approved.

32 OECD ACN, Istanbul Action Plan, Third Round of Monitoring, Progress Updates, <http://www.oecd.org/corruption/acn/Georgia-ACN-Progress-Update-March-2015-ENG.pdf> (accessed on 27 July 2015)

33 The full text of the National Anti-Corruption Strategy is available on the Ministry of Justice website: <http://justice.gov.ge/Ministry/Index/172> (accessed on 27 July 2015)

34 The monitoring and evaluation methodology is available on the Ministry of Justice website: <http://justice.gov.ge/Ministry/Index/172> (accessed on 27 July 2015)

35 The update and the analysis are available on the Ministry of Justice website: <http://justice.gov.ge/Ministry/Index/172> (accessed on 25 September 2015)

1.2.2 Increase the human resources and improve staff capacity of the Anti-Corruption Council's Secretariat; Elaborate proposals to strengthen the institutional capacity of the Anti-corruption Council

Two new staff members (a legal advisor and a sociologist) joined the Secretariat in late 2014³⁶ and another staff member was hired in 2015³⁷. Additionally, employees of the Secretariat participated in several trainings, workshops and study trips in 2014³⁸.

It is somewhat difficult to assess the implementation of this activity since the action plans do not contain any target numbers or indicators as to what kind of a margin of growth in human resources would suffice for this objective to be considered accomplished or how the improved capacity of the staff is to be measured.

According to the OECD ACN's most recent assessment, Georgia has made 'limited progress' in terms of providing its anti-corruption body with 'adequate powers, resources, and secretariat, including permanent dedicated staff specialised only in anti-corruption work'³⁹. It is worth noting that Georgia is yet to comply with the latter part of the OECD ACN's recommendation since the Ministry of Justice's Analytical Department (which has a variety of responsibilities) continues to serve as the Anti-Corruption Council's Secretariat.

36 OECD ACN, Istanbul Action Plan, Third Round of Monitoring, Progress Updates, <http://www.oecd.org/corruption/acn/Georgia-ACN-Progress-Update-March-2015-ENG.pdf> (accessed on 27 July 2015)

37 Communication with the Ministry of Justice, 11 September 2015.

38 The Georgian Government's report on the implementation of the 2014 action plan, <http://www.eu-na-to.gov.ge/sites/default/files/REPORT%20of%20the%20AA%20Action%20Plan-2014%20ENG%20-%20FINAL%20ENG.pdf> (accessed on 27 July 2015)

39 OECD ACN, Istanbul Action Plan, Third Round of Monitoring, Progress Updates, <http://www.oecd.org/corruption/acn/Georgia-ACN-Progress-Update-March-2015-ENG.pdf> (accessed on 27 July 2015)

1.2.3 Facilitate compliance with recommendations of international organisations (GRECO, OECD, UNCAC)

The OECD's Anti-Corruption Network for Eastern Europe and Central Asia (OECD ACN) published its most recent assessment on the implementation of its recommendations under the Istanbul Action Plan (IAP) by the Government of Georgia in March 2015. There are a total of 13 recommendations for Georgia under the third round of IAP monitoring divided into three categories (pillars): anti-corruption policy, criminalisation of corruption and prevention of corruption. There are two further recommendations retained from the previous round of recommendations. According to the March 2015 assessment, Georgia has achieved 'progress' in the implementation of 10 recommendations and 'significant progress' on one recommendation. 'Limited progress' has been made on the recommendation concerning improvement of the Anti-Corruption Council's capacity. The three recommendations where the OECD ACN noted relative or complete lack of progress are related to party and campaign finance, judicial independence and integrity in the business sector⁴⁰.

GRECO (the Council of Europe's Group of States against Corruption) adopted its Second Compliance Report on Georgia under the Third Round of Evaluation in June 2015. The Third Round of Evaluation includes fifteen recommendations for Georgia divided into Theme I (incriminations) and Theme II (Transparency of Party Funding). Under Theme I, the previous compliance report (adopted in June 2013) concluded that three of the five recommendations had been 'implemented satisfactorily' while two were pending. According to the 2015 report, both pending recommendations have now been implemented, so all five recommendations under Theme I are now qualified as 'implemented satisfactorily'. As for Theme II, three of the total 10 recommendations had been qualified as 'implemented satisfactorily', six – as party 'implemented', and one – as 'not implemented' in the 2013 assessment. In the 2015 Compliance Report, one of the seven pending recommendations has been upgraded from 'not implemented' to 'partly implemented' while the six that were 'party implemented' in 2013 remain so in 2015 as well, although GRECO has acknowledged Georgia's progress in implementing some components of these

⁴⁰ Ibid.

recommendations⁴¹. Overall, Georgia has no recommendation qualified as ‘not implemented’ as of 2015, although it is clear that further progress is needed in implementing the recommendations concerning transparency of party funding.

Georgia was not subject to UNCAC review/evaluation in 2014 or 2015.

1.2.4 Ensure the effective work of Open Government Partnership Georgia Forum; Monitor implementation of Open Government Georgia’s Action Plan 2014-2015

The OGP Georgia Forum is a consultative body established under the Anti-Corruption Council in order to develop OGP-related recommendations, facilitate a participatory process of drafting the OGP action plan and monitoring its implementation, and raise public awareness of the OGP. The Forum is led by two rapporteurs: One from a government institution and the other from a civil society organisation⁴².

The Forum met on six occasions during the period of time covered in this report (September 2014 - September 2015). Civil society representatives attended all six meetings and a detailed report on each of the meetings is available on the Ministry of Justice website⁴³. While the Association Agenda implementation action plans for 2014 and 2015 provide no indicators as to what would be considered ‘effective’ work of the Forum, the meeting reports indicate that it is, in fact, an effective mechanism for communication between public institutions and civil society organisations regarding the implementation of OGP-related activities and for the review of progress.

As for the monitoring of the 2014 OGP Action Plan, once again, no indicator has been provided as to what would be considered successful completion of

41 GRECO, Third Evaluation Round, Second Compliance Report on Georgia, Strasbourg, 15-19 June 2015, [https://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/2nd%20RC3/Greco%20RC3\(2015\)4_Georgia_2ndRC_EN.pdf](https://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/2nd%20RC3/Greco%20RC3(2015)4_Georgia_2ndRC_EN.pdf) (accessed on 25 September, 2015)

42 Guidelines of the Open Government Georgia Forum (accessed on 27 July 2015).

43 Reports on the Forum’s meetings are available on the Ministry of Justice website, <http://justice.gov.ge/Ministry/Index/348> (accessed on 27 July 2015)

this task (e.g. publication of a monitoring report). In a positive development, a monitoring and evaluation mechanism was developed and the OGP Georgia Secretariat asked relevant public agencies to provide information on the implementation of the Action Plan in late 2014⁴⁴. No monitoring report has been published but the monitoring results were presented and discussed at the March and May 2015 meetings of the Forum⁴⁵.

1.2.5 Elaborate the draft law on freedom of information

The draft law was originally scheduled for parliamentary discussion in the fall of 2014⁴⁶ but was yet to be officially approved by the GoG and submitted to the legislature as of February 2015. Consequently, this activity from the 2014 action plan ended up on the 2015 action plan as well. According to the Ministry of Justice, the draft was updated according to an international expert's comments in late 2014 and the work continued in 2015. The Ministry expects to submit the draft for parliamentary approval in the first half of 2016⁴⁷.

1.2.6 Implement a special retraining program for employees of the Anti-Corruption Agency of the Ministry of Internal Affairs and establish an analytical unit within the Anti-Corruption Agency

A 246-hour retraining program focused on corruption and malfeasance was developed by the Internal Affairs Ministry Academy in 2014 and 53 individuals completed it the same year. The Analytical Service of the Anti-Corruption Agency was established in November 2014⁴⁸. Since both tasks were completed in 2014, the reason for their inclusion in the 2015 action plan is unclear.

44 Report on the 10th meeting of the Open Government Georgia Forum (accessed on 27 July 2015)

45 Reports on the 11th and the 13th meetings of the Open Government Georgia Forum, <http://justice.gov.ge/Ministry/Index/348> (accessed on 25 September 2015)

46 Liberali, 'Freedom of Information Draft Law Likely To Be Presented to Parliament at Fall Session', <http://www.liberali.ge/ge/liberali/news/119110/> (accessed on 27 July 2015)

47 Communication with the Ministry of Justice, 11 September 2015.

48 Transparency International Georgia's correspondence with the Ministry of Internal Affairs, May 2015.

1.2.7 Develop international cooperation and ensure the participation of various international organisations in anti-corruption research

Due to the lack of any indicators in the action plan, it is not clear what would be considered successful completion of this task.

According to the Ministry of Justice, government delegations have conducted visits to Albania and Suriname to share successful experience of the Public Service Hall project, and the Ministry has hosted delegations from Moldova and Ukraine to share the experience of anti-corruption work. Additionally, Georgian Government delegations have attended the OECD-ACN and GRECO plenary sessions and Georgia joined the *Vienna Agreement for the Establishment of the International Anti-Corruption Academy as an International Organisation* in November 2014. The Agreement is in force for Georgia since 25 May 2015⁴⁹.

1.2.8 Ensure public engagement and raise awareness through implementation of the Voice of the Consumer project

According to the Ministry of Justice, the Voice of the Consumer project has been implemented in every branch of the Public Service Hall. Consumers can provide feedback regarding the quality of services in the Public Service Hall by filling out special forms or calling the Public Service Hall's unified telephone system. The Ministry also provided samples of the promotional materials upon request⁵⁰.

1.2.9 Attain high quality and transparent public services by supporting the professional development of employees (e.g. by providing regular trainings), simplifying processes and implementing new services

The lack of any indicators or target numbers in the action plan makes it difficult to assess the implementation of these activities.

⁴⁹ Transparency International Georgia's correspondence with the Ministry of Justice, May 2015; Communication with the Ministry of Justice, September 2015.

⁵⁰ Transparency International Georgia's correspondence with the Ministry of Justice, May 2015.

According to the Ministry of Justice, operators of the Public Service Hall receive regular training on service procedures. In order to improve the services, a system of regular meetings with the Public Service Hall operators where problematic matters are discussed has been introduced, while continuous monitoring of the existing programs is also conducted in order to identify and eliminate shortcomings. As for the new services, the Foreign Affairs Ministry's visa service was introduced in the Public Service Halls of 14 cities throughout Georgia and a service of the National Agency of State Property concerning purchase, lease and registration of state property was implemented in the Marneuli Public Service Hall in 2015. The JUSTdrive service was also launched in the Tbilisi Public Service hall in 2015⁵¹.

2. Administrative and Civil Service Reform

2.1 Assessment of 2014 and 2015 Action Plans

The Georgian Government's 2014 action plan for the implementation of the Association Agenda includes a number of activities in the area of administrative and civil service reform:

1. Adopt the civil service reform concept
2. Start drafting new legislation governing the civil service
3. Create job descriptions to establish a transparent system of remuneration in the civil service
4. Analyse the evaluation system in the civil service and select a model
5. Develop a transparent and objective mechanism for the selection, promotion and dismissal of civil servants⁵²
6. Select a system to monitor asset declarations of civil service officials.

51 Transparency International Georgia's correspondence with the Ministry of Justice, May 2015; communication with the Ministry of Justice, September 2015.

52 The Georgian Government's 2014 action plan for the implementation of the Association Agenda, http://www.eu-nato.gov.ge/sites/default/files/AA%20Action%20Plan-2014-Final-ENG_0.pdf (accessed on 27 July 2015)

The 2015 action plan lists some further activities in this field:

1. Elaborate a new draft law on the civil service
2. Start the process of functional analysis in central government agencies
3. Amend the Georgian law on Conflict of Interest and Corruption in Public Service concerning the asset declaration monitoring system
4. Develop ethics rules for civil servants
5. Implement the electronic system for human resources management (e-HRMS in central government agencies)⁵³

The activities listed in the two action plans are relevant and address some of the most significant challenges to the on-going civil service reform. Once again, no indicators or target numbers are provided to measure success in their implementation.

The lack of at least a quarterly breakdown of implementation timeframes is more problematic as it makes continuous tracking of progress quite difficult.

2.2 Assessment of Implementation of 2014 and 2015 Action Plans

2.2.1 Adopt the civil service reform concept

The reform concept was approved by government decree in November 2014⁵⁴. The adoption of the concept was preceded by a number of public discussions involving government institutions, civil society and academic circles⁵⁵. In order to facilitate the implementation of the concept, the government adopted a corresponding action plan in February 2015⁵⁶.

53 The Georgian Government's 2015 action plan for the implementation of the Association Agenda, http://www.eu-nato.gov.ge/sites/default/files/AA%20National%20Action%20Plan%202015%20-%20Final%20GEO_0.pdf (accessed on 27 July 2015)

54 The Georgian Government Decree #627 On Approving Civil Service Reform Concept and Some Related Measures, 19 November 2014.

55 See, for example: <http://www.csb.gov.ge/en/forum-on-civil-service-reform-concept/912>; <http://www.csb.gov.ge/en/discussing-the-draft-concept-of-the-civil-service-reform-with-parliament/901>; <http://www.csb.gov.ge/en/presentation-of-civil-service-reform-concept/913>

56 The Georgian Government Decree #198 On Approving Action Plan for Measures To Be Carried Out by LEPL Civil Service Bureau To Facilitate Implementation of Civil Service Reform Concept, 12 February 2015.

The concept covers important areas of civil service reform, including the centralised system for civil service management and coordination and oversight, recruitment, remuneration and equal opportunities in the civil service. In each of the areas, an analysis of current problems is provided alongside proposals for addressing them.

2.2.2 Start drafting new legislation governing civil service; Elaborate a new draft law on civil service

A working group comprising a Ministry of Justice representative and experts from the OECD SIGMA alongside the Civil Service Bureau's employees was established in 2014 to develop the draft law. The group subsequently drafted the structure of the new law⁵⁷.

After a series of public consultations, the draft of the new Civil Service Law was finalised in May 2015⁵⁸. The draft law and the corresponding package of legislative amendments was approved by Parliament in the first reading in July 2015⁵⁹.

The adoption of the new Civil Service Law is a step forward, although the proposed draft has a number of shortcomings:

1. Appointments to the positions of higher ranks (3rd, 2nd and 1st) are to be made through internal competition that will be closed to individuals outside the civil service.
2. The law provides for excessive government control and influence over a range of organisational issues within the civil service, including salaries, as these are to be regulated through government decrees (rather than the law). Moreover, these provisions also apply to the employees of the State Audit Office, jeopardising its independence from the executive branch.

57 Transparency International Georgia's correspondence with the Civil Service Bureau, February 2015.

58 Communication with the Civil Service Bureau, August 2015.

59 The draft is available on Parliament's website: <http://www.parliament.ge/ge/law/9814/23210> (accessed on 25 September 2015)

3. The law establishes an unreasonably long 12-month probationary period for newly recruited civil servants that can be extended for additional six months.
4. The law expands the number of the legal entities of public law to which the Law on Civil Service does not apply.

2.2.3 Create job descriptions to establish a transparent system of remuneration in the civil service

Following the training on job descriptions conducted for the representatives of key public agencies in September 2014, jobs descriptions were created for 12 different positions⁶⁰. The action plan does not include a target number of job descriptions to be created in 2014, although, according to the Civil Service Bureau, 240 job descriptions had been prepared as of early 2015 and they were expecting to have a job description for every position in central government bodies before the end of the year⁶¹. Additionally, the Civil Service Bureau has conducted a series of trainings on job descriptions for representatives of the human resources departments of government ministries⁶².

Progress has clearly been made toward the completion of this task. However, since this activity did not end in 2014 and continues in 2015, it would have been logical to include it in the 2015 action plan, which was not done.

2.2.4 Analyse the evaluation system in the civil service and select a model

The Civil Service Bureau presented its proposals regarding the evaluation system to the government on 25 December 2014. The Bureau proposed a five-step evaluation system, as well as a merit-based system for promotion and encouragement, a procedure for determining professional development needs of civil servants and a result-oriented management system⁶³.

60 Transparency International Georgia's correspondence with the Civil Service Bureau, February 2015.

61 Ibid.

62 Communication with the Civil Service Bureau, August 2015.

63 Ibid.

2.2.5 Develop a transparent and objective mechanism for selection, promotion and dismissal of civil servants

This task is rather broad in nature and, given the lack of indicators in the action plan, it is not clear what type of output was expected.

The Georgian Government did approve the rules for conducting competitions for civil service jobs in 2014, establishing general principles for such competitions, the procedures for forming selection commissions and their operational rules, the rights and responsibilities of candidates and appeals procedures⁶⁴. While the adoption of these rules was an important step forward, they only address the question of the selection of civil servants, so gaps remain in terms of promotion and dismissal procedures. Moreover, the decree in question was adopted in June 2014, so it is unlikely that the 2014 Association Agenda implementation action plan (adopted in September 2014) was referring to an activity implemented three months earlier.

No further steps appear to have been taken toward the completion of this task in 2014, so it is unclear why it was not included in the 2015 action plan. One possible explanation is that a decision could have been made to postpone it until the adoption of a new Civil Service Law later in 2015. This was confirmed by the Civil Service Bureau's comment that these issues will be addressed in the new law⁶⁵.

2.2.6 Start the process of functional analysis in central government agencies

The Civil Service Bureau discussed the methodology and the action plan for the functional analysis with the representatives of government ministries at a meeting in July 2015 and the Bureau's representatives subsequently met with deputy ministers in every ministry to facilitate the process.

The action plan does not provide a target number of government agencies where functional analysis is to be conducted in 2015 (or specific timeframes

64 The Georgian Government Decree #412 On Approving Rules for Conducting Competition According to Georgian Law on Civil Service, 18 June 2014.

65 Communication with the Civil Service Bureau, August 2015.

for such analysis). Still, some progress has clearly been made toward completing this task. The Bureau expects to complete the analysis of the data obtained from the ministries in September 2015 and to subsequently continue working on of the principles/standards on organisational rules and structuring of all central governmental institutions⁶⁶.

2.2.7 Develop ethics rules for civil servants

The action plan does not specify what type of output is expected after the successful implementation of this task: A set of recommendations, guidelines or mandatory provisions enforced through a law or a by-law.

However, progress has been made. A working group established by the Civil Service Bureau has developed the structure of a Code of Ethics for civil servants, which is expected to be finalised before the end of 2015. In the meantime, the Bureau published a manual on Ethics and General Rules of Conduct for Civil Servants in May 2015. Additionally, the Bureau conducted ethics trainings for the representatives of human resources and internal audit departments of all central government agencies⁶⁷.

2.2.8 Implement electronic system for human resources management (e-HRMS in central government agencies)

According to the Civil Service Bureau, an e-HRMS has been created in 13 ministries and will be created in the remaining six ministries before the end of 2015. Additionally, the system has been created in 17 legal entities of public law and four local government bodies⁶⁸.

66 Communication with the Civil Service Bureau, August 2015.

67 Communication with the Civil Service Bureau, August 2015.

68 Transparency International Georgia's correspondence with the Civil Service Bureau, May 2015.

2.2.9 Select a system to monitor asset declarations of civil service officials; Amend the Law on Conflict of Interest and Corruption in Public Service concerning the asset declaration monitoring system

A working group within the Civil Service Bureau prepared proposals concerning the introduction of monitoring of public officials' asset declarations in Georgia in 2014. These were presented to the Anti-Corruption Council in February 2015 and an interagency working group was subsequently formed in order to select a specific model and prepare draft amendments to the law.⁶⁹

The draft amendments were presented at a meeting of the Anti-Corruption Council in June 2015 and civil society organisations were given an opportunity to present their comments⁷⁰. The draft was subsequently approved in the first reading by Parliament in July⁷¹.

The adoption of the draft was an important positive development since the lack of a verification procedure has been a major gap in the Georgian system of asset disclosure. Under the proposed amendments, the Civil Service Bureau will begin reviewing the asset declarations of public officials from 1 January 2017. In another positive development, the proposed amendments will require former public officials to submit asset declarations one year after leaving office in order to monitor their compliance with post-employment restrictions.

69 Transparency International Georgia's correspondence with the Civil Service Bureau, May 2015.

70 Communication with the Ministry of Justice, September 2015.

71 The draft is available on Parliament's website: <http://www.parliament.ge/ge/law/9830> (accessed on 25 September 2015).

CONCLUSION

The Georgian Government's overall performance in terms of carrying out the activities from the 2014 and 2015 Association Agenda implementation action plans concerning anti-corruption and administrative/civil service reforms is encouraging. At least some progress has been made toward implementing each of the activities from the action plans that falls within these two areas. In a number of cases, progress was very significant and important goals were achieved: A new National Anti-Corruption Strategy and Action Plan were adopted along with the new Civil Service Law and the legislative amendments introducing a monitoring system for the asset declarations of public officials.

At the same time, a number of issues and areas require further attention from the Georgian authorities. The draft law on freedom of information is yet to be produced, although it has been part of the action plan since 2014. Seven of the 10 GRECO recommendations in the thematic area of transparency of party financing remain partly implemented. Work needs to be conducted to render the Anti-Corruption Council an effective body with appropriate powers and resources. Finally, while the adoption of the new Civil Service Law is a step forward, the draft contains a number of potentially problematic provisions that need to be addressed before the law comes into force in 2017.

In a number of cases, while certain steps have clearly been taken toward meeting the commitments from the 2014 and 2015 action plans, it is difficult to determine exactly how much progress has been made. Because the action plans lack any indicators, target numbers or expected outputs, it is not clear what the government aimed or expected to achieve in the first place. The action plans also lack specific timeframes for the implementation of each activity, which would have made more effective tracking of progress possible.

Finally, it would have been advisable to have the items from the 2014 action plan that were not implemented in time included in the 2015 action plan as well in order to ensure continuity of reforms and a logical link between the two documents. While this has been done with the activities concerning anti-corruption reform and consequently all items from the 2014 action

plan ended up in the 2015 document as well, the same is not the case with those concerning civil service reform: Some activities (e.g. creating jobs descriptions and developing a transparent and objective mechanism for the selection, promotion and dismissal of civil servants) were clearly not completed in 2014 but do not appear in the 2015 action plan. Also, in one case (establishment of the Analytical Service in the Internal Affairs Ministry's Anti-Corruption Agency), a task that was completed in 2014 was, for some reason, included in the 2015 action plan.

RECOMMENDATIONS

- ▶ Ensure timely completion of the remaining tasks from the two action plans (including the activities from the 2014 action plan that were not fully implemented in 2014 but do not appear in the 2015 document)
- ▶ Provide assessment indicators, outputs and/or target numbers for every item on future action plans along with at least a quarterly breakdown of implementation timeframes
- ▶ Prepare future action plans based on an analysis of the implementation of the previous ones and make sure that the tasks that were not completed are included in the next action plan

Ill-treatment and Torture

By Tsira Chanturia

on behalf of the Penal Reform International (PRI)

EXECUTIVE SUMMARY

This report examines progress made by the authorities in the fight against torture from the adoption of the Association Agenda (hereinafter, 'the Agenda') through September 2015 within two key areas: external and internal monitoring of closed institutions (and prisons in particular) and prison healthcare.

While the internal inspection systems for closed institutions (including prisons) are gradually being developed, they have yet to demonstrate their effectiveness in the fight against ill-treatment and other abuses. Further, external public oversight mechanisms for closed institutions are still non-existent. An effective platform needs to be created to ensure the participation of civil society in negotiations over the establishment of such mechanisms.

Much has been done to improve prison healthcare and medical services in prisons over the past two years in terms of bettering infrastructure and management practices. Nevertheless, there is a long way to go to increase the role of medical staff in fighting torture by establishing adequate injury documentation practices in line with international standards.

INTRODUCTION

Civil society, the Public Defender and other actors agree that torture and inhuman treatment no longer present a systemic problem in Georgia's prisons and police since the change of government in late 2012. Prior to that, ill-treatment was widespread in large part because of the lack of effective internal inspection systems and public oversight over closed institutions in general and prisons in particular. Some steps have been taken by the authorities to strengthen their inspection systems for prisons, the police and the military (outlined below) and create the foundation for the establishment of a public monitoring body for penitentiaries.

For the past few years, the Georgian prison system has faced a host of problems that could be partly attributed to overpopulation, including insufficient financing for prison healthcare and substandard provision of medical care. The provision of healthcare had been so inadequate, particularly the treatment of infectious diseases, that the European Court of Human Rights (ECtHR) found the Government of Georgia in violation of Article 3 of the European Convention on Human Rights (prohibition of torture) in two cases⁷² involving prisoners. The ruling stated that ‘the number of cases pending against Georgia concerning the lack of medical treatment for detainees suffering from contagious diseases revealed a systemic problem.’ The ECtHR subsequently urged the Georgian authorities to take the necessary legislative and administrative measures without delay to prevent the spread of contagious diseases in Georgian prisons, introduce a screening system for prisoners upon admission and guarantee the prompt and effective treatment of these diseases.

Despite the recommended procedures for recognising and documenting symptoms of torture outlined in the UN Istanbul Protocol⁷³, the poor documentation practices of prisoner injuries in Georgia has limited the role played by prison medical staff in the fight against torture. During a visit to Georgia in mid-March 2015, the UN Special Rapporteur on Torture found medical care of prisoners and detainees to be acceptable and noted⁷⁴: ‘In terms of medical attention I am pleased to find that efforts are made to document physical and psychological trauma.’ But he also noted an overall lack of consistency in the documentation and recommended an enhanced effort to ensure compliance with international standards, as set out in the Istanbul Protocol for the effective investigation of torture and ill-treatment.

72 ECtHR, *Ghavitadze v. Georgia* - 23204/07 Judgment 3.3.2009 [Section II] available at <http://hudoc.echr.coe.int/eng?i=002-1597> and *Poghosyan v. Georgia* - 9870/07 Judgment 24.2.2009 available at <http://hudoc.echr.coe.int/eng?i=003-2643820-2890164>; see also the Factsheet ‘Prisoners’ health-related rights’ available at http://www.echr.coe.int/Documents/FS_Prisoners_health_ENG.pdf

73 UN High Commissioner for Human Rights, Istanbul Protocol, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Geneva, 9 August 1999, available in English at: <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>

74 ‘Georgia has come a long way, but more needs to be done – UN Special Rapporteur on torture’, UN-OHCHR, Tbilisi 19 March 2015 - See more at: <http://www.ohchr.org/RU/NewsEvents/Pages/DisplayNews.aspx?NewsID=15724&LangID=E#sthash.wjGLtSsv.dpuf>

In 2012, the new Georgian leadership undertook specific measures to improve penitentiary healthcare by both increasing state funding and bettering healthcare management practices. In 2014, an 18-month prison healthcare reform project was completed⁷⁵, resulting in: improved methods to limit the spread of tuberculosis and hepatitis C, provide drug treatment and rehabilitation services and prevent suicide; upgraded medical infrastructure and facilities; a separate adapted section organised at the central prison hospital to address the needs of prisoners with disabilities; and increased human resources and capacity. With support from the EU/Council of Europe, the Prison Healthcare Reform Strategy and Action Plan⁷⁶ for 2014-2017 were adopted. These documents outline in detail the goals, tasks, responsibilities, indicators and timelines for reforming and developing healthcare system in penitentiaries.

METHODOLOGY

The EU-Georgia Association Agenda includes combating ill-treatment and torture as a priority area under the political dialogue and reform section and identifies the following five broad areas as key directions to be addressed by the Georgian authorities:

- ▶ Update the National Strategy and Action Plan to combat ill-treatment and torture, and step up efforts to implement them in order to combat impunity;
- ▶ Ensure a thorough, transparent, independent investigation into any allegation of the use of torture or ill-treatment in the penitentiary system, police, military or other closed facilities;

75 Ministry of Corrections, Annual Report for 2014, available in Georgian at: http://moc.gov.ge/public/files/pdf/text_14218352600.pdf

76 Ministry of Corrections, Penitentiary Healthcare Reform Strategy and Action Plan (2014-2017), Tbilisi 2014, available in Georgian at: http://moc.gov.ge/public/files/pdf/text_14212124281.pdf (accessed on 25 September 2015)

- ▶ Implement structural reforms and support the National Preventive Mechanism (NPM) under the Public Defender's Office to prevent future abuse and ensure the NPM has full access to monitor closed facilities, including non-state institutions;
- ▶ Further strengthen effective internal and external monitoring of the penitentiary system, police, military and other closed facilities for the early detection and prevention of abuse and ill-treatment, and continue efforts to improve the penitentiary healthcare system and prisoners' access to health care services;
- ▶ Build capacities and empower health care staff working in -or for- closed institutions to recognise and report ill-treatment.

Out of the above-listed five key areas, this report examines the designated government agencies' implementation of policy, legislative and practical measures with respect to the last two areas: monitoring mechanisms of places of detention and prison healthcare.

In order to assess the progress made by the authorities in the area of fighting and preventing torture and ill-treatment, this report's author analysed the amended legislation and regulations and modified policy framework. The report relied upon various sources, including official data provided by relevant government agencies and reports by the Public Defender's Office and international and national organisations.

The report covers the period between 1 September 2014 and 1 September 2015.

MAIN FINDINGS

1. Monitoring systems for places of detention

One of the commitments under the Association Agenda is to ‘further strengthen effective internal and external monitoring of the penitentiary system, police, military and other closed facilities for the early detection and prevention of abuse and ill-treatment’. Tasks to this end as outlined in the Action Plans for 2014 and 2015 for the implementation of the Agenda include:

- ▶ Further improve the monitoring mechanism methodology and its implementation in practice;
- ▶ Strengthen external monitoring mechanisms and interagency cooperation to improve the living conditions and treatment of prisoners and those deprived of their liberty;
- ▶ Improve the monitoring of the conditions and treatment of defendants/inmates by streamlining the legal basis and internal regulations;
- ▶ Improve internal monitoring mechanisms (inspection) of the living conditions and treatment of pre-trial/convicted inmates by means of legislative changes and the introduction of internal regulations;
- ▶ Improve the audio-video monitoring system in penitentiary institutions;
- ▶ Update the audio-video monitoring systems in two additional establishments;
- ▶ Improve the external monitoring mechanisms of the conditions and treatment of inmates;
- ▶ Revise the functions and role of the General Inspection of the Ministry of Defence, including developing guiding documents and standard operating procedures;

- ▶ Defend and monitor the rights of military servicemen in order to eliminate all types of violence in the armed forces.

International standards for protecting prisoners call for both government inspection as well as external independent monitoring of the living conditions and treatment of prisoners to be undertaken regularly⁷⁷.

1.1 Internal monitoring of the penitentiary system

The Action Plans for implementing the EU-Georgia Agenda include improving the internal monitoring/inspection system of prisons by reforming the legislative and regulatory framework.

According to information provided by the Ministry of Corrections⁷⁸, under the 2014 Action Plan for the implementation of the Agenda, and for the purpose of strengthening the internal monitoring (inspection) system of the treatment of prisoners and improving responses to violations, the ‘independence of the General Inspectorate and the Investigative Department of the MoC, as well as [the] number of their staff members was increased and uninterrupted operation of [the] 24-hour hotline was ensured’. Also to this end, boxes for complaints were made available in all penal establishments and the ‘confidentiality of related procedures was ensured’.

The Ministry notes significant progress in terms of improving the internal monitoring system and amending the Code on Imprisonment in April/May 2014 concerning the elaboration of special measures and rules for their application⁷⁹ and visual and/or electronic surveillance and control of remanded and convicted prisoners⁸⁰.

77 ‘All prisons shall be subject to regular government inspection and independent monitoring’, European Prison Rules, Recommendation Rec(2006)2 to member states on the European Prison Rules (Adopted by the Committee of Ministers on 11 January 2006) available in English at: <https://wcd.coe.int/View-Doc.jsp?id=955747>

78 Ministry of Corrections, Letter #MCLA 0 15 00528969 dated 3 July 2015 response to PRI’s enquiries

79 Article 57¹, Code on Imprisonment, amendments made on 16 April 2014 available at the Legislative Herald of Georgia in Georgian at: <https://matsne.gov.ge/ka/document/view/91612>

80 Article 54, Idem

The amendments to the Code on Imprisonment⁸¹ defined the General Inspectorate of the MoC as the body responsible for inspecting and monitoring human rights protection and compliance with the legislative requirements of prison staff and systemic monitoring of penitentiary establishments. To avoid duplication of functions, the monitoring unit of the Penitentiary Department was dissolved and its functions integrated into a new Department for Systemic Monitoring housed within the GI. The Minister of Corrections⁸² approved a new statute for the GI that defines the status, tasks, functions, structure and operation of this body. The GI is directly accountable to the Minister and responsible for extensive tasks, including: oversight of human rights protection in the sphere of responsibility of the Ministry and reaction to violations; compliance with the requirements of legislation by staff of the system under Ministry; and identification of shortcomings and problems and ensuring adequate response. According to the statute, the structural units of the GI are: a) Department for Inspecting Human Rights Protection and Performance of Employees; b) Systemic Monitoring Department and c) Inspection Department.

The head of the GI is responsible for submitting an annual report to the Minister of Corrections on inspection findings. The document is public and should be posted on the Ministry's website. Some instruments for inspection, such as monitoring templates, recommendation forms and other working documents and reporting formats, are currently being developed.

At the end of June 2015, a study tour was organised by the Council of Europe for representatives of the Ministry of Corrections on internal inspection of prisons. The tour included a visit to Her Majesty's Inspectorates of Prisons in London and Edinburgh as well as the independent monitoring board, the Office of Prisons and Probations Ombudsman and Care Quality Commission in order to learn about the monitoring process, related standards and experience in the United Kingdom.

81 Article 31, Idem, Inspection and Monitoring of Remand Custody and Deprivation of Liberty, Code on Imprisonment, amendments made on 18 May 2015

82 Order #55 by the Minister of Corrections on the Approval of the Statutes of the General Inspectorate, Tbilisi 25 June 2015, effective as of 1 July 2015 available in Georgian at the Legislative Herald Georgia, <https://matsne.gov.ge/ka/document/view/2886056> (accessed on 22 September 2015)

1.2 External monitoring of the penitentiary system

According to international standards, ‘The conditions of detention and the treatment of prisoners shall be monitored by an independent body or bodies whose findings shall be made public’⁸³. Written communication was maintained with the Ministry of Corrections in February, March and early May to request clarifications and ascertain plans made by the Ministry to establish an external public monitoring mechanism. In response to PRI’s earlier enquiries, the then First Deputy Minister of Corrections, Mr Kakha Kakhishvili⁸⁴, maintained that the Ministry plans to review the issue of establishing a public monitoring mechanism after the planned major overhaul of structural and institutional changes takes place. The draft package of legislation to introduce major structural and institutional changes to the penitentiary system was initiated in parliament at the end of December 2014 and was adopted on 1 May 2015. According to the amendments (effective from 1 July 2015) to the Code on Imprisonment (Article 6.4), a Consultative Council is to be established at the MoC, with the inclusion of representatives of the public, to define and implement penal policies. The mode of operation of the Council as well as its staffing will be determined by a Ministerial Order.

The **National Human Rights Action Plan** (adopted by government decree on 9 July 2014) also requires the MoC to establish an effective public monitoring mechanism (para 5.1.8) in 2014-2015. Tasks to this end include initiating legislative amendments, establishing a monitoring council, developing monitoring methodology and training public monitors.

In September 2015, the MoC was elaborating a statute to establish a Consultative Council with civil society membership. The statute outlines membership criteria, mode of operation, authorities, tasks and responsibilities, etc. Given the anticipated importance of this platform to discourse involving NGOs about significant issues pertinent to the penitentiary system, including its public oversight, the Consultative Council should be established as quickly as possible.

83 Rule 93.1, European Prison Rules

84 Official letters #MCLA 8 15 00240335, dated 10 March 2015 and MCLA 7 15 00291563, dated 2 April 2015

1.3 Audio-video monitoring in prisons

In 2014, video-surveillance systems were installed in three penitentiary establishments and upgraded in four prisons. Video surveillance systems are gradually being upgraded in other prisons. In 2015 video-surveillance was installed in Prison N16, and upgraded in Prisons N6, N15 and N17. Amendments to the Code on Imprisonment passed in May 2015 established visual and/or electronic surveillance and control procedures (Article 54) and were followed by detailed regulations introduced by Order of the Minister of Corrections⁸⁵. The regulations govern the use of video monitoring in prisons, including the purpose, scope, individuals authorised access, restrictions on the use, the requirement to notify those being recorded, and archiving and disposal of recordings. According to the Code on Imprisonment, video surveillance is intended to ensure the safety of prisoners and staff, prevent crime and other violations and promote a secure environment in penitentiaries. Some basic safeguards have been included, for instance the use of video surveillance when other measures have proven ineffective, an exhaustive list of grounds for its use, the duty to warn prisoners in advance and the indication of sites subject to surveillance.

Article 15 of Order N35 of the MoC currently requires that data shall be kept for at least 24 hours; however, this time period is insufficient in order to secure evidence in the event ill-treatment has taken place, as by the time a complaint reaches the Prosecutor's Office these data will have been deleted. The Public Defender recommended increasing the length of time that data are kept to at least 10 days⁸⁶.

85 Order N35 of the Minister of Corrections on Defining rules for conducting visual and/or electronic surveillance and control, keeping video recordings, deleting and disposal, Tbilisi 19 May, 2015 available in Georgian at the Legislative Herald of Georgia: <https://matsne.gov.ge/ka/document/view/2823755>

86 'The Public Defender of Georgia Addressed the Minister of Corrections with a Proposal', Public Defender's Office, Tbilisi 19 December 2014, available at: <http://www.ombudsman.ge/en/prevenicis-erovnuli-meqanizmi/siaxleebi-npm/the-public-defender-of-georgia-addressed-the-minister-of-corrections-with-a-proposal.page> (accessed on 15 July 2015)

1.4 Military Police of the Ministry of Defence and inspection system

The Military Police of the General Headquarters of the Georgian Armed Forces is responsible for conducting regular monitoring of conditions of detainees in military detention units (hauptwachts) and conduct of personnel. The new statute for the Military Police, which was approved on 23 February 2015⁸⁷, reorganised its staffing and structural units. Based on the new statute, a Special Inquiry Unit was established to document incidents resulting in trauma or injury of servicemen of the Ministry's structural units. The Special Inquiry Unit is also empowered to produce reports, register accused perpetrators and conduct expert examinations on criminal and administrative cases.

There are two military detention units under the Military Police, one in Vaziani and the other in Senaki. The units are subject to regular monitoring by the Military Police and its regional departments, which inspect the conditions of detention, treatment of detainees, and work of the personnel⁸⁸ and make recommendations for improvements and measures to be undertaken. Hauptwachts are also subject to periodic monitoring by the NPM of the Ombudsman's Office and human rights organisations. While the Vaziani hauptwacht is equipped and furnished with the necessary premises and facilities and adequate conditions for detainees, the conditions in the Senaki unit must be brought in line with international standards. The Ministry of Defence's 2015 budget includes provisions to do so.

Starting in November 2012, the Special Assistant to the Minister of Defence began monitoring the provision and protection of rights of personnel in the armed forces, including monitoring of living, socioeconomic and other conditions and producing recommendations for the Ministry. Since early June 2015, a new Minister of Defence has a new Deputy responsible for overseeing human rights and social issues of the staff within the system of the Ministry.

87 Order N7 of the Minister of Defence on the Approval of Statute for Military police, Tbilisi 23 February 2015, available in Georgian at: <https://matsne.gov.ge/ka/document/view/2737268>

88 Official letter of the Ministry of Defence N MOD 9 15 00511309, dated 30 June 2015

On 10 February 2015, a new statute was approved⁸⁹ for the General Inspectorate and structural reform was undertaken in line with the GI's new tasks and competences. In addition to investigative functions, the GI is also responsible for preventing and reacting to allegations of violence and cruel treatment and maintaining the reporting hotline.

1.5 Regulation of temporary detention isolators

The Ministry of Interior's structural unit—the Chief Department for Human Rights Protection and Monitoring—conducts oversight of temporary detention isolators (TDIs). The statute for this Department, approved in March 2013⁹⁰, lacked the methodological principles for conducting internal monitoring/inspection activities. However new rules for monitoring were adopted in practice whereby planned or ad hoc inspections are conducted by groups of 2-3 individuals to observe processes inside TDIs (whether detainees are informed of their rights, admission rules and procedures are followed, etc.) and examine documentation and the terms of detention. These inspectors also have access to video-monitoring and electronic databases. New data collection methods have been introduced and statistics are gathered to analyse cases of ill-treatment of detainees.

On 6 November 2014, amendments were made to the regulations governing the operation of the TDIs⁹¹. The amendments related to the conditions for detention and sanitation/hygiene and compliance with the requirements of human dignity, integrity and privacy. The amendments further outlined detainees' access to showering and exercise facilities, space allocation (at least 4 m² in line with CPT recommendation), documentation for placement (protocol), including for conditions and entitlements for administrative detainees, the right to possess prescribed medications, the obligation of TDI

89 By Order N3 of the Minister of Defence on the Approval of Statute of General Inspectorate, Tbilisi 10 February 2015 available in Georgian at: <https://matsne.gov.ge/ka/document/view/2721901>

90 Order of the Ministry of Interior N141 on the Approval of the Statute for Chief Department of the Human Rights Protection and Monitoring, Tbilisi March 1 2013 available at: <https://matsne.gov.ge/ka/document/view/1858229>

91 Amendment approved by the Order N879 (6 November 2014) to the Original Statute approved by Order N108 of the Ministry of Interior (dated 1 February 2010) regarding Typical Statute of Temporary Detention Isolators, Internal Rules and Additional Instruction for Regulating the Work of TDIs

personnel to carry identification badges, the reduction of the term of administrative detention to 15 days, etc.

In 2014, the Ministry began implementing an EU-funded programme called Improvement of the Capacities of the Ministry of Interior for Ensuring the Protection of Human Rights in TDIs through Training Workshops and Introduction of a New Working Standard. Under the joint programme of the EU/CoE, in October 2014, a working group was set up to elaborate an order on managing hunger strike in TDIs. The working group is also elaborating regulations governing the handover of health-related documentation from TDIs to penitentiary institutions during the transfer of detainees. Work is under way on the development of standard operation procedures (SOP) for TDIs with the help of a British expert⁹².

2. Prison healthcare

An important commitment under the Agenda is the continuation of efforts to improve the penitentiary healthcare system and prisoners' access to health care services. The Agenda requires Georgia to build the capacities of health care staff working in -or for- closed institutions and empower them to recognise and report ill-treatment.

Activities to reach this end as outlined in the implementation action plans for 2014 and 2015 are:

- ▶ Develop a continuous medical education and professional development programme for medical staff;
- ▶ Develop a new standard for routine information processing;
- ▶ Develop a format for regular analytical reports, which will include conclusions and recommendations for improving policy planning and implementation;

⁹² Interim Report for the Implementation of Human Right National Action Plan (approved by Government Decree N1134 on 2 June 2015), available in Georgian at <http://www.parliament.ge/ge/law/9422/21733>, accessed on 10 July 2015, page 37

- ▶ Elaborate quality assessment criteria and methodology and provide trainings for medical staff on the specific risks in the penitentiary healthcare system (crisis management, prevention and management of conflicts, aggression and violence, self-harm, hunger and etc.);
- ▶ Establish and train a monitoring team and/or unit;
- ▶ Prevent excessive consumption of psychoactive drugs (substances) for non-medical use by limiting access to psychotropic drugs, establishing strict control over the registration and consumption of drugs, developing the proficiency of medical staff and ensuring their independence and security;
- ▶ Register ambulatory services in line with existing legislation;
- ▶ Develop a specialised medical service package for inmates;
- ▶ Further improve and institutionalise referral mechanisms on specialised medical services - develop a detailed management manual and regulations;
- ▶ Strengthen the role of medical staff in the prevention of torture and ill-treatment;
- ▶ Upgrade dental care infrastructure;
- ▶ Develop infection control standards in the penitentiary system;
- ▶ Introduce and develop an integrated mental healthcare model;
- ▶ Develop services against drug dependence and drug addiction: prevention, treatment, rehabilitation and harm reduction;
- ▶ Establish and introduce a new form for injury registration according to the Istanbul Protocol, where information about physical injuries will be recorded in detail;

- ▶ Provide intensive training for penitentiary medical staff on instances of ill-treatment;
- ▶ Provide special medical services tailored to the needs of female inmates (cancer screening, pregnancy, etc.);
- ▶ Maintain and further improve the standard of penitentiary primary health-care infrastructure and equipment;
- ▶ Enforce systematic assessment of complaints' management and development of recommendations to improve the system;
- ▶ Provide relevant services to persons with disabilities.

The NPM⁹³ has positively assessed the prison healthcare reforms undertaken in 2014 and notes the opening of the well-equipped central prison hospital (after major refurbishment) at the end of June 2014, the accessibility of primary healthcare in all prisons, the increase in funding for medical services⁹⁴ and the number of staff, and the administration of a programme for the diagnostics and treatment of hepatitis C (in 2014 8711 prisoners were screened for hepatitis C and 180 completed the treatment course). However, the report also highlights 'a series of problems' in the area, including shortcomings in the timely and adequate provision of medical services, unhindered access to medications, periodicity of visits of medical specialists and the equivalency of prison healthcare with civilian healthcare. According to the NPM's report, the penitentiary healthcare system is still facing challenges related to suicide prevention, excessive reliance on medications and psychotropic drugs, and a lack of timely and adequate psychotropic assistance for prisoners with mental health disorders and substitution therapy for prisoners with drug addiction, to name a few. The Public Defender noted the increased number of deaths in prison (27 cases) in 2014 compared to 2013⁹⁵. Alleged suicides and their effective investigation also remained an issue in 2014.

93 Public Defender of Georgia, The Report of the National Preventive Mechanism (2014), page 14, Tbilisi, 30 June 2015 available in English at <http://ombudsman.ge/en/reports/specialuri-angarishebi/the-report-of-the-national-preventive-mechanism-2014.page>

94 Ibid, page 85

95 Within the first half of 2015, 5 prisoners died according to the National Statistics Office of Georgia, Tbilisi, June 2015, available in English at [http://geostat.ge/cms/site_images/_files/english/crime/Unified%20Report%20on%20Criminal%20Justice%20Statistics%20\(June,%202015\).pdf](http://geostat.ge/cms/site_images/_files/english/crime/Unified%20Report%20on%20Criminal%20Justice%20Statistics%20(June,%202015).pdf), accessed on 10 September 2015

2.1 Management of healthcare system in prisons

A new format for gathering data and reporting on penitentiary healthcare was elaborated and approved in 2015. Quality assessment criteria have been developed and are in use in all penitentiaries, in addition to monitoring of the supply of medications. By the end of 2015, the monitoring will have covered all prison medical facilities. A monitoring group was established and conducts its work throughout the penitentiary system. A systematic assessment of complaints management is under way and should be finished by the end of 2015.

2.2 Capacity-building of prison healthcare staff

According to information provided by the Medical Department of the MoC, ‘Starting from 2015 trainings are intensively provided for medical personnel on national and international standards related to the penitentiary and treatment of prisoners, including on the Istanbul Protocol and torture documentation, also on the prevention of torture and ill-treatment’⁹⁶. The Medical Department reports that training of medical personnel is a ‘continuous process and is conducted using a step-by-step approach’. In cooperation with the Penitentiary and Probation Training Centre (PPTC), an intensive module of basic training has been developed for medical staff, and work is under way on the elaboration of a lengthier training module. The CoE has assisted with conducting training workshops for 70 prison doctors and 80 nurses. The PPTC provides regular training for medical personnel on the ‘specifics of the penitentiary system and national and international standards for the treatment of prisoners’. To date, 60 prison doctors and nurses have taken this course. In addition 50 doctors/nurses have been trained on suicide prevention in the first stage of cascade trainings.

Under the Joint EU/CoE Human Rights in Prisons and Other Closed Institutions Programme⁹⁷, about 100 high ranking prison staff, including pris-

⁹⁶ Official letter #MCLA 3 15 00517478 dated 30 June 2015

⁹⁷ Council of Europe Office in Georgia, Human Rights in Prisons and Other Closed Institutions Programme, available in English at <http://www.coe.int/en/web/tbilisi/human-rights> (accessed on 9 July and again on 20 September 2015)

on directors, prison chief doctors, doctors and nurses, were trained in CPT standards, ECtHR case law and the Istanbul Protocol in 2014-2015. The programme is providing assistance in developing a new form for documenting injuries in prisons in line with the requirements set by the UN Istanbul Protocol. A multi-disciplinary group was set up comprised of representatives from the Medical Department, Penitentiary Department, Legal Provision Department, Penitentiary and Probation Training Centre and invited specialists, which is coordinated by a local consultant. A number of working group meetings have been organised to discuss the new version of the form and ensure that it meets CPT recommendations. Work is under way to design a respective legal framework and to approve the form officially. After the official endorsement of the form, medical staff will be trained on the practical application thereof.

Training workshops on specific issues such as international standards for treatment of prisoners and prevention of torture and ill-treatment are planned and groups of medical staff will be gradually targeted.

A working group has been set up to discuss the outline and drafting of the Code of Ethics for prison medical staff with the support of the CoE's local and international experts.

2.3 Further improve/institutionalise referral mechanisms on specialised medical services

In April standards were approved⁹⁸ on medical services in prisons in general, as well as on additional healthcare services for persons with specific needs (specialised medical service), and preventive healthcare. In addition, a list of basic medications to be used in prisons was approved. In terms of a referral mechanism for specialised medical service, an emergency waiting list was created for 2015 to ensure that patients are transferred to a hospital service within a week of being registered. The standard also envisions supervision and control of infectious diseases.

⁹⁸ Order N31 of the Minister of Corrections on the approval of a package of medical services in prisons, and additional services for persons with specific needs, on preventive healthcare and a list of basic medications (dated 22 April 2015), available in Georgian at <https://matsne.gov.ge/ka/document/view/2787230> (accessed on 23 September 2015)

2.4 Standard setting

With the technical assistance provided under the above-mentioned EU/CoE programme, a roadmap for standards for penitentiary healthcare was developed⁹⁹. This guideline lists all services to be provided for prisoners, in view of international and national good practices, considering needs-based delivery of services as well as prevention and improvement of healthcare.

2.5 Upgrade dental care infrastructure

New dentistry offices were opened at Prisons N16 and N18. Monitoring was undertaken in all dentists' offices in prisons with a view to assessing needs and creating a plan to provide all necessary equipment (during 2014-2016).

2.6 Mental healthcare

According to the MoC, all prisoners (remanded and convicted) are provided with psychiatric counselling services as needed. Prisons N2 and N8 have permanent psychiatrist staff and Prison Hospital N18 has an in-patient psychiatric care unit. When it is not possible to manage a case inside a prison, patients are transferred to this unit where they are subject to constant supervision by medical staff and are provided treatment, including psychological counselling in order to prevent self-harm.

In addition, in order to improve the management of mental health patients, a supervisory group was established at the MD comprised of 11 psychiatrists who have received specialised training on managing psychiatric patients in prisons. With donor support, training workshops were conducted for prison doctors and nurses on early identification and prevention of mental health problems, such as self-harm, parasuicide and suicide. In 2015, on the initiative of the MD and with the support of the Global Initiative on Psychiatry, a

⁹⁹ Roadmap of Standard Medical Services in Prisons and Detention Facilities, Council of Europe Office in Georgia, Tbilisi 2015, available in Georgian, English, Armenian, Azerbaijani, Persian and Russian languages. English version available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804681ab> (accessed on 20 September 2015)

multi-disciplinary group was created (consisting of a psychiatrist, a psychologist, narcologist and neuropathologist) to work on identifying psychiatric problems and providing needs-based interventions. The group assesses difficult cases within the remits of its competence and provides relevant recommendations and an intervention plan, covering all prisons.

In 2015 active monitoring of recording and use of psychotropic substances was commenced in penitentiaries and the monitoring group provides recommendations to prison staff on these issues.

2.7 Drug dependence and rehabilitation services

Work is under way in the Ministry of Labour, Healthcare and Social Security to introduce methadone-substitution maintenance treatment. By the end of 2015, a draft programme for opioid dependency treatment (substitution maintenance therapy) should be elaborated.

2.8 Gender-sensitive/specific healthcare

The primary healthcare unit has been upgraded at the women's prison. In 2015 different specialists provided preventive check-ups. A paediatrician is also employed to provide services to women with infants. Children housed with incarcerated mothers are taken to civilian clinics for vaccinations.

2.9 Primary healthcare infrastructure

Medical units were upgraded in six prisons (N3, N5, N6, N15, N16 and N17). Pharmacies were upgraded in four prisons (N2, N3, N6 and N17) and opened in Prison N15. Devices for physiotherapy were purchased and distributed in prisons.

2.10 Medical care of persons with disabilities

An adapted unit for care of persons with disabilities has been opened at Prison Hospital N18, which is equipped with relevant facilities, including a rehabilitation room with physiotherapy devices, and staffed by trained caretakers. The unit is able to provide long-term care. With the assistance of GIP, a psychosocial rehabilitation programme will also be piloted and the appropriate staff trained.

CONCLUSION

The strengthening of internal and external monitoring mechanisms and the improvement of prison healthcare (and particularly strengthening the role of medical personnel in the fight against torture) are at the initial stages of implementation. The authorities have taken some steps in legislation and practice to strengthen existing inspection mechanisms for the penitentiary system, police and military. Because of limited accountability and the lack of public reporting, however, it is not currently possible to determine whether pro-active inspections take place, whether these inspection bodies enjoy a sufficient level of independence or whether mechanisms for effective response to complaints exist. More needs to be done to elaborate an effective working methodology and instruments for the inspection of closed institutions in line with international standards and best practice.

From the communication with the MoC officials, it is evident that the Ministry is taking a cautious approach to establishing an external mechanism of public oversight over prisons. Ministry officials remain wary of external, especially civil society, oversight. Hopefully the platform of the Consultative Council (expected to be established soon) can be used to collaborate with civil society representatives in developing a transparent, effective and accountable public oversight mechanism for prisons.

The authorities have fulfilled important commitments in the reform of prison healthcare and many developments are under way to ensure timely, adequate and equivalent provision of medical care to prisoners, including groups with specific needs (those with disabilities, addiction problems, women and children, etc.). There is a need to sustain the positive developments and further develop management instruments to allow for measuring, assessing and analysing patient needs and the quality of services provided/needed. Training of medical staff undertaken and a new form for documenting injuries in line with the Istanbul Protocol (expected to be approved shortly) have laid some groundwork for strengthening the role of medical professionals in the fight against ill-treatment.

RECOMMENDATIONS

- ▶ Make every effort to fulfil the commitments undertaken in 2014 and 2015 by the end of 2015;
- ▶ Set up an evaluation framework containing measurable indicators to assess and analyse the real extent and scope of the progress and impact made and use this to inform future planning;
- ▶ Start drafting action plans for the next two years that include indicators and more detailed timeframes for attaining results;
- ▶ Ensure the effective involvement of civil society experts in oversight mechanisms over prisons by establishing a sustainable and effective monitoring mechanism based on fair and transparent criteria;
- ▶ Further strengthen and build the capacity of internal inspection systems and ensure their accountability;
- ▶ Ensure video recordings are kept in prisons for an adequate time period to allow for effective evidence gathering as and when needed;
- ▶ Take steps to establish a viable monitoring and evaluation mechanism for

medical services in prisons and sustain good management practices for further reforming the prison healthcare system;

- ▶ Improve torture/ill-treatment documentation practice by officially approving and applying in practice the new forms developed with the assistance of the CoE, training medical personnel thereon and ensuring their independence.

Trade Union Rights and Core Labour Standards

By Nino Elbakidze, Tinatin Nadareishvili
on behalf of the Article 42 of the Constitution

EXECUTIVE SUMMARY

The report assesses progress in the area of labour standards in accordance with the Association Agenda and compliance with the obligations specified by the Association Agreement. The document concerns the issues of social partnership, mediation, occupational safety, health protection and the relevant government liabilities and reforms conducted during the years of 2014-2015. The document assesses the content and implementation of the amendments to the Labour Code of Georgia and the positive or negative impact these changes are having on the protection of labour rights.

This report covers the issues of freedom of association, protection of trade union rights, collective bargaining, the right to strike and mediation as components of labour standards. The report includes a review of the changes to the Labour Code of Georgia and highlights concerns over the definition of overtime and the elimination of the right to strike in certain fields. The report assesses the activities of the Trilateral Commission for Social Partnership, which has played a limited role in improving labour standards in Georgia. The report presents the major achievements and shortcomings of the creation of the labour monitoring body, including the implications of its voluntary character. The report also recommends that the GoG proceed with the creation of the planned Register of Mediators.

INTRODUCTION

The amendments made to the Georgian Labour Code in June 2013 introduced many positive changes on a range of issues, such as the formation of the Trilateral Commission for Social Partnership¹⁰⁰ and improved standards of freedom of association¹⁰¹. Nevertheless, urgent issues still remain in the field of labour relations. For instance, the new code did not establish an efficient mechanism to monitor labour relations and the role of the GoG in

100 Georgia Labour Code, Chapter XII¹ - Tripartite Social Partnership Commission, available at: <https://matsne.gov.ge/en/document/view/1155567>

101 Georgia Labour Code, Chapter IX¹ - Freedom of Association, available at: <https://matsne.gov.ge/en/document/view/1155567>

resolving disputes between employers and employees remained unclear. This limited the government's influence on the protection of labour rights and the creation of a safe and productive labour environment.

Article 348 of the Association Agreement strives to promote more and better jobs, poverty reduction, enhanced social cohesion, sustainable development and improved quality of life. The Agreement calls for increased cooperation between the EU and Georgia in promoting the Decent Work Agenda, employment policy, health and safety at work, social dialogue, social protection, social inclusion, gender equality and anti-discrimination, and corporate social responsibility.

Through the corresponding Association Agenda, the Government of Georgia committed to establishing an effective labour inspection system to ensure administrative and enforcement capacities in the area of occupational health and safety and building the capacity of social partners as a means to encourage social dialogue while at the same time building the capacity of the administration in charge of developing and implementing employment and social policies.

The document reflects the results of the monitoring of the obligations in the area of labour rights that Georgia assumed in the Association Agenda and in the corresponding Association Agreement between the EU and Georgia. This report covers the period from 1 September 2014 through 1 September 2015.

METHODOLOGY

The assessment was produced based upon reports provided by the Government of Georgia, Georgian civil society organisations, the International Labour Organization and the European Union. This report refers to the laws, acts and provisions issued by the GoG, the Ministry of Health, Labour and Social Affairs and other public institutions. The author also draws on official statistical data provided by government agencies and other public data on

labour safety and conditions in Georgia. In addition, the report relies upon information gathered through interviews of representatives of the GoG, international organisations and Georgian trade unions.

ANALYSIS

1. The review of the obligations specified by the Association Agreement

In compliance with the Association Agreement, the GoG is obligated to gradually align its legislation with the directives of the EU and International Labour Organization. Annex XXX of the Association Agreement outlines the specific EU legislation and international instruments as well as the time-frames for each¹⁰². In total, the GoG committed to harmonising Georgian legislation with about 300 legal acts of the EU¹⁰³.

1.1 Implementation of the Labour Code

In the Association Agenda, Georgia committed to implementing the new Labour Code, as adopted by Parliament in June 2013, and to actively cooperating with the International Labour Organisation to implement its standards. The introduction of those amendments was a positive step in this process. An ILO expert stated that the new Labour Code ‘more or less approached international standards’ and signified progress in the areas of freedom of association, protection of trade union rights, collective bargaining, the right to strike, mediation etc.¹⁰⁴

Regardless of these improvements, there are issues associated with the definition of overtime and the length of shifts. An employer is currently able

102 Idem, Annex XXX; Employment, Social Policy and Equal Rights.

103 Georgia-EU Association Agreement Guide - February 2014.

104 Interview with Zachary Shvelidze, local ILO expert, Tbilisi, 24 July 2015.)

to define the length of work shift based on the specificity of the work¹⁰⁵. A normal work week is defined as 40 hours, while it is 48 hours when the specific type of work requires more than eight hours per day. The types of work that fall under the latter category are defined by the Government of Georgia, however employers are able to determine if a job includes work that falls into that category. In addition, these provisions refer to the work week and not the work day, which is the method used to determine what constitutes overtime. Over a year-long period, employees who work 48-hour weeks will work two months more than employees working 40-hour weeks¹⁰⁶.

The right to strike has been eliminated in certain fields. The 6 December 2013 decree of the Ministry of Health, Labour and Social Affairs defined a new list of sectors where employees are prohibited to strike. For example, those who work in the municipal cleaning services are not allowed to participate in strikes^{107, 108}. The right to strike is protected and guaranteed by the Constitution of Georgia and international legal acts. A limitation on this right is justified only when there can be a threat to public health or state security. In this case, concerns must be addressed in a timely and efficient manner. According to ILO standards, where the right to strike is subject to restrictions or a prohibition, the workers concerned should be afforded compensatory guarantees, such as conciliation and mediation procedures leading, in the event of deadlock, to arbitration that is perceived to be reliable by the parties concerned. In such cases, it is essential that the parties are able to participate in determining and implementing the procedure, which should provide sufficient guarantees of impartiality and rapidity. Moreover, arbitration awards should be binding on both parties and once issued should be implemented rapidly and completely (General Survey, paragraph 164)¹⁰⁹.

105 Georgian Labour Code, Article 15, 17 December 2010, Tbilisi, available at: <https://matsne.gov.ge/en/document/view/1155567>.

106 Interview with Gocha Aleksandria, deputy chairman of Georgia United Trade Unions, Tbilisi, 15 July 2015.

107 Decree №01-43/N of the Ministry of Health, Labour and Social Affairs on approval of the list of activities related with human life and health, Article “I”, dated 6 December 2013 available at: <https://matsne.gov.ge/ka/document/view/2079774>.

108 Decree №01-43/N of the Ministry of Health, Labour and Social Affairs on approval of the list of activities related with human life and health, Article “I”, dated 6 December 2013 available at: <https://matsne.gov.ge/ka/document/view/2079774>.

109 International Labour Organization: Substantive provisions of labour legislation: The right to strike, Charter V: available at the official page: <http://www.ilo.org/legacy/english/dialogue/ifpdial/llg/nof-rames/ch5.htm#4>.

The existing legislation must also be improved to correspond with international standards regulating the mass discharge of employees, the employment of women, child labour and overtime work in general, which will not be covered in the current report.

1.2 Contribution to Social Partnership

The Association Agreement includes enhancing the participation of social partners and promoting social dialogue in the elaboration and implementation of labour policy and the need to increase the capacity of all relevant stakeholders¹¹⁰. Articles 52¹, 52², 52³ and 52⁴ of the 2013 Labour Code established the Trilateral Commission for Social Partnership ‘as a consultative body for the Prime Minister in order to facilitate the development of social partnership and social dialogue at all levels in the country between employees, employers and the Government of Georgia and to draft proposals and recommendations on different issues in labour and other concomitant relations’¹¹¹.

The activities of the Trilateral Commission are based on the principles of equality, independence and consensus. The statute of the Trilateral Commission for Social Partnership was endorsed by the GoG on 7 October 2013¹¹². On 12 March 2014, the Prime Minister issued a decree approving the Commission¹¹³. The Commission’s first meeting was on 1 May 2013 to discuss the on-going reforms aimed at contributing to the development of the labour environment.

Because the role of the Trilateral Commission is quite broad, its work during this period was ineffectual. While the Commission’s statute calls for quarter-

110 *Idem*, Chapter 14; article 349, (g); article 350.

111 International Labour Organization, Georgia: Labour codes, general labour and employment acts http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=97806&p_country=GEO&p_classification=01.02 (accessed 10 October 2015).

112 The decree of the government of Georgia №258; October 7, 2013; on approval of the provision on the Trilateral Commission of Social Partnership; Article6, available at: http://gov.ge/files/276_38491_313895_25871013.pdf.

113 №55 dated 12 March 2014, Tbilisi. The decree on the appointment of the Trilateral Commission of Social Partnership; available at: http://gov.ge/files/383_41199_801983_55.pdf.

ly meetings¹¹⁴, as of July 2015 the Commission has met only once¹¹⁵ and the internal working group in the Ministry of Health, Labour and Social Affairs only two times¹¹⁶. This infrequency makes the activities of the Commission unproductive. The minutes of the meetings provided by the Ministry of Health, Labour and Social Affairs confirm that the Trilateral Commission for Social Partnership is not fulfilling its obligations.

The successful implementation of labour reforms requires the involvement of the GoG, Georgian civil society and the donor community. To this end, ILO and the EU are supporting the Contribute to Labour Relations and Social Dialogue in Georgia project to encourage social dialogue¹¹⁷. Within the framework of the project, the Ministry of Health, Labour and Social Affairs coordinates the joint activities of different government branches and departments, social partners, donor organisations and the civil sector¹¹⁸ in the area of labour relations.

1.3 Occupational safety and health protection

Occupational safety and health protection is a priority of the Association Agreement in terms of the harmonisation of the Labour Code with EU legal acts¹¹⁹. The Georgia-EU Association Agenda for the years of 2014-2016 further focuses on the improvement of labour standards, in particular, safety and the creation of a relevant monitoring mechanism¹²⁰. In addition to being

114 The decree of the government of Georgia №258 dated 7 October 2013; on approval of the provision on the Trilateral Commission of Social Partnership; Article6, available at: http://gov.ge/files/276_38491_313895_25871013.pdf.

115 Video of the meeting of the Trilateral Commission of Social Partnership, available at the official page of the prime minister: <http://irakligaribashvili.ge/?p=3648>.

116 Interview with Gocha Aleksandria, deputy chairman of Georgia United Trade Unions, Tbilisi, 1 July 2015.

117 The EU Office in Georgia, 'The Improvement of Labour relations and Social Dialogue in Georgia' (Press Release); Tbilisi, 2 February 2015; available at: http://eeas.europa.eu/delegations/georgia/documents/news/2015/20150202_01_ka.pdf.

118 Decree of the government of Georgia №199 dated 2 August 2013. On approval of 2013-2014 action plans of the realisation of the state strategy on formation of Georgia labour market -3. The organisational institutions and sources of funding for the execution of strategy, available at: <https://matsne.gov.ge/ka/document/view/1981264>.

119 Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part; Annex XXX.

120 Association Agenda between the European Union and Georgia. 26; available at: http://eeas.europa.eu/georgia/pdf/eu-georgia_association_agenda.pdf.

a requirement of the Association Agreement, the existing hazardous environment for occupational safety and health protection makes the creation of a labour inspection an urgent need. According to data provided by the Interior Ministry, during the last five years there have been 213 fatalities and 711 on-the-job injuries¹²¹, the majority of which were caused by the violation of existing safety requirements. These data do not reflect the breadth of the problem, as a range of cases have not been reported to government agencies due to established reporting practice.

In order to create the foundation for the effective monitoring of labour conditions, the GoG should focus on amending the Labour Code to include a special chapter on a safety and health monitoring mechanism and building the capacity of the individuals conducting inspections. On 5 February 2015, the GoG adopted a regulation on approval of the State Programme of Labour Conditions Monitoring to help employers establish a safe and healthy work environment. By this, the government laid the foundation for amending legislation to create a labour inspection agency. The programme's activities include raising awareness among employers and employees in order to prevent the violation of safety rules at the workplace, informing both sides about their rights and obligations and advising them as needed, elaborating and then reviewing the standards that are relevant to labour safety and health protection and determining the need for institutional reform of labour safety protection¹²². The general character of the regulation on the State Program of Labour Conditions Monitoring allows too much room for discretion.

By the regulation on approval of the State Programme of Labour Conditions Monitoring, the two target groups of the programme are the employers who agreed in writing to participate and the employees who work for these employers¹²³. The possibility that employers will on a mass scale voluntarily agree to be engaged in the programme is too low. Therefore, rules of this kind endanger the opportunity to practically implement the labour monitoring program.

121 Official letter from the Ministry of Interior of Georgia N899962 dated 28 April 2015.

122 Decree of the government of Georgia № 38 dated 5 February 2015, on approval of the State Program of Labour Conditions Monitoring. Article 1, available at: <https://matsne.gov.ge/ka/document/view/2719707>.

123 Idem. Article 2.

On 21 April 2015, the Department of Labour Inspection was created within the Ministry of Health, Labour and Social Affairs¹²⁴. The main functions of the department are the monitoring of labour conditions and protection of labour standards¹²⁵. As of 19 August 2015, 31 companies had been monitored by 25 trained Department of Labour Inspection monitors¹²⁶. There is, however, no information about the results of the monitoring, making it impossible to determine the effectiveness of this new labour inspection mechanism.

International donors have also undertaken large-scale projects in order to facilitate the implementation of the reforms. In particular, the US Department of Labor implemented the Improve the Protection of the Labor Law project in order to promote occupational health and safety¹²⁷. Through this project, a training curriculum was developed and hot-line operators of the Ministry of Health, Labour and Social Affairs and 15 judges have been retrained on international labour standards and legislation¹²⁸. Similar activities promote the GoG's practical implementation of the changes that have already been made at the legislative level.

1.4 Development and activities of mediation mechanism

The Association Agenda requires the GoG to strengthen the existing Georgian Mediation Service. Currently, Article 48¹ of the Georgian Labour Code stipulates that collective disputes be solved through the Mediation Service. Government Decree #301 dated 25 November 2013 specifies the rules for settling collective employment disputes.

In addition to these two norms, there are decrees and decisions of the Minister of Health, Labour and Social Affairs that regulate the assignment of me-

124 Ministry of Labour, Health and Social Affairs Order №01-10 / N dated 21 April 2015. Available at: <https://matsne.gov.ge/ka/document/view/2817403>.

125 Idem. Article 2.

126 Official web page of the Ministry of Health, Labour and Social Affairs, available at: http://www.moh.gov.ge/index.php?lang_id=GEO&sec_id=29&info_id=2501

127 The Action Plan of Georgia for implementation of the Association Agreement, 2014 – 2017; Clause 34, available at: http://www.economy.ge/uploads/news/giorgi_kvirkashvili/ASSOCIATION_AGREEMENT_action_plan_GEO.pdf.

128 The fulfilment of 2014 of the Action Plan of Georgia for implementation of the Association Agreement, 2014 – 2017; Trade and Sustainable development, available at: http://www.economy.ge/uploads/Association_Agreement/ASSOCIATION_AGREEMENT_REPORT_2014_GE_-_final.pdf.

diators. According to existing rules, a mediator is assigned to a case either at the request of a party or by the Minister when there is high public interest in a case. Mediators are selected from the Register of Mediators, which is maintained by the Mediation Organisational Service. The Register of Mediators is intended to be composed of independent experts with knowledge of and experience in conducting negotiations on labour relations. Individuals would apply to be placed on the Register and be approved by the Trilateral Commission for Social Partnership¹²⁹. Currently, there is no Register of Mediators maintained by the Trilateral Commission for Social Partnership¹³⁰. Because the Commission has met only once since it was created, the Commission has not developed this register. As of the writing of this report, eight representatives of the Ministry of Health, Labour and Social Affairs are approved to serve as mediators for collective employment disputes¹³¹. Four of them are on the reserve list. Another eight mediators are approved to participate in dispute hearings as special representatives of the minister¹³².

The goal of negotiations or mediation is to settle collective disputes. However, mediation is a conciliatory procedure with the direct involvement and supervision of a mediator who is assigned by the Minister of Health, Labour and Social Affairs. When assigned to a case, mediators work on dispute settlement in close cooperation with the Conciliatory Commission. The Conciliatory Commission is composed of an equal number of representatives from each party of the collective dispute with the purpose of hearing and settling a collective dispute. A disputing party is obliged to participate in conciliatory procedures and attend meetings arranged by the mediator. In turn, the assigned mediator is obliged to keep the details of the case confidential¹³³. The trust of the disputing parties in the mediator is key to this process. Therefore, it is important that each mediator assigned to a case should be highly qualified, credible, fair and impartial.

129 Decree of the Government of Georgia on approval of the rule of hearing and settling collective employment dispute on the basis of conciliatory procedures, №301, 25 November 2013. Tbilisi. Article 5, available at: <https://matsne.gov.ge/ka/document/download/2091854/0/ge/pdf>.

130 Idem.

131 The 2-year report of the Ministry of Health, Labour and Social Affairs, 2014, available at: <http://www.moh.gov.ge/files//2014/Failebi/Angarishebi.pdf>.

132 Official letter from the Ministry of Health, Labour and Social Affairs# 01/55562 dated 27 July 2015,

133 Decree of the government of Georgia on approval of the rule of hearing and settling collective employment dispute on the basis of conciliatory procedures, №301, dated 25 November 2013. Tbilisi, available at: <https://matsne.gov.ge/ka/document/download/2091854/0/ge/pdf>.

For 2014-2015 mediators participated in the settlement of seven disputes in total. Five mediators were involved in these cases. Three of them represented the basic list while two were from the reserve list¹³⁴. Due to the lack of specific regulatory norms and the absence of the Register of Mediators, it is not possible to efficiently assess the use of mediation to resolve collective disputes. The creation of the register depends largely on the perfection of the legal framework and assistance from the government institutions. While the legal framework does exist, any contribution to the development of a culture of dispute settlement and negotiations is formal.

CONCLUSION

There have been positive changes made in the regulation of labour relations in terms of legislative and institutional changes. While the international obligations of the Government of Georgia to amend the Labour Code have been started, it is a slow and lengthy process. Thus, the monitoring of the practical implementation of these changes has revealed little progress to date.

Cooperation between the GoG and international actors to improve labour relations has accelerated recently. ILO is implementing a joint large-scale project to promote the protection of labour rights. The US Department of Labor also implemented the project Improve Protection of Labor Law in order to increase health and safety at workplaces¹³⁵.

The creation of the Department of Labour Inspection within the Ministry of Health, Labour and Social Affairs is a positive development. However, the legislation currently asks employers to volunteer to undergo inspection, rather than making it mandatory for all employers.

The Trilateral Commission has met only once, which has stymied progress in the areas of mediation, labour safety and health protection.

134 The official letter from the Ministry of Health, Labour and Social Affairs, 27 July 2015, # 01/55562

135 The Action Plan of Georgia for implementation of the Association Agreement, 2014 – 2017; Clause 34, available at: http://www.economy.ge/uploads/news/giorgi_kvirkashvili/ASSOCIATION_AGREEMENT_action_plan_GEO.pdf.

RECOMMENDATIONS

- ▶ In order to increase the effectiveness of the Trilateral Commission for Social Partnership, the GoG should establish functioning work groups within the government agencies that are members of the commission similar to what exists in the Ministry of Health, Labour and Social Affairs. These work groups would be responsible for elaborating proposals for possible solution of urgent labour issues and should facilitate the work of the Commission.
- ▶ The Trilateral Commission for Social Partnership should meet quarterly in accordance with the existing requirements.
- ▶ Either a single law should be elaborated or the Labour Code should be amended to include a chapter on monitoring labour safety and the introduction of an effective mechanism.
- ▶ The Ministry of Health, Labour and Social Affairs should elaborate an efficient and transparent execution mechanism to identify the violations that create hazardous labour or health conditions on the job.
- ▶ A unified Register of Mediators should be created and maintained by the Trilateral Commission.
- ▶ The legislation should be improved to include methods for monitoring and assessing mediators' activities.
- ▶ In order for the Labour Code to be further harmonised with international standards, the process of the ratification of the International Labour Organization's conventions on labour safety issues should be accelerated.

Equal Treatment

By Babutsa Pataraiia
on behalf of Union "Sapari"

EXECUTIVE SUMMARY

Ensuring equal treatment between men and women is a commitment undertaken by the Government of Georgia (GoG) under the Association Agreement with the European Union and consequent Association Agenda (hereafter, ‘The Agenda’) and National Action Plans (NAPs) for 2014 and 2015. Equal treatment is a new direction in EU-Georgia relations. Unlike other sections of the Association Agreement that had been topics for discussions and implementation under the European Neighbourhood Policy (ENP), the GoG elaborated the NAP activities focusing on equal treatment for the first time. For this reason, an assessment of the content of the NAPs is in itself important in addition to the assessment of the implementation process.

The Association Agenda outlines three major directions under the equal treatment section:

- 1) Enhancement of gender equality in social, political and economic life;
- 2) Approximation of health and safety rules to European standards;
- 3) Strengthening the implementation of legislation regarding domestic violence, awareness raising and increased access of victims to counselling.

The present monitoring report analyses the implementation of the Association Agenda according to these three major directions.

The assessment of the NAPs reveals that the GoG does not have a coherent vision for ensuring equal treatment in Georgia. The activities foreseen in the 2014 and 2015 NAPs in relation to equal treatment are minimal and superficial. One of the three major directions of the Association Agenda section on equal treatment—approximation of health and safety rules to European standards—is non-existent in the 2014 and 2015 NAPs. Ensuring equal opportunity for men and women in social, economic and political life is also weakly developed. Further, the NAPs do not address either the extremely low participation of women in politics¹³⁶ nor the economic empowerment of women. Domestic violence is

136 Pataraiia B. Georgian Politics without Women – Quotas as a Solution to the Problem, policy brief, 2015.

the only adequately elaborated and implemented direction of the equal treatment section.

The present report concludes that in order to enhance gender equality and ensure equal treatment of men and women, Georgia must develop a comprehensive and transformative approach towards gender equality and women's empowerment. The GoG should commit to implementing the Gender Equality Action Plan 2014-2016, adopt effective measures to ensure women's representation in political life and elaborate specific programs designed to promote the economic empowerment of women.

INTRODUCTION

Georgia is a patriarchal society, where gender equality is guaranteed *de jure* through gender-neutral legislation, but *de facto* inequality between the sexes remains a challenge. The gender roles of men and women in Georgia differ dramatically. Household chores and parenting are considered to be the primary responsibilities of women, while social, economic and political life is male-dominated. As one example, 88% of members of parliament are men.

In order to enhance gender equality, Georgia must also combat domestic violence, which is both a widespread and taboo crime. Georgia adopted the law on domestic violence in 2006 and psychological violence was criminalised in 2012, but the transformation of domestic violence from a private into a public matter is an on-going process. 2014 saw an unprecedented number of femicides (murder of women). Multiple cases of 'honour killings'¹³⁷ triggered mass protests organised by the Georgian Women's Movement (GWM), an informal social initiative group composed of 700 women activists. GWM urged the government to review its policy on combating domestic violence in November 2014 and demanded legislative gender quotas for the political empowerment of women in March 2015.

137 'If a woman or girl is accused or suspected of engaging in behavior that could taint male and/or family status, she may face brutal retaliation from her relatives that often results in violent death.' Amnesty International USA, Culture of Discrimination: A Fact Sheet on "Honor" Killings, 2012. Examples of 'honor killings' in Georgia were: murder of Salome Jorbenadze, June 25, 2014; murder of Sophie Zurebiani, May 14, 2014; induced suicide of Khanum Jeiranova, September 17, 2014.

In December 2014, the Human Rights and Integration Committee of Parliament established a working group on violence against women, which includes members of GWM. The working group elaborated recommendations for the GoG in June 2015. Meanwhile, the Ministry of Internal Affairs (MoIA) initiated a large-scale awareness raising campaign against domestic violence. The process of ratifying the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) is on-going. To date, the GoG has not addressed demands for the political empowerment of women or the adoption of legislative parliamentary gender quotas and no state policy or strategy is in place to overcome the extremely low representation of women in elective and executive bodies (11% of local self-government body representatives and 1.3% of executive heads of municipalities are women).

METHODOLOGY

This report is based on the results of qualitative and comparative research. The information provided by relevant state institutions obtained through official correspondence were used for this report. The report analyses the content of the NAPs and progress in the implementation of the activities outlined in the NAPs.

The following documents were analyzed:

- ▶ EU-Georgia Association Agreement and Association Agenda 2014-2016;
- ▶ National Action Plans of 2014 and 2015 for the Implementation of the Association Agreement and Association Agenda;
- ▶ Implementation report of 2014 National Action Plan for the Implementation of the Association Agreement and Association Agenda;
- ▶ Relevant laws;
- ▶ Relevant normative acts (decrees of GoG, decree of Ministry of Defence, decrees of Parliament);
- ▶ Relevant state policies, action plans and implementation reports.

The report covers the period between 1 September 2014 and 1 September 2015.

1. Assessment of 2014 and 2015 National Action Plans

The Association Agenda outlines three major directions under the section on equal treatment:

1. Enhancement of gender equality in social, political and economic life;
2. Approximation of health and safety rules to European standards;
3. Strengthening the implementation of legislation regarding domestic violence, awareness raising and increased access of victims to counselling.

On 3 September 2014, the GoG adopted the National Action Plan for the Implementation of the Association Agreement and Association Agenda. To evaluate the implementation process of the Association Agenda, the NAP itself and its execution is analysed in this report.

According to the 2014 NAP, the following activities were designed to ensure equal treatment in accordance with the Association Agenda:

1. The High School of Justice will elaborate a curriculum and conduct training of judges on gender equality, which will address the issue of domestic violence among other things (activity #73);
2. The Ministry of Defence will implement a gender equality strategy (activity #74);
3. The Ministry of Labour, Health and Social Affairs will amend legislation in line with existing international standards for eradicating domestic violence, introduce corresponding institutional mechanisms and raise public awareness (target groups) (activity #75)¹³⁸.

138 2014 National Action Plan for the Implementation of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part and Association Agenda between the European Union and Georgia, Approved by the Decree No. 1516 of the Government of Georgia 3 September 2014, available at: http://www.eu-nato.gov.ge/sites/default/files/AA%20Action%20Plan-2014-Final-ENG_0.pdf (last accessed on 15 July 2015)

The National Action Plan for 2015 repeats these three same activities (activities #103, #104 and #105)¹³⁹ with the Ministry of Interior and Ministry of Education and Science added as implementers of the third activity.

1.1. Enhancement of gender equality in social, political and economic life

The first statement of the Association Agenda section on equal treatment reads as follows: ‘Enhance gender equality and ensure equal treatment between women and men in social, political and economic life.’ Because this statement is quite broad and covers all aspects of social, economic and political life, it enables the government to introduce various activities to implement the abovementioned obligation. However, the GoG introduced only two activities in the 2014 and 2015 NAPs: 1.1. Implementation of the Gender Equality Strategy and 1.2. Elaboration of curriculum and conduct trainings on gender equality and domestic violence.

On 6 February 2014, the Parliament of Georgia adopted the new Gender Equality Action Plan 2014-2016¹⁴⁰. This document has eight chapters and covers all major aspects of gender equality in social, economic and political life. Nonetheless, the GoG did not commit to implementation of the Gender Equality Action Plan under the NAP; rather, the NAP refers only to the Ministry of Defence (MoD) implementing its own Gender Equality Strategy (activity #104). Thus, implementation of this particular document became an obligation under the NAPs and not the Gender Equality Action Plan 2014-2016. A representative of the Union “Sapari” addressed the need for the introduction and implementation of Georgia’s Gender Equality Action Plan 2014-2016 under the NAP during a meeting with the State Minister of European and Euro-Atlantic Integration. Regardless, the GoG maintained activity #104 as it was and did not commit to implementing the broader Gender Equality Action Plan 2014-2016 in NAP 2015.

139 2015 National Action Plan for the Implementation of the Association Agreement between Georgia, of the one part and the European Union and the European Atomic Energy Community and their Member States, of the other part and the Association Agenda between Georgia and the European Union, Approved by the Decree №59 of the Government of Georgia, 26 January 2015, available at: <http://www.eu-nato.gov.ge/sites/default/files/AA%20National%20Action%20Plan%202015%20-%20FINAL%20ENG.docx> (last accessed on 15 July 2015)

140 Decree of the Minister of Defence of Georgia #544 on Gender Equality Strategy of Ministry of Defence, available at: <https://mod.gov.ge/assets/up-modul/uploads/pdf/gender/genderuli-Tanasworobis-erovnuli-samoqmedo-gegma.pdf> (last accessed on 15 July 2015)

The extremely low representation of women in politics remains a persistent problem in Georgia¹⁴¹. Women's participation does not exceed 12% either in Parliament or in local self-government, falling far below the global average.¹⁴² The NAPs of 2014 and 2015 do not contain any activities designed to increase gender equality in political life. Moreover, Georgia does not have a strategic vision for overcoming this problem. In the Gender Equality Action Plan there is a separate chapter #6 called 'Women and Politics'. Chapter #6 contains five activities: awareness raising of representatives of political parties on gender equality and the possibilities of receiving financial incentives for presenting women candidates in party lists; gender analyses of party lists; a study of barriers for women holding decision-making posts in government; and refining relevant legislation¹⁴³. The enumerated activities cannot be considered a strategic vision of the government to overcome the low numbers of women in political life. None of the activities offer concrete solutions to the problem, taking into consideration that the problem is not new and Georgia has had a gender equality action plan in the past. Despite the fact that Georgia has its second Gender Equality Action Plan, the document contains general activities and lacks both specific and temporary measures. In 2011 Georgia tried to address the low representation of women in parliament by introducing financial incentives for those political parties that voluntarily provide candidates of different sex in party lists¹⁴⁴. As the OSCE noted, in the 2012 parliamentary elections the impact of the legislation was negated by the fact that neither the United National Movement nor the Georgian Dream coalition met the requirements for receiving the voluntary incentives¹⁴⁵. Again in the local self-government election in 2014, the financial incentive had no impact on improving women's representation (women secured only 11% of seats at Sakrebulo).

141 Pataraiia B. Georgian Politics without Women – Quotas as a Solution to the Problem, policy brief, 2015.

142 *ibid.*

143 Parliamentary Decree of Georgia on Action Plan 2014-2016 on Implementation of Gender Equality Policy, available at: <https://mod.gov.ge/assets/up-modul/uploads/pdf/gender/genderuli-Tanasworobis-strategia.pdf> (last accessed on July 15, 2015)

144 Pataraiia B. Georgian Politics without Women – Quotas as a Solution to the Problem, policy brief, 2015.

145 International Election Observation, Georgia — Parliamentary Elections, 1 October 2012, Statement of Preliminary Findings and Conclusions, p.2, available at: <http://www.osce.org/odihr/elections/94593?download=true>

The NAP does not contain any activity targeted at the economic empowerment of women.

1. 2. Approximation of health and safety rules to European standards

The section on equal treatment in the Association Agenda requires Georgia to approximate rules on the following issues to European standards: (1) health and safety, (2) the protection of maternity and (3) the reconciliation of parental and professional responsibilities¹⁴⁶. Neither the NAP 2014 nor the NAP 2015 contains any activities related to the protection of maternity, the reconciliation of parental and professional responsibilities or other health and safety rules with regard to equal treatment of men and women. In addition, official letters from Ministry of Labour, Health and Social Affairs (MoLHSA) #01/47513 and #01/71266 regarding the implementation of NAPs 2014 and 2015 provide information solely regarding domestic violence and state shelters.

The fact that the approximation process with regards to maternity protection, parental responsibilities and other safety rules is unaddressed raises concerns and impedes implementation of the Association Agenda.

1.3. Strengthening the implementation of legislation regarding domestic violence, awareness raising and increased access of victims to counselling

The equal treatment section of the Association Agenda focuses on domestic violence and identifies the following activities to combat the problem:

- ▶ Strengthen the implementation of legislation against domestic violence;
- ▶ Raise awareness among the general population and specific professional groups, such as the police, and in rural and minority areas in particular;
- ▶ Increase the access of victims to counselling services and shelters.

¹⁴⁶ EU-Georgia Association Agreement and Association Agenda 2014-2016, available at: http://eeas.europa.eu/georgia/pdf/eu-georgia_association_agenda.pdf (last accessed on July 15, 2015)

The 2014 NAP (activity #75) and 2015 NAP (activity #105) contain activities to address the issue. The first activity concerns fine-tuning the legislation regarding domestic violence. Responsible agencies for this activity are the MoLHSA and its legal entity of public law – the State Fund for the Protection and Assistance of (Statutory) Victims of Human Trafficking (State Fund). In order to further improve legislation, the 2015 NAP adds the protection and support of victims of domestic violence and identifies two other responsible institutions: the MoIA and MES.

It should be highlighted that focusing on protecting and supporting victims of domestic violence is crucial to the successful implementation of the law and the role of the MoIA is vital in this process. Thus inclusion of the MoIA as a responsible institution is a positive step for the implementation of the Association Agenda. However, the role of the Ministry of Education and Science in protecting and supporting victims of domestic violence is not clearly defined.

The second activity concerns introducing the relevant institutional mechanisms and public awareness raising of both the general population and of specific professional groups, such as the police and in particular in rural and minority areas (activity #75 of the 2014 NAP). However, the 2015 NAP activity #105, while focusing on improving the mechanisms for protecting, supporting and rehabilitating victims of domestic violence, omits any public awareness component. Raising awareness is a major component in combating domestic violence and should continue throughout the Association Agenda implementation process. In addition, the MES, which is the main entity in charge of defining education policy for all educational institutions, should become one of the responsible bodies for awareness raising activities.

2. Assessment of the implementation of the 2014 and 2015 NAPs

2.1. Enhancement of gender equality in social, political and economic life

2.1.1 Implementation of the Gender Equality Strategy

The MoD's Gender Equality Strategy was adopted on 29 April 2014¹⁴⁷. The document has one article describing the state policy and outlining the aim and scope of the strategy. The document defines gender equality, discrimination and sexual violence and describes the actions needed to achieve gender equality within the Ministry.

Article #7 of the Strategy sets out four activities¹⁴⁸. In an official letter (#MOD 2 15 00535252), the MoD reported that two out of four activities were performed during the reporting period.

The first activity focused on studying the situation of women in the MoD, analysing the gaps in women's engagement with the MoD and elaborating appropriate recommendations to eliminate those gaps. The study has not yet been conducted. Neither the state report on implementation of the Association Agenda 2014¹⁴⁹ nor the information provided by the MoD includes information regarding a study or gap analysis. The 6-month state report on Association Agreement implementation mentions that a gender audit was conducted in February 2015 at the MoD, but no further information regarding the content or scope of the gender audit was provided by the MoD. The Ministry's official website, which has a separate section on gender, does not contain any information about a gender audit¹⁵⁰, thus making it impossible to assess its content and relevance to the gender strategy activities.

147 Parliamentary Decree of Georgia on Action Plan 2014-2016 on Implementation of Gender Equality Policy, available at: <https://mod.gov.ge/assets/up-modul/uploads/pdf/gender/genderuli-Tanasworobis-strategia.pdf> (last accessed on July 15, 2015)

148 *supra* note 4, article #7.

149 Implementation report of 2014 National Action Plan for the Implementation of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part and Association Agenda between the European Union and Georgia, available at: <http://eu-nato.gov.ge> (last accessed on July 15, 2015)

150 MoD, official website, available at: <https://mod.gov.ge/p/gender> (last accessed on 15, 2015)

The second activity obliges the MoD to prepare training modules and to raise awareness of gender equality and of UNSCR #1325 and other subsequent resolutions on women, peace and security. In December 2014 and February 2015, mid-level managers within the MoD were trained on gender equality and UNSCR #1325. In May 2015, a three-day training seminar was conducted on UNSCR #1325 for the students of the Defence Academy. On 31 March 2015, a high-level conference was conducted on women, peace and security. In April 2015, the MoD's gender advisors were trained on UNSCR #1325. In July 2015, training on gender was conducted for the personnel who will be deployed in the peace building operation in Afghanistan¹⁵¹. In sum, the MoD is systematically conducting trainings, seminars and other activities to raise awareness among its personnel and is fulfilling this obligation.

The third activity foresees supporting women's engagement within the MoD and armed forces of Georgia. No information was provided regarding this activity by the MoD and the state report on implementation of the Association Agenda 2014 does not contain information on any supporting activities to increase women's engagement within the MoD.

The fourth activity, which focuses on increasing the capacity of the MoD's gender advisors, was completed in October 2014. A monitoring group was established to study cases of gender discrimination within the MoD as envisaged under the Gender Strategy article #7.

2.1.2. Elaborate curriculum and conduct trainings on gender equality and domestic violence

Both the 2014 and 2015 NAPs include the elaboration of a curriculum on gender equality, which addresses domestic violence among other things, and conducting subsequent training. The High School of Justice of Georgia is named as the responsible institution for the implementation of these activities.

According to information provided by the High School of Justice (official letter #02/649), the High School of Justice cooperated with international

¹⁵¹ MoD, official website, available at: <https://mod.gov.ge/w/search> (last accessed on 15 July 2015)

organisations to elaborate the ‘Supporting Justice through Gender Equality’ curriculum in 2014. In addition, one pilot training and two training of trainer sessions were conducted for judges in 2014 by the High School of Justice.

In August 2015, the High School of Justice established a working group composed of judges and a representative of a non-governmental organisation to develop a training module for judges on European and Georgian standards on the elimination of all forms of discrimination.

2.2 Strengthening the implementation of legislation against domestic violence

2.2.1. Strengthening mechanisms on combating domestic violence

On 20 September 2014, the Minister of Internal Affairs issued order #726, which established the Commission on the Prevention and Efficient Response to Domestic Violence. The Commission is composed of mid-level managers of the MoIA and is empowered to assess the work of the police on domestic conflicts and violence and to elaborate policy recommendations for the improvement of relevant mechanisms. The Commission has developed methods for trained district inspectors to collect data on cases of domestic violence on a monthly basis.

On 9 December 2014, the Minister of Internal Affairs issued a directive to apply a stringent policy on domestic violence. The directive has a recommendatory character and facilitates the application of Article 126¹ of Criminal Code of Georgia (CCG) for police¹⁵².

In November-December 2014, the analytical department of the MoIA created a program for more thorough data collection. Starting in 2015, the MoIA began collecting information according to municipality. In addition, information about age, sex, social status and physical address is now collected on persons engaged in domestic conflicts.

¹⁵² According to the article, domestic violence can take the form of physical, physiological, economic, and sexual violence or coercion. The article defines this crime as the systematic abuse, blackmail, or humiliation of one family member by another if such acts cause physical pain or suffering.

2.2.2. Legislative Changes

On 17 October 2014, the MoIA initiated legislative changes to the CCG. Specifically, Article 126¹ now includes restriction and deprivation of liberty as sanctions for acts of domestic violence.

The Ministry of Justice (MoJ) cooperated with civil society and international organisations to prepare a package of legislative amendments to meet the standards of the Istanbul Convention.

On 18 December 2014, the GoG issued decree #684 on the rules for identifying and issuing the appropriate status to the victim of domestic violence for the group responsible for issuing the status of the victim under the Inter-agency Council Combating Domestic Violence.

2.2.3. Awareness-raising on domestic violence

As noted in official letters #01/47513 and #01/71266 from the MoLHSA, the State Fund, in cooperation with the MoIA and civil society organisations, developed an informational brochure regarding domestic violence. The brochure was distributed in the regions near state borders and is available at the receptions of the MoLHSA, regional service centres of the State Fund and the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees. The brochures were also distributed among police officers by the Patrol Police Department of the MoIA. Informational flyers on domestic violence were distributed in Tbilisi. Public service announcements were produced and aired on various television and radio stations in March-May 2015.

In official letter #1502823, the MoIA indicated that domestic violence is part of the curriculum at the police academy. Fourteen hours are dedicated to methods of detecting, reacting and preventing domestic violence, including the rights of victims, legal mechanisms for their protection, and protective orders, etc.

In addition, the MoIA, in cooperation with international and local NGOs, conducted professional training regarding legal mechanisms related to the crime of domestic violence for 260 law enforcement officers, 600 patrol officers and 452 district inspectors.

On 25 November 2014, the MoIA officially announced the start of the ‘Violence is a crime!’ public awareness campaign, which included domestic violence. The campaign was distributed through mass media outlets, including shows on television. The campaign contained a number of activities directed at and tailored to various target groups, including interactive meetings at 18 public school and 10 universities, sport contests, etc. The MoIA cooperated with NGOs, theatres, schools, sport federations and religious institutions and used a variety of media during the campaign.

The MoLHSA conducted informational meetings and seminars regarding domestic violence for prosecutors and policemen in April 2015. Informational meetings were conducted in a number of public schools in Tbilisi, Kutaisi and Tkibuli in April-May 2015.

The MoLHSA also conducted a social event with the bookstore Biblus on 8 March 2015 involving beneficiaries of the Tbilisi and Gori shelters.

2.2.4. Increase the access of victims to counselling services and shelters

According to official letter #01/47513 from the MoLHSA, the State Fund purchased real estate with the financial support of UN Women in the Kakheti Region in 2014 for the purposes of opening a state shelter for victims of domestic violence. Renovation of the building was completed in spring 2015. The shelter will open by the end of 2015 and will be able to serve 12 beneficiaries at one time.

On 18 December 2014, the GoG adopted decree #684 to establish the rules for identifying victims of domestic violence and issuing them the corresponding status¹⁵³. The new decree regulates the process of identifying a vic-

¹⁵³ Decree of Government of Georgia #684 on the procedures of identification and issuance of the status of victim by domestic violence status identification group existing with inter-agency council of combating domestic violence, available at: <https://matsne.gov.ge/ka/document/view/2637810> (last accessed on 15 July 2015)

tim and defines the procedures for acquiring the status of victim of domestic violence. The mentioned decree improves access to counselling services and shelters for victims of domestic violence.

In May 2015 the personnel of state shelters were trained according to the legislative changes regarding domestic violence.

At present, there are no crisis centres for victims of domestic violence and shelters are accessible only for those who have already acquired the status of victim of domestic violence. In addition, shelters are not accessible for all women; substance-dependent women do not have access to state shelters. In 2015, the state shelter provided services to six women with mental health problems¹⁵⁴, which is a positive development.

CONCLUSION

The assessment of the implementation of the Association Agenda shows that the section on equal treatment was not a priority area for the GoG during the elaboration of the 2014 and 2015 NAPs. Of the three components outlined in the section, the one on approximating health and safety rules to European standards has been completely ignored. No activities are included in the 2014 and 2015 NAPs to meet the requirements of the Association Agenda for this component.

In addition, the fundamental statement of the Association Agenda regarding enhancing gender equality and ensuring equal treatment between women and men in social, political and economic life is reflected in the NAPs in only two activities for very specific institutions: the implementation of the Gender Equality Strategy by the MoD and the training of judges conducted by the High School of Justice. The GoG did not commit to implementing the Gender Equality Action Plan of Georgia 2014-2016 under the Association Agenda 2014-2016.

154 Official letter from MoLHSA #01/71266, dated: 21 September 2015.

The third priority of the equal treatment section is combating domestic violence and providing access to counselling for victims of domestic violence. This commitment was reflected in the planned activities outlined in the NAPs, which were implemented in a satisfactory manner. The major shortcoming of this section is the omission of awareness raising from the NAP 2015.

Currently Georgia does not have any clear policies to ensure equal treatment of men and women in economic and political life. If the GoG plans to enhance gender equality it must elaborate a state strategy to commence reforms directed at the *de facto* inequality of men and women.

RECOMMENDATIONS

For successful implementation of the equal treatment section of the Association Agenda 2014-2016, Georgia must develop a clear and comprehensive state policy on the enhancement of gender equality. The three major directions of the section of equal treatment should be transformed into concrete activities in the 2016 NAP. In the process of drafting the 2016 NAP, the GoG should take into consideration the following recommendations:

- ▶ Adopt effective measures to ensure women's representation in political life, such as legislative party quotas.
- ▶ Elaborate specific programs directed at the economic empowerment of women.
- ▶ Commit to implementing the Gender Equality Action Plan of Georgia 2014-2016.
- ▶ Propose legislative changes to approximate health and safety rules to European Union standards.
- ▶ Commit to continuing awareness raising efforts on domestic violence involving the MoIA and MES.

- ▶ Make plans to open at least one crisis centre for the alleged victims of domestic violence.
- ▶ Ratify the Istanbul Convention.

Children's Rights

By Ana Argannashvili and Ana Abashidze
on behalf of the Partnership for Human Rights (PHR)

EXECUTIVE SUMMARY

This report assesses the commitments made by Georgia under the EU-Georgia Association Agreement in the field of children's rights. The main issues of the report are child poverty and its effects on children and the human rights situation of vulnerable groups of children, including children living and working on the street and children with disabilities. The report particularly focuses on the lack of data on children and the challenges to the protection of children and child welfare. The report also examines the issues of child trafficking and forced labour in Georgia. In the end, the report suggests specific recommendations for improving the child protection and welfare system and combating child trafficking and forced labour.

INTRODUCTION

The violation of children's rights has a long-term impact on individuals and broader societal implications. Inadequate age-appropriate civic education in childhood reduces civic participation levels in adulthood¹⁵⁵ and has a consequent negative impact on the rule of law. Improper diet and inadequate housing in infancy and adolescence have a negative impact on health care and increase social security costs. Child abuse and neglect undermine mental health¹⁵⁶ and quality of life and proportionally increase the risk of delinquency and criminality in adulthood¹⁵⁷.

Despite these obvious connections, Georgia pays minimal attention to children's rights. For the first time in 2014, safeguarding children's rights was included within the framework of cooperation and partnership between the European Union and Georgia. In particular, Chapter 2.1 of the Association Agreement between the European Union and Georgia obligates Georgia to protect children's rights, including preventing child poverty and all forms of violence against children. In

155 Kahne, J.E., Sporte, S.E., *Developing Citizens: The impact of civic learning opportunities on students' commitment to civic participation*, *American Educational Research Journal* (2008) Sept. Vol 45., No.3 738-766.

156 Browne, A. Finkelhor, D., *Impact of child sexual abuse: a review of the research*, *Psychological Bulletin*, (1986) Jan, vol 99 (1), 66-77.

157 Straus, M.A., *Discipline and deviance: physical punishment of children and violence and other crime in adulthood*, *Social Problems* (1991), May 1. 133-154

addition, children's rights are also discussed in the context of juvenile justice. The inclusion of these components gives hope to children's rights advocacy organisations and civil society that the Government of Georgia will prioritise children's rights and fulfil its responsibilities in this regard.

This report presents an assessment of the protection of children's rights in Georgia in accordance with the EU-Georgia Association Agenda between 1 September 2014 and 1 September 2015. The report focuses on the issues of child poverty and its impact on vulnerable groups of children (children living and working in the street and children with disabilities) and protecting children against violence, trafficking and forced labour.

METHODOLOGY

The report relies upon international and local studies and information requested from public agencies and available on government websites. The report reflects the problems that PHR and other partner organisations that work on child protection and welfare issues have encountered in their work in this field. The authors also draw on the reports of experienced and qualified international organisations, such as the United Nations Children's Fund and Save the Children, among others. Representatives of PHR additionally gathered information about the violation of children's rights from primary sources. Approximately 150 children and 200 adults (parents, school teachers, social workers and police officers) participated in meetings led by the organisation in Gori, Kutaisi, Zugdidi, Sagarejo, Zestafoni, Tianeti and Pankisi.

1. Child mortality and demographic statistics

According to the preliminary results of the 2014 census¹⁵⁸, the population of Georgia is 3 729 635, constituting a 14.7% (641 900 people) drop in comparison with the previous census conducted in 2002 (4 371 535). Data from

158 The National Bureau of Statistics (2014), the preliminary results of the 2014 census. Web resource. (accessed 30 July 2015) http://geostat.ge/cms/site_images/_files/georgian/population/agceris%20cinasca

2015¹⁵⁹ suggest that the total number of children is 780 100, which is 16.1% less than in 2012 (930 000 children).¹⁶⁰

The rate of child mortality often reflects the general condition of children in the country and forecasts the level of their development in the future. To that end, reports on child mortality in Georgia show that, while Georgia's child mortality rate has dropped over the past few years, this rate remains high in comparison with other countries. According to the Report of the Public Defender¹⁶¹, in 2014, 635 children under five years of age died¹⁶². This figure translates into 9.7 deaths per one thousand live births, which is more than double the global average rate of child mortality of 4.6. Among European countries, Georgia ranks ahead of only Albania, Moldova, Armenia and Azerbaijan.

According to the Public Defender's data, the negligence of medical staff is one of the major causes of death of children under five. In 2014, 19 deaths of children under the age of five were investigated by the Commission. As a result of these investigations, 40 doctors had their licences suspended and 64 doctors were given written warnings.

2. Children's rights policy and legislation

Children's rights are protected by Article 36 of the Constitution of Georgia, however, there is no one law that regulates all aspects of children's rights. Instead, children's social, education and healthcare rights are scattered throughout various legislative acts, making it difficult to assess the protection of children's rights. The development of the Juvenile Justice Code in 2014 should be considered a step forward, however, gaps remain in all other areas.

159 The National Bureau of Statistics, correspondence #11-224, 30 July 2015.

160 UNICEF. The state of the world's children 2014. Every child counts. (2014), p. 61 (accessed 30 July 2015) http://www.unicef.org/sowc2014/numbers/documents/english/SOWC2014_In%20Numbers_28%20Jan.pdf

161 The Public Defender of Georgia, Rights of Children in Georgia, (2014) p. 34-35. The report relies upon information gathered by the National Centre for Disease Control (a legal entity under public law of the Ministry of Labour, Health and Social Affairs) and the Public Health Service Development Agency.

162 Of the 635 children who died in 2014, 259 were between 0 and 6 days old (early neonatal), 157 were between 7 and 28 days old (neonatal), 148 were between 28 days and 1 year old and 69 were between 1 and 5 years old.

In 1994, the Parliament of Georgia ratified the UN Convention on the Rights of the Child (UNCRC), after which the Convention prevailed over the national legislation of Georgia. However, the UN Children's Rights Committee in its periodic reporting on Georgia has determined that the Convention is not enforced in practice.

One of the most important political documents of Georgia in the area of children's rights is the National Action Plan on Human Rights 2014-2015, which was approved in 2014 by the Government of Georgia¹⁶³ and includes a separate section on children's rights. However, Georgian non-governmental organisations contend that the plan that is presented in the document is far from realistic. In accordance with standard practice in Georgia, the plan does not include precise quantitative and qualitative indicators, making it impossible for civil society to monitor the implementation of the plan for protecting children's rights. Recently, the Georgian Government adopted the Child Welfare and Protection Action Plan 2014-2015¹⁶⁴, which also lacks indicators and is thus not effectively monitored.

ANALYSIS

1. Child poverty and its impact on children's welfare

Although in recent years the Georgian Government has undertaken a number of measures to overcome poverty, it still remains at a worrisome level. A 2014 UNICEF survey¹⁶⁵ revealed that children received fewer benefits from the implemented reforms than other segments of the population. Twenty-eight per cent of children live in poverty, including 6% of children who live in extreme poverty and consume less than 2 GEL per day (less than 1.25 USD). Even though the 2011 reforms reduced the level of extreme poverty (people whose daily con-

163 Resolution # 445 dated 9 July 2014, Georgian Government's Action Plan for Human Rights (2014-2015) approval of the government's Human Rights Action Plan (2014-2015) and approval of creating the coordination council and its regulations.

164 Resolution #762 of the Georgian Government, dated 24 April 2012, Child Welfare and Protection Action Plan 2014-2015.

165 Baum, T., Mshvidobadze, a., Tsuruoka, H., United Nations Children's Fund, to reduce child poverty in Georgia, the way of the future, (2014) (accessed 30 July 2015) http://unicef.ge/uploads/UNICEF_Poverty_Paper_2015_GEO_FINAL.pdf

sumption is less than 1.25 USD) from 9% to 4%, 6% of children still live in extreme poverty. According to the survey, in the years 2011-2013 the percentage of children living in relative poverty increased from 25% to 27%. In addition, the majority of the extremely vulnerable population are members of a household with children (78%). The main problem for more than half of households with children (52%) is unemployment, while 11% are unable to pay debts or loans. Almost two-thirds of the children who live in poverty (64%) come from families where none of the members have a regular income.

According to the same survey, households with children are more likely to suffer from extreme poverty, particularly when there are three or more children. In households with three or more children, the extreme poverty rate is 8.3% higher than those who do not have children. Each additional child in the household increases expenses spent on childcare. The person responsible for childcare may be forced to reduce his or her work hours or even to stay away from work, which decreases total household income. As a result, per capita consumption levels are reduced.

A new methodological approach for evaluating the socio-economic status of poor households was introduced in January 2015¹⁶⁶ that resulted in special measures for supporting households below the poverty line (scoring 100 000) through granting 10 GEL (approximately 4 USD) per child. Previously, financial support of this type was not provided. Unfortunately, this change has not produced any significant reduction in child poverty because of the extent and impact of the phenomenon, as discussed above.

1.1 Children living and working on the street

While the problem of children living and working on the street has existed for years in Georgia, the GoG has not gathered data on the issue. The only survey ever conducted on children living and working on the street was undertaken in 2008 by the International Organization Save the Children¹⁶⁷ in

166 Decree #758 from 31 December 2014, Government of Georgia approval of the methodology for evaluation of the social-economic condition of the households under the poverty line.

167 Wargan, K., Dershem, L., Save the Children, ACT Research, Don't call me a street-child, (2008). (accessed 30 July 2015) http://pdf.usaid.gov/pdf_docs/PNADO657.pdf

cooperation with other partners. That survey, which covered only four cities in Georgia, counted more than 1 500 children living on the street. Unfortunately, these data have not been updated since 2008, despite the visible increase in the number of children living on the street in recent years.

It is suggested that the growing number of children living and working on the street is a natural outcome of the ineffective reform of child welfare. For example, in 2005-2012, children under state care were released from institutions but provided no alternative or community-based services and, being unable to integrate into a family environment, found themselves on the street¹⁶⁸. The government did not conduct any in depth assessment of the reform, since releasing negative information could undermine the positive image of the reform.

In 2013-2014, the European Union and UNICEF funded a project to support highly vulnerable children in Georgia with a specific focus on children living and working on the streets. This project included the creation of four mobile groups of social workers, psychologists, teachers and peer educators and established four day-care centres for children living and working on the street and three 24-hour transitional centres. The project so far has reached around 400 children on the street. While the project has been a success, it is still not enough to solve the needs of this population.

The inefficiency of the Georgian state policy regarding street children is directly linked to the lack of social policy documents. The state, which is unable to offer families the necessary elements of social protection and has extremely limited resources to rehabilitate these children, is unwilling to reveal the full extent of its problems. The lack of acknowledgement of this problem makes it difficult to address even more serious crimes like child trafficking and forced labour. Children living and working on the street are particularly vulnerable to those crimes.

168 Ombudsman of Georgia, Report on the monitoring of residential child-care institutions,(2011) page: 76 (accessed 25.09.2015) <https://drive.google.com/file/d/0BzKRMBDU8J3dSzNDMnB4NnVrZjQ/view>

1.2 Child trafficking and forced labour

Child trafficking and forced labour are two more issues on which the government is silent. Data from the Interior Ministry, provided in April 2015¹⁶⁹, revealed two cases of child trafficking in 2014. Forced labour of children was not observed in 2014. (This is contradicted by information provided by the Social Service Agency for the same period, according to which there were two cases of forced child labour in 2014)¹⁷⁰.

The conflicting information raises doubts about the reliability of the data, since international reports, assessments and recommendations consistently mention the high risk of trafficking and forced labour of children, especially children living and working on the street. The US State Department's report on human trafficking for 2014 reads:

Georgia is a source, transit, and destination country for men, women, and children subjected to trafficking in persons, specifically the forced prostitution of women and the forced labor of men, women, and **children**... Some street children may be subjected to forced begging or coerced into criminality¹⁷¹.

Although the government is trying to identify and protect the victims of trafficking, some defects are observed in protection against children's involvement in begging and sexual exploitation of girls and women. NGO representatives are especially concerned about children living and working on the street, foreign citizens, women involved in the commercial sex industry and foreign citizens working in the labour sector.

The report seems to challenge the national data on child trafficking and forced labour. These inconsistencies could be caused by the low qualification of law enforcement agencies to identify and react to cases of child trafficking.

169 Ministry of Internal Affairs, correspondence # 873731, 24.04.2015

170 Social Service Agency, correspondence 04/17971 dated 13 March 2015.

171 US State Department, Trafficking in Persons 2014 Trafficking in Persons Report (2014), p. 182. (accessed 25 September 2015) <http://www.state.gov/documents/organization/226846.pdf>

The situation regarding forced child labour is similar. Even though the data do not show any cases of forced child labour in Georgia, the latest report by the US Department of Labor from 2014 describes a different situation. '*Children in Georgia continue to engage in child labor in agriculture and in the worst forms of child labor in forced begging*¹⁷²'. These data suggest that child trafficking and labour exploitation and forced labour may constitute a more serious problem in Georgia than is reflected in domestic reporting. The fact that only international reports cover these issues indicates that the problem is neither recognised by the state nor being addressed.

1.3 Children under state care

Since 2005, Georgia has implemented the large-scale deinstitutionalisation of children. As part of the reform, more than 5 000 children under state care were moved from large institutions and 45 institutions were closed. The children were housed in small family type children's homes or with foster or biological families. According to information from non-governmental organisations, which was supported by the Public Defender, the deinstitutionalisation process was carried out very rapidly and without adequate preparations. State agencies (social services) were usually given an assignment from the Ministry of Labour, Health and Social Affairs to complete deinstitutionalisation efforts at specific institutions within several days or weeks. This created extremely tense and stressful situations and caused mental health issues among the children. Only in rare cases was treatment and rehabilitation provided for them by the Government. As an unfortunate result, some of the children did not appear ready for the place where they moved or failed to adapt to their new environments and it became necessary for them to find alternative placements. Since the state did not have enough funds, the only alternative was to place the children in non-state institutions, such as religious institutions. The state has not reported the exact number of children living in religious institutions and boarding schools. The only source of information available to civil society actors is the media and journalists' reports.

172 United States Department of Labor, Findings on the Worst Forms of Child Labor (Georgia) (accessed 25 September 2015) <http://www.dol.gov/ilab/reports/child-labor/findings/2014TDA/georgia.pdf>

According to media reports¹⁷³ from 15 February 2015, there are around 24 Muslim boarding schools for children in Adjara that house around 600 children. The journalist acquired this information directly from each institution. Other media sources report¹⁷⁴ that there are around 17 918 children in around 90 schools under the auspices of the Georgian Orthodox Church. Out of this number, 825 children stay at boarding schools and 525 children are at residential childcare institutions. Only two residential childcare institutions under the auspices of the Georgian Orthodox Church are licensed. For the rest of the religious childcare institutions the Government plays no role in enrolling children or ensuring their safety and does not conduct monitoring.

Those religious children's homes are not controlled by the state social services according to the law. Neither the transfer to nor removal of children from those childcare institutions is registered. According to the Public Defender's report, some of those children who are supposed to be living in religious institutions actually live on the street and are engaged in anti-social behaviour, but there is no official record of this. In 2013, Disability Rights International called the situation a child trafficking threat, however the issue has not been addressed as of September 2015¹⁷⁵.

1.4 Children with disabilities

The impact of poverty is particularly conspicuous on children with disabilities. One of the origins of the problem is inaccurate data. By comparison, if the entire world population of persons with disabilities is 15%, the registered number of people with disabilities in Georgia is only 131 000, which is around 4% of the total population. Similarly, only 9 010 children with disabilities were recorded as benefits recipients in February 2015, which is about 1% of children in Georgia (compare with 6% worldwide).

173 Dumbadze, L., "Netgazeti", Children's homes beyond the law, published 15.02.2015), (accessed 25 September 2015) <http://www.netgazeti.ge/GE/105/News/41301/>

174 Kakheti Information Centre, "Patriarchate of Georgia spreads information on spending 25 000 000 GEL", (1 April, 2013) (accessed 25 September 2015) <http://ick.ge/rubrics/society/13971-i.html>

175 Mathews, E., Ahren, L., Rosenthal, E., Conroy, J., Kaplan, L., Levy, R., McGowan K., G. Disability Rights International, Left Behind (2013) (accessed 5 November 2015) <http://www.driadvocacy.org/wp-content/uploads/Left-Behind-final-report1.pdf>

The reasons could be many, but one of the main reasons is the use of the medical model rather than the social model and the out-dated Soviet style system of granting people the status of disabled. According to the current system, in order for a child with special needs to be eligible to receive support (including cash benefits), he or she must undergo a medical-social examination. During the examination, a doctor makes the decision on the basis of a specific list of symptoms regardless of other evidence of certain mental, physical or sensory restrictions. For example, children (under 5 years) with autism and Down syndrome are not granted the status of disabled. As such, they do not have access to programmes that require the status of disabled and are not able to receive any cash benefits from the state. In some cases, examiners ask parents to artificially trigger the symptoms of a child's disease (e.g. an epileptic seizure) in the presence of a doctor. This should be considered ill-treatment dictated by that system. According to psychiatrists, some parents refuse to continue treatment for child behaviour management, since improvement in the child's health can lead to a reduction in symptoms and therefore the loss of the cash benefit that is frequently the only source of income for poor families¹⁷⁶.

State medical-social rehabilitation services for children with disabilities are only available in five major cities. Families living in other villages and regions do not have access to services, which violates the right of children with disabilities to necessary and appropriate care.

The situation for children who are diagnosed with psychiatric disabilities is especially difficult, since there are only 10 beds in the entire country assigned for the inpatient care of children under 15¹⁷⁷. After the abolishment of the child psychiatry departments established during the Soviet period 20 years ago, children between the ages of 15 and 18 no longer have access to adequate services. The problem is particularly significant in relation to child suicide, since children do not have access to proper mental health services. Even when there is an obvious risk of suicide, the possibility of a child to receive state run/funded services does not actually exist. Some services are

176 Berukashvili, A., Netgazeti, Disability statistics that do not reflect reality, 2012, (accessed 30 July 2015). <http://www.netgazeti.ge/GE/94/News/8430/>

177 Makhashvili, N., Global Initiative on Psychiatry, Mental health reform in Georgia. (accessed 30 July 2015) http://www.mls.ge/hrh/pictures/dfltcontent/gallery/108_1.pdf

provided by non-governmental organisations, but these are few and far between.

Community-based services for children with disabilities are underdeveloped. At present, day care centres function only in large cities and regional centres. The operations of the state-funded Early Intervention Programme are limited to seven cities, meaning that children with disabilities living in rural areas do not have access to any services.

Despite the fact that Georgia has introduced inclusive education in the last few years, in practice it is implemented only in big cities. The schools in small regions and villages have not been provided with the staff and other resources that are needed for inclusive education. For this reason, the children with disabilities who should be receiving an inclusive education are actually only receiving perfunctory inclusion. Inclusive pre-school education is only provided in large cities and cannot be found in other villages and regions.

2. Violence against children

A 2013 UNICEF survey¹⁷⁸ found that violence against children is widespread in Georgia. According to the survey:

- ▶ 60% of the respondents believe that violent forms of punishment are more effective than non-violent parenting techniques
- ▶ 45% of the respondents believe that the use of physical violence against children is acceptable and that children raised without physical punishment are 'spoiled'.

While the attitudes reported in the study indicate that violence against children is widespread, data provided by Georgian authorities (Ministry of Internal Affairs, Ministry of Labour, Health and Social Affairs and the Min-

178 Dvalishvili, D., UNICEF, Violence against Children in Georgia, a National Survey of Knowledge, Attitude and Practice about Violence against Children (2013). (accessed 30 July 2015) http://unicef.ge/uploads/Unicef_VAC_GEO_Final3_02_09.pdf

istry of Education and Science) indicate the opposite. According to data¹⁷⁹ gathered by the Social Service Agency (which works under the Ministry of Labour, Health and Social Affairs), in 2014 there were only 203 confirmed cases of violence against children, of which 86 were neglect and abandonment, 96 physical and psychological violence, 13 sexual abuse, two labour exploitation and four economic violence. The number of recorded cases is also low in comparison with global rates. A study by Paulo Sergio Pinheiro performed for the UN on Promotion and Protection of the Rights of Children asserts that '[u]p to 80 to 98 per cent of children suffer physical punishment in their homes, with a third or more experiencing severe physical punishment resulting from the use of implements'¹⁸⁰.

In 2015, a consortium of international organisations¹⁸¹ produced a detailed assessment of the shortcomings of the child protection system in Georgia. The study utilised data from Moldova, Romania, Serbia and Georgia in order to outline the main trends in the region. The assessment found that, among these four countries, Georgia performs worse than the others in several areas:

1. Georgian legislation and policy on protecting children against violence does not meet the provisions of the UN Convention on the Rights of the Child. The current child protection policy does not include effective, specific standards and regulations for the protection of children against violence. The lack of those standards undermines efforts to protect children and *makes it impossible for civil society to monitor the child protection system. State accountability for the protection of children is not clear and measurable.*

2. Georgia's child protection services are the least developed of the four countries. *There are no measures to protect children against exploitation, drug addiction and homelessness and community-based services are very limited.*

179 Social Service Agency, Correspondence 04/17971, dated 13 March 2015.

180 General Assembly, sixty-first session, 29 August 2006, Report of the Independent Expert for the United Nations Study on Violence against Children (accessed 15 October 2015) http://www.unicef.org/violencestudy/reports/SG_violencestudy_en.pdf

181 Guth, A. and J.P. Hall, Child Protection Index, Georgia (2015) (accessed 11 September 2015): <http://www.childpact.org/wp-content/uploads/2015/06/Child-Protection-Index-Georgia.pdf>

3. The system of developing and coordinating professional resources in the field of child abuse is especially weak in Georgia. Experts find that Georgia's social services fail to meet the needs of young children *who suffer from sexual or emotional abuse or are at risk of such abuse*.

Despite the fact that Georgia has prioritised the needs of people living below the poverty line, the reforms cannot be implemented successfully because of a lack of infrastructure. The 242 social workers in Georgia are not enough to address the needs of the country's population in the 21 categories of users¹⁸², which include: children living and working on the street; child victims of domestic violence; children under state care, foster care or children living in family type houses; children with disabilities, as well as many others. State social workers are not given resources for transportation and communication. Social workers are limited in their ability to act on complaints from people living in remote (mountainous) regions due to transportation costs and time. As a rule, they are expected to accumulate complaints over several months until they can get to multiple remote locations at one time and at their own expense. In many cases, social workers do not have an office space in order to ensure the privacy or confidentiality of victims of sexual violence. In some regions, social workers do not have their own desks or computers. Instead, they must take turns using a shared computer and other equipment. Across the country, only 11 psychologists are employed by the state to serve children with psychological issues and participate in the investigation of child abuse cases. There are no special guidelines or protocol nor any government services for the victims of sexual abuse. Many victims are simply not able to return to their lives because they cannot overcome the trauma caused by the abuse.

A small percentage of schools and medical institutions report suspected cases of child abuse. The situation in preschools is particularly dire. Monitoring conducted by the Public Defender from May 2014 through January 2015 in 61 preschools found¹⁸³:

182 In Adjara region, a representative of the Social Service Agency reported that one social worker is assigned to 265 cases. (accessed on 15 October 2015) <https://www.youtube.com/watch?v=qBjvLY6-SSw>

183 Public Defender of Georgia, a special report on the monitoring of pre-school establishments (2014). (accessed 25 September 2015) <http://www.ombudsman.ge/ge/reports/specialuri-angarishebi/specialuri-angarishi-skolamdeli-saagmzrdelo-dawesebulebebis-monitoringis-sheaxebe.page>

- ▶ Cases of psychological violence in 70% of the monitored preschools and the use of corporal punishment in 40%.
- ▶ 30% of caregivers at the preschools think that restricting access to food is an appropriate method to subdue children or regulate behaviour.
- ▶ 75% of caregivers at the preschools agree with limiting children's access to games and toys to punish children for inappropriate behaviour.
- ▶ 90% of preschool staff did not know the mandatory referral procedures they must follow when encountering possible cases of violence against children.

CONCLUSION

The research shows that the protection of children's rights remains a challenge in Georgia and that the issue has not received sufficient attention from the government. Because they are not prioritised, insufficient resources are allocated to promote children's rights and child welfare. Unfortunately, the Government of Georgia is unable to assess the negative implications of inadequate child protection on the development of individuals or of the state due to a lack of data.

Poverty and its impact on children continue to be major concerns for civil society. For example, the cost of the re-socialisation and rehabilitation of children living on the street and the deinstitutionalisation of children are higher than those associated with preventing child abandonment and poverty. Nevertheless, the state programme does not include measures to prevent impoverishment and abandonment.

A major obstacle to protecting children's rights is the lack of political will and coordination between the child protection and child welfare systems.

RECOMMENDATIONS

In order to promote the protection of children's rights in Georgia, the government must:

- ▶ Assess the needs of community-based services, child protection and rehabilitation of child victims of violence and implement those services accordingly.
- ▶ Reexamine the policy of protection of children against violence and ensure the harmonisation of domestic policies and legislation in accordance with the requirements of the UN Convention on the Rights of Children.
- ▶ Collect accurate data on all vulnerable groups of children.
- ▶ Ensure that children are given a special place in the national programme of poverty reduction and prevention of impoverishment.
- ▶ Study the causes of child mortality, malnutrition and diseases caused by poverty and develop measures to reduce these problems.
- ▶ Analyse the forms of child trafficking and labour exploitation and forced labour and devise standard methods of identifying and responding to these crimes.
- ▶ Improve the procedure for granting children the status of disabled in line with human rights standards.
- ▶ Assess the capacity of professionals working in the field of child welfare and child protection and increase the number of qualified professionals.
- ▶ Develop and enforce national standards for childcare, welfare and protection and facilitate civil society monitoring of the protection of children's rights.

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ABOUT THE OPEN SOCIETY GEORGIA FOUNDATION

The Open Society Georgia Foundation (OSGF) is a member of the Open Society Foundation's Network, which was set up in 1994. In more than twenty years of independence, Georgia has made progress in building a democratic society that strives to take its place as part of the European family of nations. Having undergone territorial conflicts, economic collapse and war with Russia, Georgia has nonetheless managed to turn itself from a near-failed state to a developing country with western aspirations. Through donor funding, partnership, training and helping to unlock the potential of talented Georgian young people, the OSGF has played a significant role in this process that continues to this day.

The OSGF is committed to the development of a free and democratic society where government is accountable to its citizens and politics serves people. The Foundation promotes a vision of society in which human rights are protected and people are respectful of diverse opinions and ethnic backgrounds. The OSGF supports growth of independent media, protection of human rights, respect for the rule of law, development of the health sector and social integration of ethnic minorities and marginalized groups.

The Foundation has a strong record of achievements in developing civil institutions and the media, promoting civil values, contributing to improvement of election environment, and increasing access to education and healthcare; it has also provided major support to European and national integration programs and the development of social equality.

The Foundation runs following national programs:

- ▶ EU integration
- ▶ Human rights
- ▶ Higher education

- ▶ Media support
- ▶ Public health
- ▶ Local democracy development

The Foundation actively cooperates with the Open Society Foundation's network programs.

The OSGF runs grant-making as well as operational programs. It finances non-governmental organizations, individuals and initiative groups.

