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# Abuse of State Resources in Elections

## *Georgia Assessment Report*



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## *Georgia Assessment Report*

September 2017

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Abuse of State Resources in Elections: Georgia Assessment Report  
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## I. Executive Summary

The abuse of state resources (ASR) in elections gives significant, unfair advantages to incumbent candidates and political parties. More broadly, it can erode the quality of democracy, the ability of state institutions to function, and the fair allocation of public resources.<sup>1</sup> In recognition of the importance of this issue, IFES researched, developed, and peer-reviewed a detailed ASR assessment methodology under the Global Elections and Political Transitions (GEPT) mechanism, funded by the United States Agency for International Development (USAID). This report details the findings of the pilot test of this methodology in the Republic of Georgia, conducted in-country in May 2017 in the wake of October 2016 elections in which the ruling Georgian Dream coalition increased its parliamentary majority.

ASR violations are a consistent feature of national and municipal elections in Georgia, although assessment interlocutors were keen to emphasize that ASR violations have trended downward in recent electoral cycles. This report aims to provide actionable recommendations for improving the ASR environment while accounting for capacity, context, and political will at a time when Georgia is in a position to solidify recent gains and capitalize on a favorable anti-corruption atmosphere.<sup>2</sup>

Per the assessment methodology, this report focuses on three principles for deterring, detecting, and remedying ASR abuses in a manner commensurate with international standards. Principle 1 evaluates the legal framework for addressing three potential avenues for ASR: restrictions on state personnel; restrictions on the use of state funds and physical resources; and restrictions on official government communications to the public. The Georgian legal framework for prohibiting ASR on each of these fronts is relatively robust and has been strengthened through a series of inclusive reform efforts. However, these reform efforts have produced an ASR legal framework that is scattered throughout a number of sources, leaving it somewhat inscrutable to the public. Additionally, the ASR abuses most commonly cited by observers and interlocutors are often difficult to regulate or to prove. Such challenges include municipal governments altering local budgets to allow for increases in social spending in the immediate lead-up to Election Day (termed by one interlocutor as the *legal* misuse of administrative resources) and pressuring or intimidation of civil servants, concrete cases of which have proven difficult to verify. While noteworthy loopholes still exist, years of comprehensive reforms (and tinkering around the margins) have created a legal framework that is adequately designed to prevent the abuse of state resources for electoral purposes. Assessment recommendations highlight a variety of legislative reforms that could strengthen the ASR legal framework, but this report acknowledges that challenges to oversight and enforcement create the most significant apertures for the continued misuse of state resources.

Principle 2 of this report therefore focuses on oversight of the ASR legal framework by independent institutions. The State Audit Office of Georgia (SAOG), Central Election Commission (CEC), and Georgia National Communications Commission (GNCC) each have a relatively narrow (though at times overlapping) purview of ASR oversight that generally culminates in the submission of administrative protocols to the court system for violations falling under each body's respective mandate. The Inter-Agency Task Force on Free and Fair Elections has a broad mandate to serve as a forum for discussing alleged violations of election

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<sup>1</sup> Erica Shein and Megan Ritchie, *Unfair Advantage: The Abuse of State Resources in Elections*, report, International Foundation for Electoral Systems, January 2017.

<sup>2</sup> The Group of States against Corruption (GRECO), the Council of Europe's anti-corruption monitoring body, affirms that "it is widely agreed that Georgia has come a long way in creating a regulatory and institutional framework for fighting corruption." GRECO, *Fourth Evaluation Round Corruption prevention in respect of members of parliament, judges and prosecutors* (Jan. 17 2017), §1, <https://rm.coe.int/16806dc116>. Georgia's rank on the Transparency International Corruption Perception Index has risen impressively, from 130 out of 159 countries in 2005, to 44 out of 176 countries in 2016. TI, *Corruption Perceptions Index 2005* (Oct 18, 2005), [http://www.transparency.org/research/cpi/cpi\\_2005/0/#results](http://www.transparency.org/research/cpi/cpi_2005/0/#results) (last visited May 11, 2017).

law as reported by the media, observer organizations and/or the electorate. The IATF is a non-permanent body that convenes all institutions with a role in addressing ASR in elections, but it only has the ability to make non-binding recommendations for action by any public officer, an administrative body or the CEC.

The third and final principle included in the analysis of the ASR legal framework assesses whether sanctions and penalties are effectively enforced. As discussed herein, multiple assessment interlocutors and observer reports noted that the efficacy of the court system limits the effective enforcement of sanctions and penalties in Georgia. Anecdotal evidence collected during the assessment indicates that few sanctions and penalties are applied in a timely manner to ASR offenders, and those that are enforced do little to deter violations in the future. Further research is needed on the efficacy of the available mechanisms, and the enforcement process, to determine what would more appropriately deter violations and change behavior.

The methodology applied for this assessment also acknowledges the need to account for contextual factors may impact the ASR in elections. As such, the report provides a narrative overview of challenges related to the public service framework, campaign finance framework, civil society oversight and advocacy, media environment and public information, and public procurement in Georgia.

Assessment interlocutors suggested that the participation of civil servants in campaign activities is one of the most significant ASR challenges facing Georgia. It is worth evaluating this issue in the context of systemic problems that have plagued the public service bureaucracy for decades, including lack of independence, professionalism and transparency in compensation. Also of concern is the perceived over-staffing of public service departments and legal entities of public law (LEPLs), especially at the local level.

This assessment also provides a brief overview of the campaign finance structure in Georgia, and notes that many of the recommendations made by observer and CSO groups following the 2016 elections should be seriously considered. These recommendations include the need for revisiting public financing mechanisms; offering more avenues for independent candidates to gain access to campaign funds; and training political parties and candidates on how to comply with laws relating to income, expenditures, and disclosure.

Both the media and civil society have key watchdog functions in detecting and monitoring the abuse of state resources. In Georgia, civil society groups have taken a leading role in exposing the abuse of state resources for electoral advantage, but this process could be improved going forward with the introduction of an expanded CSO monitoring methodology to address structural, political, and social challenges to countering ASR at all levels of government. Similarly, the media and public information environment in Georgia is generally conducive to freedom of expression and political debate, but effective ASR oversight requires increased investigative capacity of journalists and a renewed commitment to supporting ASR accountability.

Finally, public procurement is a significant avenue for corruption in many countries, including Georgia, where the introduction of a transparent e-procurement process and a national public procurement regulatory authority have rightfully garnered significant praise. However, important problems related to relationships between contractors and political entities remain, despite detailed legal provisions. These include a number of loopholes permitting contracts to be awarded non-competitively, and difficulties ensuring that donations to political parties or candidates do not impact how or to whom state contracts are awarded.

The remainder of this report offers a detailed recommendations list and a brief overview of the ASR assessment methodology, as well as an in-depth analysis on each of the areas described above. Based on the foregoing analysis, recommendations have been made to strengthen the legal framework with an emphasis on clarifying the rights and responsibilities of civil servants, ensuring that ASR sanctions and penalties achieve a deterrent effect, and clarifying mandates of oversight and enforcement bodies.



## II. Recommendations

In the following table, summary recommendations (discussed in more detail in the rest of this report) are indicated in the first column, followed by the relevant actor or actors responsible for implementation. In the political will columns, two additional elements are identified in summary form: existing features of the political landscape that can be leveraged (by the international community, technical assistance providers, or other stakeholders) because they enable or do not block reform, and features that may need to be mitigated or overcome as they present barriers related to political will. These features include incentives (e.g., checks and balances in the government that hold officials accountable, including through the effective use of penalties and sanctions for misbehavior, support from powerful actors, including from the international community); relationships (e.g., Interest groups and political parties/forces that are supportive of the effort, or that do not seek to provide organized opposition, a receptive and engaged public, and supportive partners in the international community); and consequences (e.g., social and political conflict are minimal, reputational costs are minimal or advantageous). The final column identifies the priority level of the particular recommendation.

Figure 1: Priority Recommendations

<p><i>Acronyms used in this table:</i></p> <p>Abuse of state resources (ASR)      Central Election Commission (CEC)      State Audit Office of Georgia (SAOG)</p> <p>Georgian National Communications Commission (GNCC)      Civil society organization (CSO)      Inter-Agency Task Force on Free and Fair Elections (IATF)</p> <p>Financial Monitoring Service (FMS)      Legal entity of public law (LEPL)      Ministry of Justice (MoJ)</p>				
Recommendation	Responsible actor(s)	Political will elements to leverage	Political will elements to overcome	Priority level
<b>ASR Legal Framework</b>				
After conducting a detailed study evaluating whether ASR sanctioning mechanisms are deterring or changing behavior, evaluate the range of penalties available for misuses of state resources to ensure they are proportional and structured to achieve a deterrent effect	Parliament CEC SAOG GNCC International community CSOs	<ul style="list-style-type: none"> <li>✓ Influence of the international community to push for change</li> <li>✓ Existing, highly engaged CSO advocacy and monitoring groups</li> </ul>	<ul style="list-style-type: none"> <li>✓ Political parties benefit from existing penalty/sanction regime</li> </ul>	High
Consider amendments to the legal framework to protect civil servants from political interference by senior officials and to further restrict the ability of senior political officials to participate in campaign events	Parliament	<ul style="list-style-type: none"> <li>✓ Existing, highly engaged CSO advocacy and monitoring groups</li> <li>✓ Potential champions within major political parties</li> </ul>	<ul style="list-style-type: none"> <li>✓ Political incumbents benefit from existing legal framework</li> </ul>	High
Require civil servants to take leave without pay, rather than vacation time, in order to participate in campaign activities	Parliament Public agencies	<ul style="list-style-type: none"> <li>✓ Existing, highly engaged CSO advocacy and monitoring groups</li> <li>✓ Potential champions within major political parties</li> </ul>	<ul style="list-style-type: none"> <li>✓ Limited public interest in curbing ASR abuses</li> <li>✓ Potential resistance from civil servants satisfied with existing legal framework</li> </ul>	Moderate

Recommendation	Responsible actor(s)	Political will elements to leverage	Political will elements to overcome	Priority level
Conduct targeted public outreach on the rights and responsibilities of the civil service with respect to political campaigns	Public agencies CEC CSOs IATF	✓ Existing, highly engaged CSO advocacy and monitoring groups	✓ Limited public interest in curbing ASR abuses ✓ Potential resistance from civil servants satisfied with existing legal framework	Moderate
Amend the law to prohibit social assistance transfers that were not publicly announced at least 6 months prior to Election Day, as well as to proscribe the lump sum annual payment of social assistance transfers during the campaign period	Parliament	✓ Existing, highly engaged CSO advocacy and monitoring groups	✓ Limited public interest in curbing ASR abuses ✓ Municipal governments benefit from existing ambiguities in the legal framework	High
Conduct targeted outreach campaigns to highlight spending activities of municipal governments	CSOs	✓ Existing, highly engaged CSO advocacy and monitoring groups	✓ Limited public interest in curbing ASR abuses	Moderate
Expand GNCC monitoring mandate to include relevant online content	GNCC	✓ Incentives for smaller political parties and independent candidates to support an increased mandate for the GNCC	✓ Potential GNCC resistance to broader workload/ mandate	Moderate
Conduct a cross-institutional mapping exercise, led by the IATF, to discuss overlapping oversight of ASR and determine a clear framework for future elections	IATF (lead) CEC SAOG GNCC CSOs Political parties	✓ IATF forum as a platform to air grievances with all actors around the table ✓ Champions within oversight institutions interested in eliminating confusion and redundancy in mandates	✓ Lack of IATF credibility among some stakeholders	High
Consider changes to the FMS directorate that would enable the office to increase the number of investigators allotted to carry out its ASR monitoring and investigation mandate	Parliament SAOG	✓ FMS awareness of the problem and desire to remediate ✓ Influence of the international community to push for change	✓ Potential resistance to significant legal changes among political forces in Parliament	High
Provide comprehensive investigation training to FMS investigators between election processes	SAOG International community	✓ FMS openness to receiving additional resources	N/A	Moderate
Produce and disseminate publicly a detailed report to support SAOG transparency	SAOG	✓ FMS awareness of the problem and desire to remediate ✓ Existing, highly engaged CSO advocacy and monitoring groups	N/A	High

Recommendation	Responsible actor(s)	Political will elements to leverage	Political will elements to overcome	Priority level
Review required timelines for addressing complaints to ensure that the CEC is able to meet its obligation to provide thorough investigations	Parliament CEC	✓ Existing, highly engaged CSO advocacy and monitoring groups	✓ CEC benefits from existing timeline and ability to dismiss complaints due to procedural issues and tight deadlines	High
Release frequent and comprehensive GNCC monitoring reports during the election campaign to ensure monitoring processes support deterrence	GNCC	✓ Existing, highly engaged CSO advocacy and monitoring groups	✓ Potential resistance from GNCC	Moderate
Conduct more extensive outreach to ensure that all election stakeholders understand the IATF mandate and potential value of its platform	IATF	✓ IATF forum is a platform to air grievances with all actors around the table	✓ Lack of IATF credibility among some stakeholders	Moderate
Give the ASR oversight institutions (e.g., CEC, SAOG and GNCC) legal authority to impose and enforce some administrative sanctions without filing administrative protocols with the court system	Parliament CEC SAOG GNCC	✓ Institutional incentives to bypass the court system, which slows the process and limits enforcement of recommended sanctions	✓ Potential costs for political actors in removing the court system from the sanctioning process ✓ Potential resistance from oversight institutions benefiting from a limited enforcement mandate	High
Establish an ASR violation tracking system to reside within the MoJ that monitors the protocols, requests and administrative remedies forwarded to the courts by the agencies responsible for overseeing the ASR legal framework	MoJ/IATF (lead) CEC SAOG GNCC	✓ IATF forum is a platform to air grievances with all actors around the table ✓ Ministry of Justice is a trusted institution with the public	✓ Lack of IATF credibility among some stakeholders ✓ Potentially limited appetite among some institutional and political actors to implement a complex monitoring system	High
<b>Enabling Environment</b>				
Conduct analysis of civil service staffing levels in municipalities and LEPLs and create reasonable standards for the permissible number of employees based on population	CSOs International community	✓ Existing, highly engaged CSO advocacy and monitoring groups ✓ Influence of the international community to push for change	✓ Limited public interest in curbing ASR abuses	High
Limit the hiring of civil servants and LEPL employees in the pre-election campaign period	Parliament Municipalities	✓ Influence of the international community to push for change ✓ Potential champions within political parties	✓ Limited public interest in curbing ASR abuses	High
Evaluate effectiveness of new Civil Service Law (CSL) after one year and whether additional	Parliament CSOs	✓ Existing, highly engaged CSO advocacy and monitoring groups	✓ Limited public appetite for removing bonuses	High



Recommendation	Responsible actor(s)	Political will elements to leverage	Political will elements to overcome	Priority level
changes are needed, including prohibiting the arbitrary dispensation of bonuses to civil servants		✓ Potential champions within political parties	✓ Current patterns of clientelism that benefit public employees and elected officials	
Implement observer and CSO recommendations on the campaign finance process since 2016, including revisiting public financing, enabling independent candidates to receive campaign funds, and offering training on compliance with finance laws and regulations	Parliament CEC SAOG	✓ Existing, highly engaged CSO advocacy and monitoring groups ✓ Influence of the international community to push for change	✓ Potential resistance from political parties benefiting from the current legal regime	Moderate
Expand CSO monitoring methodologies to address structural, political, and social challenges to countering ASR at all levels of government, with a particular focus on tracking and publicizing outcome of cases during and after election campaigns	International community CSOs	✓ Existing, highly engaged CSO advocacy and monitoring groups ✓ Influence of the international community to push for change ✓ Potential champions within political parties	✓ Limited public interest in curbing ASR abuses	Moderate
Provide targeted training to investigative journalists that focuses on objective reporting and supporting ASR accountability	International community Media	✓ Influence of the international community to push for change	✓ Potential resistance from media outlets due to politicization and/or limited financial incentives for investigative journalism	High
Reduce the number of exemptions that qualify a procurement to be conducted outside of the competitive process	Parliament International community	✓ Existing, highly engaged CSO advocacy and monitoring groups ✓ Influence of the international community to push for change	✓ Influential businesses benefit greatly from the current legal regime	High
Ensure that information on simplified procurements is accessible via the public, electronic tender system	Parliament International community	✓ Existing, highly engaged CSO advocacy and monitoring groups ✓ Influence of the international community to push for change	✓ Influential businesses benefit greatly from the current legal regime	Moderate
Address in the law conflicts of interest of contractors, in addition to public officials	Parliament International community	✓ Existing, highly engaged CSO advocacy and monitoring groups ✓ Influence of the international community to push for change	✓ Influential businesses benefit greatly from the current legal regime	Moderate

### III. Methodology

The misuse and abuse of state resources (ASR) for electoral campaigns is increasingly recognized as a major corruptive force in electoral and political processes, yet it is often less understood and regulated than other areas of political finance. Although the concept of the abuse of state resources is indirectly highlighted in some international and regional public law documents, there are few comprehensive sources for this information. This methodology was developed to address this gap and examine ASR as a specific electoral challenge that undermines electoral integrity while more broadly eroding the quality of democracy, the ability of state institutions to function, and the fair allocation of public resources.

The purpose of this assessment report is to analyze the effectiveness of the ASR framework in the Republic of Georgia and offer meaningful recommendations for reform, accounting for capacity, context, and political will. Important terms used throughout the report are defined in Figure 2 below. The assessment methodology focuses on the use of the legal and regulatory framework to prevent specific abuses related to the state's resources, which are limited herein to state personnel, state funds and physical assets, and official government communications to the public (including publicly-funded or state-run/owned media). As this tool was designed to evaluate abuses of state resources directly related to election campaigns for which there are recognized international standards on which to draw, it does not delve deeply into several common areas of abuse (for example, government procurement and contracting, public works and social spending around elections, and vote buying).

However, measuring the *effectiveness* of the legal framework regulating the use of state resources in elections requires more than assessing compliance with international standards. As such, an analysis of effectiveness requires an examination of contextual factors that impact how the legal framework operates in practice. Without this additional analysis, any recommendations resulting from the assessment would likely fail to capture important nuance, and could be impractical to implement. The methodology therefore examines both the **ASR legal framework** and contextual factors that influence the abuse of state resources – described herein as the **enabling environment**. This holistic approach allows for recommendations that take into account contextual factors – both positive and negative – that need to be either leveraged or mitigated in order to realistically effect change. The methodology also considers the potential for gender-based differences in the use and abuse of state resources (for example, whether oversight bodies have equitable gender representation, or whether there are gender-based differences in the application of sanctions and penalties), but neither the Georgia desk study nor the field assessment revealed consequential findings in this regard.

#### **ASR Legal Framework**

ASR legal framework questions are predicated on several important principles recognized in international law and comparative good practice:

Principle 1	First, the legal framework must <u>establish effective mechanisms to prevent public officials from taking unfair advantage of their positions in order to influence the outcome of elections (legal and regulatory frameworks)</u> . Provisions regarding the permissible uses of state resources should clearly apply to both incumbent and opposition political forces, and “should not favor or discriminate against any party or candidate.” <sup>3</sup> The legal and regulatory framework should require public employees to act in a neutral and impartial manner, and make a “clear distinction
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<sup>3</sup> The Organization for Security and Cooperation in Europe, Office for Democratic Institutions and Human Rights, *Election Observation Handbook*, 5th ed. (Warsaw, 2005), 18, 47.

between the operation of government, activities of the civil service and the conduct of the electoral campaign."<sup>4</sup>

Principle 2

Second, effective and transparent oversight by independent institutions is essential to address the abuse of state resources (*oversight institutions*). Institutions responsible for auditing the use of administrative resources should be granted the necessary authority and mandate to monitor parties and candidates, and must be equipped with the necessary human and financial resources to effectively carry out their mandate.

Principle 3

Third, the framework should properly enforce sanctions and penalties for state officials who violate the law, regulations, and rules established by their institutions (*enforcement*).<sup>5</sup>

The ASR legal framework quantitative analysis is based on scores assigned by the expert assessment team to the three principles of effectiveness described above. Following extensive desk and field research, team members assigned scores to each of the three principles based on pre-determined scales and evaluation questions (as set out later in this report). Each question on the consistent scoring scale is coded so that a higher score indicates a more effective ASR framework.

### ASR Enabling Environment

Enabling environment questions shed light on five additional contextual areas of interest by highlighting important environmental factors outside the bounds of the principles assessed in the ASR legal framework category:

- Public service framework
- Campaign finance framework
- Civil society oversight and advocacy
- Media environment and public information
- Public procurement

Given the availability of reliable global indices evaluating the categories that are part of the enabling environment, this methodology does not require the expert team to score these areas. The expert team chose the indicators that were available and most appropriate to Georgia. All indicators are re-scaled as needed on a 0-100 scale, where 100 is the best or highest score allocated. The composite score is the mean of the included indicators.

Figure 2: Important Definitions

**Abuse of state resources:** “the undue advantages obtained by certain parties or candidates, through use of their official positions or connections to governmental institutions, to influence the outcome of elections” (OSCE/ODIHR, Handbook for the Observation of Campaign Finance 66 (2015))

**Financial resources/state funds:** operating budgets of government institutions (e.g., travel budgets).

**State physical resources:** assets owned by the state, including buildings, vehicles, land, and equipment

**Oversight body/authority:** The entity or entities with monitoring, regulatory or supervisory control over the use of state resources

**Immunity:** Protection for public employees from politically-motivated prosecution, removal from office, and other reprisals based solely on conduct appropriate for carrying out their legal mandates

**Remedy:** The means to achieving justice in any matter in which legal rights are involved. For example, the enforcement of penalties, sanctions and restitution or other court order

<sup>4</sup> *Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources During Electoral Processes*, report no. 778/2014, The Venice Commission and OSCE Office for Democratic Institutions and Human Rights (Strasbourg, 2016), 4.

<sup>5</sup> Chad Vickery, ed., *Guidelines for Understanding, Adjudicating, and Resolving Disputes in Elections* (Washington, D.C.: IFES, 2011). and Magnus Ohman and Megan Ritchie, "Campaign Finance," in *International Election Remedies*, ed. John Hardin Young (American Bar Association, 2016).

#### IV. ASR Legal Framework Analysis

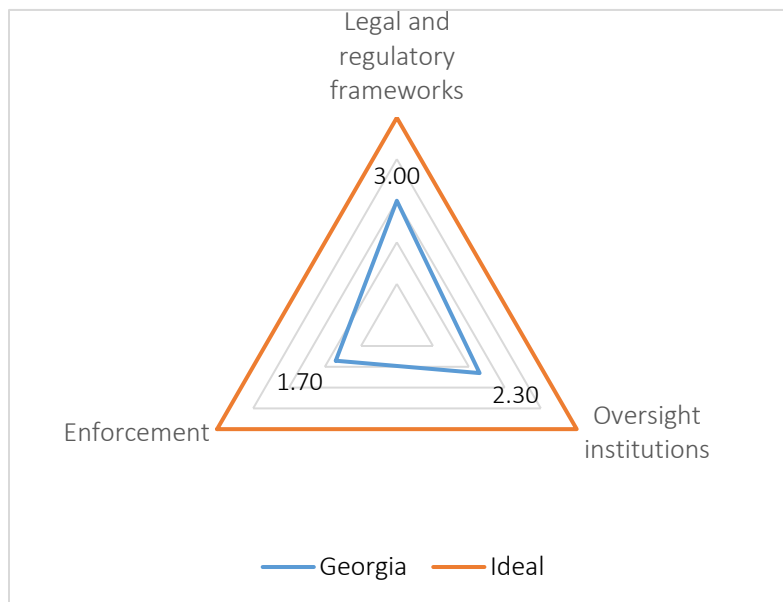
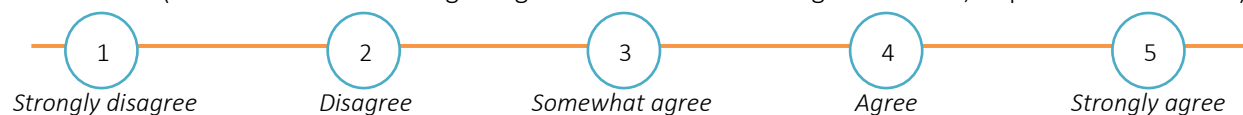


Figure 3: Georgia ASR Legal Framework Scores

This section of the analysis offers a window into the legal framework countering the abuse of state resources in elections in Georgia, as well as its practical implementation. The effectiveness of the legal and regulatory framework is evaluated in light of the extent to which it enables the deterrence, detection, and remedy of ASR abuses in a manner commensurate with international standards. As discussed above, scores were assigned by the assessment team to each of the three principles, and arrayed on Figure 3 in blue (the orange lines represent the ideal score for each dimension). The detailed score profiles for each of the three principles – legal and regulatory

frameworks; oversight institutions; and enforcement – are included below, and apply the following scoring rubric:

Principle 1, which focuses on the legal and regulatory framework as a mechanism for preventing public officials from taking advantage of their positions to influence election outcomes, received a score of 3.5 on the 1-5 scale (where 5 indicates strongest agreement with the scoring statements, as per the table below).



This aggregate score captures the strengths and weaknesses of the legal framework for ASR in Georgia, which provides a relatively detailed and comprehensive set of laws and regulations. However, the sheer number of sources for regulations on this subject and the layering of a number of incremental reforms onto these laws over the last decade creates some confusion and inaccessibility for political actors, public servants, and the general public. As will be discussed further below, the available sanctions and penalties are not necessarily sufficient or proportionate to the potential range of violations, limiting the ability of the legal framework to encourage fair competition and equality of opportunity to all candidates.

<i>Principle 1: Establish effective mechanisms to prevent public officials from taking unfair advantage of their positions in order to influence the outcome of elections</i>	<i>Score</i>
The legal framework for ASR encourages fair competition and equality of opportunity to all candidates	3.0
The legal framework for ASR is clear and accessible to both political actors and the public servants governed by it	3.0
The legal framework for ASR is comprehensive	4.0
Legal sanctions and penalties available under the law are proportional to offenses committed	2.0
<b>Principle 1 score</b>	<b>3.0</b>

Principle 2, which addresses the oversight of the ASR legal framework by independent institutions, was scored as a 2.3 on the 1-5 scale. Although each of the primary ASR oversight institutions in Georgia – the Central Election Commission (CEC), the State Audit Office of Georgia (SAOG), the Georgian National Communications Commission (GNCC), and the Inter-Agency Task Force on Free and Fair Elections (IATF) – have made demonstrable progress in carrying out their mandates over recent election cycles, this score highlights the significant challenges that remain. In some cases, institutional purviews are overlapping or resources are misaligned with mandates, leading to challenges with both oversight and enforcement of penalties. Several assessment interlocutors identified divided or overlapping mandates between various oversight institutions as the most significant systemic challenge in addressing ASR violations and providing sufficient deterrence in Georgia. Additional concerns are reflected in the low scores assigned to the latter two components of this score; staff at some oversight institutions have little recourse from political pressure and removal procedures are less than transparent.

<i>Principle 2: Ensure effective and transparent oversight by independent institutions (oversight institutions)</i>	<i>Score</i>
Oversight institutions fully exercise their legal authority and mandate to investigate parties and candidates for breaches of ASR laws and regulations	3.0
The assignment of mandates and resources to oversight institutions facilitates investigation of ASR cases	2.0
Oversight institutions are insulated from political pressure and reprisals	2.0
Removal of staff at oversight institutions is governed by predetermined and transparent procedures	2.0
<b>Principle 2 score</b>	<b>2.3</b>

Principle 3, focused on the effective enforcement of sanctions and penalties, received an aggregate average score of 1.7. This score reflects the significant challenges for the enforcement of sanctions and penalties for state officials who violate the ASR legal framework in Georgia. Although precise figures for the ASR sanctions levied and enforced are difficult to ascertain, multiple assessment interlocutors and observer reports opined that the effective enforcement of sanctions and penalties is limited by the efficacy of the court system. The scores accorded to this principle reflect the anecdotal evidence that few sanctions and penalties are applied in a timely manner to ASR offenders, and those that are enforced do little to deter violations in the future. Further research is needed on the efficacy of the available mechanisms, and the enforcement process, to determine what would more appropriately deter violations and change behavior.

<i>Principle 3: Properly enforce sanctions and penalties for state officials who violate the law, regulations, and rules established by their institutions (enforcement)</i>	<i>Score</i>
Legal sanctions and penalties are applied in a timely manner	1.0
Legal sanctions and penalties are enforced	3.0
Legal sanctions and penalties, as enforced, effectively deter violations	1.0
<b>Principle 3 score</b>	<b>1.7</b>

### **Principle 1: Establish effective mechanisms to prevent public officials from taking unfair advantage of their positions in order to influence the outcome of elections (legal and regulatory framework)**

As recognized in international law and best practice, it is essential for states to draft legislation that clearly defines permissible and prohibited uses of state resources. Laws, regulations, and codes of conduct or ethics should require impartiality in the conduct of official duties and ensure that a clear distinction is made between “the operation of government, activities of the civil service and the conduct of the electoral



campaign.”<sup>6</sup> The legal framework should also “provide for an equal right to stand for elections and for equality of opportunity to all candidates, including public employees, and political parties during electoral processes.”<sup>7</sup>

In addition to clearly establishing parameters for the appropriate uses of state resources, the most effective ASR-prevention and mitigation systems will have a range of remedies available, and identify a clear remedy for each potential violation determined by the law.<sup>8</sup> These options can include “formal warnings, fixed monetary penalties, reduction in public financing, or referral for criminal prosecution.”<sup>9</sup> Regardless of the types of restrictions that may be built into the legal framework, and the mandates and resources provided to oversight institutions, the lack of effective and enforceable sanctions and remedies associated with these provisions may create openings for the abuse of state resources.<sup>10</sup>

The Georgian legal framework provides a relatively detailed and comprehensive set of laws and regulations apposite to this subject, scattered through a number of sources in the legal hierarchy (including the constitution, Election Code, General Administrative Code, Law on Public Service, Law on Conflict of Interest and Corruption in Public Service, Criminal Code of Georgia, Law on Public Unions of Citizens, Law of Georgia on Broadcasting, and the Code of Conduct of Broadcasters). Reform processes have been numerous and

### Recommendation

- ✓ After conducting a detailed study evaluating whether ASR sanctioning mechanisms are deterring or changing behavior, evaluate the range of penalties available for misuses of state resources to ensure they are proportional and structured to achieve a deterrent effect (for example, it may be necessary to increase fines levied on political parties rather than individuals)

generally inclusive; CSOs have participated in the development and adoption of a myriad of legislative amendments relating to transparency of ownership and financing in the media, as well as electoral campaign funding rules.

Annex 1 to this report contains a (non-exhaustive) list of sanctions provided for in the Georgian Election Code and the Law on Political Unions of Citizens, the principle sources for warnings, fines, and other remedies (including forfeiture of received donations, temporary suspension of public funding, loss of candidate/party registration, nomination for election, or elected seat, or suspension of government or party activities) for administrative ASR violations. The annex also contains detailed excerpts of other ASR laws, from the range of sources listed above. Assessment interlocutors recommended making available a wider range of sanctions to ensure they are proportional to the offense committed and serve as an effective deterrent to actors with a greater ability to afford fines or absorb other legal penalties. In order to inform an update of the ASR sanction regime, a detailed study should be undertaken to evaluate whether administrative protocols issued by ASR oversight institutions and enforced by the court system (discussed in Principles 2 and 3) are deterring or otherwise changing behavior in a meaningful way. This study could review fine levels and other available remedies for effectiveness, defined as a remedy that: “(1) ensures that the letter and spirit of the law is realized in practice (including to restore electoral rights or otherwise undo the harm caused by a violation); (2) is provided in a timely manner; (3) is proportional to the violation or irregularity in question;

<sup>6</sup> Venice Commission & OSCE/ODIHR, *Joint Guidelines for Preventing and Responding to Misuse of Administrative Resources during Electoral Process*, 106th Sess., Doc No.778/2014, A.5.2.

<sup>7</sup> Ibid, A.3-A.5.

<sup>8</sup> Ohman Megan Ritchie, “Campaign Finance.”

<sup>9</sup> *Joint Guidelines for Preventing and Responding*, C.2.3.

<sup>10</sup> Erica Shein and Megan Ritchie, *Unfair Advantage: The Abuse of State Resources in Elections*.

(4) is enforceable; (5) leads to deterrence or a change in behavior in question; and (6) reinforces the perception of fairness and credibility of the process.”<sup>11</sup>

Article 40 of the Criminal Code also provides for a range of potential penalties for criminal offenses: fines; deprivation of the right to occupy an official position or to carry out a particular activity; community service; corrective labor; service restrictions for military personnel; restriction of liberty; fixed term imprisonment; life imprisonment; and confiscation of property. The code outlines specific offenses for which these penalties may be applied; of relevance to elections are provisions on interference with the “expression of will” in elections, referenda or plebiscites, interference with the work of election commissions, and vote buying (Articles 162-164).

The remainder of the Principle 1 narrative is divided into three sections, each focused on one type of state resources as emphasized by this assessment methodology: state personnel activities and time; state funds and physical assets; and official government communications to the public, including state-run or owned media.

### *Restrictions on State Personnel*

As noted in an IFES paper on the subject, states should place some restrictions on the electoral activities of government personnel, including regulations compelling state impartiality by state agencies and employees.<sup>12</sup> Although these types of regulations are insufficient as a sole means of regulating the abuse of state resources, they can be beneficial in establishing an important principle by which public employees must abide.<sup>13</sup>

In examining the legal and regulatory framework for ASR, it is also necessary to address the activities and responsibilities of public employees who are planning to run for office.<sup>14</sup> The Venice Commission and OSCE/ODIHR’s 2016 Guidelines reference the need to consider “adequate and proportionate” rules in the legal framework pertaining to the “suspension from office or resignation of certain public authorities running for elections in order to ensure neutrality.”<sup>15</sup> Finally, it is necessary to prevent incumbents from leveraging the considerable pool of government employees to gain an electoral advantage, and to conserve government work-time strictly for governance functions. In addition, regulations regarding state personnel’s time and financial contributions to an electoral campaign can also serve to protect government employees from coercion with regard to their election activity.<sup>16</sup>

The General Administrative Code of Georgia provides the basic foundation for ensuring that public servants and institutions carry out their work in a neutral manner, stating in Article 8(1) that “an administrative agency shall exercise its authority impartially.” More detailed rules for public administration are established through the Law on Public Service and the Law on Conflict of Interest and Corruption in Public Service. A 2015 Transparency International Georgia report noted that these laws are generally robust, covering important areas such as conflict of interest, gifts, involvement in private business, whistle-blower protections, asset declarations by public officials, and post-employment restrictions. Although it is still too

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<sup>11</sup> Chad Vickery and Katherine Ellena, “Measuring Effective Remedies for Fraud and Administrative Malpractice,” in *International Election Remedies*, ed. John Hardin Young (American Bar Association, 2016), 103.

<sup>12</sup> Magnus Ohman, *Training in Detection and Enforcement Political Finance Oversight Handbook* (TIDE) (Washington, D.C.: International Foundation for Electoral Systems, 2013), 138.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid, 140.

<sup>15</sup> *Joint Guidelines for Preventing and Responding*, A.4.2. However, Ohman warns that in some cases the implementation of such regulations could be counter-productive, if public employers are only willing to re-hire candidates that support the ruling party and refuse to re-hire representatives of the opposition. See TIDE.

<sup>16</sup> Shein and Ritchie, *Unfair Advantage*.

early to assess the impact of reforms made to both laws (enacted in July 2017), the changes made to the Law on Conflict of Interest and Corruption in Public Service broaden the law's scope to include "public servants," a wider category than the original group of "officials" bound by the law. One continuing gap is the regulation of LEPLs: although the "officials" regulated under the law include the heads LEPLs and their deputies, it still excludes those LEPLs established for cultural, educational, scientific, research, sports and religious activities and political parties, as well as most other LEPL employees besides high-level management.

Over the last few election cycles, observer groups have noted some challenges in the implementation of these laws, as well as areas where progress has been made. In 2011, Transparency International's National Integrity System Assessment Report noted that although Georgia's legal framework contained a number of provisions designed to safeguard the independence of public servants, there were insufficient safeguards against political interference in their work and no dedicated body for the protection of their rights. According to the OECD's Anti-Corruption Network for Eastern Europe and Central Asia (OECD ACN), legal provisions give excessive discretion to the senior officials of public agencies, making it possible for them to exert undue influence on public servants. The legal framework does not expressly prohibit political interference in the public administration's activities and there is still no dedicated body for the protection of civil servants' rights.<sup>17</sup> As such, Georgia should consider amendments to the legal framework to protect civil servants from political interference from senior officials.

As noted in a 2016 OECD report, the newly-reformed Civil Service Law (CSL) "provides a detailed definition of rights, responsibilities and guarantees" of the civil service in order to insulate the service from political pressure. Generally, the CSL provides that a professional civil servant shall "carry out his/her powers by observing the principle of political neutrality and is prohibited to use their official powers to favour partisan interests."<sup>18</sup> Under the new CSL, "civil servants in principle can be members of political parties but there is an explicit prohibition to use administrative resources for the party purposes. Political neutrality is protected by obligation to refrain from political activities during the civil service employment."<sup>19</sup> However, the OECD warns that despite the legal alterations made in the new CSL to enhance the professionalism of the civil service – particularly with respect to insulation from the influence of ministers and heads of agencies – the vulnerability to political influence exerted on the professional civil service still remains in practice with respect to political appointees who oversee departments.<sup>20</sup> This is discussed in more detail in the "Public Service Framework" section of this report.

Several assessment interlocutors noted that the reformed CSL is a good first step towards a more professional civil service in Georgia, but agree that additional changes are still needed. The public

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<sup>17</sup> *Georgia National Integrity System Assessment*, report, Transparency International Georgia (Tbilisi, 2015), 55.

<sup>18</sup> *Anti-Corruption Reforms in Georgia: Fourth Round of Monitoring the Istanbul Anti-Corruption Action Plan*, report, OECD Anti-Corruption Network for Eastern Europe and Central Asia (Paris, 2016), 30.

<sup>19</sup> Ibid. The report also notes the following: "Internal audit units have tasks related to public financial management and control, human resource units are busy with civil service reform issues, and contact points representing ministries in the Anti-Corruption Council are dealing with their own obligations under the Anti-Corruption Strategy and Action Plan. In some ministries, Inspector Generals also deal with conflict of interest rules and other anti-corruption issues. According to TI, 'Georgia did not have an established mechanism for monitoring the application of integrity rules in practice, responsibility for integrity promotion and monitoring of ethics standards is assigned to internal audit units in the majority of public agencies. However, the impact of this activity seems to be dubious, as it is rare for them to detect any violations of integrity rules.'"

<sup>20</sup> Ibid. The report notes: "Ministers and heads of agencies are direct supervisors of civil servants, as there is no position of senior civil servant, such as a state secretary. Experience of many ACN countries shows that lack of clear decision-making autonomy of professional civil servants is an important weakness in the region that allows heads of state bodies to interfere in all activities of their subordinates," p. 31.

institutions covered by the law will need to prioritize its implementation ensure that funding is available for the changes required under the law. Several areas remain in need of additional reform, including the need for a specific office responsible for monitoring civil service integrity, as noted by the OECD, as well as the haphazard system of awarding bonuses to civil servants over and above the base and supplemental salaries regulated under the CSL.

Other laws in the Georgian framework – including the Election Code – provide numerous specifics on the subject of the permissibility of participation of public officials in election campaigns (or support for particular candidates or political parties), and address the types of positions that carry special restrictions or exemptions relating to candidacy as well as campaigning for others.

For candidates running for parliamentary elections, certain public officials are required to resign from their positions to be eligible to stand for office. Per Election Code Article 112, persons holding a specific set of offices must resign and be dismissed no later than on the second day after submitting an application to the appropriate election commission for registration as a candidate for Georgian Parliament.<sup>21</sup> An additional set of officeholders are forbidden from any campaigning activities, per Election Code Article 45(4):

- member of an election commission;
- judge;
- public officials of the Ministries of Internal Affairs and Defense, Prosecutor’s Office, Intelligence Service and Special State Protection Service;
- the Auditor General;
- Public Defender of Georgia;
- aliens and foreign organizations;
- charity and religious organizations;
- public officials of bodies of State and local self-government, while directly carrying out their duties; and,
- members of Georgian National Communications Commission (GNCC) and Georgian National Energy and Water Supply Regulatory Commission.

Also of note, as per Constitution Article 26(5), a person enrolled in the military forces or the bodies of internal affairs, or an appointed judge or prosecutor is legally required to cease his or her membership in any political association. Observers have suggested further limiting the pool of political officials with rights to participate freely in election campaigns, though a balance with the freedom of expression must be maintained.<sup>22</sup>

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<sup>21</sup> These offices are: the President of Georgia; ministers of Georgia and autonomous republics, heads and deputy heads of government and state subordinate agencies; members of the Security Council of Georgia (except for Members of the Parliament); members of the Board of the National Bank of Georgia; Auditor General and deputy Auditor Generals; state attorneys - Governors and their deputies; the chairperson of Sakrebulo (Tbilisi City Council), Gangebeli (head of the district municipality), mayor of the city; officers of the Ministry of Internal Affairs of Georgia and Ministry of Defense of Georgia, Georgian Intelligence Service and Special Service of State Protection; judges; public Defender and Deputy Public Defender; advisors to the President of Georgia; members of the High Council of Justice of Georgia (not Members of Parliament); head and deputy heads of the public service bureau; prosecutors, their deputies, assistants, and investigators; and, members of the Georgian National Communications Commission, and Georgian National Energy and Water Supply Regulatory Commission.

<sup>22</sup> *Recommendations for Improving the Election Environment*, Georgian Young Lawyers' Association, International Society for Fair Elections and Democracy, and Transparency International Georgia, February 10, 2016, 8. The report further recommends legal amendments “restricting the participation of the Deputy Minister and the State Attorney–Regional Governor in pre-election campaigns during working hours.”

Georgia's Election Code Article 49(1) also stipulates the following with regard to prohibitions against campaigning during working hours for public officials who are not otherwise restricted from election activities: "A person having the right to participate in canvassing, who holds an office within the state authorities or local government bodies, shall be prohibited to use his/her official status or capacity in the course of canvassing and election campaign in support of or against any political party, candidate for electoral subject, or electoral subject. For the purposes of this article, the above-stated shall include: a) getting any career subordinate or otherwise dependent person involved in an activity that may support to presentation and/or election of a candidate; b) collecting signatures and conducting canvassing during business trips funded by state authorities or local self-government bodies; c) conducting canvassing during working hours and/or in the course of performing official duties."

Article 88 of the Election Code further prohibits "the use of administrative resources and the abuse of power or office during canvassing and election campaign." Violations related to using administrative resources or "exercising official duties or an official capacity during canvassing and election campaign" are subject to a fine of GEL 2,000.

Assessment interlocutors generally agreed that the most significant ASR challenges in Georgia pertain to public servants engaging in election activities, though the problem is considered to have been less severe in 2016 than in previous electoral cycles. Interlocutors also observed that solving these challenges is made more difficult by limited political will to do so: political parties that hold power have an incentive to skirt the law, the public is generally apathetic to most ASR issues, and public employees in particular are motivated by a desire to keep their jobs.

According to the International Republican Institute (IRI), the 2016 campaign period was marred by allegations of coercion of state employees (e.g. teachers, civil servants, and public administrators) and mobilizing local government influence to prevent opposition party activities. During the campaign period, IRI observers received dozens of reports that state administration officials worked on Georgian Dream's campaign during work hours.<sup>23</sup> The National Democratic Institute (NDI) also cited reports by opposition parties of the reluctance of businesses to donate to them, allegedly due to fear of repercussions.<sup>24</sup> Assessment interlocutors attributed some cases of civil servants campaigning to individuals choosing to participate in order to curry favor with their superiors, while other (difficult to prove) cases appear to involve government officials exerting pressure on public servants, often teachers. These cases do not appear to be systemic and are instead instigated by local governments or officials, but it does raise concerns that pressure on state personnel will be exacerbated in upcoming municipal elections.

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<sup>23</sup> *Georgia's Parliamentary Election October 8 and October 30, 2016*, report, International Republican Institute (Washington, D.C.: International Republican Institute, 2016), 13.

<sup>24</sup> *Final Report of the National Democratic Institute on Georgia's October 2016 Parliamentary Elections*, report, National Democratic Institute (National Democratic Institute, 2014), 10.



In its report on the elections, Transparency International found that the period between the first and second rounds of elections were characterized by “one of most alarming trends of using enforcement administrative resources.”<sup>25</sup> OSCE observers of the same elections also noted that while fundamental freedoms were generally respected during the campaign and contestants were able to campaign freely, several parties voiced allegations of political pressure on candidates and campaign staff involving local authorities, police, and the State Security Service. Only a few official complaints were formally submitted on these matters and are under investigation.<sup>26</sup> These included a few incidents of pressure on local public

employees and teachers to attend campaign events.<sup>27</sup> Assessment interlocutors further noted that while these issues are reported throughout the country, the language barrier in minority areas means that civil servants are less likely to understand their rights and are more vulnerable to political pressure.

### Recommendations

- ✓ Consider amendments to the legal framework to protect civil servants from political interference by senior officials and to further restrict the ability of senior political officials to participate in campaign events
- ✓ Require civil servants to take leave without pay, rather than vacation time, in order to participate in campaign activities
- ✓ Conduct targeted public outreach on the rights and responsibilities of the civil service with respect to political campaigns

OSCE also noted that while the law prohibits campaigning by certain public officials during working hours, provisions permit officials to take vacation time to campaign.<sup>28</sup> Some assessment interlocutors raised concerns that on the local level, this stipulation does not go far enough to address signs of impropriety. There is an overwhelming sense among the relatively small Georgian population that ‘everyone knows everyone,’ and on the municipal level this translates to personal identity and status as civil servant or government official being one in the same. Transparency International Georgia found in their observations of the 2016 Parliamentary elections that public servants mainly used leave days to participate in campaign activities; however, in some cases, local self-governments made illegal use of their human resources for election purposes.<sup>29</sup> Civil servants, particularly at the municipal level, as well as the general public, should have a clear understanding of the rights and responsibilities of the public service in order to facilitate detection of the misuse of state resources and ensure that civil servants are able to exercise their right to free expression by participating (or not) in campaign activities of their choosing. Public agencies, as well as civil society organizations and oversight institutions such as the Inter-Agency Task Force on Free and Fair Elections (IATF, discussed in Principle 2), should conduct targeted public outreach on the rights and responsibilities of the civil service with respect to political campaigns.

### *Restrictions on the Use of State Funds and Physical Resources*

The physical assets (including buildings, equipment, and vehicles) and operating/administrative budgets wielded by state and local governing bodies are potential sources of abuse for election campaigns absent appropriate restrictions. The legal framework can serve to limit potential abuses by clearly identifying

<sup>25</sup> Gigi Chikhladze and Tamta Kakhidze, *Misuse of Administrative Resources During Electoral Processes: 2016 Parliamentary Elections in Georgia*, report, Transparency International Georgia (2016), 4.

<sup>26</sup> *Georgia: Parliamentary Elections 8 and 30 October 2016*, report, OSCE/ODIHR Election Observation Mission, OSCE Office for Democratic Institutions and Human Rights (Warsaw, 2017), 7.

<sup>27</sup> Ibid, 8.

<sup>28</sup> Ibid.

<sup>29</sup> Chikhladze and Kakhidze, *Misuse of Administrative Resources*, 3.

inappropriate uses of these resources and requiring transparency in any permissible uses throughout the electoral process.<sup>30</sup> There are a variety of approaches to doing so, including banning specific sources or expenditure types, and requiring detailed disclosure of funding from political parties and candidates to ensure that misuses of state resources will be revealed.

The legal framework in Georgia is relatively clear on the appropriate uses of key administrative resources, such as public facilities and vehicles, for election campaigns. Several assessment interlocutors noted that these types of resources are relatively straightforward to regulate in Georgia, given that they are clearly addressed in the law and generally observable (with the notable exception of state vehicles, which do not use standardized license plates and may be difficult to track). The Election Code clearly prohibits public officials from using administrative resources in support of campaign activities and regulates the use of public facilities, such as schools, for campaign events. Specific examples of these prohibitions include the following:

- Article 48 (1.a) prevents the use of premises occupied by the bodies of state and local self-government, as well as organizations funded from the Georgian state budget, if other election subjects are unable to use the premises of same or similar function under the same conditions.
- Article 45(5) prohibits pre-election campaigning on the premises of the executive governance agencies of Georgia, courts, and military units.
- Article 46(2) prohibits the posting of election posters on buildings and premises of religious significance, cultural heritage, on interior and exterior of buildings of state authority, local self-government bodies, courts, the Prosecutor's Office, military units and police, as well as traffic signs.
- Article 48(1.c) prevents the use of means of transportation owned by the bodies of state or local self-government free of charge or under preferential terms.<sup>31</sup>

It is also important to note that the Election Code does permit the use of public resources in some instances – as long as equality among election subjects is ensured – in order to help parties and candidates reach their potential electorate. This includes, for example, an equitable share of public billboard space and the use of the premises of state and local government, and companies owned by the government, for advertising and other campaign purposes as outlined in Article 48. Article 46(4) requires that local “self-government bodies” provide a list of locations or install stands for posting and displaying campaign materials. These local self-government bodies are required to publish the information about places and/or installed stands not later than 10 days before calling elections.

In its observation of the 2016 parliamentary elections, ISFED identified 28 examples of the misuse of administrative resources during the pre-election period, generally to the benefit of the ruling party. Instances of abuse in various municipalities included the use of official vehicles for campaign activities and “restrictions in availability of buildings owned by the local self-governments to opposition parties.”<sup>32</sup> As noted above, however, assessment interlocutors from various stakeholder groups – including civil society,

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<sup>30</sup> Shein and Ritchie, *Unfair Advantage*.

<sup>31</sup> Organic Law of Georgia, Election Code of Georgia, Article 48(2) provides for an exception for the use of service vehicles by public political officials that are protected by the Special State Security Service.

<sup>32</sup> *Final Report of the Observation Mission for the 2016 Parliamentary Elections*, report, International Society for Fair Elections and Democracy (ISFED) (Tbilisi, 2017), 20-21.

## Recommendations

- ✓ Amend the law to prohibit social assistance transfers that were not publicly announced at least 6 months prior to Election Day
- ✓ Amend the law to proscribe the lump sum annual payment of social assistance transfers during the campaign period
- ✓ Conduct targeted outreach campaigns to highlight spending activities of municipal governments

political parties, and government agencies – emphasized that this type of misuse is a relatively minor issue both in terms of its prevalence and likely overall impact on the electoral process.

A more significant area of concern highlighted by assessment interlocutors, as well as official observer missions, is the use of public spending (especially on social programs and public works) to potentially influence voter behavior. Although the letter of the Election Code prohibits changes to local budgets during the campaign period, many note that the spirit of the law is frequently violated. As one interlocutor noted during the in-country assessment, the *legal* misuse of administrative resources may have a much greater impact on the conduct and fairness of elections than illegal uses. Election Code Article 49(3) prohibits altering the government budget to implement new projects/programs within the 60 days before and including Election Day.<sup>33</sup> Article 49(4) specifically addresses – and prohibits – the funding of welfare benefits (for example, pensions or hardship allowances) that were not previously provided for by the legislation of Georgia at least 60 days before Election Day. However, interlocutors noted that state, autonomous republic, and local government budgets can be altered just before the 60-day mark (when the likely election date is commonly known), enabling the implementation of social or infrastructure programs or the dispersal of welfare benefits within the pre-election campaign window.

Transparency International Georgia and the Georgian Young Lawyers Association (GYLA) highlighted instances of electorally motivated public spending in state and local budgets for the 2012 Parliamentary Elections. The trend showed that a high number of infrastructural, social, cultural and sporting programs were implemented during the pre-election period (when comparing with non-electoral years, these or similar programs were either non-existent, or distributed during the whole year, not just few months prior to elections).<sup>34</sup> Election observation reports from 2016 also noted a number of examples of this practice. Transparency International Georgia found that questions regarding the appropriate use of state financial resources were raised following two initiatives by the central government: one, an increase of pensions starting July 1, and two, exemptions for mountainous areas that entered into force on September 1.<sup>35</sup>

OSCE observers noted as well that claims were made by several contestants that the government reallocated budget funds immediately prior to the legal deadline, and that infrastructure and renovation projects were being unfairly promoted just prior to Election Day.<sup>36</sup> Transparency International Georgia also reported that a number of municipalities also launched budget amendments to increase funding for infrastructure and social projects after the launch of the pre-election campaign; however, they completed the amendment processes within the legally allowed timeframe. Despite being technically legal, these amendments raised observers' suspicions about attempts to increase voter satisfaction prior to the

<sup>33</sup> See Election Code, Article 49(3): An exception is provided for projects/programs that are 1) funded within the allocations provided for by the respective program code of the respective budget and/or by the funds from such allocations, or 2) funded by the funds allocated by donors at least 60 days before Election Day.

<sup>34</sup> "Data: Georgia," *Money, Politics, and Transparency* (MPT) Campaign Finance Indicators Scorecard, 2014, 1.1, <https://data.money politicstransparency.org/countries/GE/>.

<sup>35</sup> Chikhladze and Kakhidze, *Misuse of Administrative Resources*, 3.

<sup>36</sup> *Georgia: Parliamentary Elections*, OSCE/ODIHR Election Observation Mission, 8.

elections.<sup>37</sup> The International Society for Fair Elections and Democracy (ISFED) echoed these findings in its report on the 2016 parliamentary elections in Georgia, particularly highlighting misuse by local self-government bodies. Some municipalities directed funds towards social and infrastructure projects in a manner that was in line with the legal framework but raised questions about motivations for altering the budget just before the pre-election period.<sup>38</sup>

Addressing this issue is particularly thorny, as most governing bodies appear to be working within the bounds of the law as it relates to setting and expending budgets. It is essential that the law balance the need to fulfill government mandates (for example, to provide social services and ensure maintenance of infrastructure) with the imperative that decisions about public resource expenditures should not be made as a result of a political calculus. The law should not have a chilling effect on spending for the genuine good of the public, but should instead emphasize advance planning, transparency, and avoiding the appearance of impropriety. At a minimum, the law should prohibit the lump sum payment of yearly social assistance packages (including pensions) during the campaign period prior to Election Day. Legal reformers could also consider amending the law to prohibit any expenditures of social transfers/assistance packages that were not planned for and included in publicly accessible budgets at least six months prior to Election Day (rather than the 60 days currently mandated). Civil society organizations should continue providing oversight of such expenditures (for example, Transparency International Georgia's "electorally motivated spending" analysis) and should conduct targeted outreach campaigns to the public. These campaigns should present not only the spending activities of municipal and national governments that may violate the spirit of the law, but also emphasize why these issues are important: the misuse of public resources can undermine the fair competition needed for truly credible elections, as well as waste public funds that may be better allocated for other purposes.

#### *Restrictions on Official Government Communications to the Public*

Official government communications, as well as publicly-managed or funded media sources, can heavily tilt the playing field in electoral campaigns towards the incumbent party if not properly regulated. It is important, therefore, for the legal and regulatory framework to clearly outline allowable and unallowable uses of official government communications during the electoral period, though specific approaches to this regulation may vary.<sup>39</sup> For example, as noted in an IFES white paper on the subject, "legal provisions may restrict the advertising activities of state agencies during the campaign period. Countries may also include provisions in the legal framework placing restrictions on the use of government funds to print or distribute communication during the electoral campaign period; for example, prohibiting mass mailings paid with official government funds or official publications that "prominently feature" a public official from being sent during an established pre-election campaign period. Additionally, legal provisions may include *content* restrictions (such as on the use of official symbols or other government insignia in election-related communication)."<sup>40</sup>

This report section focuses on two types of government communications: the dissemination of information from official government bodies and individuals acting in an official capacity (including through the use of traditional sources such as mailings as well as websites and social media), and the use of public media outlets (including broadcast, radio, newspaper, and other media sources).

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<sup>37</sup> Chikhladze and Kakhidze, *Misuse of Administrative Resources*, 3.

<sup>38</sup> *Final Report of the Observation Mission*, ISFED, 20-21.

<sup>39</sup> Shein and Ritchie, *Unfair Advantage*, 16.

<sup>40</sup> Shein and Ritchie, *Unfair Advantage*, 16-17.

#### Official government communications:

Georgia Election Code Article 48(1.b) prohibits the election-related use of communications or information services designated for state and local government agencies or organizations funded by the state budget, noting that this would be an abuse of administrative resources. Article 49(6) proscribes the use of state funds to produce campaign materials, video or audio materials, or contribute to the creation of websites supporting, opposing, or advertising a political party or electoral subject. Funds from state or local self-government unit budgets may not be used to produce a public service announcement (PSA) advertising a political party or electoral subject during an election campaign. In addition, Article 66<sup>1</sup> of the Law on Broadcasting restricts the ability of administrative bodies, political parties, government officials, and public servants to finance or procure the services of broadcasters. Administrative bodies may only use a broadcaster's service for "social" advertisements containing information that is important for public knowledge; disputes over what constitutes a social advertisement may be settled by the GNCC.<sup>41</sup>

As reported by several international and domestic observers, there are still some cases where these laws are not followed and/or enforced; however, there seems to be a trend towards improvement over the last few electoral cycles. Few interlocutors cited major concerns about abuses of official government communication channels, but social media was emphasized as a particularly problematic area to regulate (and one which may become increasingly challenging in the future). According to assessment interlocutors, government ministries maintain official Facebook pages as well as webpages, and in past elections these communications channels have been misused to display ruling party campaign event materials. Although the courts declined to punish the respective agencies following the issuance of administrative protocols by the election commission, the information was removed from the websites.

Personal Facebook pages are particularly difficult to regulate, although ISFED is tracking the use of such tools for campaigning by local officials and attempting to ascertain whether they are being used during working hours (when it would theoretically be prohibited). ISFED reporting on the 2016 parliamentary elections also found some examples of pre-election campaigning in favor of the ruling party and its candidates on municipal websites and Facebook pages. In addition, ISFED notes that "the so-called SMS Service introduced by some municipalities contained signs of misuse of administrative resources. Local executive bodies sent out mass text messages about infrastructural projects that had been completed. While the use of the above means as a way to keep population informed about local government activities is beneficial and welcomed, it is peculiar that municipalities started using the text-messaging service during the pre-election period."<sup>42</sup> This issue is clearly entwined with the significant challenge of regulating spending in the pre-election period described in the first section of this report; the use of information and communication technologies such as text messages and social media by government officials/bodies may magnify the impact of such abuses.

#### Public media:

As discussed later in this report, the Georgian Constitution guarantees freedoms of speech and of the press and prohibits censorship. The principal state-managed media outlet is the Georgian Public Broadcaster (operating two television channels and one radio station), which is constrained by a number of legal commitments designed to ensure neutrality and reduce conflicts of interest. The Law on Broadcasting

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<sup>41</sup> Under the same article, if an administrative body and a broadcaster fail to reach an agreement about whether the material provided to the broadcaster by the administrative body is a social advertisement and/or whether it contains information which is important for the public: "the Commission shall settle the dispute within 10 days after one of the parties files an application with the Commission as determined by the General Administrative Code of Georgia."

<sup>42</sup> *Final Report of the Observation Mission*, ISFED, 20-21.



identifies a broad range of conflicts that would limit one's ability to serve as a public broadcasting Director General or on the Board of Trustees. This includes the ownership of stocks or any other "direct or indirect economic interest" in another television or radio enterprise.

Election Code Article 51(1) requires broadcasters to remain impartial and fair (as defined by the Law of Georgia on Broadcasting, the Code of Conduct of Broadcasters, and the Election Code) when broadcasting social-political programs and election activities during the course of election campaigning.<sup>43</sup> Article 22 of the Code of Conduct of Broadcasters affirms principles of impartiality and fairness: "Broadcasters shall ensure accurate, impartial and fair coverage of elections, fair and transparent scheduling of political advertisements and the coverage of pressing issues of public policy and politics in accordance with the Georgian Law on Broadcasting, the Election Code of Georgia and this Code."<sup>44</sup>

Based on Election Code Article 51(2), a general broadcaster intending to cover election campaigning must broadcast pre-election debates in a non-discriminatory manner and with the participation of all "qualified electoral subjects" during the election campaign within its coverage area.<sup>45</sup> The law differentiates among broadcasters; the Georgian Public Broadcaster, Ajara TV, Radio of the Public Broadcaster, and community broadcasters are required to allot five minutes every hour for qualified electoral subjects to air free pre-election advertisements and to air these advertisements for up to 90 seconds every three hours no later than the 50<sup>th</sup> day before Election Day.<sup>46</sup> Other broadcasters are subject to somewhat different requirements, spelled out in Article 51(6). Article 51(10) explicitly focuses on "local broadcasters," requiring that they recognize as "qualified electoral subjects" any political party or electoral bloc that meets the definition, and also met a certain threshold in the previous election. The law also gives local broadcasters the ability to consider additional political parties and majoritarian candidates as qualified subjects, including parties that have earned at least 4% of voter support in at least 5 public opinion polls conducted during the election year or in one national-level public opinion poll conducted within one month of elections.<sup>47</sup>

As per Election Code Article 51(12), the Public Broadcaster, Ajara TV and Radio of the Public Broadcaster (legal entities under public law) must also allot paid airtime for pre-election advertising for all other parties and electoral blocs (that are not considered "qualified electoral subjects" under the law). Election Code Article 50(1.b) requires that all electoral subjects (both qualified and unqualified) be charged the same fee

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<sup>43</sup> The legal framework appears to include both public and private broadcasters under this requirement, specifying that a broadcaster is defined as "a Public Broadcaster, Ajara TV and Radio of a Public Broadcaster, a person holding a licence and/or an authorised person, who carries out TV and/or radio broadcasting on the basis of this law." Law of Georgia on Broadcasting, Article 2(s).

<sup>44</sup> Per Article 4, this code applies to "any broadcasting licensee and especially, the public broadcaster."

<sup>45</sup> The Election Code provides general regulations defining a "qualified electoral subject" entitled to free airtime. According to Article 2(q<sup>1</sup>), a qualified electoral subject is a political party (financed under the State Budget of Georgia) or an electoral bloc registered under the law, and a qualified party under Article 2(t<sup>1</sup>).

<sup>46</sup> Evidencing the scattered nature of the relevant laws, Law on Broadcasting also requires that public broadcasters (including radio and community television) "shall broadcast pre-election advertisements submitted by each qualified electoral subject for not more than 60 seconds per hour free of charge and without discrimination during the electoral campaign, which takes place within their service areas and shall allot time for the placement of pre-election advertisements of all other parties and electoral blocs."

<sup>47</sup> Election Code, Article 51(8), which also prohibits a broadcaster's discriminatory use of sociological surveys. Election Code, Article 51(7) also states that for the purposes of the provisions in the article, a candidate nominated by a political union funded from the State Budget of Georgia based on the results of the previous parliamentary or local self-government election can be considered a qualified electoral subject for presidential elections.

for airtime, and that paid airtime allocated by a TV or radio broadcaster must not exceed 15% of its total daily broadcasting time.<sup>48</sup>

The Law for Public Broadcasters requires all broadcast houses, both private and public, to have self-regulatory bodies for receiving and responding to complaints. The accompanying Code of Conduct for Broadcasters also underpins principles and guidance surrounding non-discriminatory and accurate coverage, particularly during a campaign cycle, and obliges broadcasters to send an annual audit report of their self-regulation mechanism to the Georgian National Communications Commission (GNCC).<sup>49</sup>

Penalties associated with violating elections-related media regulations range from 500 GEL to 5,000 GEL, which interlocutors noted is a comparatively trivial expense for large broadcast companies that can accrue 30,000 GEL per minute for political advertising spots. As highlighted in a recommendation at the outset of Principle 1, the legislature should consider increasing fines for certain media-related election violations so that they might serve as more effective deterrents. As will be discussed in Principles 2 and 3 of this report, the GNCC typically addresses complaints by issuing warnings to offenders, followed by issuing administrative protocols recommending that the courts levy fines.

With respect to print media, Article 50 of the Election Code requires newspapers funded either by central or local budgets to report weekly to the GNCC on the dates and frequency of campaign advertisements, as well as space allotted for this purpose, from the time elections are announced until results are totaled. Article 50(2) states that no election subject may be given more than one-third of the newspaper space in either a single newspaper publication or over a period of one week, and that all electoral subjects must be charged the same fee for newspaper space. Article 50(2) also requires the paper to display an inscription above the article heading and in the corner of the advertisement, of "paid political advertising" or "free political advertising" when publishing campaign and political advertisements.<sup>50</sup>

In observing the 2016 Parliamentary Elections, the OSCE noted there were improvements since 2012 in the overall pluralism of the media landscape and more recently with the growing contribution of online media. Nevertheless, media outlets, especially broadcast media, are still often perceived as polarized along political lines.<sup>51</sup> According to the OSCE's reporting, the Georgian Public Broadcaster (GPB) and Ajara TV, in line with legal requirements, offered non-qualified contestants equal, but very limited, airtime (10 seconds per day) and only one party availed itself of this opportunity. Generally, media outlets respected legal provisions on free and paid advertisement; however, broadcasters did not abide by the disclosure rules for the publication of opinion polls.<sup>52</sup>

Though both international and domestic observers, as well as interlocutors interviewed in the assessment, noted that state-managed media generally adhered to their legal commitments regarding fair and equal

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<sup>48</sup> When broadcasting a political or pre-election advertisement, Election Code Article 50(1.c) requires that the screen corner display the inscription 'paid political advertising' or 'free political advertising.' Such advertisements must be accompanied with sign language translation, to be arranged for by the electoral subject presenting the advertisement.

<sup>49</sup> As discussed in more detail in the next section of this report, the GNCC's media monitoring unit checks adherence to the legal framework regarding political content around elections. The commission is also considering broadening its capacity to review political and state-sponsored advertisements prior to air to preempt possible infractions. However, the GNCC does not yet monitor online media, including traditional radio, print, and television channels that may have original online content. As online platforms become increasingly important sources of information for citizens in Georgia, this could become an accountability and compliance gap in future elections.

<sup>50</sup> Election Code, Article 50(4) allows the Public Broadcaster and a newspaper to distribute airtime or newspaper space unused by any electoral subject equally among other electoral subjects.

<sup>51</sup> *Georgia: Parliamentary Elections*, OSCE/ODIHR Election Observation Mission, 9-10.

<sup>52</sup> *Georgia: Parliamentary Elections*, OSCE/ODIHR Election Observation Mission, 10.

political coverage and advertisements, the independence of the Georgian Public Broadcaster (GPB) was questioned by many citizen observer groups when it conducted an exit poll with several private media stations, including one with political links to the ruling party. Further, the GPB's recent hiring of production and technical staff from Georgian Dream Studios (GDS), a private outfit owned by former Prime Minister Bidzina Ivanishvili's son, create risks of politicization, both real and perceived, of the public station. Assessment interlocutors indicated their concern that Georgian Dream may be attempting to co-opt the public broadcaster in this manner. Additionally, although in the past the GPB has reportedly been fairly balanced in its coverage, with the legal discretion to focus only on major parties, new and emerging parties may not be adequately protected.

## Principle 2: Ensure effective and transparent oversight by independent institutions (oversight institutions)

As noted by IFES previously, "an independent, empowered oversight institution that is responsible for auditing and monitoring the use of state resources is essential in the development of a strong system to prevent or address potential abuse. Clarity is needed in the legal and regulatory framework as to an oversight institution's mandate, and how compliance with the rule will be monitored."<sup>53</sup> Oversight bodies should be provided with "sufficient resources, independence, and political will to investigate potential violations and to initiate a remedy."<sup>54</sup> Although a clear demarcation of regulatory responsibilities between and among oversight institutions is generally considered desirable, research has shown that it may be theoretically possible to design an effective system characterized by "institutional multiplicity," in which competing jurisdictions are enabled by "more than one institution [being] charged with performing a certain function."<sup>55</sup> As the International Research Initiative on Brazil and Africa has noted, however, it is important to create a structure where the competing jurisdictions creates incentives to improve performance, rather than providing an option for institutions to shirk their responsibilities.<sup>56</sup>

### Recommendation

- ✓ Conduct a cross-institutional mapping exercise, led by the IATF, to discuss overlapping oversight of ASR and determine a clear framework for future elections

In Georgia, there are several entities responsible for different aspects of ASR oversight; in some cases, their purviews are overlapping or resources are misaligned with mandates, leading to challenges with both oversight and enforcement of penalties (as will be discussed further in the next section of this report). Several interlocutors identified divided or overlapping mandates between various oversight institutions as the most significant systemic challenge in addressing ASR violations and providing sufficient deterrence in Georgia. Stakeholders are often unsure of where to file complaints and bring the same complaint to multiple bodies, and those under scrutiny for a violation of the law may also be interviewed by multiple bodies as part of the same investigation. GRECO draws a link with the multiplication of

responsible bodies, such as the IATF (discussed below), and the filing of complaints with the wrong bodies.<sup>57</sup> It would be advisable for the principal institutions involved in ASR oversight (detailed in the table below) to engage in a more detailed mapping exercise, focusing on specific mandates and where these may overlap. The mapping exercise could be convened by the IATF, and include civil society organizations that track ASR

<sup>53</sup> Shein and Ritchie, *Unfair Advantage*, 16-17.

<sup>54</sup> Ohman and Ritchie, "Campaign Finance."

<sup>55</sup> Lindsey Carson and Mariana Mota Prado, *Brazilian Anti-Corruption Legislation and its Enforcement: Potential Lessons for Institutional Design*, report no. 9, International Research Initiative on Brazil and Africa (Manchester: University of Manchester, 2014), 8.

<sup>56</sup> Ibid.

<sup>57</sup> *Third Evaluation Round: Second Compliance Report on Georgia*, report, Group of States Against Corruption (GRECO) and Council of Europe (Strasbourg, 2015), 46.

infractions. The key output of the meeting would be a clear framework for ensuring proper ASR oversight in future elections, including an interagency ASR docket if possible.

An overview of the role of each institution, including the institution's role in ASR oversight and public perceptions of the efficacy of these institutions, is below:

Oversight Institution	Role in ASR oversight	Public perceptions
State Audit Office of Georgia (SAOG)	<ul style="list-style-type: none"> <li>Examines state, autonomous republic, and local self-government unit budget expenditures; the issuance of public loans and public funding from the National State Bank; the use of state property by governing entities; and the use of financial resources allocated for election purposes</li> <li>Verifies the completeness, accuracy and legality of campaign financial declarations and funding reports, and conducts political party financial audits</li> </ul>	<ul style="list-style-type: none"> <li>In its report on the 2016 parliamentary elections, TI states that the SAOG is "independent in its routine work."<sup>58</sup> The NGO notes improved transparency brought about by an increase in published documents and in the quantity and the quality of annual audits, as well as better detection of spending irregularities in public agencies.<sup>59</sup></li> <li>Stakeholders indicate that the SAOG is hindered in carrying out its mandate by a lack of technical and financial resources</li> <li>Limited awareness of the SAOG's mandate and activities among the general public</li> </ul>
Central Election Commission (CEC)	<ul style="list-style-type: none"> <li>Independent administration of elections</li> <li>Considers election-related complaints and adopts by ordinance the Code of Ethics for Electoral Administration officers</li> <li>Develops protocols of administrative offenses<sup>60</sup> for violations within its purview</li> </ul>	<ul style="list-style-type: none"> <li>The OSCE/ODHIR 2016 observation report notes an overall "high level" of confidence in the CEC,<sup>61</sup> though stakeholders generally have less confidence in the lower level PECs.</li> <li>Civil society was critical of the appointment of lower-level commission members. In response, the CEC made efforts to increase the transparency of PEC recruitment by publishing information on PEC members' experience and members previously appointed by parties.<sup>62</sup></li> <li>Strong public approval ratings per recent National Democratic Institute (NDI) polling data<sup>63</sup></li> </ul>

<sup>58</sup> *Georgia National Integrity System Assessment*, Transparency International Georgia, 92.

<sup>59</sup> *Ibid*, 144.

<sup>60</sup> In this context, a "protocol of administrative offenses" refers to a written summary of an investigation into an administrative offense (including a recommended action/penalty), which is then submitted to the relevant adjudicative authority for a decision.

<sup>61</sup> *Georgia: Parliamentary Elections*, OSCE/ODIHR Election Observation Mission, 2.

<sup>62</sup> *Ibid*, 7.

<sup>63</sup> Laura Thornton and David Sichinava, *Public Attitudes in Georgia: Results of a June 2017 Survey Carried Out for NDI by CRRG Georgia*, National Democratic Institute, 2017.

Oversight Institution	Role in ASR oversight	Public perceptions
Georgia National Communications Commission (GNCC)	<ul style="list-style-type: none"> <li>Develops procedures for the use of the media in the electoral process</li> <li>Supervises the implementation of these provisions, and conducts media monitoring</li> <li>Responds to alleged violations by submitting protocols of administrative offenses to the appropriate court for adjudication</li> </ul>	<ul style="list-style-type: none"> <li>A number of stakeholders have identified possible cases of conflict of interest and nepotism in hiring<sup>64</sup></li> <li>Election observer reports have indicated that GNCC monitoring activities are not sufficiently comprehensive</li> </ul>
Inter-Agency Task Force on Free and Fair Elections (IATF)	<ul style="list-style-type: none"> <li>Acts as a forum for discussing alleged violations of election law as reported by media, observer organizations and/or the electorate</li> <li>Makes non-binding recommendations for action by any public officer, an administrative body, or the CEC</li> </ul>	<ul style="list-style-type: none"> <li>International observers note that the IATF serves a “confidence-building role,”<sup>65</sup> but the IATF has been criticized for the efficacy of its reports processing, politicized proceedings, the issued recommendations<sup>66</sup> and a lack of authority to impose sanctions.<sup>67</sup></li> </ul>

### ***State Audit Office of Georgia (SAOG)***

The State Audit Office of Georgia (and specifically, its Financial Monitoring Service (FMS) office) has an important role to play with regard to levying sanctions and penalties for ASR violations. Although in past election cycles the SAOG has been criticized for biased investigations or passivity, improvements appear to have been made in 2014 and 2016.<sup>68</sup>

The SAOG is an independent institution, accountable to the Parliament, that is mandated by Article 97 of the Georgian Constitution to supervise the use and expenditure of “public funds and material.” Assessment interlocutors observed that the legal framework defining the SAOG’s role (which includes provisions in the Law on Political Unions of Citizens, the Election Code, and a separate Law on the State Audit Office of Georgia) is generally comprehensive, but there are significant problems with carrying out this mandate as a result of insufficient human resources and a lack of action (derived from limited political will) by the courts to enforce the decisions arising from its investigations. The SAOG – and FMS – is largely focused on vote buying and illegal donations, as well as investigating the income and resources of political party donors.

The Law on the State Audit Office of Georgia provides detailed information on the status and guarantees of independence of the SAOG.<sup>69</sup> The law states that the Parliament of Georgia is responsible for electing the General Auditor of State Audit Office for a term of five years by a majority of the full list of members of parliament on the recommendation of the Chairperson of Parliament. The SAOG has a legal mandate to examine 1) expenditure and execution of the state budget and budgets and the legality of these expenditures; 2) issuance of public loans and public funding from the National State Bank; 3) use of state

<sup>64</sup> *Georgia Anti-Corruption Legislation: Implementation in Practice*, report, Transparency International Georgia (2015), 24.

<sup>65</sup> *Final Report of the National Democratic Institute*, National Democratic Institute, 8.

<sup>66</sup> *Statement of the National Democratic Institute Pre-Election Delegation to Georgia*, report, National Democratic Institute (Tbilisi, 2014), 11.

<sup>67</sup> *Final Report of the National Democratic Institute*, National Democratic Institute, 8.

<sup>68</sup> Ivan Briscoe, Diana Golf, and Catalina Uribe Burcher, *Protecting Politics: Deterring the Influence of Organized Crime in Elections* (Stockholm: International IDEA, 2016), 54.

<sup>69</sup> Law of Georgia on the State Audit Office of Georgia, § Article 1 (2008).



property by the state, autonomous republics and local self-government; and 4) the use of financial resources allocated for election purposes under the Election Code.<sup>70</sup>

As per the Law on the Political Unions of Citizens Article 34<sup>1</sup>, the SAOG is mandated to draft administrative offense protocols, to be submitted to the Regional (City) Court for review. An administrative offense protocol, or “protocol of administrative offenses” refers to a written summary of an investigation into an administrative offense (including a recommended action/penalty), which is then submitted to the relevant adjudicative authority for a decision. This Article also authorizes the SAOG to seize property of a party or/and person (including bank accounts) as appropriate. The SAOG is authorized to verify completeness, accuracy and legality of the financial declarations and reports of election campaign funding, audit the financial activity of the parties and ensure transparency of party financing, and request information on party finances from administrative bodies and commercial banks or origins of the property contributed to or received from party or the persons if required.<sup>71</sup> Transparency provisions require the SAOG to publish financial declarations on institution’s website and to provide “all interested persons” with information on these declarations as requested.<sup>72</sup>

Election Code Article 93(3) requires the SAOG to draw up protocols of administrative offenses for “actions aimed at avoiding the requirements of law for funding political activities” and for failing to comply with the requirements on election campaign fund forms.<sup>73</sup> A tracking system for protocols submitted to the courts by the SAOG is currently available in the Georgian language.

IFES observed during the 2012 and 2013 elections that the SAOG did not have the resources needed to fulfill its extensive and very technical mandate, nor did it receive the level of cooperation needed from other institutions to ensure the timely and accurate oversight of campaign finance activities.<sup>74</sup> Although there have been improvements on this front, interlocutors during the 2017 ASR assessment stressed that a lack of human and financial resources, rather than institutional independence, continue to hinder the SAOG’s ability to fulfill its mandate. For example, all work in the FMS – the primary department carrying out investigations related to the scope of this assessment – is conducted by five investigators. The FMS is considered a supportive department under the SAOG rather than a separate entity, and it is therefore legally barred from hiring even temporary employees to assist during the election period. Currently, the entire SAOG may have a maximum of seven ad hoc employees, but the new Civil Service Law will prevent even this level of hiring. As discussed in the IFES 2013 Electoral Integrity Assessment Report on Georgia, the expert analysts employed by the SAOG are responsible for an extensive range of tasks, including monitoring and investigating possible legal violations; reviewing media articles and observing political party activity; responding to referrals from the prosecutor’s office, written submissions from nongovernmental organizations, and complaints filed by parties or members of the public. Once this monitoring process is complete, the SAOG also must investigate legitimate cases; investigators must identify information sources, interview individuals of interest and gather responses from other supporting institutions. This entire process is time intensive and requires a significant number of highly trained staff for effective implementation.<sup>75</sup>

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<sup>70</sup> Law of Georgia on the State Audit Office of Georgia, Article 17.

<sup>71</sup> The Law on Political Unions of Citizens, Article 34<sup>1</sup>. This article also permits the SAOG to request an individual’s financial report if there is a probable cause and make decisions on the imposition of restrictions on individuals through a simple administrative procedure, as well as develop a monitoring methodology for a party’s financial activity and provide consultations to the interested persons regarding party financing.

<sup>72</sup> Law on Political Unions of Citizens, Article 32(3)

<sup>73</sup> Election Code, Articles 84 and 85

<sup>74</sup> IFES Georgia Electoral Integrity Assessment (EIA) Final Report, 2014, 37, (internal IFES document).

<sup>75</sup> Ibid, 40-42.

## Recommendations

- ✓ Consider changes to the FMS directorate that would enable the office to increase the number of investigators allotted to carry out its ASR monitoring and investigation mandate
- ✓ Provide comprehensive investigation training to FMS investigators between election processes
- ✓ Produce and disseminate publicly a detailed report to support SAOG transparency

The challenges highlighted by assessment interlocutors are supported by recent reporting from Transparency International Georgia. For example, the organization noted that the Temporary Parliamentary Commission in charge of assessing the work of the SAOG observed that to address an issue of having more administrative staff than auditors, the SAOG changed the position of some administrative staff members to either auditor, auditor-assistant or auditor-intern. This decision resulted in a lack of qualified experts in the field as well as the lack of clear definition and assignment of staff functions at the SAOG. Transparency International Georgia noted that this is especially problematic when it comes to undertaking new responsibilities of monitoring financing of political parties, a task that places additional burden on the resources of the audit institution.<sup>76</sup>

Several changes to the work and structure of the SAOG would support improvements in the institution's efforts to combat the abuse of state resources in elections. The most urgent recommendation is to increase the number of investigators allotted to the FMS to carry out the SAOG's ASR mandate. As noted above, there are structural impediments to increasing the cadre of investigators that would need to be overcome. Accordingly, the FMS would need to be changed from a directorate under the SAOG to an independent agency or a department of the Anti-Corruption Council, or provided under the law with a special exception to the rules limiting hiring of temporary employees during the election process (as is the case with the Central Election Commission). A thorough review of each of these options should be undertaken in

order to present an informed case to the Parliament for this important change.

At present, the FMS and other responsible bodies are challenged to conduct investigations that meet international standards (in particular, General Comment 31 to the ICCPR, which addresses the requirement for investigations to be conducted promptly, thoroughly, effectively, and by independent and impartial bodies).<sup>77</sup> To address the first three elements of this requirement, SAOG/FMS investigators should be provided with comprehensive investigation training between election processes that focus on core standards and principles for abuse of state resources and election investigations. The training should highlight due process protections and evidence collection and retention methodologies, and focus on the General Comment 31 principles. It would be advisable to include representatives of the major political parties and relevant CSOs to ensure they are empowered to provide proper oversight of the investigatory process during elections. Annually, the FMS team should produce and publicly disseminate a detailed report cataloguing all the claims and enforcement status of sanctions and penalties to increase transparency and act as a deterrence mechanism. This effort would support the SAOG's current efforts to increase transparency of its activities through meetings with local and international NGOs.

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<sup>76</sup> *Georgia National Integrity System Assessment*, Transparency International Georgia, 91.

<sup>77</sup> International Covenant on Civil and Political Rights (ICCPR), General Comment No. 31 states that "Administrative mechanisms are particularly required to give effect to the general obligation to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies."

## Recommendation

- ✓ Review required timelines for addressing complaints to ensure that the CEC is able to meet its obligation to provide thorough investigations

### *Central Election Commission (CEC)*

The Central Election Commission (CEC) and its staff, as well as district and provincial levels of the commission, are independent administrative bodies.<sup>78</sup> According to Election Code Article 10, five members of the CEC are elected by the Parliament of Georgia after nomination by the President of Georgia, and seven members are appointed by parties. The CEC Chairperson is elected by the party-appointed CEC members following nomination by the President (or by the Parliament of Georgia), for a term of 5 years.

Election Code Article 14(1) provides information on the powers of the CEC, which includes (u) considering election-related complaints, and

making appropriate decisions within its delegated authority; and (z<sup>3</sup>) adopting by ordinance the Code of Ethics for Electoral Administration officers. Several Election Code provisions stipulate the mandate of the electoral administration as it relates specifically to ASR. Article 45(9) requires that local self-government bodies draw up a list of locations where election campaigning is likely to occur, and to submit this to the DEC within five days after the commencement of election campaigning. The DEC is then responsible for 1) making the list of premises public; 2) ensuring equal availability of the premises for all political parties and electoral subjects; and 3) drawing up a schedule, in agreement with political parties and electoral subjects, for the electoral events.

Election Code Article 93(1) requires the “CEC Chairperson, as well as the persons authorized by the CEC and respective DEC (officials),” to draw up protocols of administrative offenses referred to in Articles 79, 81 and 86-92 of the Election Code. These protocols are then forwarded to the relevant court for a decision and enforcement of any penalties. There is a public tracking system of the protocols submitted to the courts by the CEC, but cases related to previous elections have been removed from the database due to privacy concerns. While the CEC previously uploaded the protocols submitted and the accompanying court decisions, it is no longer possible to determine the number of protocols issued by the CEC or the status of these submissions. The limitations on the court system’s enforcement of such decisions are discussed in further detail in Principle 3 of this report.

Stakeholders with legal standing may file complaints and disputes regarding the election process with the CEC.<sup>79</sup> The Election Code outlines an issue-by-issue process for filing complaints and appeals regarding elections. Election Code Article 72 provides information for filing complaints on Election Day, including with whom to file the complaint, required information, and next steps once the complaint is filed. Broadly speaking, a complaint may usually be filed with the Precinct Election Commission (PEC) or the District Election Commission (DEC). Complaints filed with PECs are recorded and forwarded to DEC. Decisions are usually made within a two-day time frame after the application/complaint is registered.

The OSCE/ODHIR describes the dispute resolution process for appeals of election commission decisions as “timely”<sup>80</sup> and “conducive to holding democratic elections.”<sup>81</sup> However, in its report on the 2016 Parliamentary elections, the OSCE/ODHIR notes that there is insufficient knowledge of the complaints system, and citizen observers and party representatives were insufficiently trained. The process allows for filing complaints with prosecutors, the SAOG and local municipalities. In practice, complaints are often filed

<sup>78</sup> Election Code, Article 7(1)

<sup>79</sup> Election Code, Article 78 provides that individual voters only have a right to apply and submit complaints related to voter lists, and certain authorized people can submit complaints on other issues.

<sup>80</sup> *Georgia: Parliamentary Elections*, OSCE/ODHIR Election Observation Mission, 3.

<sup>81</sup> *Ibid*, 5.

with several bodies concurrently, due to a lack of clarity of the appropriate avenue and distrust in adjudicating authorities.<sup>82</sup> After Election Day, however, OSCE/ODIHR observed that timeframes were “inadequate for thorough investigation and effective remedy.”<sup>83</sup> In its report on the 2016 parliamentary elections, the International Republican Institute (IRI) reports that slightly more than half of complaints (focused on a range of issues) filed with the CEC were addressed either in full or in part. However, IRI also noted a “widespread perception” that the influence of Georgia Dream as the ruling party prevented the CEC from addressing “a number” of valid complaints.<sup>84</sup> ASR assessment interlocutors also noted that the short timeframes legally mandated for complaints adjudication often results in complaints being dismissed on technicalities. These timelines should be reviewed to ensure that Georgia is able to meet its obligation to conduct thorough investigations per General Comment 31 to the ICCPR, as discussed above.

### ***Georgia National Communications Commission (GNCC)***

The Georgian National Communications Commission (GNCC) is responsible for investigating violations of media-related legal provisions. The GNCC has been mandated to monitor and investigate violations of the law relating to the media since the 2012 elections. Election Code Article 51(15) gives the GNCC the mandate to 1) “determine the procedure for participation and use of the media in the electoral process;” 2) “supervise the observance of provisions under this Law by any broadcaster;” and 3) respond to violations of these provisions. The GNCC draws up protocols of administrative offenses for violations related to the publication of public opinion polls and the placement of political/pre-election advertising, which are then submitted to the appropriate court for adjudication.<sup>85</sup> The GNCC is not subject to any state authority and is not financed from the state budget. GNCC revenue comes from regulation license fees paid by broadcasters.<sup>86</sup>

#### **Recommendations**

- ✓ Release frequent GNCC monitoring reports during the election campaign to ensure monitoring processes support deterrence
- ✓ Expand GNCC monitoring mandate to include relevant online content

In general, the GNCC has had difficulties applying principles regarding political content and coverage elaborated in the Election Code, the Law on Broadcasting, and the broadcasters’ code of conduct. Multiple stakeholders raised concerns about the will and capacity of the GNCC to perform election-related media monitoring and oversight and called into question the quality of its efforts. The GNCC is authorized to issue protocols of administrative offenses for violations related to public opinion polls during elections and the placement of political advertising, but no information is available on protocols issued by the GNCC in previous election cycles. During the 2013 Presidential Election cycle, the OSCE-ODIHR EOM cited continued problems including a passive approach to oversight, limited transparency and effectiveness, and late reporting.<sup>87</sup> The GNCC did submit administrative protocols to the court system during the 2016 election cycle. Inconsistencies in post-election reporting and the lack of a public tracking mechanism make it difficult to determine the precise number and ultimate status

<sup>82</sup> Ibid, 22.

<sup>83</sup> *Georgia: Parliamentary Elections*, OSCE/ODIHR Election Observation Mission.

<sup>84</sup> *Georgia’s Parliamentary Election*, International Republican Institute, 19.

<sup>85</sup> Election Code, Article 93(2).

<sup>86</sup> “About Georgian National Communication Commission,” Georgian National Communications Commission, 2015, <http://www.gncc.ge/en/the-commission/about-commission>.

<sup>87</sup> IFES EIA, 45-46.

of these submissions, but it does appear that at least some cases resulted in court issued fines of media outlets for violations of the law.

In 2014, IFES' *Electoral Integrity Assessment* team also observed that the GNCC was unable to fully operationalize its legal mandate prior to the 2012 parliamentary elections (a new mandate at the time) and assumed a passive posture during the 2013 presidential elections, which "limited transparency and effectiveness." Multiple domestic and international stakeholders interviewed by IFES during that period called into question the quality of the GNCC's efforts and raised concerns about the will and capacity of the GNCC to perform election related media monitoring and oversight.<sup>88</sup> Additionally, IFES noted that prior to the 2012 parliamentary elections the GNCC was not able to contract media monitoring services due to time, public procurement law and budget constraints. Regulations on how it would fulfill its new responsibilities were adopted only in the midst of the election campaign and applied retroactively. Accordingly, the GNCC issued no sanctions during the 2012 and 2013 election cycles.

For the 2016 Parliamentary elections, the OSCE reported that the GNCC conducted media monitoring and published four reports covering the period from 8 June to 22 September. However, they found that the reports did not comprehensively disclose monitoring findings, and that the GNCC did not react in a timely and effective manner to most violations detected during the campaign.<sup>89</sup> However, election observers drew on their own media monitoring efforts to note that broadcasters respected legal provisions pertaining to free and paid advertising. Observers noted that debates offered an inclusive and pluralistic platform for contestants to present their views, but some monitored broadcasters were biased in their news or current affairs programs.<sup>90</sup> Interlocutors noted that during the 2016 election cycle, one complaint was filed against a public broadcaster (alleging that it was pro-Russia), while other complaints were filed against private broadcasters. Interlocutors for this assessment observed that the GNCC could be more proactive in publishing monitoring reports, which currently do not seem to perform much of a deterrence function. To strengthen ASR accountability, the GNCC's monitoring mandate should also be expanded to include online broadcast content.

According to the Law on Broadcasting and the Code of Conduct of Broadcasters, the self-regulatory mechanism of each broadcaster is responsible to consider complaints related to the content of editorial coverage; however, during the 2016 election campaign, OSCE observed that none of the self-regulatory bodies of major broadcasters received official complaints.<sup>91</sup>

Although the assessment team did not extensively research this allegation, a 2015 Transparency International Georgia report notes that "in recent years, Parliament, media and non-governmental organizations have identified possible cases of conflict of interest and nepotism in the Georgian National Communications Commission." TI's assessment is that this finding "illustrates that the existing mechanisms and legal framework cannot effectively prevent conflict of interest, corruption and nepotism."<sup>92</sup> ASR assessment interlocutors suggested that more frequent monitoring reports would support the deterrence function performed by the GNCC, but did not highlight major concerns of bias or inability to carry out the mandate.

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<sup>88</sup> IFES EIA, 39.

<sup>89</sup> *Georgia: Parliamentary Elections*, OSCE/ODIHR Election Observation Mission, 10.

<sup>90</sup> *Ibid*, 2.

<sup>91</sup> *Ibid*, 10.

<sup>92</sup> *Georgia Anti-Corruption Legislation*, Transparency International Georgia, 24.

### ***Inter-agency Task Force on Free and Fair Elections (IATF)***

The Inter-Agency Task Force on Free and Fair Elections (IATF) was established by Election Code Article 48(7) to consider issues related to the misuse of state resources during election campaigns and the prevention of electoral violence. The commission is not a permanent entity; it begins operating on July 1 of an election year for general elections and three days after calling extraordinary elections, by-elections or re-run elections, and ceases activities when the CEC officially publishes election results.<sup>93</sup> Per Article 48(5), the interagency commission is to be convened by the commission chairperson when necessary – at a minimum, once every two weeks, and once a week when the registration period for electoral subjects expires.

To maintain transparency, representatives of local and international observer organizations are invited to observe the sessions of the IATF. Election Code Article 48(6) permits qualified electoral subjects, as well as political unions that inform an interagency commission about any violation of the electoral legislation by public officers, to participate in the commission's activity. If any statement of violation is confirmed, the commission drafts an administrative protocol for the relevant body (such as the CEC, SAOG, or the Ministry of the Interior in the case of election violence) to address the violation.<sup>94</sup> The mandate of the IATF does not include levying sanctions on its own. According to IATF interlocutors, when an allegation is submitted for the body's consideration, a representative of the responsible agency is present at the meeting along with the complainant. IATF interlocutors also emphasized to the assessment team that the commission drafts a short memo on the rights and obligations of civil servants and distributes to government ministries.

Election Code Article 48(5) states that the composition of an interagency commission shall be determined by an order of the Minister for Justice of Georgia, while the rules of operation of the interagency commission are to be determined by its statute approved by the Minister for Justice of Georgia. According

#### **Recommendation**

- ✓ Conduct more extensive outreach to ensure that all election stakeholders understand the IATF mandate and the potential value of its platform

to interlocutors, in 2016 the IATF had 16 members, all from agencies who play a role in either the abuse of state resources in elections or electoral violence. One new member joining in 2016 represented the SAOG.

For the 2016 Parliamentary elections, the OSCE reported that the IATF held nine public sessions and received 104 complaints, but only issued four non-binding recommendations of a general nature.

Several interlocutors argued that the IATF has served as a venue to air grievances, sometimes turning into a type of political theater, and noted that the non-binding recommendations released by the IATF are often recycled. Other sources have noted that the IATF is an important platform for parties and citizen observers to make public their concerns

and ensure their complaints are forwarded to the relevant authorities.<sup>95</sup> As a gathering of representatives from all institutions with influence over ASR in Georgia, the IATF could serve as a valuable platform to facilitate inter-agency cooperation, leverage political will through the building of working relationships, and discuss the status of investigations and enforcement among the institutions involved in the ASR enforcement process. The IATF would be well-served in conducting more extensive outreach – before and during the election campaign – that emphasizes the consultative nature of its mandate and the benefit to election stakeholders in presenting their concerns to that body when it is active, despite the fact that its mandate does not extend to the resolution of disputes or levying of sanctions and penalties.

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<sup>93</sup> Election Code, Article 48(4).

<sup>94</sup> Election Code, Article 48(9).

<sup>95</sup> *Georgia: Parliamentary Elections*, OSCE/ODIHR Election Observation Mission, 12.

### ***Other institutions***

One additional institution, Georgia's Anti-Corruption Council (ACC), is an interagency coordination body in operation since 2008, that is mandated to coordinate "the formulation and implementation of the anti-corruption policy."<sup>96</sup> While further analysis is needed, the ACC appears to have a limited focus on the abuse of state resources during election campaigns as a subset of Georgia's broader corruption challenges, and interlocutors did not raise the body as a significant player vis-à-vis the scope of this assessment.

The current legal framework for whistle-blower protections and provisions theoretically offers another avenue for punishing ASR violations. As the OECD reported in its 2016 report on Georgia's progress on anti-corruption reforms under the Istanbul Anti-Corruption Action Plan, there are two types of channels for reporting corruption-related offenses in government, the former including departmental internal investigation units, prosecutors, and the Public Defender of Georgia, and the latter including media and civil society reporting channels.<sup>97</sup> Any individual may file complaints on the Civil Service Bureau's (CSB) website and then report the case directly to civil society or the media for further publicity. The website form notes that reports may be anonymous, unless the whistle-blower provides written permission to disclose his or her identity. Whistle-blower protections are to be monitored by the "general inspectorate that reports to the head of appropriate public institution" and the law prohibits a range of retaliatory actions against whistleblowers and their close relatives (including intimidation, coercion, or violence, as well as administrative retaliation or prosecution).<sup>98</sup> Although Georgia was an early adopter regionally of this type of legislation, assessment interlocutors were skeptical about the efficacy of the legal mechanisms, some noting that there is "no confidence" in the current whistle-blower laws, which have not yet been used to prosecute any offenders.

### **Principle 3: Properly enforce sanctions and penalties for state officials who violate the law, regulations, and rules established by their institutions (enforcement)**

As noted by IFES authors in a recent ABA publication, enforcement of remedies "requires the cooperation of diverse authorities responsible for the implementation of administrative or judicial decisions."<sup>99</sup> Due to insufficient resources or political will, the enforcement of sanctions and penalties may be ineffective or nonexistent in many nascent or developing democracies. As noted in the IFES chapter, "A lack of proper enforcement can undermine the right to an effective remedy and must be addressed if the electoral dispute resolution process – and the electoral process as a whole – is to be respected by the electorate and if electoral and judicial institutions are to be seen as legitimate... The enforcement of remedies and sanctions is important not only to give substance to rights, but also to deter future instances of malpractice and fraud. The effectiveness of certain sanctions as a deterrent depends in part on enforcement. If the courts, EMB, or other state bodies are unable, or unwilling, to enforce a sanction or implement a remedy, the deterrent effect decreases."<sup>100</sup>

There are significant challenges that stymie the enforcement of sanctions and penalties for state officials who violate the ASR legal framework in Georgia. As discussed in the previous section, multiple oversight institutions are empowered to issue administrative protocols – essentially recommended actions or

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<sup>96</sup> *Anti-Corruption Reforms in Eastern Europe and Central Asia: Progress and Challenges 2013-2015*, report, OECD, (2016).

<sup>97</sup> *Anti-Corruption Reforms in Georgia*, OECD Anti-Corruption Network for Eastern Europe and Central Asia, 30.

<sup>98</sup> *Anti-Corruption Reforms in Georgia*, OECD Anti-Corruption Network for Eastern Europe and Central Asia, 37-38.

<sup>99</sup> Katherine Ellena and Chad Vickery, "Measuring Effective Remedies for Fraud and Administrative Malpractice," in *International Election Remedies*, ed. John Hardin Young (American Bar Association, 2016), 109.

<sup>100</sup> Katherine Ellena and Chad Vickery, "Measuring Effective Remedies for Fraud and Administrative Malpractice," in *International Election Remedies*, ed. John Hardin Young (American Bar Association, 2016), 110-111.



penalties – for consideration by the court system and public prosecutor (for criminal cases). However, as noted in a recent OECD report, “Integrity and independence of the judiciary has remained one of the main challenges in the development of democratic governance and the rule of law in Georgia. Finding a right balance between independence and accountability of judges is a difficult task and Georgia is still struggling with it.”<sup>101</sup>

A 2012 report by the International Bar Association’s Human Rights Institute (IBAHRI) highlighted the significant progress made in Georgian legal institutions since its independence in 1991:

On the whole, Georgia’s legislative and institutional reforms have been very positive. They have done much to improve compliance with international standards and best practice... This process has been accompanied by significant changes in personnel. Under-performing members of the judiciary have been replaced by a new generation of younger judges. ... There is much to be impressed about by the Georgian Prosecutor’s Office, with its gleaming new buildings and its young and dynamic staff. Intensive training and retraining programmes have been carried out for judges and prosecutors. The international community has played a major role in promoting reform and in providing material and other support, particularly in its work with the judiciary and the Prosecutor’s Office. In important ways, the criminal justice system has been made more effective and more humane...<sup>102</sup>

At the same time, the report notes, reform processes have not been successful across the board:

The judiciary is independent from external interference, but it is not a sufficiently open or assertive institution. More needs to be done to increase transparency in judicial selection and appointment processes. Standards of judicial reasoning are also criticised. Judgments are sometimes written using templates. Even when they are not, judgments often do not contain sufficient reasoning... There are also fundamental concerns about the judiciary’s failure to ensure due process in the prosecution of administrative offences.<sup>103</sup>

There are several avenues by which remedies for violations of the ASR legal framework may be initially triggered, including (but not limited to) the mandated monitoring and investigatory processes of oversight institutions (including the CEC, SAOG, and GNCC), as appropriate; the election complaint mechanisms provided to election stakeholders; and through other institutional channels for individuals to report corruption violations in government. This assessment has focused mainly on the first avenue, by which oversight institutions conduct monitoring and investigations relating to abuses of state resources, as outlined in the legal framework. Oversight mandates were discussed in detail under Principle 2 of this report, and the available sanctions and penalties that can be levied by these institutions were discussed in Principle 1 (and detailed further in Annex 1). The chief problem with these remedies, as highlighted by most assessment interlocutors, is the *enforcement* of allowable penalties, which is generally under the purview of the court system. Given the differing institutions involved in the process of generating and submitting administrative protocols to the courts, and the lack of a centralized system for monitoring the status of ASR cases, it is difficult to pinpoint accurately the number of sanctions and remedies that are levied and enforced by the courts. This narrative and the scores assigned to Principle 3 are based therefore on the evidence marshalled through observation reports and assessment interviews.

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<sup>101</sup> *Anti-Corruption Reforms in Georgia*, OECD Anti-Corruption Network for Eastern Europe and Central Asia, 56.

<sup>102</sup> *Strengthening the Rule of Law: Challenges and Opportunities for the Georgian Bar*, report, International Bar Association’s Human Rights Institute (IBAHRI), (2012), 6.

<sup>103</sup> *Ibid*, 7.

According to assessment interlocutors as well as numerous observer reports, the effective enforcement of sanctions and penalties is limited by the efficacy of the court system. The CEC, GNCC, and the SAOG all submit administrative protocols for violations to regional (city) courts;<sup>104</sup> per our research, the court system often does not act on these protocols and no sanctions are levied. It was also noted that the judicial process

## Recommendations

- ✓ Give the ASR oversight institutions (e.g., CEC, SAOG, and GNCC) legal authority to impose and enforce some administrative sanctions without filing administrative protocols with the court system
- ✓ Establish an ASR violation tracking system to reside within the Ministry of Justice that monitors the status of the administrative protocols forwarded to the courts by the agencies responsible for overseeing the ASR legal framework

can stymie requests for official information by the SAOG; for example, the FMS is required to seek court approval to review tax information for individual donors. In some cases, approval is not granted for two months following the request, by which point the election campaign has already been completed.

To more effectively deter the abuse of state resources and to increase efficiencies, the CEC, SAOG/FMS, and GNCC should be empowered to unilaterally impose administrative sanctions and penalties (e.g., fines, candidate disqualification) for violations falling under their oversight purview. These decisions should be appealable to the courts if there is a question of misconduct by the administrative body or if there is a fundamental rights violation. The OSCE/ODHIR proposed a similar recommendation as it pertains to the GNCC after observing the 2013 presidential election cycle: “In order for the GNCC to be active and effective during the campaign, consideration could be given to grant it legal authority to impose sanctions for violations of equal access and fair treatment by the media based on its media monitoring results.”<sup>105</sup>

Several assessment interlocutors offered the opinion that the courts are not over-burdened or under-resourced; political will – and specifically, the desire to avoid political backlash – prevent the courts from pursuing cases with alacrity or enforcing the administrative protocols submitted by the ASR oversight bodies. As a consequence, the court system does poorly in public opinion polling on trust levels and institutional performance; in an April 2017 NDI poll, the court system received a 13% approval rating (respondents indicating that the system performs well or very well). The Office of the Chief

Prosecutor (to whom the CEC and the SAOG can also refer criminal cases, such as vote buying<sup>106</sup>) was similarly rated.<sup>107</sup> Assessment interlocutors noted that significant investigation delays are the normal course of business in the prosecutor’s office, and many observers believe that they conduct their work in a politicized manner. As described in Principle 2 above, some ASR oversight bodies have implemented administrative protocol tracking mechanisms of varying levels of accessibility and usability. Given the lack of a centralized, public tracking system for ASR protocols, as well as the fact that an individual must

<sup>104</sup> As per the Law on the Political Unions of Citizens, Article 34<sup>2</sup> (13-15), during a pre-election period, the court must render a decision within 5 calendar days after the receipt of the relevant materials after receiving an administrative offense report from the SOA; a court decision may be appealed once to the Court of Appeals within 72 hours. For administrative violations for which the SOA seizes property (e.g. bank accounts) of a party and/or person to prevent ‘hindering the execution of statutory penalties applicable to violations,’ a court shall render a decision within 48 hours of the submission of materials by the SOA. A court decision may then be appealed once to the Court of Appeals within 48 hours.

<sup>105</sup> Georgia: Parliamentary Elections, OSCE/ODIHR Election Observation Mission, 16.

<sup>106</sup> Law on the Political Unions of Citizens, Article 34<sup>1</sup>(2j).

<sup>107</sup> Thornton and Sichinava, *Public Attitudes in Georgia*, National Democratic Institute.

represent a party to the process in order to access court decisions, perceptions of the effectiveness of oversight institutions and the sanctioning process are informed by assumptions and anecdote rather than written decisions and data on the disposition of cases. To help address this issue, an ASR violation tracking system should be developed that monitors the protocols, requests and administrative remedies forwarded to the courts by all agencies responsible for enforcing the ASR legal framework. Such a tracking system could reside within the Ministry of Justice, which leads the IATF. Complementary efforts by existing civil society organizations focused on this topic (discussed later in this report) would support public awareness of the enforcement process.

## V. Enabling Environment Analysis

### Enabling Environment Comparative Analysis

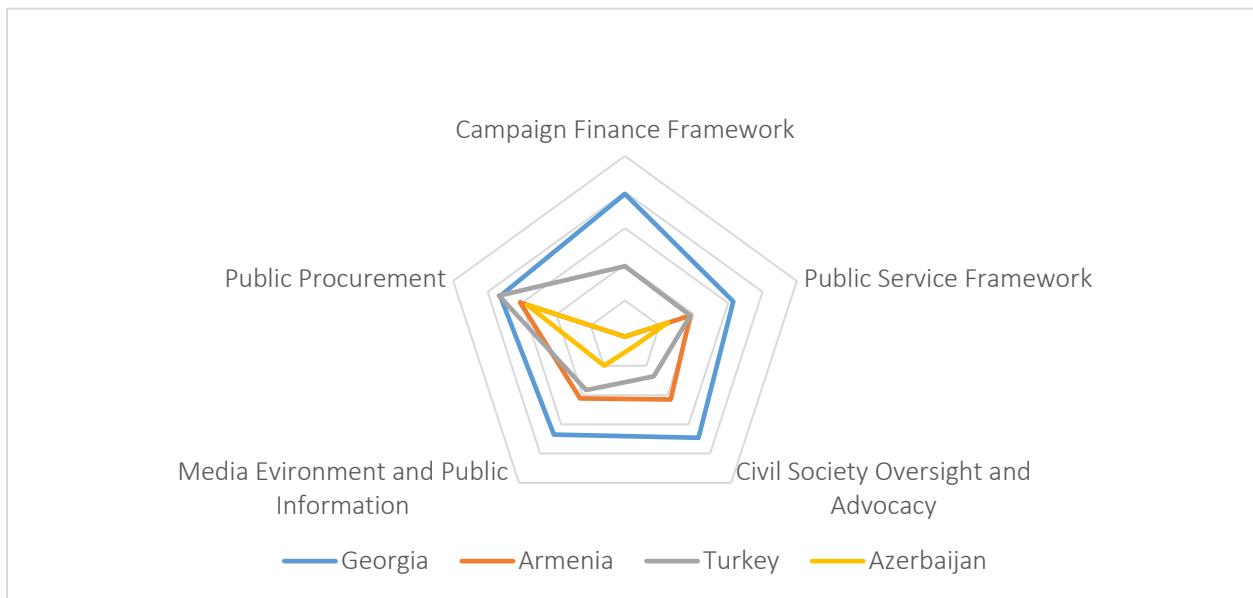


Figure 4: Georgia Enabling Environment Scores Comparison to Bordering Countries

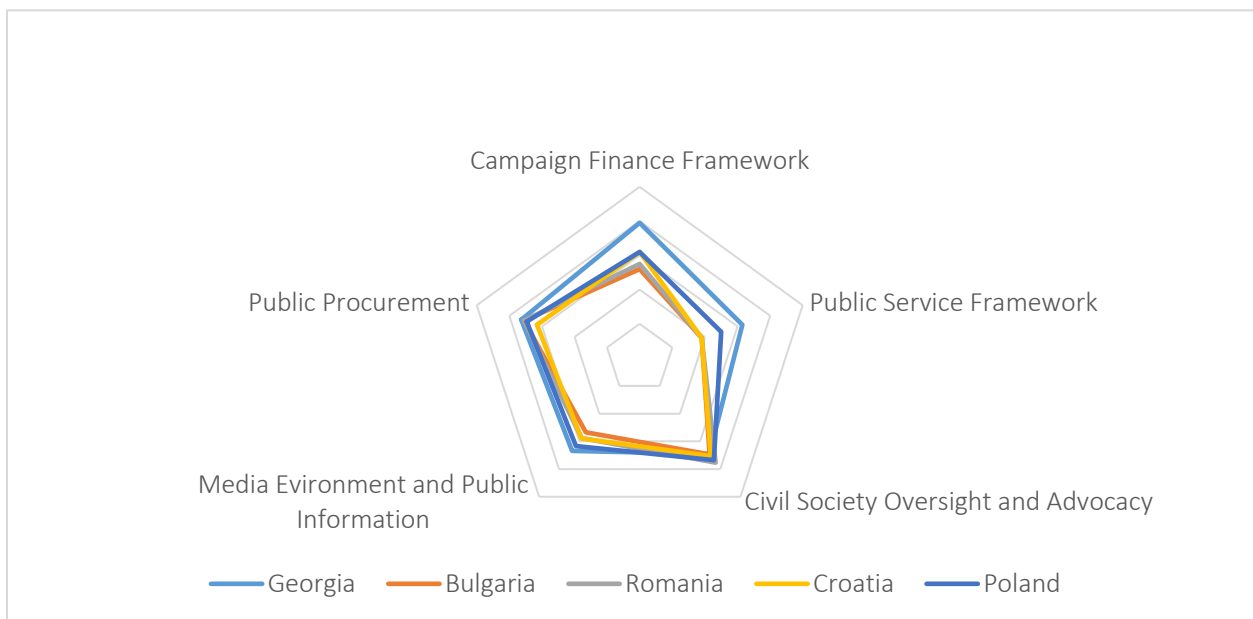


Figure 5: Georgia Enabling Environment Scores Comparison to EU Countries

As mentioned in the Methodology section earlier in this report, the assessment analysis of the legal framework regulating the use of state resources in elections is complemented by a review of five contextual factors: the public service framework; civil society oversight and advocacy; media environment and public information; public procurement; and the campaign finance framework. The scores for this section are provided to lend additional color to the brief analysis below, and draw on established indices that address

similar questions (including the World Justice Project *Rule of Law Index*, the Varieties of Democracy [V-Dem] index, the *Money, Politics, and Transparency* [MPT] database, the Economist Intelligence Unit's index on government effectiveness, Freedom House *Freedom in the World*, and the World Bank *Benchmarking Public Procurement* indicators). Detailed descriptions of the indices and their respective scoring methodologies are included in Annex 2.

To provide an additional reference point for the reader, the scores for Georgia's enabling environment have been arrayed against three neighboring countries in the top graph (Armenia, Turkey, and Azerbaijan), as well as against members of the European Union whose GDP per capita most closely approximates that of Georgia (Bulgaria, Romania, Croatia, and Poland).

### Public Service Framework

The public service sector in Georgia is beset with a series of challenges, from shoring up the independence and professionalism of the civil service, to combatting over-staffing and addressing a lack of transparency in compensation. Assessment interlocutors also made clear that civil service policies and procedures still differ significantly between ministries, and the most prevalent examples of shortcomings and mismanagement occur at the local level. The regulation of the civil service apparatus in Georgia is also complex. The Civil Service Bureau (CSB) is a LEPL "with a mission to support the implementation of a uniform civil service policy in Georgia and the development of a professional, career-based civil service through improving legislation, establishing effective and transparent governance and ethical standards, as well as promoting anti-corruption policy."<sup>108</sup> While the OECD praises the improving capacity of the CSB, it also notes that the mandate of this entity is blurred with that of the Civil Service Council, which is tasked with managing human resource policies.<sup>109</sup> Despite these challenges, progress has been made largely across the board since the Soviet and immediate post-Soviet era, and recently, new reforms to the Civil Service Law squarely target the major issues plaguing Georgian bureaucracy. It remains to be seen how the practical implementation of this law's provisions will impact the public service, and some assessment interlocutors remained skeptical that these (or, in fact, any) modifications to the law will do much to substantially alter the status quo.

While the situation has improved in recent years, public administration in Georgia, especially at the local level, is not generally perceived as independent from the governing party. There are many issues of particular concern, including dissimilar standards applied to career public servants and political appointees. As discussed in the ASR Legal Framework section of this report, low- and mid-level civil servants are generally prohibited under the law from campaigning during working hours. However, assessment interlocutors emphasized that political appointees, including Ministers and Deputy Ministers, are legally allowed to participate in elections and are often very heavily involved in campaigns in the months leading up to Election Day. Additionally, observers are concerned that even under the new civil service law (discussed below), there is not a sufficient degree of separation between political and professional members of the civil service that would "protect in practice the professional civil servants from the undue influence of political appointees."<sup>110</sup> As described by the OECD Anti-Corruption Network for Eastern Europe and Central Asia, the new law continues to provide that "Ministers and heads of agencies are direct supervisors of civil servants, as there is no position of senior civil servant, such as a state secretary."<sup>111</sup>

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<sup>108</sup> Georgia Civil Service Bureau Annual Report, 2015, [http://csb.gov.ge/uploads/2015\\_ENG\\_web.pdf](http://csb.gov.ge/uploads/2015_ENG_web.pdf).

<sup>109</sup> *Anti-Corruption Reforms in Georgia*, OECD Anti-Corruption Network for Eastern Europe and Central Asia, 7-8.

<sup>110</sup> Ibid.

<sup>111</sup> Ibid, 31.

Assessment interlocutors agreed that the concept of a professional civil service needs to be strengthened in Georgia. A new law on the civil service, adopted in 2015 and originally set to be implemented on January

### Recommendations

- ✓ Conduct analysis of civil service staffing levels in municipalities and LEPLs and create reasonable standards for the permissible number of employees based on population
- ✓ Limit the hiring of civil servants and LEPL employees in the pre-election campaign period
- ✓ Evaluate effectiveness of new Civil Service Law (CSL) after one year and whether additional changes are needed, including prohibiting the arbitrary dispensation of bonuses to civil servants

1, 2017, was postponed to an intended start date of July 1 of the same year. While interlocutors agreed that this new law marks a good first step, how implementation will impact the civil service in practice is not yet clear, and concerns remain that the law does not go far enough to protect a professional civil service. Open competition (or merit-based recruitment) will only take place for entry-level positions to the civil service. After the new law is implemented, upward mobility to higher ranks in the civil service will only occur through internal promotion. Interlocutors expressed concerns that this will ultimately mean that outsiders will be unable to enter the system and the civil service will not attract professional, qualified staff.

It should be noted that, as is the case throughout most areas of this assessment, challenges pertaining to the civil service are heightened at the local level. Interlocutors generally noted that local level civil servants remain largely unaware of their rights and obligations; these problems are exacerbated in ethnic minority regions where civil servants (as well as voters) who do not speak Georgian are more vulnerable to political pressure and have a lower level of understanding of their rights. Interlocutors also noted that heads of national political parties may not even be aware of the actions their representatives are taking at the municipal level that undermine an independent, professional civil service. There is also not a unified approach or universal code of ethics across public service ministries. According to interlocutors, the new civil service law mentions an Ethics Code that may be helpful in reducing politicization among public servants, but it is not clear if a streamlined and uniform implementation will be possible.

Discussions in assessment meetings also focused on the fact that a change in the governing party is traditionally accompanied by an overhaul of the civil service apparatus. For example, there was a “purge” of public servants associated with the United National Movement (UNM) after 2012 and the subsequent 2014 municipal elections. The significant discretion of heads of departments in recruiting, firing, and promoting within the civil service calls meaningful independence from the government into question. In its report on the 2016 parliamentary elections, ISFED noted a positive trend in this regard, though problems still remain: “Over the last few years there have been fewer cases of dismissals of civil servants due to their political affiliation and dismissal from work is no longer used as a punitive measure against civil servants that hold opposing political views. However, several facts of dismissal for political reasons were still reported in the pre-election period.”<sup>112</sup> The new law on civil service does address issues of managerial discretion with respect to salary and employment. It “clearly defines the grounds for dismissal” as it relates to disciplinary misconduct; mandatory and other grounds for dismissal; and dismissal due to the reorganization, liquidation or merger of an institution (in this case, civil servant should be transferred rather than fired).<sup>113</sup>

<sup>112</sup> *Final Report of the Observation Mission*, ISFED, 7.

<sup>113</sup> *Anti-Corruption Reforms in Georgia*, OECD Anti-Corruption Network for Eastern Europe and Central Asia, 31.

The bloated size of the public service infrastructure in Georgia has also been a concern since the immediate post-Soviet era: “Bureaucratic growth in the number of personnel and the proliferation of administrative bodies during the Shevardnadze era contributed to the cumbersome and corrupt bureaucracy. The passage of incompatible and overlapping pieces of sub-legislation and regulatory acts made effective governance more difficult.”<sup>114</sup> Assessment interlocutors noted that problems in this area – such as individuals being hired for sinecures for several months leading up to Election Day – have subsided somewhat but are still ongoing. Concerns remain that staffing levels some municipalities remain overly high, and LEPLs are created to generate employment in functions that are arguably unnecessary or duplicative.

Concerns that the civil service bureaucracy is too large are compounded by issues related to salary. There are currently three different types of compensation available to civil servants: salary, salary supplements, and bonuses. Interlocutors noted that civil servants essentially consider supplements to be included in their standard salary, though it is provided as a separate payment and the timing of the distribution varies by ministry. Bonuses, however, are distributed arbitrarily. While the new civil service law is set to curtail potentially inappropriate distribution of supplementary salaries, it does not address the issue of bonuses, which interlocutors note are the most common avenue of misuse.

The new civil service law will also introduce a payment scale based on ministerial hierarchies. While praising the positive attributes of the law, interlocutors did express worries that it will be difficult to implement and individual ministries may not be prepared (as evidenced by the postponement of the law’s implementation). Some universally acknowledged challenges in the civil service are also not addressed through this new law; for example, at least one assessment interlocutor argued that the law may not do enough to support Human Resources departments across the civil service. Some interlocutors, particularly among political parties, expressed skepticism that changing the law will serve as a solution where issues generally pertain to oversight and enforcement.

### Campaign Finance Framework

According to recent assessments, Georgia has made great gains in its efforts to draft and implement an election law that effectively regulates campaign donations and expenditures,<sup>115</sup> though challenges still exist with respect to both the letter and spirit of the law.

With respect to funding sources, the Election Code allows an election/referendum campaign to be funded by the competing party itself, the first party on the list of an electoral bloc, or the funds of “an initiative group of voters” in the case of an independent candidate.<sup>116</sup> Additionally, the Law on Political Unions of Citizens permits individuals to donate up to GEL 60,000 in total to political parties annually (including both direct and in-kind contributions) but prohibits anonymous and cash donations.<sup>117</sup>

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<sup>114</sup> Shalva Machavariani, “Overcoming Economic Crime in Georgia through Public Service Reform,” in *Organized Crime and Corruption in Georgia*, ed. Louise Shelley, Erik Scott, and Anthony Latta, (Oxon: Routledge, 2007).

<sup>115</sup> IFES EIA, 37.

<sup>116</sup> Election Code, Article 54(1).

<sup>117</sup> Law on Political Unions of Citizens, Article 27(1). Another permissible funding source for an election campaign is credit from a commercial bank, which in total cannot exceed 1,000,000 GEL per calendar year (see TI Georgia, “Election Campaign Finances in Georgia: 2016 Parliamentary Elections,” p. 15). The OSCE/ODIHR expressed concerns that during the 2016 parliamentary elections, Georgian Dream was the only party to take advantage of this provision. While not a violation of the law, stakeholders considered the action “inappropriate” as there are no special regulations for terms of the loan and it could be repaid through the use of state funds. *Georgia: Parliamentary Elections*, OSCE/ODIHR Election Observation Mission, 14.



Public funding is another important source of funding for election campaigns, and Georgia has five sources of public funds for political parties and their candidates. Two of these funding sources are for institutional finances distributed annually; although these funds are not earmarked specifically for campaigning, there is no restriction on whether a party may use it for campaign purposes.<sup>118</sup> Three other sources of public funding are also available to political parties for supporting advertisement costs of political campaigns,<sup>119</sup> for funding political party representatives at the Election Commissions,<sup>120</sup> and for reimbursement for political parties and candidate meet a threshold number of votes on Election Day.<sup>121</sup> Election Code Article 56(4) also provides for additional funds to be allocated from the state budget to cover TV advertising expenses. Eligibility for this funding source is based on the results of the previous general elections.<sup>122</sup>

Political parties receive public funding only if they are "qualified" subjects, having gained a specific number of votes in previous elections. The OSCE/ODIHR notes that independent candidates are not entitled to public funds, in violation of international good practice,<sup>123</sup> though they may have their electoral campaign costs reimbursed after the election if they gather a certain number of votes.<sup>124</sup>

Several sources of funding are also specifically *prohibited*, including donations from legal entities that are either established by or partially/fully owned by the state, and from non-corporate entities such as NGOs and charitable foundations, religious organizations, and legal entities of public law. Foreign donations are also not permitted under this Article.<sup>125</sup>

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<sup>118</sup> See Law on Political Unions of Citizens Article, 30; and *Money, Politics, and Transparency* (MPT) Campaign Finance Indicators Scorecard, 2014, 1.1, <https://data.money politicstransparency.org/countries/GE/>.

<sup>119</sup> Election Code, Article 56(5) and the Law on Political Unions of Citizens, Article 30(12) provides for financial support from the state budget to party election campaigns to cover TV advertising costs during a parliamentary and municipal election year. Funds can only be used for advertisement purposes from after elections have been announced through election day. Amount of funding is based on number of votes received by a party in the previous election.

<sup>120</sup> Election Code, Article 43 also includes provisions for public funding to support representation at District Election Commissions and Precinct Election Commissions on Election Day. A "qualified electoral subject" can receive GEL 100 for each electoral precinct and GEL 150 for each electoral district, and an electoral bloc uniting two or more qualified parties shall receive GEL 150 for each electoral precinct and GEL 200 for each electoral district.

<sup>121</sup> Election Code, Article 56. Under this article, political parties and candidates can receive a one-time payment from the State budget to cover election campaign expenses; they qualify based on number of votes received following a request submitted to the CEC.

<sup>122</sup> Election Code, Article 56(4) provides that this eligibility is calculated by taking the number of votes obtained by the electoral subject in question in the last general elections and multiplying by three and dividing by the number of the political associations making up the electoral subject.

<sup>123</sup> *Georgia: Parliamentary Elections*, OSCE/ODIHR Election Observation Mission, 13.

<sup>124</sup> MPT Campaign Finance Indicators Scorecard. Election Code Article 56(1) states that an electoral subject that obtains 5% or more of votes in a parliamentary election conducted under the proportional electoral system, or 10% or more of votes in the first round of a presidential election shall receive a one-time amount of not more than GEL 1,000,000 (approximately 433,715 USD) from the State Budget of Georgia to cover election campaign expenses incurred in both rounds. As per Election Code Article 56(1), an electoral subject that obtains 3% or more of votes in the general elections for a Sakrebulo (the number of votes shall be calculated according to the votes obtained in the elections held under the proportional electoral system across the whole country) shall receive a one-time amount of not more than GEL 500 000 (approximately 216,858 USD)<sup>124</sup> from the State Budget of Georgia to cover election campaign expenses incurred in both rounds of Sakrebulo/Mayoral/Gamgebeli elections.

<sup>125</sup> Law on Political Unions of Citizens, Article 26(1). This ban applies to physical and legal persons of other countries, international organizations and movements. Exceptions apply only in cases when lectures, workshops and other public arrangements are held with the funds from foreign sources that are educational in nature.

In its final report on the 2016 Georgian Parliamentary elections, the International Society for Fair Elections and Democracy (ISFED) expressed concerns with the status of charitable organizations and their role in the electoral process. As described by ISFED, the non-profit (non-commercial) legal entity “Georgian Dream – Healthy Future” provided approximately 200 teachers with free medical examinations during the pre-election period. The procedures were organized by a member of the Georgian Dream party and raised concerns of illegal campaigning (described as a “flagrant violation of the election legislation” by ISFED). However, the CEC found that the law had not been broken as the Ministry of Finance had not granted charity status to Georgian Dream – Healthy Future.<sup>126</sup>

Recommendations by NGOs dedicated to promoting transparency and democracy have centered around a more uniform legal framework regulating party funding. Transparency International (TI) Georgia suggests using the Law on Political Unions of Citizens to clearly define the criteria applicable to political parties’ right to state funding.<sup>127</sup> TI is especially critical of the vagueness of the terminology used in the provisions relating to bonuses derived from creating a faction. It is unclear when a faction is considered to have been created by a concrete party. It cites the example of the ‘Georgian Dream’ and ‘Georgian Dream Industrialists’ factions, which are composed primarily of ‘Georgian Dream’ Members of Parliament (MPs), but were created by the ‘Industry Will Save Georgia’ party.<sup>128</sup>

The Election Code Article 54 clearly defines campaign costs as the sum of funds designated for the election/referendum campaign of an election subject, as well as all types of goods and services obtained free of charge. The Law on Political Unions of Citizens establishes maximum spending limits for political parties and individual candidates.<sup>129</sup>

Georgian law also includes specific provisions regarding vote-buying. The Law on Political Unions of Citizens prohibits parties through candidates, representatives or any other person from giving financial resources, gifts and other material or non-material values either directly or indirectly to Georgian citizens (with the exception of small value accessories such as T-shirts).<sup>130</sup> The Election Code Article 47(1) also prohibits electoral subjects, candidates for electoral subject, and their representatives from giving funds, gifts, and other material possessions (irrespective of their value) to the citizens of Georgia, personally or through other persons; from selling goods to electoral subjects, candidates for electoral subject, and their representatives at a preferential price; from distributing or disseminating goods free of charge (except for campaign materials defined by this Law) among electoral subjects, candidates for electoral subject, and their representatives; and from motivating Georgian citizens by promising to give them funds, securities, and other material possessions (irrespective of their value). Interlocutors at the State Audit Office of Georgia noted that violations of this law can carry administrative and criminal charges.<sup>131</sup>

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<sup>126</sup> *Final Report of the Observation Mission*, ISFED, 17.

<sup>127</sup> Chikhladze and Kakhidze, *Misuse of Administrative Resources*, 11.

<sup>128</sup> *Ibid*, 8.

<sup>129</sup> Law on Political Unions of Citizens, Article 25<sup>1</sup>(1<sup>1</sup>) caps the total amount of expenditures by political party/electoral subject at 0.2 % of Georgia’s GDP of the previous year; this amount includes both direct expenditure by the party and expenditure made by third parties on the party’s behalf. For independent majoritarian candidates, the cap on expenditure is determined by dividing 0.2 % of Georgia’s GDP of the previous year by the total number of voters in the country, and multiplied by the number of voters in the relevant election district.

<sup>130</sup> Law on Political Union of Citizens, Article 25<sup>2</sup>.

<sup>131</sup> “Vote buying by parties, as well as illegal gifts, income, services, and use of assets not exceeding GEL 100 will incur a fine of ten times for the party, and twofold for the individual.” Transactions with a value over GEL 100 are considered criminal under Article 164<sup>1</sup> of the Criminal Law. See TI Georgia, “Election Campaign Finances in Georgia: 2016 Parliamentary Elections,” February 2017. Interlocutors noted that the criminal charge could be up to three years in prison.

Cases of vote-buying have been reported in the media and by civil society during recent election cycles, including incidents of vote buying with money and gifts during the 2016 parliamentary elections. ISFED particularly noted concerns that a lack of enforcement by the courts surrounding vote buying provisions in the legal framework served to encourage the behavior.<sup>132</sup> As noted previously, interlocutors also discussed cases of the implementation of development programs in a appeared to support vote buying, such as municipal governments distributing entire annual packages of social benefits in the immediate lead-up to an election.

Campaign finance disclosure is regulated through both the Election Code and Law on Political Unions of Citizens; the Election Code requires electoral subjects to submit to the State Audit Office of Georgia information about their bank accounts, and to provide information every three weeks following registration via prescribed reporting forms about the sources, amounts, and dates of receipt of donations. The Law on Political Unions of Citizens also requires political parties and candidates to submit financial reports to the SAOG every three weeks, including information on monetary and in-kind donations and loans – but not on expenditures.<sup>133</sup> As per Election Code Article 57(7), the SAOG is responsible for determining the reporting form for funds used for elections as well as the procedure for their completion. The Law on Political Unions of Citizens also requires political parties and individual candidates to report itemized contributions upon receipt of a donation and in both annual and election campaign reports. There is no annual reporting requirement for individual candidates.

### Recommendation

- ✓ Implement observer and CSO recommendations on the campaign finance process since 2016, including revisiting public financing, enabling independent candidates to receive campaign funds, and offering training on compliance with finance laws and regulations

The Law on Political Unions of Citizens Article 32(3) requires that all information contained in the financial reports be made publicly available; this information should be posted within 5 business days of receipt, but this does not always happen in practice.<sup>134</sup> It is worth noting that the law does not require political parties or individual candidates to report itemized expenditures, apart from expenditures regarding salary, rent, and certain types of advertisement details (e.g., TV and print media).

Observer missions and domestic civil society organizations have made a number of recommendations since 2016 that would improve the campaign finance process in Georgia, and these should be implemented. These recommendations include the need for revisiting public financing mechanisms; offering more avenues for independent candidates to gain access to campaign funds; and training political parties and candidates on how to comply with laws relating to income, expenditures, and disclosure.

### Civil Society Oversight and Advocacy

Georgia currently enjoys an open and vibrant civic space that allows citizens to advocate and organize around a broad range of public interest issues. The 2016 World Justice Project Rule of Law Index ranked Georgia well above average in “civic participation,” “right to information,” “non-governmental checks,” “freedom of association,” and “freedom of expression” indicators, particularly compared to other countries in its region.<sup>135</sup> Civic participation is sanctioned by freedom of speech, freedom of information, and

<sup>132</sup> *Final Report of the Observation Mission*, ISFED, 21-22.

<sup>133</sup> Law on Political Union of Citizens, Article 32.

<sup>134</sup> MPT Campaign Finance Indicators Scorecard, 3.2.

<sup>135</sup> “Georgia,” Rule of Law Index, 2016, <http://data.worldjusticeproject.org/#/groups/GEO>.

freedom of association clauses in the Georgian Constitution.<sup>136</sup> The Georgian Election Code also clearly enumerates the roles and rights of nonpartisan civic actors as election observers.<sup>137</sup> For the first round parliamentary elections in 2016, the CEC and DEC accredited 111 Georgian civic organizations to observe the electoral process.<sup>138</sup>

There are a number of civil society organizations specifically engaged in government accountability and political process monitoring at the national, regional, and local level. The most prominent include Transparency International-Georgia (TI), GYLA, and ISFED. These organizations have been active in promoting Georgia's democratic transition for over a decade, building reputations as key government watchdogs broadly perceived as professional and impartial. In addition, they frequently coordinate monitoring activities with one another and release joint statements to advocate for common interests and bolster solidarity. While TI, GYLA, and ISFED maintain a large nationwide presence, local and regional civic organizations have also demonstrated interest in campaign and corruption monitoring, including the Public Movement "Multinational Georgia" (PMMG), which has been particularly involved in Georgia's ethnic minority regions of Kvemo Kartli, Kakheti and Samtskhe-Javakheti.<sup>139</sup>

Georgian civic groups have taken a leading role in evaluating and exposing the abuse of state resources for electoral advantage, although not without some limitations. TI conducts substantial research on the topic, including an in-depth assessment on the misuse of state resources surrounding the 2014 local self-government elections. For the 2016 parliamentary elections, TI used six long-term observers as well as regional and core staff to examine political events and public data to track the use of state resources during the campaign period, releasing both an interim and final report on the subject.<sup>140</sup> Meanwhile, ISFED deployed 68 long-term observers to monitor the pre-election period in every electoral district ahead of the 2016 elections, and released several pre-election, election day, and post-election reports that include analysis on the misuse of administrative resources and campaign finance.<sup>141</sup> Similarly GYLA election observers in Tbilisi and eight regional offices gathered and synthesized information regarding, among other items, the abuse of state resources in the five months leading up to election day in 2016. The PMMG also released a report assessing political finance and the misuse of state resources prior to the October 2016 elections based on observations from their specific regions.<sup>142</sup>

Administrative resource analysis from these organizations are available in Georgian and English on their respective websites, and were distributed broadly via social media and press conferences. Many of the reports have substantial overlap in content, with little variation regarding monitoring methodologies, and typically focused on specific incidences of ASR without thorough attention to government follow-up and remedies. Findings of each organization was similar, in particular identifying: political pressure on civil servants to support or campaign for certain candidates; the introduction of social and infrastructure projects just before the exclusion period; and partisan hiring in election administration, particularly at the PEC level. However, the findings also agreed that none of the occurrences were severe enough to

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<sup>136</sup> See Constitution Article 19, Section 1, "Everyone has the right to freedom of speech, thought, conscience, religion, and belief"; Article 24, Section 1, "Everyone shall be free to receive and disseminate information, to express and disseminate his/her opinion orally, in writing, or otherwise;" and Article 26, Section 1, "Everyone shall have the right to establish and join public associations, including trade unions," respectively

<sup>137</sup> Election Code, Articles 40 and 41.

<sup>138</sup> *Statement of the National Democratic Institute*, National Democratic Institute.

<sup>139</sup> Public Movement Multinational Georgia, 2016, <http://www.pmmg.org.ge/?lang=eng>.

<sup>140</sup> Chikhladze and Kakhidze, *Misuse of Administrative Resources*.

<sup>141</sup> *Final Report of the Observation Mission*, ISFED.

<sup>142</sup> *Parliamentary Elections in Georgia 8 October 2016*, report, Public Movement Multinational Georgia (Tbilisi: PMMG, 2016).

## Recommendation

- ✓ Expand CSO monitoring methodologies to address structural, political, and social challenges to countering ASR at all levels of government

undermine the overall integrity of the process or electoral outcome. Though most interlocutors acknowledged the active role civil society has played in enhancing transparency and government accountability, it was also noted that international scrutiny of such issues carries substantially more political weight than domestic.

The legal framework in Georgia allows citizens to collect and analyze relevant electoral data, with enumerated rights for domestic observers to access election commission sessions, the voter registration process and voter list, the full polling process including opening, voting, closing, counting and tabulation, and complaints procedures.<sup>143</sup> In addition, the SAOG is legally obligated to collect and make available political finance reports. The General Administrative Code of Georgia, Chapter 3 on

Access to Information guarantees the openness of all public information, save for data that could violate personal privacy or is otherwise considered confidential. It includes guidance for citizens on how to request government information as well as stipulations for objections and appeals regarding undisclosed information.

In practice, both domestic and international observers noted broad access to relevant election processes and data for the 2016 parliamentary elections.<sup>144</sup> Interlocutors specifically engaged in ASR monitoring also confirmed they were able to receive publicly-available data from the government in analyzable formats, although some required formal requests. The CEC supplied timely information on its website and the SAOG posted political finance reviews every three weeks on its website leading up to election day. However, there is legal ambiguity regarding the timeline compelling the SAOG's political finance evaluations, and resource constraints within the office meant that some crucial information, such as scrutiny of campaign expenditures, was not available until after the elections.<sup>145</sup>

Moreover, a lingering obstacle for monitoring the abuse of state resources is not related to the availability of public information, but rather the challenge of monitoring areas that are fundamentally opaque, such as political pressure or intimidation within the civil service occurring behind closed doors. Though groups received anecdotal reports of such incidents, these instances were sometimes difficult to substantiate and are not easily captured by traditional monitoring methodologies.<sup>146</sup> These findings were echoed by assessment interlocutors. Furthermore, some purported government resource abuse occurs so far in advance of Election Day, particularly the manipulation of budgets and inflation of civil employment, that domestic observers may not yet be mobilized to investigate such instances.

Civic organizations and political parties used available complaint mechanisms to report concerns related to campaign finance and state resources. According to the OSCE/ODIHR (and verified by assessment interviews), the SAOG received over 70 total complaints prior to election day, and the election administrative bodies received 187. However, the overlapping nature of some of the oversight committees – including the local, district, and national EMB, the SAOG, the GNCC, and the courts – meant that many groups submitted complaints to several entities at once.<sup>147</sup> The IATF also provided another avenue for civil society to highlight issues related to state resources and build consensus with relevant stakeholders.

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<sup>143</sup> Election Code, Article 41.

<sup>144</sup> *Final Report of the Observation Mission, ISFED, 7 and Georgia: Parliamentary Elections*, OSCE/ODIHR Election Observation Mission.

<sup>145</sup> *Georgia: Parliamentary Elections*, OSCE/ODIHR Election Observation Mission.

<sup>146</sup> Chikhladze and Kakhidze, *Misuse of Administrative Resources*.

<sup>147</sup> *Georgia: Parliamentary Elections*, OSCE/ODIHR Election Observation Mission.

However, some interlocutors expressed frustration with the effectiveness of the IATF and the speed of other bodies to respond to or redress claims.

It is essential that civil society organizations continue to support ASR accountability, and should consider expanding their monitoring methodologies beyond reporting specific incidents. Interviews, surveys, and analysis of budget and judicial data may provide more insight to the structural, political, and social challenges to abuse of state resource at the national, regional, and local level, in particular its abundance outside the traditional electoral cycle. In cases where information is not available, such as data on certain procurement practices or civil service bonuses, additional advocacy for transparency may be needed.

## Media Environment and Public Information

### Recommendations

- ✓ Provide targeted training to investigative journalists that focuses on objective reporting and supporting ASR accountability

The media landscape in Georgia is diverse and generally supports public debate, although individual outlets tend to be highly politicized. Though elections and political campaigns are widely covered by both private and public media, the level of investigative journalism is considered weak. A joint media monitoring effort between Memo '98 and the Charter for Journalistic Ethics in 2015 criticized state-owned television, including the Georgian Public Broadcaster, for lacking politically informative and substantially investigative content.<sup>148</sup> Interlocutors have noted that the politically polarized nature of most media outlets, in tandem with decreased independent funding sources, is diluting impartial and analytical voices.<sup>149</sup>

Freedoms of speech and the press and the right to seek and receive information are protected by the Georgia Constitution,<sup>150</sup> and reinforced by the General Administrative Code's Access to Information rules. However, legal provisions on access to information have been described as "basic," and there is no "modern stand-alone law on the right to information," nor a dedicated oversight authority.<sup>151</sup> The implementation of a system of proactive information publication has been uneven and many public authorities do not respect the available standards.<sup>152</sup> Despite these challenges, Transparency International's National Integrity System Assessment notes "some improvements" in the Georgian Parliament's transparency. After draft laws are registered at the Parliament Bureau, which organizes Parliamentary work, they are "immediately" published online.<sup>153</sup>

Freedom of expression advocacy organizations like Article XIX, Reporters without Borders and the Committee to Protect Journalists have not highlighted persecutions of journalists in Georgia since 2011, and election observers have noted that individual reporters can generally operate in the electoral environment freely without fear of intimidation, harassment, or retaliation. Though interlocutors have not noted any serious cases of government censorship against specific journalists in the last several years, an ongoing controversy regarding the Tbilisi City Court's intervention in an ownership dispute of popular, opposition-leaning *Rustavi 2* television station has drawn criticism from international and domestic watchdogs. While the Georgian Supreme Court granted ownership rights to the station's former co-

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<sup>148</sup> See "Media Monitoring Report on Programming of the Public Service Broadcasters," Memo '98; and the Charter for Journalistic Ethics, 24 February 2015.

<sup>149</sup> "Opening Journalism," Open Society Georgia Foundation, [http://www.osgf.ge/index.php?lang\\_id=ENG&sec\\_id=7](http://www.osgf.ge/index.php?lang_id=ENG&sec_id=7).

<sup>150</sup> Constitution, Articles 19 and 24.

<sup>151</sup> *Georgia: Parliamentary Elections*, OSCE/ODIHR Election Observation Mission, 15.

<sup>152</sup> *Anti-Corruption Reforms in Georgia*, OECD Anti-Corruption Network for Eastern Europe and Central Asia, 9.

<sup>153</sup> *Ibid*, 25.

owner,<sup>154</sup> the European Court of Human Rights recently intervened in an unprecedented decision to overturn the ruling, saying: “The Supreme Court's verdict might have an impact on the country's media landscape, affecting the diversity of views available to citizens through broadcasting channels.”<sup>155</sup> Other NGOs expressed concern that government and former government officials’ public criticism of civil society and the media, including calls for investigations of individual NGO leaders, led to self-censorship by journalists and civil society actors.

In addition, the canceling of several high-profile, frequently political, talk shows on various stations has raised concerns regarding political influence and self-censorship.<sup>156</sup> Georgia is identified as “Partly Free” in Freedom House’s “Freedom of the Press 2017” and has fallen by two points in the ranking since 2015.<sup>157</sup> Nonetheless, international and domestic observers agreed that there was an improvement in the political plurality of electoral coverage in the 2016 elections compared to previous years.<sup>158</sup>

Like civil society, members of the press are recognized in the Election Code with rights to access election information, including polling stations on Election Day, CEC meetings, and public election data. For the first-round parliamentary elections in 2016, 184 media outlets with 5866 journalists were registered with the CEC.<sup>159</sup> However interlocutors indicated that journalists rarely took advantage of opportunities to gather and analyze available information, particularly in the pre-election period.

Ahead of the 2016 elections, according to election observation and media monitoring reports, Georgian media houses provided adequate space for political debate, including attempts to organize candidate and party dialogues, although these were not always accepted. However, the OSCE/ODIHR’s media monitoring project found that the major media outlets tended to focus electoral coverage on horserace dynamics rather than substantive policy issues.<sup>160</sup> Most interlocutors agreed that the media does not yet serve as a particularly strong deterrent to government malfeasance.

There are ongoing international and domestic efforts to continue to encourage media independence and bolster the integrity and public relevance of Georgian journalism. Open Society – Georgia has been supporting investigative journalism initiatives, while organizations like Internews and IREX have provided capacity-building grants for independent and professional journalism and media trainings on various public interest issues. However, additional support is needed to ensure that journalists are enabled to make serious contributions to highlighting and deterring ASR in elections. Enhanced training and support for independent, investigative journalism should be provided to encourage greater ASR accountability, with a particular focus on more nuanced long-term challenges, such as local government spending and employment designed to garner political favors or maintain the status quo.

Finally, there is no national code of conduct regarding the use of social media by state personnel, although Article 48 of the Election Code prevents the use of “means of communication, information services, and other kinds of equipment designated for state authorities and local self-government bodies, also for

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<sup>154</sup> “ECHR Suspends Supreme Court's Rustavi 2 Decision,” *Civil Georgia*, March 4, 2017, <http://civil.ge/eng/article.php?id=29904>.

<sup>155</sup> “Statement by the Spokesperson on the Decision of the European Court of Human Rights on the Rustavi 2 Case,” news release, August 3, 2017, European Union External Action.

<sup>156</sup> “Georgia: Freedom of the Press 2016,” Freedom House, 2016, <https://freedomhouse.org/report/freedom-press/2016/georgia>.

<sup>157</sup> Ibid.

<sup>158</sup> See *Georgia: Parliamentary Elections*, OSCE/ODIHR Election Observation Mission; and *Statement of the National Democratic Institute*, National Democratic Institute.

<sup>159</sup> *Georgia: Parliamentary Elections*, OSCE/ODIHR Election Observation Mission.

<sup>160</sup> Ibid.



organisations funded from the State Budget of Georgia.” Moreover, there is no clear legal guidance for how the social media presence of an electoral subject should be considered in terms of active campaigning. The current legal framework regulating political advertisements focuses exclusively on broadcast and print media.

## Public Procurement

Public procurement in Georgia is a source of both considerable progress and continuing tension. As noted in a 2015 World Bank report, “public procurement is at the core of how government conducts its business. As such, reforming procurement systems can prove transformational for development in any country.”<sup>161</sup> Such procurements also have the potential to undermine the electoral process, if public funds for development projects are diverted for political ends, or if contractors bolster their competitiveness on public procurements by donating great sums to the party in power. A number of sources have lauded Georgia in recent years for introducing a transparent e-procurement process and a national public procurement regulatory authority. The World Bank notes that:

The introduction of e-procurement through the Georgian electronic Government Procurement (Ge-GP) system is a good example of how strong political will and commitment can be critical in the context of reforming public procurement...The e-procurement system, which is broadly consistent with good public procurement practices, has increased competition among suppliers. In addition, by bringing processes online, it has made the procurement system more transparent, less bureaucratic, and less discriminative. As a result, the system has significantly minimized corruption risks and brought substantial savings to the government and Georgia's citizens.<sup>162</sup>

However, other observers (and a number of assessment interlocutors confirmed this finding) note that the public procurement system is still riddled with loopholes permitting a significant number of contracts to be awarded non-competitively or outside the admirably transparent e-procurement process.<sup>163</sup> Additional concerns include the fact that the relevant law (the 2012 Public Procurement Law, or PPL) does not permit appeals against the method of awarding contracts, nor has “mandatory debarment for corruption-related offences of a company or its management” been introduced.<sup>164</sup> The European Bank for Reconstruction and Development, in its review of the commercial climate in Georgia, reinforces this concern: “The current PPL does not provide for an independent review and remedies for public procurement; the existing review procedure is simple and very efficient but does not guarantee independence from the regulatory authority as recommended by international best practice for reviewing complaints on public procurement.”<sup>165</sup>

These concerns are not insignificant in light of the relative magnitude of this type of public spending in Georgia. According to a 2016 OECD report, “Public contracting in Georgia accounts for about 40 per cent of all government spending and about 11 per cent of the country’s Gross Domestic Product. In 2015 public entities in Georgia concluded 24,950 contracts.”<sup>166</sup>

As noted above, one public procurement challenge relevant to regulating the use of state resources in

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<sup>161</sup> “Georgia: A E-Procurement Success,” The World Bank, February 18, 2015.

<sup>162</sup> Ibid.

<sup>163</sup> *Georgia National Integrity System Assessment*, Transparency International Georgia, 9-10. and *Anti-Corruption Reforms in Georgia*, OECD Anti-Corruption Network for Eastern Europe and Central Asia, 9.

<sup>164</sup> *Anti-Corruption Reforms in Georgia*, OECD Anti-Corruption Network for Eastern Europe and Central Asia, 9.

<sup>165</sup> *Commercial Laws of Georgia: An Assessment by the EBRD*, report, European Bank for Reconstruction and Development (2013), 11.

<sup>166</sup> *Anti-Corruption Reforms in Georgia*, OECD Anti-Corruption Network for Eastern Europe and Central Asia, 83.

## Recommendations

- ✓ Reduce the number of exemptions that qualify a procurement to be conducted outside of the competitive process
- ✓ Ensure that information on simplified procurements is accessible via the public, electronic tender system
- ✓ Address in the law conflicts of interest of contractors, in addition to public officials

election campaigns is ensuring that donations to political parties or candidates do not impact how or to whom state contracts are awarded. International IDEA and Transparency International both note that “modest progress” has been made in Georgia on this front; between 2010 and 2013, “the ruling party’s donors almost exclusively won competitive government tenders and simplified procurement contracts... In contrast, an updated Transparency study found that although donors connected to the ruling party still won most of the government contracts awarded between January 2013 and May 2014, companies affiliated with opposition party donors also won some contracts. While companies connected to the ruling party still enjoy a marked advantage, the distribution of contracts represents an improvement on the previous state of affairs.”<sup>167</sup> According to the Law on Political Unions of Citizens, Article 27(2), legal entities receiving more than 15% of their annual income from public contracts are prohibited from donating to political campaigns. Assessment interlocutors were aware of this prohibition, but maintained that the relationships between contractors and political entities continue to be problematic. Beyond this provision, there are few legal impediments to government contractors participating in political activity. Regulations do not specifically prohibit contractors from diverting funds awarded by the government for political purposes, but any misuse of the amount budgeted in a contract would be illegal.

Several recommendations (detailed more thoroughly by reports focused on this issue, such as the OECD’s “Anti-Corruption Reforms in Georgia”

2016 monitoring report) would limit loopholes and promote the transparency of the public procurement process, with implications for the ASR issue. For example, the law could be amended to reduce the quantity and type of exemptions that permit non-competitive procurements. Detailed information on the remaining simplified procurements – those that are exempt from the competitive process under the law – should be made available to the public via the electronic tender system. Finally, further analysis could be conducted on whether it would be appropriate to limit the ability of contractors with significant public contractors to participate in political activity.

A related issue highlighted by a number of interlocutors in Georgia focuses on government development projects more broadly, rather than only the procurement process. Specifically, there are clear indications that many municipalities make changes to local budgets prior to the campaign period, as is permitted by the law, that enable them to increase social and infrastructure spending close to Election Day. As ISFED notes in its 2016 election reporting, “Although the Election Code prohibits such changes within 60 days ahead of elections and municipalities mostly abided by this requirement, launch of social campaigns and mobilization of budget funds for social projects created suspicions that initiation of projects or increase of

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<sup>167</sup> Briscoe, Golf, and Burcher, *Protecting Politics*, 54. According to the OECD Anti-Corruption Network report, “there was a substantial reduction in the contracts awarded to companies directly connected to Georgian Dream donors (directors, owners, board members) – GEL 5.6 million only. In the same period, United National Movement donor connected companies received contracts worth approximately GEL 140,000. The problem was more severe in 2011-2012. In 2012, the United National movement received GEL 6.6 million in donations from persons connected to companies which received GEL 160 million in contracts. The same companies received GEL 110 million through simplified procurements in 2011.” *Anti-Corruption Reforms in Georgia*, OECD Anti-Corruption Network for Eastern Europe and Central Asia, 85.

spending in some municipalities had to do with the formal launch of the pre-election campaign.”<sup>168</sup> As is clear from this quote, the majority of municipalities are abiding by the letter of the law; however, the clear concern about this issue from a number of assessment interlocutors and sources is evidence that the *spirit* of the law is not necessarily being upheld. This issue was covered in more depth in the “Legal Framework” section of this report.

### Scores

<i>Enabling Environment Component</i>	<i>Aggregate Score</i>
Public Service Framework	63/100
Campaign Finance Framework	74/100
Civil Society Oversight and Advocacy	69/100
Media Environment and Public Information	67/100
Public Procurement	73/100

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<sup>168</sup> *Final Report of the Observation Mission*, ISFED, 20-21.

## VI. Annexes

### Annex 1

Below is a list of sanctions provided for in the Election Code and the Law on Political Unions of Citizens. Of note, as per the Law on Political Unions of Citizens, Article 34<sup>1</sup>(10), a person can be held liable as prescribed by this Article for 6 years after perpetrating the relevant act.

#### Warnings

Article	Violation	Type of Warning
Election Code Article 57(6)	The electoral subjects having received the required number of votes as provided for by this Law fail to submit a report of their election campaign funds within the specified time frame, or if any violation of the requirements provided for by law is confirmed	The SAOG shall notify the electoral subjects in writing and request them to remedy the deficiency and submit detailed information about the relevant violations in writing **If the SAOG deems that the violation is of an essential nature and could have affected the election results, it may recommend to the relevant election commission to apply to court and request to summarize election results without taking into account the votes received by that electoral subject
Law on Political Unions of Citizens, Article 30 (11)	A party fails to submit the written consent for receiving the next year's state funding in time	The SAOG shall inform the party in a written form on the next day after expiration of the deadline. The party has right to submit the relevant consent within 3 days from receiving warning from the SAOG.
Law on Political Unions of Citizens, Article 34	A party fails to submit its financial declaration to the SAOG in time	The SAOG shall warn the party in a written form and request to remove inaccuracy within 5 days.

#### Fines<sup>169</sup>

The following fines pertaining to campaign/political finance/ASR violations are provided for under the Election Code:

Article	Violation	Fine Amount
Article 79	Participation in election campaigning in violation of the requirements of this Law	GEL 2,000
Article 80	Obstruction of the dissemination or seizure of election calls, statements, inscriptions, papers, photo and other materials, as well as the seizure of, or hindrance of, the use of transportation, or other kinds of specially equipped means aimed at pre-election agitation	GEL 1,000 <i>The same action conducted by officials shall be subject to a fine of 2,000 GEL</i>
Article 81	The conduct of election campaigning in institutions where such activities are prohibited by this Law and the issue of a permit for such activities by an authorized person	GEL 1,000

<sup>169</sup> At the time of this writing, the average 6 month historical conversion from February – August 2017 was 1 USD = 2.42 GEL. "Historical Rates," OANDA Solutions for Business, August 2017, <https://www.oanda.com/fx-for-business/historical-rates>.

Article	Violation	Fine Amount
Article 82	The publication of the results of a public opinion poll conducted in relation to elections without the required information within the time frame determined by law or the violation of other procedures related to publication	GEL 1,500
Article 83	Violation of the requirements under the Election Code related to election campaigning, placement of political/pre-election advertising and transmission or publication of information	GEL 1,500 for electronic media GEL 500 for print media <i>If the same action is repeated one year after the imposition of an administrative penalty, these fines will be increased to GEL 5,000 and GEL 1,500, respectively</i>
Article 85	Failure to comply with the statutory obligation to submit a report for election campaign fund and/or submitting a report for election campaign fund with inaccurate data	GEL 1,500 for a political union of citizens GEL 3,000 for a political union of citizens receiving state funding
Article 86	Refusal to submit all required materials to election, referendum, or plebiscite commissions or the failure to comply with their decisions	GEL 1,000 for the respective officials
Article 88	Any violation of the requirements of this Law in the course of using administrative resources or exercising official duties or an official capacity during canvassing and election campaign	GEL 2,000
Article 89	Any violation of the requirements of this Law for the issue of copies of summary protocols of elections, referenda, or plebiscites	GEL 1,000 for the respective election commission chairperson and/or secretary
Article 90	Hindering a person authorized to be present at a polling station in making notes in the log-book	GEL 500
Article 91	Any restriction of the rights referred to in this Law for domestic/international observers, electoral subjects, and media representatives, or for hindering their activities	GEL 500

The following fines pertaining to campaign/political finance/ASR violations are provided for under the Law on Political Unions of Citizens:

Article	Violation	Fine Amount
Article 34 <sup>2</sup> (1)	Receipt or hide of donations/membership fees prohibited by Georgian legislation by party or a person	Transferring the prohibited donation/membership fee in the state budget and fine with five-fold of the received donation/membership fee
Article 34 <sup>2</sup> (2)	Implementation of donation/membership fee prohibited by Georgian legislation carried out by physical or legal entity, their union or other types of organizational forms in favor of a party or a person	Fine of a person implementing prohibited donation/membership fee with five-fold of the donation/membership fee
Article 34 <sup>2</sup> (3)	Receipt or/and hide of information regarding the donation/membership fee, prohibited by Georgian legislation, by person in favor of a party or a person	Fine of a person with five-fold of the donation/membership fee

Article 34 <sup>2</sup> (4)	Failure to comply with the requirements and obligations prescribed by this Law by party or by the person prescribed by paragraphs 1st and 2nd of the Article 26 <sup>1</sup>	GEL 5,000
Article 34 <sup>2</sup> (5)	Failure to provide information to the State Audit Office in compliance with obligations by the law	GEL 1,000 for natural person and GEL 2000 for legal entity
Article 34 <sup>2</sup> (6)	Violation of requirements prescribed by Article 252 of this Law, also receipt of illegal gift, income, service, or property (service) by physical person, prescribed by this Law, if value doesn't exceed 100 GEL	Fine of a party, party representative, legal entity with ten-fold of corresponding property (service), or of corresponding agreement and twice fold of corresponding value of physical person
Article 34 <sup>2</sup> (8)	Violation of requirements prescribed in paragraphs 1st and 1 <sup>1</sup> of Article 25 <sup>1</sup> of this Law	Fine worth two-fold of the expense that exceeded the prescribed limits

***Forfeiture of received donations, temporary suspension of public funding, and/or losing right to public funding for specific period***

Article	Violation	Consequence
Law on Political Unions of Citizens, Article 27 <sup>1</sup> (2)	Regulations prescribed by this law are violated because of acceptance of the donations, as well as membership fees, after the transfer on its account	Party is obliged to return the money to the donator/implementer of membership fee within the 5 working days. In case of failure of this obligation money shall be transferred in State Budget. If the party did not know nor could have known about the illegality of the donations, the obligation to transfer money back arises from the moment of the request of the SAOG.
Law on Political Unions of Citizens, Article 30 (11)	A party fails to submit the written consent for receiving the next year's state funding in time	Following a warning, if the party fails to submit the relevant consent in the timeframes set by the SAOG, it shall lose the right to receive state funding next year
Law on Political Unions of Citizens, Article 34	A party fails to submit its financial declaration to the SAOG in time	Following a warning, if the party does not submit its financial declaration to the SAOG within 5 days, it shall not be entitled to receive public funding for subsequent 1 year

***Loss of candidate/party registration, nomination for election, or elected seat***

Article	Violation	Consequence
Election Code, Article 112	A person holding an office listed in Article 112 does not resign their position no later than on the second day after submitting an application to the appropriate election commission for registration as a candidate for the Parliament of Georgia	These officials shall be denied registration as a candidate for membership of the Parliament and, if the registration has already taken place, it shall be annulled

***Suspension of government or party activities***

Article	Violation	Warning
Election Code, Article 49(3)	Implementation of such projects not being previously envisaged in the state/local budget <u>or</u> increase of those budgetary programs stipulated by the budget prior to the elections, initiation of unplanned transfers or boosting of planned transfers in the local budget between the day of calling of elections until the sum up of the election results	An authorized individual shall have the right to apply to court and demand suspension of expenses
Election Code, Article 49(4)	Either an increase the amount of welfare benefits (pensions, hardship allowances, allowances, etc.), <u>or</u> funding of welfare benefits, except for benefits the increase of which was provided for by the legislation, at least 60 days before Election Day.	An authorized individual shall have the right to apply to court and demand suspension of expenses

Article 93 of the Election Code provides that the following organizations shall draw up protocols of administrative offenses referred to in the following articles:

***CEC Chairperson, as well as the persons authorized by the CEC and respective DEC***

Article	Violation	Fine Amount
Article 79	Participation in election campaigning in violation of the requirements of this Law	GEL 2,000
Article 81	The conduct of election campaigning in institutions where such activities are prohibited by this Law and the issue of a permit for such activities by an authorized person	GEL 1,000
Article 86	Refusal to submit all required materials to election, referendum, or plebiscite commissions or the failure to comply with their decisions	GEL 1,000 for the respective officials
Article 87	Alteration of any data entered into summary protocols of polling and election results is not confirmed by the correction report drawn up by the election commission concerned	GEL 500 for the respective election commission chairperson and/or secretary
Article 88	Any violation of the requirements of this Law in the course of using administrative resources or exercising official duties or an official capacity during canvassing and election campaign	GEL 2,000
Article 89	Any violation of the requirements of this Law for the issue of copies of summary protocols of elections, referenda, or plebiscites	GEL 1,000 for the respective election commission chairperson and/or secretary
Article 90	Hindering a person authorized to be present at a polling station in making notes in the log-book	GEL 500
Article 91	Any restriction of the rights referred to in this Law for domestic/international observers, electoral subjects, and media representatives, or for hindering their activities	GEL 500
Article 92	Any violation of the requirements referred to in Article 41(2)(b-d) of this Law by an observer, electoral subject, or media representative	GEL 500



### Georgia National Communications Commission

Article	Violation	Fine Amount
Article 82	The publication of the results of a public opinion poll conducted in relation to elections without the required information within the time frame determined by law or the violation of other procedures related to publication	GEL 1,500
Article 83	Violation of the requirements under the Election Code related to election campaigning, placement of political/pre-election advertising and transmission or publication of information	GEL 1,500 for electronic media GEL 500 for print media <i>If the same action is repeated one year after the imposition of an administrative penalty, these fines will be increased to GEL 5,000 and GEL 1,500, respectively</i>

### State Audit Office of Georgia

Article	Violation	Fine Amount / Consequence
Article 84	Violations of the Organic Law of Georgia on Political Unions of Citizens, as well as actions aimed at avoiding the requirements of law for funding political activities	Electoral subjects, including electoral blocs, political unions within an electoral bloc, initiative groups of voters and candidates nominated by an initiative group shall be liable under the Organic law of Georgia on Political Unions of Citizens and under procedures defined by this Law
Article 85	Failure to comply with the statutory obligation to submit a report for election campaign fund and/or submitting a report for election campaign fund with inaccurate data	GEL 1,500 for a political union of citizens GEL 3,000 for a political union of citizens receiving state funding

### Relevant municipal executive body or authorized person

Article	Violation	Fine Amount
Article 80	Hindering dissemination of, or seizure of, election appeals, statements, signboards, papers, photos, and other materials	GEL 1,000 GEL 2,000 for an official conducting the same action

Article 26<sup>2</sup> of the Law on the State Audit Office mandates an “authorised person designated under a normative act of the Auditor General” with preparing an administrative protocol for the following offense:

Article	Violation	Fine Amount / Consequence
Article 26 <sup>1</sup>	Failure to present necessary information and/or documentation to the State Audit Office, provision of false information, interference with other hindrance to its activities	GEL 100 Under a court decision imposing a fine, the offender shall also be charged with non-performance of the obligation for which the administrative penalty is imposed. An appeal shall not suspend execution of a court decision with respect to non-performance of the obligation for which the administrative penalty has been imposed on the offender.

## Annex 2

The following table displays quantitative Enabling Environment scores for Georgia based on publicly available global and regional indices. All indicators are re-scaled, as needed, on a 0-100 scale, where 100 is the best or highest score allocated. The composite score is the mean of the included indicators. Enabling Environment scores and aggregation calculations for all comparison countries included in this report are available upon request.

Georgia									
Category	Composite Indicator	Indicator 1		Indicator 2		Indicator 3		Indicator 4	
		Source	Scaled Score	Source	Scaled Score	Source	Scaled Score	Source	Scaled Score
Campaign Finance Framework	74	<a href="#">Money, Politics and Transparency database</a>	79	<a href="#">Varieties of Democracy</a> *	68				
Public Service Framework	63	<a href="#">EIU, Government Effectiveness</a>	63						
Civil Society Oversight and Advocacy	69	<a href="#">WJP ROL Index</a> , <i>Freedom of Association</i>	77	<a href="#">WJP ROL Index</a> , <i>Civic Participation</i>	69	<a href="#">Freedom House</a> , <i>Associational and Organizational Rights</i>	67	<a href="#">Varieties of Democracy</a> *	64
Media Environment and Public Information	67	<a href="#">WJP ROL Index</a> , <i>Right to Information</i>	70	<a href="#">Varieties of Democracy</a> *	64				
Public Procurement	73	<a href="#">World Bank Benchmarking Public Procurement</a> , <i>needs assessment</i>	70	<a href="#">World Bank Benchmarking Public Procurement</a> , <i>bid opening</i>	71	<a href="#">World Bank Benchmarking Public Procurement</a> , <i>content</i>	77		

\* Varieties of Democracy (V-Dem) scores were determined by scaling and averaging the following individual V-Dem indicators for each category:

### Campaign Finance Framework

- Disclosure of campaign donations
- Public campaign finance

### Civil Society Oversight and Advocacy

- CSO repression
- CSO consultation

### Media Environment and Public Information

- Government censorship effort – media
- Print/broadcast media critical
- Harassment of journalists
- Media self-censorship
- Media bias
- Media corrupt



Global Expertise. Local Solutions.  
Sustainable Democracy.