

Report on the Implementation of Georgia's European Neighbourhood Policy Action Plan



Georgian NGO Coalition

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Executive Summary

The European Neighbourhood Policy (ENP) provides a framework through which the EU can offer assistance and encourage political, economic and social reforms in its neighbours, both old and new. These reforms are intended to enhance democracy in the target countries, protect human rights, encourage economic development, and bring the countries into closer alignment with the EU. Georgia agreed to a set of reform priorities with the EU under the ENP in an individual action plan that was ratified in 2006.

The purpose of this report is for members of a Georgian NGO Coalition¹ to provide an analysis of the Georgian Government's implementation of the ENP Action Plan. The intention is not to be comprehensive, but to offer analysis on those areas that fall under the expertise of the coalition members. The Government of Georgia has already provided an assessment of its own performance for the January to June period of this year and so the report will also respond to that.

The report covers strengthening the rule of law, democracy and human rights (priority one), sustainable development, poverty reduction and environmental protection (priority three) and transport and energy (priority eight).

Priority Area 1: Strengthening the Rule of Law, Democracy and Human Rights

The bulk of the report focuses on the many issues that relate to the reforms in the democratic process, human rights and rule of law. There is a general consensus that there has been little development in this area over the last year. In 2008 under mounting international pressure President Saakashvili promised a 'new wave of democracy', which envisaged, among other things, increased powers to parliament, more opposition oversight, a freer media and reform of the country's judiciary.

A year on, the reality has been disappointing. Despite the re-introduction of limited political debate shows, all three national TV channels are clearly pro-government. Many of the most influential opposition parties continue to boycott parliament and the government has continued to pass constitutional amendments without consulting the commission charged with overseeing such changes. Negotiations over the electoral system ahead of local elections in 2009 are ongoing but have not produced any results.

Media

When President Saakashvili announced a 'new wave of democratic reforms' in his September 2008 state of the nation address, he acknowledged for the first time that the lack of media freedom 'remains a challenge for our democracy'. Today, according to assessments by *Reporters Without Borders* and *Freedom House*, Georgia's media is less free and pluralistic than it was before the Rose Revolution in 2003.

¹ Non-governmental organisations have been working on the ENP Action Plan monitoring since 2006 and in 2008 the Heinrich Boell Foundation, Transparency International Georgia (TI Georgia), the Georgian Young Lawyers Association (GYLA) and Green Alternative (GA) initiated an coalition to regularize that monitoring. This was joined in 2009 by International Society for Fair Elections and Democracy (ISFED) and the Centre for Strategic Research and Development of Georgia (CSR DG).

Since the government closed down the independent Imedi TV station in November 2007 there have been no real major sources of national independent (or pro-opposition) media. All the national terrestrial (non-satellite) channels are pro-government and the public broadcaster acts more like a state broadcaster than a real public service institution. To change this it is essential that the television watchdog agency and the public broadcaster are given significant freedom from political control. There is little sign of this happening at this time.

Elections

Shortcomings of electoral process remain a significant potential source of political instability. Lack of trust in the system led to popular protests after the January 2008 presidential election and also prompted a number of opposition parties to give up their parliamentary seats obtained in the May 2008 election. Currently the opposition and ruling party are involved in negotiations on changing the electoral law to improve the quality of elections.

One of the main issues that need to be addressed before the May election is election system for city mayors and Tbilisi city council (Sakrebulo). Presently mayors of big cities are not directly elected and Tbilisi has the so called 'winner takes all' proportional system that allowed the ruling party to obtain over 90 per cent of total proportional seats in the 2006 local government election when it received only 66 per cent of the vote.

Changes are required to the parliamentary election system as well. Under the current legislation, the Georgian parliament is made up of 150 members of whom 75 are elected through nationwide proportional vote and 75 are elected in single-mandate districts. The election law does not require the single-mandate districts to be of the same or even comparable size i.e. the election district with 4,000 votes and one with 140,000 votes both elect one MP. The OSCE/ODIHR recommended Georgia that, if the single-mandate system is retained, the boundaries of districts should be redrawn to ensure that the variations in the number of registered voters in each district do not exceed 10 per cent².

There are a number of other steps that need to be taken in order to develop Georgia's electoral system and enhance the general trust of public in the elections. First, the Central Election Commission needs to take serious steps to depoliticize. Second, voters' lists need to be developed more transparently. Third, it is essential that the government makes a serious effort to stamp out voter intimidation (which was a serious problem in 2008). Fourth, there needs to be a serious effort to ensure that government resources are not mobilised to help the incumbent. Finally, the government needs to ensure that in order to send the right message; violations are prosecuted to the full extent of the law.

Judiciary, Courts, Police and Penitentiary System

The European Neighbourhood Policy gives significant weight to the role of the criminal justice system in the operation of a lawful society. Therefore, this report gives significant consideration to the judiciary, court system, police and penitentiary.

In the judiciary, court system and the police, while significant legal and procedural changes have taken place their effect remains to be seen. In the judiciary a number of laws have now been passed to reduce interference in judicial decision-making. Politicians are now a lot less influential in choosing judges and it is explicitly illegal to try and influence a judge's decision. However, the court system continues to lack

² OSCE /ODIHR Election Observation Mission, *Georgia Parliamentary Elections 21 May 2008 Final Report*, p. 1.

public trust. In addition, the extremely high conviction rate and the failure of the legal system to prosecute, or even pursue, many high profile 'political' cases leaves legitimate concerns over its independence.

Specific concerns also continue about the high level of pre-trial detention and the legal provisions on criminal responsibility, which still considers a 12-year-old 'responsible' for some crimes.

In the police service too, formal changes have occurred but seem to have created little impact on police activities. There is now formal human-rights training that forms part of the police curriculum. However, the reporting year saw a sharp increase in the use of excessive force by the police officials. For example, on 6th May 2009, the police used plastic bullets against the demonstrators. On 15th June, peaceful demonstrators gathered in front of the main department of Ministry of Internal Affairs were attacked and beaten by policemen wearing civilian clothes. These instances were not followed by adequate investigation from the Prosecutor's Office.

In the penitentiary system there has been some improvement. A new code of conduct for the penitentiary system is currently going through its first hearing. However, in revisions to the draft code some of its more progressive elements have been removed so that it offers fewer protections to the prisoner, or rights to the victim, than originally envisaged.

Priority Area 3: Sustainable Development, Poverty Reduction and Environmental Protection

The analysis of 'sustainable development and environmental protection' offered by the NGO coalition, reflects their work over the year on a range of different projects. The report considers a range of different environmental issues, competition policy, food safety and trade unions.

General Social Protections in the Economic Field

In competition, food safety and trade unions the government of Georgia continues to offer very few protections to the purchaser, consumer or employee respectively. This, once again, reflects the government's general liberalisation agenda but has noticeable negative effects.

In food-safety the lack of standards results in Georgia holding some of the worst food-safety statistics in the world. In competition policy, the lack of anti-monopoly and anti-trust legislation probably impacts negatively on the cost of crucial goods like food, medicine and telecoms. Finally, the lack of employee protections is not only bad from a human rights point of view but may also discourage employers and employees from providing training and developing skill-sets.

Environmental Protection

In emphasizing 'sustainable development' Priority 3 of the ENP action plan explicitly combines the issues of environmental protection and economic growth. In general this has not been the Georgian government's approach. Their attitude towards sustainable development has largely been to focus on liberalising all aspects of the Georgian economy and leave the environmental protection for another day. This situation has not changed over the course of the last year.

The biggest concern comes from the general direction of government policy. In October of this year the government presented a comprehensive range of constitutional amendments which push their liberalisation agenda further than ever before. These new rules make it *constitutionally* difficult to enact

more environmental protection legislation and, more generally, suggests that the government is unlikely to be receptive to significant modifications of its policies anytime soon.

The ENP highlights the importance of both general environmental legislation and the importance of environmental legislation in particular sectors. In terms of general environmental protection, there has been consideration of legislative changes but no major changes have taken place. The second National Environmental Action Plan for 2008-2012 was completed in 2007 but has not yet been adopted and in July 2009 the Ministry of Environmental Protection and Natural Resources (MEPNR) stated that the document will not be adopted formally.

There is an initiative of the Ministry of Environment Protection and Natural Resources to develop an all-inclusive Environmental Code. The first working version of the code should become available for public soon.³ However, no concept note has been released and there is some concern that the code will only act as a legislative organisational exercise rather than an opportunity for the development of comprehensive and effective environmental protection.

Priority Area 8: Transport and Energy

The ENP Action plan envisaged considerable development in both transport and energy and highlighted the need for regional cooperation (within a largely Black Sea Regional Area) to facilitate the development of these sectors. These two sectors have become even more important in the aftermath of the conflict with Russia because of large proportion of post-war reconstruction money that has been allocated into these areas. At the post-war donors' conference, USD 659 million was pledged for roads and USD 621 million was pledged for energy projects.

The development of these areas certainly sees considerable opportunities for the Georgian economy. However, there has been wide-spread concern about the way in which new investment decisions are being made and potential new projects managed. In particular, there is little public consultation on either the setting of priorities or the implementation of projects. The Joint Needs Assessment that took place after the Georgia-Russia conflict did not have any public participation. The document it produced was only released a day before the conference so there was not even a space for public debate. This is not consistent with the Paris Declaration on Aid Effectiveness, which Georgia still has not joined.

The trend for low transparency and poor consultation has continued into the design phase of the projects. As massive infrastructure projects, both roads and energy (focusing on hydropower) can have massive ecological consequences. One of the mechanisms for avoiding these consequences is to involve the affected communities in discussions about them. For the most part this has not happened, and the Georgian government seems to have indicated that its principle focus at the current time is to achieve the projects at the lowest economic cost.

³ The relevant statements were made at the meeting held at the Ministry of Environmental Protection and Natural Resources on August 14, 2009.

Introduction

The European Neighbourhood Policy (ENP) provides a framework through which the EU can offer assistance and encourage political, economic and social reforms in its neighbours, both old and new. These reforms are intended to enhance democracy in the target countries, protect human rights, encourage economic development, and bring the countries into closer alignment with the EU. Georgia agreed to a set of reform priorities with the EU under the ENP in an individual action plan that was ratified in 2006. The plan covers a wide range of areas of Georgian domestic politics, economics, governance and security.

Civil society in Georgia has been actively involved in the development and monitoring of the ENP process from the beginning and its involvement has been essential in ensuring wider understanding of the ENP process, and wider participation in the development of the action plan. In September 2005, approximately 70 civil society organizations, with support of the Open Society-Georgia Foundation and the Heinrich Boell Foundation prepared recommendations to be considered in the development of the action plan.

Since 2006, the government and the EU have continued to update and evaluate the implementation of the action plan. In order to maintain civil society involvement, in 2006 the Open Society-Georgia Foundation, the Heinrich Boell Foundation and the Eurasia Foundation initiated a European Neighbourhood Policy monitoring group.⁴ As a part of this initiative the group prepared recommendations that were subsequently discussed with the European Commission and some of the comments were incorporated into their ENP progress report published in April 2008.⁵

While this involvement in the European Commission evaluation was useful it was also considered that civil society should maintain a separate evaluative voice. To that end, in 2008 the Heinrich Boell Foundation, Transparency International Georgia (TI), the Georgian Young Lawyers Association (GYLA) and Green Alternative (GA) initiated an informal coalition to monitor the implementation of the European Neighbourhood Policy in Georgia. This was joined in 2009 by International Society for Fair Elections and Democracy (ISFED) and the Centre for Strategic Research and Development of Georgia (CSRDG).

The purpose of this report is for members of a Georgian NGO Coalition to provide an analysis of the Georgian Government's implementation of the ENP Action Plan. The intention is not to be comprehensive, but to offer analysis on those areas that fall under the expertise of the coalition members. The Government of Georgia has already provided an assessment of its own performance for the January to June period of this year and so the report will also respond to that.

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⁴ This group releases a monthly bulletin entitled 'European Neighbourhood Policy and Georgia.' To support public debate, discussions on various issues regarding EU-Georgian relations are held periodically, where any interested person may take part (www.enp.ge).

⁵ Georgian Civil Society Overview of the EU-Georgia Action Plan Priorities 2007-2009.

It has been another difficult year for Georgia. The results of the combined with the financial crisis have taken a heavy toll on the economy. Post-war assistance has helped to sustain public finances and the government claims that recovery is already happening but the situation continues to be difficult.

At the same time political unrest has been considerable. In April, the opposition started a series of protests that were intended to secure the resignation of President Saakashvili. At their height these protests attracted somewhere between 50-80,000 people, depending on whose numbers you believe. Numbers dwindled sharply after the first few weeks with a handful of regular protestors occupying many 'cages' across the city. The cages were supposed to symbolise the lack of freedom in the country and blocked Tbilisi's main street throughout the summer.

During these protests the government initially showed restraint. However, there were several occasions when members of the opposition were beaten and blamed the authorities. On 6th May 2009, the Police used plastic bullets against the demonstrators. This was not authorised under the legislation in force at the time. On 15th June, peaceful demonstrators gathered in front of the Main Department of Ministry of Internal Affairs were attacked and beaten by policemen wearing civilian clothes. As a result several sustained serious injuries. No one was prosecuted.

Towards the end of the summer, the protest had largely ended and the government announced that it would bring forward local elections from November to May of 2009. Some members of the opposition, notably the opposition 'Alliance' headed by Irakli Alasania (a former UN Ambassador to Georgia) joined working groups on electoral reforms, constitutional reform and reform to the public broadcaster. None of these working groups have yet produced any results and at the time of writing this report a positive outcome is looking doubtful.

Priority Area 1: Strengthening the Rule of Law, Democracy and Human Rights

Since the 2003 Rose Revolution, Georgia has been generally considered the most free and democratic state in the South Caucasus region and, at various points, a 'beacon of democracy' for the whole former soviet space. In November 2007 the government significantly tarnished that reputation when they violently broke up an opposition rally and in the process closed down the independent Imedi TV channel. Partially in an attempt to salvage that reputation and to re-establish the government's credibility President Saakashvili held Presidential and Parliamentary elections in January and May of 2008.

As the NGO coalition argued in our last report last year, these elections were fraught with problems and did not restore confidence in the way the government had hoped. Acknowledging that democratic reforms needed to once again become a focus of government attention, in September 2008, President Saakashvili announced a 'New Wave of Democratic Reforms'. This envisaged, among other things, increased powers to parliament, more opposition oversight, a freer media and reform of the country's judiciary.

A year on, the reality has been disappointing. Despite the re-introduction of limited political debate shows, all three national TV channels are clearly pro-government. Many of the most influential opposition parties continue to boycott parliament and the government has continued to pass constitutional amendments without consulting the commission charged with overseeing such changes.

Negotiations over the electoral system ahead of local elections in 2009 are ongoing but have not produced any results.

What is certain is that the 'New Wave' has so far failed to bring Georgia significantly closer to fulfilling its commitments to democratic reform. None of the reforms have envisaged the government reducing its monopoly on power. Most of the measures aim to establish consultation and dialogue, but until we see the results of the discussions it is hard to know if the government is serious about considering the opinions of its opponents. For real progress to be achieved, the government has to do more than establish commissions. It has to be prepared to share power, or limit its own power in key ways. In particular, it has to ensure that key institutions, such as the judiciary, the electoral commission and the public broadcaster are truly independent.

Freedom of Media

When President Saakashvili announced about the 'new wave of democratic reforms', he acknowledged for the first time that the lack of media freedom 'remains a challenge for our democracy'. Today, according to assessments by *Reporters Without Borders* and *Freedom House*, Georgia's media is less free and pluralistic than it was before the Rose Revolution in 2003.

This assessment is markedly different to the impression that the Georgian Government tries to give. In their June assessment of the ENP action plan the government highlights three reforms; the development of a Georgian version of C-SPAN/BBC-Parliament Channel, the license that was given to the largely pro-opposition TV station *Maestro* to air political talk-shows, and the expansion of political TV output more generally.⁶

All of these statements are true but their impact on the media environment has been negligible because all of the national terrestrial (non-satellite) TV channels are pro-government.⁷ While it is true that *Maestro*, which is largely 'pro-opposition', does now have political programming, it is not seen outside of Tbilisi. In addition to the pro-government bias in national programming, many of the small regional channels operating outside Tbilisi are linked to local administrations. In addition, even if a Georgian version of CSPAN were to emerge, it would be unlikely to attract much of an audience so would probably not have an effect on the political environment.

It is hard to be clear of the exact source of the bias. The television stations are private but Georgian television never makes a profit so is usually subsidized by its owners. However, it remains unclear, who really owns and controls most of Georgia's television stations. Georgia's current regulation of the broadcasting sector has proven insufficient to ensure a transparent media ownership regime and to promote a competitive, pluralistic television market.

This problem could be addressed by an amendment to the broadcasting law, in order to ensure sufficient information about the shareholder structure of license holders and their owners is reported to the Georgian National Communication Commission (GNCC), the regulator responsible for electronic communication. The information on TV ownership should also be made accessible to the general public.

⁶ Government of Georgia (June 2009), *Progress Report on the ENP Action Plan Implementation*, p.1.

⁷ The private national pro-government channels Rustavi 2 (36 percent) and Imedi (25 percent) dominate the television market with Georgian Public Broadcaster's (GPB) Channel 1. *Maestro* has received a license that allows them to broadcast a signal via satellite but so far, the station has been unable to pay for the transmission of the signal and even if it could, satellite dishes are fairly rare in Georgia.

However, the GNCC itself is not perceived as a truly independent regulatory body. The regulator has not issued a new broadcasting license since spring 2008, preventing new stations from entering the market. An effort should be made to depoliticize the regulator and increase its credibility by revising the process of how its commissioners are appointed. The management of the GNCC is currently selected by the President and confirmed by Parliament with a simple majority.

There is also an urgent need for a comprehensive reform of the Georgian Public Broadcaster (GPB), which currently operates more like a state broadcaster than a real public service institution. President Saakashvili's plan to enlarge the broadcaster's board from nine to 15 members, allowing opposition parties to appoint seven of the board members, is likely to increase the politicization of the GPB's reporting. A strengthened Channel 1, showing informative and critical news and reports, could provide important momentum and contribute to a more pluralistic television landscape in Georgia.

One way to depoliticize the board could be to grant civil society institutions the sole right to nominate candidates for it. Candidates should be chosen after a public hearing and a transparent selection process and be confirmed by a two-thirds majority of the Parliament. Furthermore, there is a need to reform the broadcaster's financing model. Currently, the government seems to somewhat arbitrarily decide on the broadcaster's funding, which comes from the national budget. The GPB's editorial independence is thus not ensured. Intensive thought should be given to the idea of funding the GPB.

Electoral Reform

The ENP Action Plan requires Georgia to “ensure that the local (2006), parliamentary (2008) and presidential (2009) elections in Georgia are conducted in accordance with international standards, through implementation of OSCE/ODIHR and Council of Europe recommendations, notably regarding the need for a reliable voter registry and a functioning and transparent electoral commission⁸”.

Yet the shortcomings of electoral process remain a significant potential source of political instability. The lack of trust in the system led to popular protests after the January 2008 presidential election and also prompted a number of opposition parties to give up their parliamentary seats obtained in the May 2008 election.

Currently the opposition and ruling party are involved in negotiations on changing the electoral law to improve the quality of elections. This negotiation is expected to be finalized and the law amended by the end of 2009 so that there is ample time prior to the planned May 2010 local government elections for the election administration, political parties and observer organizations to prepare.

One of the main issues that need to be addressed before the May election is election system for city mayors and Tbilisi city council (Sakrebulo). Presently mayors of big cities are not directly elected and Tbilisi has the so called “winner takes all” proportional system that allowed the ruling party to obtain over 90 per cent of total proportional seats in the 2006 local government election when it received only 66 per cent of the vote.

Changes are required to the parliamentary election system as well. Under the current legislation, the Georgian parliament is made up of 150 members of whom 75 are elected through nationwide

⁸ EU/Georgia Action Plan, Priority Area 1, p. 5.

proportional vote and 75 are elected in single-mandate districts. The election law does not require the single-mandate districts to be of the same or even comparable size i.e. the election district with 4,000 votes and one with 140,000 votes both elect one MP. The OSCE/ODIHR recommended that, if the single-mandate system is retained, the boundaries of districts should be redrawn to ensure that the variations in the number of registered voters in each district do not exceed 10 per cent.⁹

There are a number of other steps that need to be taken in order to develop Georgia's electoral system and enhance the general trust of public in the elections. First of all, the central election commission (CEC) members should be changed and it should be made up of impartial professionals selected through an open and transparent process and consensus between the government and the opposition. The ruling party should not dominate in the central election commission.

The process of preparation of voter lists needs to be rendered more transparent and the procedures for requesting corrections to the lists should be improved so that the inaccuracies identified by voters and election subjects are addressed. Also, the authorities must ensure that the voter lists include accurate information about the citizens living abroad. Article 9 of the election law requires the "out of country" comment to be included next to the names of such citizens; however, this requirement was often ignored in the 2008 elections.

The use of administrative resources to the ruling party's advantage during election campaign has been another recurrent problem in Georgia. In its report on the 5 January 2008 presidential election, the OSCE/ODIHR Election Observation Mission noted that the campaign was "overshadowed by widespread allegations of intimidation and pressure, among others on public sector employees and opposition activists" and the "distinction between State activities and the campaign of the ruling party candidate was blurred¹⁰". In order to address this problem it is necessary to introduce stricter restrictions on the activities of both the political and the public officials during the campaign, to prevent the use of state funds to the advantage of individual election subjects and to investigate all allegations of pressure on the state employees and the opposition's activists.

During the two 2008 elections over 70 special polling stations were established in military units, hospitals, pre-trial detention centers and prisons. The ballots from these stations were taken to a regular polling station and counted together. In order to be able to identify potential manipulation of elections in these stations, precinct election commissions (PEC) should be required to fill in separate protocols for the votes cast there. Besides, the law should be amended to grant election subjects' access to military units during the campaign.

Domestic and international observer organizations noted significant irregularities in the handling of election-day related complaints by the election administration and courts. PECs often refused to register appeals. Complicated and ambiguous appeal procedures and short timeframes created additional hurdles. Thus, it is necessary to correct the appeal provisions and to enhance the impartiality of the election administration and courts in the process of adjudication.

Kvemo Kartli and Samtskhe-Javakheti, the provinces populated by the largest ethnic minority groups, remained problematic places as far as administering elections is concerned. Violations ranged from the

⁹ OSCE /ODIHR Election Observation Mission, *Georgia Parliamentary Elections 21 May 2008 Final Report*, p. 1.

¹⁰ OSCE/ODIHR Election Observation Mission, *Georgia Extraordinary Presidential Election 5 January 2008, Final Report*, p. 1.

low qualification of commission members to the so-called carousel voting. Additional efforts are required to protect PECs and voters in minority areas from pressure from local authorities, as well as to increase PEC members' competencies.

Finally, to improve the overall quality of the elections, the authorities need to identify and hold responsible the individuals who have violated the law. Changes to the legislative framework will have little effect, unless those who break the law are duly punished.

Reform of the Legal and Judicial System

The Judiciary

Despite the fact that reform of the judicial system is one of the top priorities of the ENP Action Plan, the judiciary still remains one of the least trusted public institutions.¹¹ The courts' impartiality is most seriously questioned when it comes to the adjudication of cases where it is believed that the authorities have some 'political interest'. The rate of acquittals in criminal cases remains low below 0.2%¹² and judges are thought to follow instructions from the Executive branch in the high profile cases of administrative detention.

The need for more independent judiciary is recognised and restated by the high ranking officials, including the President of Georgia and the Head of the Supreme Court. To address the issue, the President, promised a 'new wave of democratic reforms' in September 2008. This proposed amendments to the *Law on Rules of Communication with Judges of Common Courts*.¹³ These amendments increase the rate of the fine for illegal correspondence with a judge and clarify the scope of the law extending it to officials serving in political positions. This explicitly includes those in positions of power because there is a strong feeling that the personal insecurity of the judges is a major obstacle to their independence.

However, the initiative will not prove effective without more comprehensive approach to the issue. Official records show that the number of prosecutions for illegal communication with judges is extremely low,¹⁴ even though the law has been in effect for two years. It seems unlikely that the increased fine will increase these prosecutions.

A year after the announcement of a "new wave of democratic reforms", the only promise that has been fulfilled in the area of judiciary is the inclusion of a member of the Parliamentary Opposition in the High Council of Justice. The rest of the promises that include the life-long appointment of judges and introduction of jury trials are not in place yet. The principle of life-long appointment of the judges was approved by the Constitutional Commission¹⁵, however, the draft amendments to the law are not prepared yet. The jury trials will be introduced after the adoption of a new Criminal Procedural Code on 1 July 2012.

¹¹ According to the UNDP sponsored survey carried out by IPM in 2009, the level of trust in the judiciary (17,10%) was lower than that in the police (27,80%).

¹² Data from 2008 according to the statistics of the Supreme Court of Georgia, full statistical information can be found at http://www.supremecourt.ge/default.aspx?sec_id=1083&lang=1, last accessed on 23 November, 2009

¹³ The draft is in the Legal Issues Committee of the Parliament under discussion.

¹⁴ The Law entered into force in 2007. According to the information from the High Council of Justice, only two private individuals and a lawyer were fined for illegal communication with judges.

¹⁵ Created by the Presidential Decree # 348 of 23 June 2009.

Though these initiatives are generally positive, concerns still remain. First, life-long appointment of the judges, if they occur, should be conducted with a high-level of public scrutiny. Second, the procedure for the appointment and dismissal of the judges, particularly relevant provisions of the Law on Disciplinary Proceedings against Judges of Common Courts, should be revised to ensure safeguards against arbitrary removal and protection from political pressure. Third, the High Council of Justice needs to be more inclusive. Inclusion of one member of the opposition could improve the transparency of the Council's work, but to enable effective reform of the body other representatives of the legal profession should also be included (e.g. members of the Bar).

Jury trials should increase the level of public participation in the justice, but a wide public information campaign should be conducted in advance of the reform and clear mechanisms for the independence and security of the lay jurors should be concretely guaranteed. Without these measures in place, jury trials and judges appointed for life will not serve as a precondition for the independence and impartiality of the Judiciary.

The New Criminal Procedural Code

Under priority one of the ENP action plan, there is an explicit ambition to 'Adopt a new Criminal Procedural Code (by 2007)'.¹⁶ A new criminal procedural code is currently in its third hearing with the Parliament of Georgia, after long delays. According to the Government of Georgia Progress Report on the ENP Action Plan, the draft code was discussed under the auspices of the Council of Europe and it was stated that 'according to the report of the Council of Europe experts its terms are fully compliant with European human rights norms'.¹⁷

While the Council of Europe (CoE) was generally positive about the new code, it is certainly not true to say that it is 'fully compliant with European Human Rights norms'. The CoE experts point out that there are still a range of issues that the new code needs to address. They highlight three key areas. First, they say that on victim's rights the present draft of the CPC 'goes against the present trend in Europe that gives a growing role to the victim in criminal proceedings'.¹⁸ In particular, the CoE agreed with GYLA's analysis, that the victim should have some role in the plea-bargain process. Second, they argue that the prosecution and defence still do not have equal rights in the collection of evidence.

Finally, the current draft of the CPC abolishes the role of 'court witnesses'. The CoE are generally critical of this development, arguing that 'without being the absolute guarantee, the presence of witness is an additional guarantee in a fair trial'.¹⁹ However, even though we agree with this analysis it is important to note that in the majority of the controversial criminal or administrative detention cases, witnesses were not invited anyway.

In addition to the Council of Europe recommendations it is clear that if the novelties of the code are to be effectively utilized then it will be necessary to conduct a wide-scale information campaign to ensure that all stakeholders, including not only lawyers and prosecutors but also the general public are aware of it.

¹⁶ EU/Georgia Action Plan, p. 4.

¹⁷ Government of Georgia (June 2009), *Progress Report on the ENP Action Plan Implementation*, p. 2.

¹⁸ Expert meeting on the Draft Code of Criminal procedure of Georgia, Paris, 28-29 January 2009, Conclusions provided by the Experts: Olivier de Baynsat, Pierre Cornu, 3.1. Role of the victim in the criminal proceedings.

¹⁹ *Ibid*, 4.6. Introduce witnesses for searches.

The Use of Non-Custodial Measures

The Government is keen to highlight its success in promoting non-custodial pre-trial measures. According to its own progress report,

Deprivation of liberty, including arrest, detention and imprisonment is considered to be the measure of last resort which can be used for the shortest period of time. The referral to alternative schemes is strongly encouraged.....the use of non-custodial measures as an alternative to pre-trial detention is progressively increased.²⁰

Our analysis directly contradicts this claim and show that levels of pre-trial detention have actually gone up. While the indicator of imprisonment was 43% in 2007, in 2008 it increased to 45%.²¹

Year	Applied Preventive Measure		Total
	<i>Imprisonment</i>	<i>Non-imprisonment</i>	
2008	7 996 (45.30%)	9 656 (54.70%)	17 652
2007	8 929 (43.73%)	11 488 (56.27%)	20 417
2006	10 367 (58%)	7 505 (42%)	17 872

The chart below illustrates that in 2008 courts continued to apply imprisonment, bail with arrest guarantee and release on bail as a rule, while the indicator of application of other measures is extremely low.

Pre-Trial measure	Result of Discussion		Total
	Refused	Satisfied	
Imprisonment	392	7 996	8 388 (46%)
Release on bail	130	6 976	7 106 (39%)
Bail with arrest guarantee	56	2 542	2 598 (14%)
Personal guarantee	0	101	101 (0.55%)
Transfer of a juvenile into supervision	1	15	16 (0.08%)
Supervision of headquarters over the activities of a military officer	22	0	22 (0.12%)

Like in 2007, in 2008 usage of the institute of 'bail with arrest guarantee' is high, however, due to the high cost of bail (minimum rate for bail is 2000 GEL), the measure is partially custodial since the person remains in detention while he/she pays the amount of bail provided, and it is highly punitive. In general, the courts grant prosecutor's motion for imprisonment in 95%, 7996 cases out of 8388 in 2008.

Another effort for reducing the use of custodial sentences is to encourage early release. While there have been some improvements in the parole system to make early release easier, the overall trend is very negative. On the positive side in December 2008 the criminal code was liberalised so that the served part of the sentence is calculated not out of the total sentence but out of the term of sentence to

²⁰ Government of Georgia (June 2009), *Progress Report on the ENP Action Plan Implementation*, p. 3.

²¹ The apparatus of the Main Prosecutor's Office, "Statistical Research Regarding Criminal Situation in the Country", November 2008.

be in prison served.²² This makes early release more likely. In addition, the inclusion of the member of the non-governmental sector in the Standing Commission of the Ministry of Penitentiary, Probation and Legal Issues is also a positive step forward for making the work of the Commission more transparent.

However, in 2008, the general trend on early release was alarming. According to the Supreme Court of Georgia, only 309 people were released in 2008 as the result of conditional release, amnesty or presidential pardon.

In 2009, the state made a commitment to revise the age of criminal responsibility and raise it from 12 to 14 years. The Government progress report on the ENP Action Plan suggests that this has been fulfilled.²³ However, particularly in the case of serious crimes like murder, assault, rape or carrying of a knife the lower age remains in force.²⁴ In order to align with international practice the age of criminal responsibility should be raised for all crimes.

Legal Aid

The ENP Action Plan highlights the need for 'improved access to justice notably through the establishment of an effective legal aid system'.²⁵ Although the initial intention had been to provide comprehensive legal aid from 1 January 2009, this has been delayed until 1 January 2011. It is not clear whether the state will be able to deliver the services in civil and administrative cases starting from 2011. In the Action Plan for 2009-2013 on Legal Aid elaborated within the Criminal Justice Reform Inter-Agency Coordination Council, provision of state legal service in civil and administrative cases is not stipulated.

In addition, the structure of the legal aid that is currently envisaged offers cause for concern. In the concept elaborated in 2004, state legal aid was expected to be provided through an independent entity in order to avoid conflict of interest. The independence of the service was confirmed by the Criminal Justice Legislation Reform Strategy in 2005.

However, at the current time legal aid is provided through the newly formed Ministry of Penitentiary, Probation and Legal Aid Service. This creates potential conflicts of interest in cases where the government is the plaintiff. For example, since the Ministry overseeing legal aid includes the prison service, this could create a conflict of interest as legal aid recipients could be convicted felons who claim to be the victims of the abuse by the prison administration. For ensuring the independence of the State Legal Aid Service it is advisable to facilitate its formation as an independent entity of public law or move it under the Judiciary or Public Defender's Office.

Procedural Agreement (*saprotseso shetankhmeba*)

Procedural agreement was introduced into Georgia in 2004 to high levels of both domestic and international criticism. While changes were made in response to critics, serious problems remain. Conviction rates in criminal cases approach 99%. This suggests a prosecutorial bias in the system that is incompatible with the internationally recognised rights of defendants. Furthermore, the large revenues

²² In the Georgian system the split between definite imprisonment and conditional imprisonment will be stipulated by the judge. So that someone facing a 10 year term will be told that, for example, 2yrs of it are conditional. This law counted the time served against the required sentence making early release more likely.

²³ Government of Georgia (June 2009), *Progress Report on the ENP Action Plan Implementation*, p. 2.

²⁴ Article 33 of the Criminal Code of Georgia, amended 23 May, 2007.

²⁵ Georgia/EU Action Plan, p. 4.

gained by the state from procedural agreements (over GEL 33 million entered state coffers between January and August 2009) have prompted suspicion that the motive behind procedural agreements is fundraising rather than the creation of an effective criminal justice system.

Nevertheless, in the short term, the abolition of procedural agreements is not a realistic option in a country with a high judicial caseload and prisons operating at 130% capacity. Reform, however, is required, not only of procedural agreements but of the entire criminal justice system. Judges must be afforded more independence so that defendants are guaranteed a genuine choice between procedural agreement and a full-length court procedure that is fair and impartial and which does not result in a near-automatic conviction. The financial element should also be reduced since the idea of 'cash for freedom' is not compatible with the values of fair criminal justice. The level of transparency must also be increased so that the actions of prosecutors, defendants and judges can be subject to greater scrutiny.

Human Rights and Fundamental Freedoms

The ENP Action Plan puts considerable emphasis on human rights and fundamental freedoms, and highlights the importance of the police, court system and penitentiary system in achieving this. Georgia's own progress report regarding the implementation of the ENP Action Plan from January – June 2009 includes significant information regarding protection of human rights and fundamental freedoms.²⁶ The Progress Report places particular attention on the strengthening respect of human rights within the system of Ministry of Internal Affairs. They specifically highlight the trainings for police officers, the strict supervision and prevention of misconduct from the policemen and the renovation of the infrastructure of the temporary detention isolation. The report will briefly deal with each of these in turn.

Police Service

The ENP Action Plan highlights the importance of reforms in the Police Service to the maintenance of human rights. In particular, it highlights the importance of reforms to develop human rights training for the police and efforts to ensure their impartiality generally.²⁷ The progress report claims that these goals have been achieved. However, in spite of increased training the police continue to be involved in questionable practices, particularly in relation to the treatment of opponents of the ruling party.

At the Police Academy of the MIA a human rights course is now part of the baseline training. However, the Georgian Government Progress Report further argues that,

Due to the extensive training, detailed guidelines and regulations given to the police units, and the close supervision over their execution, violations of human rights by police officers, and the police misconduct in general, decreased to the minimum; nowadays, the violations represent rather single and sporadic acts and they are followed by the severe response from the Ministry.²⁸

This is not true. The reporting year saw a sharp increase in the use of excessive force by the police officials. These instances were not followed by adequate investigation from the Prosecutor's Office. On 6th May 2009, the Police used plastic bullets against the demonstrators. This was not authorised under

²⁶ *Georgia's Progress Report on Implementation of the ENP Action Plan (January-June, 2009)*, 1.1.4. Human Rights and Fundamental Freedoms, p. 4.

²⁷ Georgia/EU Action Plan, p. 4.

²⁸ Government of Georgia (June 2009), *Progress Report on the ENP Action Plan Implementation*, p. 5.

the legislation at the time. On 15th June, peaceful demonstrators gathered in front of the Main Department of Ministry of Internal Affairs were attacked and beaten by policemen wearing civilian clothes. As a result several sustained serious injuries. However, the authorities failed to initiate criminal proceedings against those involved in the attack. According to the Deputy Minister of Internal Affairs only seven policemen were subject to disciplinary sanction. However, their names were not disclosed to the public.²⁹

The authorities also failed to effectively investigate the cases of repeated attacks against peaceful demonstrators who participated in the continuous demonstrations held after 9 April by the political opposition.

Infrastructure of the Temporary Detention Isolation Units

According to the established practices, administratively detained persons serve their sentences in temporary detention Isolation Units. While the Law on Imprisonment regulates the basic rights of convicted prisoners there is no equivalent regulation for those sentenced to administrative imprisonment. As a result the minimum standards of imprisonment, like space, exercise, wash facilities and visiting rights do not apply. This is particularly problematic because under the recent amendments introduced to the Code of Administrative Offences the period of administrative detention has been increased from 30 to 90 days.

The Progress Report provided by the Georgian government states that the 'vast majority of the [Temporary Detention Isolation units] have been renovated and all of the Isolation units operated by MIA nowadays already correspond to the minimum international standards'.³⁰ However, according to the reports of the Public Defender, some of the Temporary Detention Isolation units do not meet any standards, even the most basic.

According to the public information received from the MIA, out of 45 Temporary Detention Isolation Units 11 have been renovated and three are in the process of renovation. However, even in the renovated Isolation Units, the ventilation and heating systems are not functioning properly, cells are do not receive enough daylight, and level of humidity is very high. Some cells are reported to be overcrowded while others are used to apply solitary confinement as a punitive measure

Penitentiary System

The penitentiary system is also essential to the protection of right to justice and human rights. For that reason the ENP action plan explicitly highlights the need for reform in the penitentiary service. A range of elements have been under consideration to bring the penitentiary system into line with European standards. This includes a code of conduct and an increase in the age of criminal responsibility. Each of these has been problematic in their application.

Code of Imprisonment

In accordance with the Action Plan 2008-2009 on the Fight against Torture, Inhuman, Cruel or Degrading Treatment or Punishment in Georgia the Parliament of Georgia was obliged to adopt the Code of

²⁹ GYLA requested the names through public information act; appealed the inaction of the Ministry through an administrative appeal; after refusal a lawsuit against the MIA was submitted to the City Court; Case is pending at this stage.

³⁰ Government of Georgia (June 2009), *Progress Report on the ENP Action Plan Implementation*, p. 5.

Imprisonment by the first half of 2009. The first draft was presented to the Parliament on March 29, 2007; however, the legislature did not adopt the Code at that time.

Currently, the revised draft is going through its first hearing. However, this draft has removed some of the more progressive provisions of the first version. For example, the current draft does not contain the right to long visits for family members. In addition, the draft code was intended to be a progressive step forward to improving conditions of convicted prisoners. However, in some areas it does not meet basic international standards. In particular the following rights need to be amended: the right to long family visits, the freedom of correspondence, the provision for adequate space and living conditions and the right to healthcare.

In addition, the draft introduces concept of administrative imprisonment for disciplinary misconduct. The provision, according to which, term of administrative imprisonment for convicted prisoners could be 90 days a year (which is not included in the imprisonment term), raises particular concerns as it might lead to 'indefinite' imprisonment. The relevant section of the draft code should be substantially revised or removed.

Local governance

Under priority area 1 of the ENP Action Plan is the need to 'finalise and implement a strategy and programme for local government reform (the "Law on Self Governance"), in accordance with Council of Europe recommendations'.³¹ Like many other areas covered in this report, this objective is marked more by discussion of reform than reform itself. While there have been significant bodies set up to discuss decentralisation of government, and the newly formed Ministry of Regional Development and Infrastructure has been working hard on the subject, no devolution of power has occurred in relation to the authorities, tax raising or management capacity of municipal government.

The Regional Development Commission of Georgia, which started its work on 18 December 2008, has completed the *Regional Development Strategy Diagnostic Report*, covering a number of municipal development issues. However, the Government of Georgia has not yet formulated its official policy on regional development and no action plan for regional development has been adopted yet. A concept note on decentralisation was prepared in 2007 and has been amended several times, but has not been adopted as a government strategy.

No major legislative changes have occurred in the last year on the fiscal independence of self-governing entities. The majority of projects aimed at the improvement of local infrastructure which are financed via the local entities' budgets are in reality financed from the state budget. Local tax-raising continues to be a problem since local taxes are so small and the central authority (that actually collects the taxes) considers them to be a low priority.

The process of transferring property of local importance (such as forest and water resources or rural agricultural lands) from state ownership to self-government entities has not yet been completed. This is likely to hinder effective planning and implementation of local economic policies. Also, local governments as owners are limited in their ability to utilise the property. Specifically, under the current law in force, the President of Georgia still has the exclusive authority to privatise a property of a municipal entity.

³¹ EU/Georgia Action Plan, p. 5.

On 29 January 2009 a new law on the Chamber of Control entered into force, according to which the bodies of self-government entities came within the scope of financial-economic controls of the Chamber of Control. This is the centralisation of an audit function that had been the responsibility of the local authority so will not help decentralisation directly. However, if the Chamber of Control is free from political influence and functions transparently, then it will definitely have a positive impact in guaranteeing the financial and economic control of local government bodies.

Citizen participation in self-government is still very low. According to the law on local self-government, a special law should have been adopted by 1 September 2006 to provide for direct participation of society in self-government. However, this law has not been adopted yet.

During the period covered by this report, a State Constitutional Commission was established by the initiative of the Georgian Government with a goal to prepare a draft constitutional law on self-government. A working group on local self-governance and territorial formation of the state has been created in the framework of the Commission's structure. One of the goals of the group included defining the scope and substance of self-government in the Georgian constitution.

Priority Area 3: Sustainable Development, Poverty Reduction and Environmental Protection

Priority Area 3 of the ENP action plan explicitly combines the issues of economic growth with social and environmental protection. The reason for this is to ensure that the concepts of equity and sustainability are built into any economic development strategy. In general this has not been the Georgian government's approach. Their attitude towards sustainable development has largely been to focus on liberalising all aspects of the Georgian economy and leave social and environmental protection for another day.

In October 2009 the President made an announcement about the Act on Economic Freedom. According to his proposal, Georgia will amend its constitution, to make its liberal economics part of Georgia's constitution. The proposed amendments to the constitution would require:

- Any government that wanted to make tax increases would first have to put the subject to a referendum;
- Prohibition on the creation of new regulatory organs;
- Prohibition of new licenses and permits;
- That the ratio of budgetary expenses to GDP could not exceed 30%;
- That the debt to GDP ratio could not exceed 60%;
- That a budgetary deficit not exceeding 3% GDP.

In relation to the ENP, the prohibition of creation of new regulatory organs and new licenses/permits is very important. It is unclear whether or not this initiative would allow a possibility of expanding current regulatory functions. For example, and relevant for this report, it may preclude the expansion of protection on environmental issues, competition policy, food safety or labour protection. This is an important issue because convergence with EU legislation will almost certainly require new regulations in these areas.

General environmental regulation and protection

The government's general reform agenda has seen the systematic reduction or abolition of requirements that relate to environmental protection, oversight and licensing of potentially environmentally damaging projects, public participation and consultancy. This has left the key areas of society vulnerable to a whole host of potential environmental problems.

The ENP highlights the need to 'Strengthen administrative structures and procedures to ensure strategic planning of environment issues and coordination between relevant actors'.³² This section will look at the general level of environmental legislation in Georgia.

There has been little improvement in the general environmental regulation in the reporting period. The second National Environmental Action Plan for 2008-2012 was completed in 2007 but has not yet been adopted and in July 2009 the Ministry of Environmental Protection and Natural Resources (MEPNR) stated that the document will not be adopted formally. The ministry has said that instead it will prepare another one with the help of the Dutch government.

Environmental Code

There is an initiative of the Ministry of Environmental Protection and Natural Resources to develop an all-inclusive Environmental Code. The first working version of the code should become available for public soon³³. Public consultations will apparently last for six months. However, the form and timing of the code are entirely unclear at this time.

For a start it is not clear exactly what benefit the central codification of environmental legislation will produce since no concept paper has been produced to form the basis of public consultations. One concern is that the code will have extremely limited aims and will see itself as a principally a mechanism for the eradication of ambiguities, gaps and legal contradictions. However, the primary goal of a new code should be to strengthen the instruments and procedures that provide sustainable development, environmental protection and sustainable use of natural resources, especially those that were either abolished or significantly weakened after 2003.

Unfortunately, neither experience of this government, nor recent developments give ground for optimism. As already discussed economic liberalism in Georgia has tended to result in the removal of environmental protections and there are strong suspicions in the environmental community in Georgia that the constitutional changes highlighted above may even trigger further weakening of environmental regulations.

Given the uncertainty that exists over the form and timing of future grand environmental legislation, like the National Environmental Code and the Environmental Action Plan it is therefore essential to continue working to improve the current legislation in parallel with working on the environmental code. It is important that the aspiration to produce a code is not used as an excuse to derail other environmental reforms since it is unclear when the code.

³² *EU/Georgia Action Plan*, p. 7.

³³ The relevant statements were made at the meeting held at the Ministry of Environmental Protection and Natural Resources on August 14, 2009.

One area requiring particular attention is that of Environmental Impact Assessment. This system was critically weakened by the post Rose Revolution reforms and no effort has so far been made to improve legislation and procedures nor to strengthen structures. It is promising to read in the governmental progress report that the Dutch government may provide assistance in the improvement of EIA system in Georgia. The progress report considers the project as a preparatory instrument for ratification of UNECE Convention on Environmental Impact Assessment in Transboundary Context. However, at the current time, Georgia's EIA standards are a long way from international standards and have not improved in recent years.

The administration of environmental protection

The state agency responsible for environmental permitting has not improved since January 2009, especially in terms of the allocation of human and financial resources. The enforcement structure (the Inspectorate for Environmental Protection of the same ministry) was in a somewhat better position and here progress was noticeable during 2007-2008, though problems with the allocation of resources still remained. It should be noted that at the end of 2008 management team and part of the staff was changed at the inspectorate; this has influenced activities and plans of the inspectorate.

The Minister himself tries to popularize the environmental protection through the ministry's public relation efforts. However, the Ministry still faces a lack of strategic vision and lacks resources.

International Environmental Legislation

The Georgian Government has only ratified one international environmental convention since joining the ENP. In September 2008 they ratified the Cartagena Protocol, an international convention aimed at protecting biodiversity. This had been made a condition of the European Commission extending its preferential GSP+ trade provision to Georgia. However, at this time the measures of the convention have not been implemented into national legislation.

As it is stated in the progress report of the Georgian government, the government is taking certain preparatory steps for ratification of some of the UN ECE conventions and this should certainly be welcomed.

Sectoral reforms

A second clear environmental objective of the ENP is to 'Take steps to improve integration of environmental considerations into other policy sectors'.³⁴ However, environmental legislation as it related to crucial sectors like waste and water did not change in the reporting period.

In August 2009 quite important changes were made in the forest-use regulating legislation to strengthen the environmental safeguards and increase the consultation requirements of those using forests.³⁵ These legislative amendments represent a rare instance of the government using public consultations in environmental issues.

That said, in the forestry sector there were also some negative movements. Amendments to the Forest Code were submitted to the Parliament in September. Under the current law cutting trees from a

³⁴ *EU/Georgia Action Plan*, p. 24.

³⁵ The amendments made on August 19, 2009 to the regulation "On the Rules and Terms of Issuing Licenses on Forest Use" approved by decree 132 of the Government of Georgia dated August 11, 2005.

mountain slope over 30 degrees is prohibited as a measure to stop erosion. However, under the new amendment it will be permissible to cut trees on a slope from 30-35 degrees 'while implementing the projects of special state importance'. If this practice is used widely it could create erosion problems. The Ministry has not discussed these amendments with the other stakeholders. These legislative amendments are initiated to ensure that *The Black Sea Regional Energy Transmission Project* (discussed below) can be initiated without "barriers" for its implementation³⁶.

In 2009 a government/NGO project was completed to improve the management of chemicals in Georgia.³⁷ This project updated a national chemicals management profile, conducted a national Strategic Approach to International Chemicals Management (SAICM) capacity assessment, and with the involvement of stakeholders set priorities for SAICM implementation in Georgia. The project did not envisage development of a national chemicals management programme, however, the project did establish a solid foundation for elaboration of such programme/plan.

Efforts have not been made in the direction of legal regulation of the waste management in the country. A framework law on waste that would provide waste classification, define major principles and assign roles and responsibilities to the authorities at all levels has still not been adopted.

The situation has also not changed in the water sector, though some steps were undertaken for the improvement of legislation in this area. Specifically, a concept paper for new water law and water sector convergence plan for Georgia were developed under the EU supported project 'Environmental Collaboration for the Black Sea'.

Improving public information and participation

The ENP Action Plan calls for improvement of public participation in a wide range of ways. In the environmental sector, the call is specifically to 'Adopt legislation and establish procedures regarding access to environmental information and public participation'.³⁸ However, on top of this, its anti-corruption provisions and its general discussion of democracy highlight the importance of public participation. We therefore considered changes to public participation in general as they have occurred in Georgia in 2009

Public access to information and public participation has not really changed in 2009. Public participation in the decision-making process is still sporadic and inconsistent and no efforts have been made to formalise them.

Moreover, despite the commitments undertaken under the action plan, in summer 2009 the representatives of the parliamentary majority submitted a new legislative package to the Parliament, which significantly restricts the current formal procedures of public participation. This new legislation will make changes to the Law on Normative Acts and the General Administrative Code of Georgia and will remove their provisions for public participation. This is in conflict with paragraphs 5 and 6 of Article 3 of the Aarhus Convention. It has been strongly opposed by the NGO sector but is entering its third reading in parliament at the current time.

³⁶ This project is also discussed below in the section on cooperation in energy sector.

³⁷ The project was implemented by Ministry of Environmental Protection and Natural Resources and implemented by the Georgian non-governmental organization the Centre for Strategic Research and Development of Georgia

³⁸ EU/Georgia Action Plan, p. 41.

Public Participation on Post War Recovery Spending

In more general terms, public participation has been particularly important in the reporting period because of the unparalleled amounts of international aid coming into the country. The Georgian Government in its ENP AP progress report of 2009 stressed that it has achieved significant progress in cooperation with International Financial Institutions. However, as was emphasised in the 2009-2013 National Indicative Programme draft³⁹, the Georgian government's understanding of good governance and sustainable cooperation is not consistent with European Commission principles. That is why the EC recommended that Georgia joins the Paris Declaration on Aid Effectiveness.

Unfortunately, Georgia is not a party to the Paris Declaration on Aid Effectiveness and the post-conflict aid totalling USD 4.5 billion demonstrates some of the limitations of Georgian efficiency and transparency on aid issues. Most significantly, there was no public participation in the production of the Joint Needs Assessment (JNA) document prepared by UN and World Bank that set the priorities for the aid. Even public debate of the final document was limited by the fact that an incomplete document became available only one day before the conference.⁴⁰ This was hugely problematic since it meant that budgetary choices which will affect Georgia for generations were made by a very small group of people behind closed doors.

That said, once the aid had been pledged the Georgian government has tried to increase the transparency of its disbursement. The Finance Ministry, for example, has posted a database of aid commitments and disbursements on its website. The Ministry has also posted the international agreements that relate to budgetary aid. This forthrightness has not been matched by many of the international institutions themselves.

Since a significant part of international aid for Georgia comes for infrastructure and energy projects, it is essential that international financial institutions and the Georgian government hold an extensive dialogue with society and the local population to make the right spending choices and to minimise any damage that can be caused by building work on this scale. Unfortunately, problems related to the transparency of international aid, public involvement and independent monitoring still persist in respect of particular projects.⁴¹ We will discuss these below.

Other Areas of Economic regulation

Within some of the specific elements of trade related reform suggested by the ENP Action Plan, a number have been consistently important for Georgia. The report focuses on competition policy, food safety and worker protections.

³⁹ Available for consultation at the EC delegation web-site.

⁴⁰ The full text of the document has not been published yet. Only a limited 46-page version is available at present. The limited document does not include forecasts in relation to unemployment, assessment of the impact of the war on economy, social problem, anti-poverty measures, and data on the bank sector. According to the World Bank officials, this information was removed at the request of the Georgian government. The government also insisted that the document be confidential and available only to the conference participants.

⁴¹ For instance, local population is against the EBRD financed project for establishment of sanitary landfill in Adjara due to the problematic suggested location.

Competition policy

In light of Georgia's commitment "to ensure that its legislation [in terms of competition] will be gradually made compatible with that of the Community [the European Union]" [Partnership and Co-operation Agreement], TI Georgia's *Competition in Georgia* report highlighted a number of concerns.⁴²

The Government's progress report on ENP Action Plan implementation has practically nothing to say about competition policy. Its only comment is that 'the Prime Minister has started analyzing the existing legislation in the competition policy and international best practice'.⁴³ The weakness of this observation is demonstrative of the government's commitment to reform on this issue.

According to a report by the Georgian-European Policy and Legal Advice Centre (GEPLAC) the 2005 Law on Free Trade and Competition, for example, 'does not touch the traditional fields of competition law, such as agreements restricting competition, concerted practices, abusing dominant position in the market, takeovers and mergers, state enterprises and so called natural monopolies'.⁴⁴ The Agency for Free Trade and Competition (the body charged with overseeing the law) lacks independence and its powers are restricted to giving recommendations and it has no enforcement mechanism. The results on the ground are monopolies and cartels and rampant downstream price fixing in various sectors including food, petrol import and sale, pharmacies, and Internet market.

Georgia does have regulation of key sectors like banking, communications, energy and water utilities. However, these do not show themselves to be very sensitive to monopoly issues. For example, the phone regulators did not stop a major consolidation of the ISP market when *Caucasus Online* bought *Sanet* and *Georgia Online* in 2006. They were also slow to get involved when, in 2008, another phone company called UGT tried to cut-off Caucasus Online customers, in a clear attempt to take over the market.

To address the problems identified and to bring Georgia into compliance with its commitments, we recommend that competition legislation be completely overhauled to bring it into line with European practice.

Food Safety

Georgia, under the ENP Action Plan, is committed to "ensure effective cooperation in order to establish and strengthen in Georgia a modern institutional system of technical regulation, standardisation, accreditation, metrology, conformity assessment and market surveillance."⁴⁵

In 2009 the state continued to limit itself to so-called "market monitoring" rather than control. In the first half of 2009 only 153 tests were conducted in whole Georgia (including 65 on alcoholic drinks).⁴⁶ The market monitoring activity has remained low even though the 2009 budget for this activity was 650

⁴² TI Georgia: *The Georgia Trade Union Movement*, November 2009.

⁴³ Government of Georgia (June 2009), *Progress Report on the ENP Action Plan Implementation*, p. 25.

⁴⁴ Implementation of the National Program for Harmonisation of the Georgian Legislation with that of the EU (NPLH) – Current Status as of June 2006, GEPLAC Report, http://geplac.org/files/10150_9_397548_NPLH_report_Jun06_fin.pdf.

⁴⁵ EU/Georgia Action Plan, p. 25.

⁴⁶ For comparison, during the state monitoring of the food market in 2008 a total of 718 samples were tested, of which 387 were alcoholic drinks. Violations of the applicable standards were found in 132 models.

thousand GEL, (three times more than the 2008 budget). Violations were found in 38 tests.⁴⁷ Results are published only in a consolidated format, meaning that information is not publicly available as to which product a violation was found in and what kind of violation it was. Detailed results of the tests are communicated only to the manufacturer. Even if there is a serious fault in the product consumers are not informed or warned.

A procedure for food safety certification has been developed by the government, as have rules for issuing hygiene certificates. However, the procedure remains voluntary and therefore it did not affect the food safety of goods on the market very much. In reality, this procedure mainly serves the interests of exporters so that they can obtain the documents needed to export goods into other countries.

The suspension of the 2005 Law on Food Safety and Control, however, means that the country has moved no closer to meeting this commitment. It is meant to come into effect in 2010, but given institutional incapacity, lack of funding, and little or no investment in laboratories, this deadline will not be met.⁴⁸ Even the most basic requirement for the operation of the law, to register food processing companies, has yet to be carried out.

The result is that Georgia has, what one official at the European Delegation in Tbilisi called, an "appalling [phyto-sanitary] situation." The rate of botulism in Georgia is the highest in the world, bacterial food poisoning rates are rising rapidly and the rate of diarrheal diseases is a third higher than that in the EU15. Random testing of food products by the Food Agency reveals that around 2/3 of meat and meat products pose high risks.⁴⁹

However meeting its obligations under the ENP may not be wisest route. To fulfill these commitments could require massive investments in human resources and technology, institutional capacity building, outreach programmes and training for all stakeholders in the food industry. Consultancy fees alone are estimated to be as high as €36,000 over a year per processing company⁵⁰. One study also found that the operational costs of SPS "represent overheads of between 2% and 10% of the value of products exported⁵¹." Most Georgian companies would be unable to afford this, and would inevitably close. The Ministry of Economic Development has predicted that 90% of producers would be closed because of a financial inability to meet the legal requirements.

A cheaper and more attainable medium-term alternative would be to target standards at a retail level. The catering industry is responsible for 75% of all food poisoning cases⁵², and so with simple and cheap hygiene standards, food safety would dramatically improve.

⁴⁷ It should be noted that it is not considered to be a violation, for example, to sell margarine under the name of "butter".

⁴⁸ Amendments to the rules on food safety would require a number of additional changes in legislation. A review of the parliamentary calendar makes clear that these additional changes have not been allocated sufficient time and so meet the 2010 deadline.

⁴⁹ Determination of the Level of Harmonization of the Legislative Framework and Applied Law Practice related to Traceability in the Field of Georgian Food Safety with the Regulation (EC) No 178/2002, Association "21st Century".

⁵⁰ TI Georgia's Interview with Vano Chkhikvadze/ Eurasia Partnership Foundation (EPF), Tbilisi, Georgia, February 2009.

⁵¹ SPS measures causing high costs and losses to developing countries,
http://www2.unine.ch/webdav/site/irene/shared/documents/TEXTES/sha_spsmeasure.pdf.

⁵² Launch of new SA food service food safety model (corporate feature),
http://www.developotechnology.co.za/index.php?option=com_content&task=view&id=20425&Itemid=101.

During 2009 the procedures for phytosanitary and veterinary border control were standardised. In May 2009, information from the EPPO informational service and OIE's weekly information on animal diseases started to be published in Georgia. Also, from September 2009 the Georgian version of RASFF system notification lists on food safety have been regularly uploaded on food safety service website.

On 14 April 2009, under the framework of the Commission for Georgia's Integration into the EU, a working group on the preparation of a free trade agreement was established. The group's scope of work includes issues on food safety standards and technical rules. The group prepared and presented to the European Commission the Georgian Government's strategy on food safety. However, this document is not available for Georgia's civil society.⁵³ In November the EU will give its comments on the document. Presumably, after these comments it will be determined what kind of amendments will be made to the law on food safety, and more precisely, for how many years delays will still persist in controls of the food market and food producers and in the establishment of a food safety system.

The European Social Charter and ILO Conventions

The Georgian Government's progress report on the ENP Action Plan says that the government is currently 'working on a report on the "European Social Charter" to be submitted by November 2009 and the Governmental Reports on nine ratified ILO Conventions⁵⁴ to be submitted by September 2009'⁵⁵.

More broadly, the Georgian government has so far offered little inclination to widen support for labour rights. Georgia's trade unions are currently engaged in a process of transition. The past few years has seen the Georgian Trade Union Confederation (GTUC) move away from its Soviet-era roots and evolve from being a passive and largely ineffective organisation to one that genuinely seeks to defend employees' interests. However, despite recent reforms and increased activity on the part of the unions, public awareness of their activities is low.

However, efforts by the unions' leadership to raise awareness about workers' rights and promote the development of an active grass roots union movement have been hindered by a largely anti-union government stance. The Georgian Labour Code does not comply with the international standards outlined by the International Labour Organisation (ILO) and basic rights, such as the right to join a trade union and engage in collective action, are often ignored in practice. Georgia risks losing its GSP+ preferential trade regime with the EU unless it brings its legislation into line with ILO standards.

Amendments to the Labour Code are needed to ensure that Georgia meets its international commitments. Measures must be taken to prevent employers sacking workers for union activities, something that the unions say has increased since the Labour Code was passed in 2006. The quality of social dialogue between unions, employers and the government must also improve to ensure state labour policy reflects the interests of employers and workers alike.

⁵³ Faced with demands for access to this document, the leader of the working group answered that it was an internal document of the group and it simply did not exist for the Georgian society.

⁵⁴ Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); Right to Organise and Collective Bargaining Convention, 1949 (No. 98); Equal Remuneration Convention, 1951 (No. 100); Discrimination (Employment and Occupation) Convention, 1958 (No. 111); Employment Policy Convention, 1964 (No. 122); Labour Relations (Public Service) Convention, 1978 (No. 151); Seafarers' Welfare Convention, 1987 (No. 163).

⁵⁵ Government of Georgia (June 2009), Progress Report on the ENP Action Plan Implementation, p. 6.

Social Protection: Health Insurance

The ENP Action Plan makes a number of demands on Georgian Government in relation to health. In particular it suggests that Georgia should provide, 'sustainable systems for education, health and other social services with access for all'. In Georgia a combination of benefits for the elderly and for the very poor provide health cover for the lowest fifth of the population. On top of that the government estimates that about one fifth of the population buy health insurance for themselves or have it provided by their employers. This leaves 60% of the population without health cover.

The biggest push to include this group has been the 'GEL 5 Health Insurance scheme'. This scheme, implemented by the government in 2008, was intended to offer limited health cover to anyone who wanted it with a health insurance package that would be largely subsidized by the government.

The need for reform of the old system was obvious. The old system has been characterized by chronic funding shortages, corruption, inefficiencies, poor care and limited patient choice. The new insurance approach could help to address some of these issues. Purchaser and provider functions are separated, thus ensuring cost-effective purchasing of services. Drug costs are reduced as insurance companies counter the commercial rent seeking instincts of the pharmacy cartel. It is also hoped that the insurance companies, as profit seekers themselves, will also reduce corruption and inefficiencies. Fundamentally, the new scheme offers the potential for greater private investment in healthcare, an absolute requirement given limited government financing.

However, there has been little interest from the public in buying the GEL 5 insurance package. In July, just immediately prior to the closing date, only 67, 000 people had signed up. This threatens the entire viability of the scheme, as low numbers attract adverse selection prevent the pooling of risk.

The main reason for this is that at GEL 5 (around \$3) per month the coverage on offer is extremely limited, covering little more than accidents and emergencies. The package has been improved somewhat since the first release and is now worth almost GEL 10. However, it still needs to cover more conditions if it is to attract significant numbers of people. In addition, there needs to be a tax incentive to encourage people to take out higher priced packages.

Priority Area 5: Strengthening Regional Cooperation and Priority Area 8: Transport and Energy

The ENP Action plan envisaged considerable development in both transport and energy and highlighted the need for regional cooperation (within a largely Black Sea Regional Area) to facilitate the development of these sectors. These two sectors have become even more important in the aftermath of the conflict with Russia because of large proportion of post-war reconstruction money that has been allocated to them. At the post-war donor's conference, USD 659 million was pledged for roads and USD 621 million was pledged for energy projects.⁵⁶

In both the transportation and energy sectors regional consultation has tended to focus on facilitating new building projects rather than coordinating to ensure that they avoid producing harm. Regulations to ensure that environmental considerations are taken into account have been largely removed.

⁵⁶ George Welton, *The Loan Component of the Post-War Pledge: An Evaluation*. Tbilisi, Open Society Georgia Foundation, p. 18.

There was also no progress in improving sustainability in the transport sector after the adoption of the ENP Action Plan. With the drafting of a new Georgian National Road Safety Strategy there has been some positive movement on the issue of road safety but the negative impacts of transportation on environment and human health has yet to be taken seriously by central and/or local authorities. This can be seen in a range of areas. The inner city road projects are approved without Environmental Impact Assessments and often avoid economic assessment and consultations with the affected public. For example, a new road in Tbilisi was built through a popular green recreational area without consultation.

In the energy sector the EU-Georgia Action Plan openly requires "energy policy convergence towards EU energy policy objectives" through elaboration and implementation of "a coherent long-term energy policy converging gradually with the EU energy policy objectives including security of energy supply".⁵⁷ However the deregulation activities taking place now are not enough to create free and competitive electricity and gas supply markets, to ensure low costs for facilitating industrial competition with the aim of pursuing broad socio-political goals. For example, in 2009 no steps have been made to disaggregate electricity generation and distribution functions as suggested by the rules of the European free market. As a result, there are a number of operating companies in Georgia that combine both functions.

Instead the Ministry of Energy and Natural Resources has been focused on a hydropower strategy. According to the Ministry, the deregulation of small hydro power plants (HPPs) and the creation of a supportive legislative environment will encourage the construction of 78 small and medium size HPPs. At the same time the government is promoting a number of large Greenfield hydro-generation projects. However, the Government's consideration of these projects does not give significant consideration to the broader environmental impact they will have.

An example of the Governments lack of concern for environmental issues can be seen in the construction of new power lines to support new hydropower projects. EBRD, KfW and the EIB, are helping to finance the construction of a 500 MW transmission line, from Azerbaijan through Georgia to Turkey. The *Black Sea Energy Transmission Project* documentation specifies that it is closely connected with the construction of a number of Greenfield dams in Georgia, as it will allow the export of high volumes of electricity to Turkey and will, therefore, ensure tax income generation for the Georgian government. The preliminary environmental and social studies are financed from the EU Neighbourhood Investment Facility (NIF).

The project has two possible routes. In one version the transmission line would cross the Borjomi-Kharagauli National Park for an 11.5-kilometer forest-covered section. In the second alternative the power line will only cross the park for a 4.7-kilometer non-forest section. Hence, the second alternative will cause the least impact on the national park. However, the Georgian Energy Ministry is attempting to exert pressure on the Ministry of Environmental Protection and Natural Resources to use the alternative that is the cheapest.

In order to ensure the sustainability of Georgia's energy sector, the international donors should assist the Georgian government to development plans for Georgia's power sector that would be based on participatory processes. This is not happening. The Greenfield hydro power constructions are already generating a negative reaction from local communities. The communities have experiences with big

⁵⁷ EU/Georgia Action Plan, p. 34.

dams, since Georgia's largest existing dam is fairly close to those currently proposed. The communities know how micro-climates change and how this affects their health and everyday life, to say nothing about the damage caused to their cultural heritage.

People are also concerned about the seismic and geological stability of the two proposed dams. While Georgia is located in a highly seismic zone, the Racha-Dzjava earthquake (Ms=7) that occurred on 29 April, 1991 was the biggest disaster ever recorded in the region, stronger than the Spitak earthquake (Ms=6.9) in 1998.⁵⁸ It should be noted that during the recent earthquake (MS=6.2, 8 September, 2009), the epicentre was very close to where the new dam is proposed.

The action plan also requires "the adoption of legislation addressing energy efficiency and renewable energy," however little has been done in this direction. The Ministry of Energy views a progressive increase in the energy tariff to be one of the keys to increased efficiency although research conducted by the World Bank seems to suggest that in many areas energy use is so low that increases in price will have little effect on consumption.

There is no formulated state vision or strategy on energy efficiency improvement and development of renewable energy. In July 2008, the work on energy efficiency law, as well as law on renewable energy, supported by the USAID and conducted with the participation of the Ministry of Energy, was stopped. The lack of a sound and reliable legal framework for renewable and energy efficiency, also undermines the efforts of different international organizations in this area.

⁵⁸ Power's promise: *electricity reforms in Eastern Europe and Central Asia* by Julian A. Lampietti, World Bank, 2004.