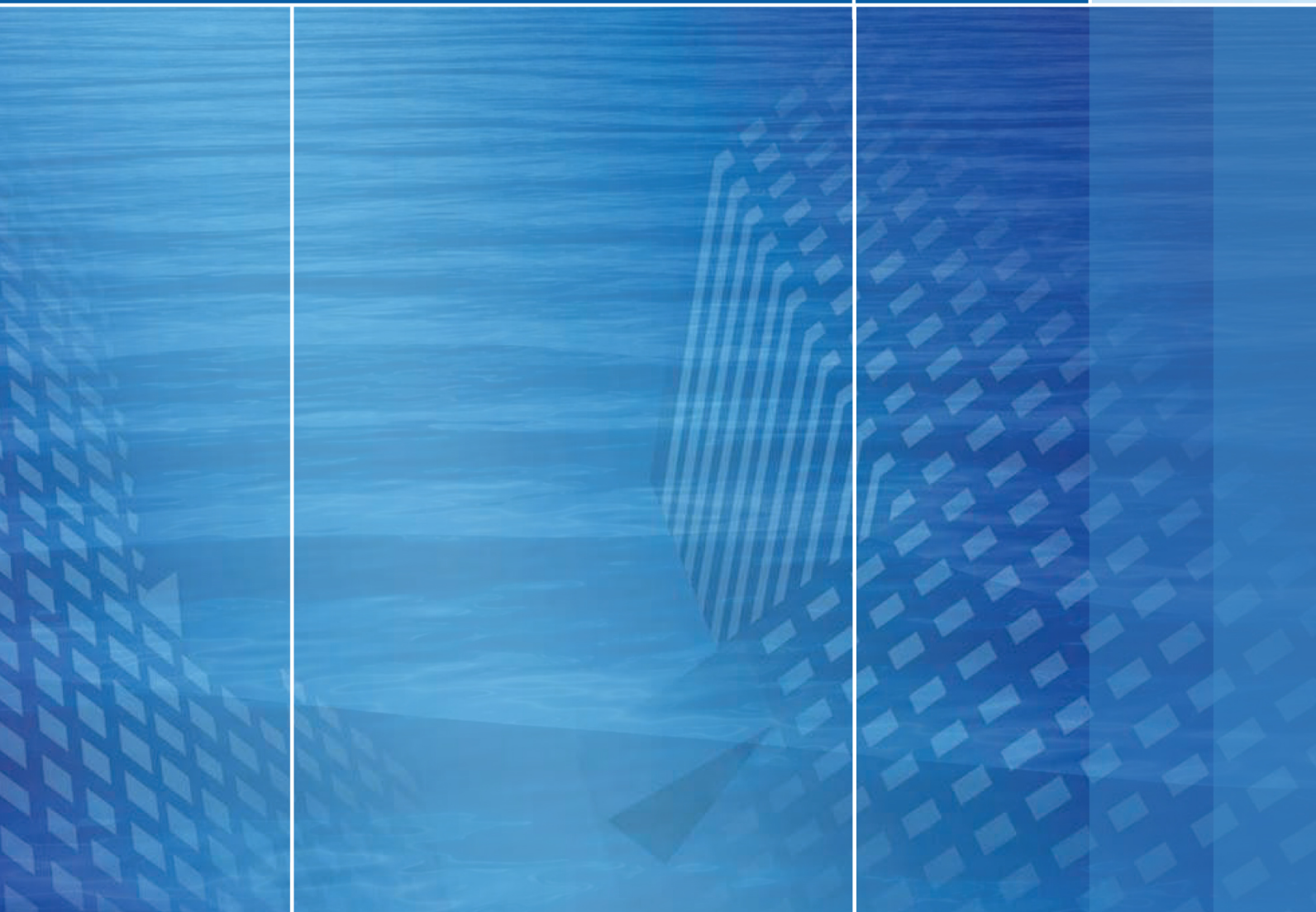
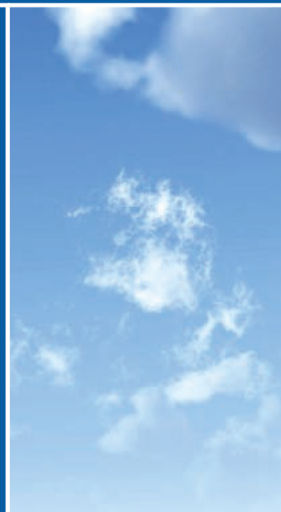


**Local  
Self-Government  
in Georgia**

**1991–2014**



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## FORWORD

The development of self-governance in Georgia over 25 years of the country's independence has been challenged with numerous complications as frequent efforts to reform the system have been translated into attempts to develop and establish diverse models of municipal systems varying over a course of the time. The Georgian system of local self-governance has a long way to go to perfection and as of today it is going through the reformation. Therefore, it is important to rethink and critically analyze the past as this is the only approach that can lead to elaborating an optimal strategy for future development.

The present paper is an attempt to highlight main tendencies and problems pertaining to the development of local self-governance in Georgia between 1991 and 2015. It also seeks to revisit and analyze the past with the hope that it will be interesting for academia as well as broader public.

The first part of the paper prepared in 2013 provides a general overview of the decentralization process in Georgia:

The second part of the paper *Local Self-governance Reform in Georgia – 2013-2014* overviews the context prior to the reform and a preparation process, a political process evolving round the development and adoption of *Local Self-governance Code* in 2013 and perceptions of key stakeholders as well as post-reform implementation of the new organic law in 2014 and related challenges. This part also describes motivations of the stakeholders and delineates progress of the implementation as of January 2015 and future prospects.

We hope that the publication will help readers interested in the self-governance system in Georgia to rethink challenges characteristic to this direction of public life.

Sincerely,

**Konstantine Kandelaki**

Chairman of the Board  
The International Centre for Civic Culture

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# PART I. LOCAL DEMOCRACY DEVELOPMENT IN GEORGIA (1991 – 2012) – POLICY ANALYSIS

*David Losaberdize*

## 1. The general picture

For the last 20 years, following the restoration of its statehood, Georgia made some progress in creating State institutions. However, a series of issues have remained unresolved during this period and one may observe regress in some ways.

Development of local-governance is one of the issues in which many questions are still left without answers. Not only decentralization process has not taken place in Georgia by standards accepted in developed countries, but we do not even have a uniform and publicly thought-through concept about vertical distribution of power. The ongoing changes are self-contradictory and incomplete often moving away from the determined course and individual success stories are normally followed by stagnation and restoration of centralized governance methods.

The Georgian political elite has been referring to the country facing other more important issues as a reason of impeded decentralization. In a way, this view is justified: against the background of political and ethnic conflicts, destruction of centralized economy, protracted process of adopting market economy principles, and constant deficit in human and financial resources, it seemed hard indeed for the country to think about developing local democracy. In addition, other relatively successful reforms (accelerated privatization, building of the army, educational reform and the recently strengthened social protection policies) required the highest level mobilization of State resources.

In addition to the declared reasons, the “low priority” of the decentralization issue had other serious and covert reasons: none of the political teams in the government has been willing during the two decades to bid farewell to the mechanisms of absolute Soviet-rooted control of power at lower levels. Every political force willing to come to power was referring to the need for decentralization but, once in power, they were soon forgetting their promise and, relying on local interest groups, were trying to protract as much as possible the full, absolute and indivisible domination at all levels of government.

A glance at the processes this far makes it obvious that these processes have never been consistent with any single way of development:

- The first attempt to get rid of the communist heritage and make self-governance a reality was in 1991 when multi-party municipal elections were held and a number of guarantees were created (community self-governance) to ensure public participation in the decision-making process. However, these efforts were not strong enough to fight down the negative aspects of a mechanism the central government has created to control the local self-governance bodies (President-appointed prefects in the regions).
- After the coup d'état in 1992, given the economic and political chaos, it was not far from being reasonable to expect the government would think about conveying its powers to the local authorities. Districts and regions were subjected to the control of district governors (Gamgebelis) and regional governors (envoys) appointed by first the Head of State and later by the President.
- The adoption of the Organic Law on Local Governance and Self-Governance in 1997 and the holding of municipal election in 1998 have created starting conditions for decentralization. However, the newly-formed system had strong features of centralized governance: heads of district executive bodies were appointed by the center. The very name of the Organic Law was confirming the dual nature of local authorities (elected/appointed). True self-governance bodies at grassroots level were town, village and community

authorities. The law was vesting them with sufficient powers on the paper but, with lack of appropriate finance, these powers remained a mere formality.

- Following the “Rose Revolution”, centralization trends again became visible in the process of local self-governance development. The Government-declared modernization doctrine was not leaving much space for democratic processes. In 2006, the lower level of self-governance authorities was abolished on the ground that the district level, which has largely become estranged from the citizens, would now have more opportunities to mobilize financial and human resources. However, the districts soon started losing resources available to them (shared taxes were abolished and their collection became a fully centralized process). In addition to all of these factors, in 2007, the previously informal methods of exerting influence over local self-governance authorities were strengthened at the legislative level and now they were backed up by the applicable law.
- The hindered process of local democracy development has resulted in both reduced public involvement and deteriorated quality of provided public services. The situation has worsened due to the political crisis in 2007 (forced breakup of the protest rally in November 2007, premature presidential and parliamentary elections whose legitimacy was questionable, etc) followed by an armed conflict with Russia and economic crisis in 2008. With these conditions in place, instead of starting a decentralization process, the Government took on reducing the already meager powers of local self-governance authorities (by centralizing the water supply, waste management and legal services). A single-party system coupled with a strong in-party hierarchical rule and lack of any alternative political forces has created a serious gap between the society (especially, the communities in the regions) and the political processes leaving only a single functional power to the self-governance authorities to provide simply an appearance of democracy and collection of as many votes as possible for the ruling party in time of elections.

These circumstances explain the indifferent attitude of the society and lack of societal demand. This environment, on its turn, allows the ruling political parties to refer to lack of self-governance tradition in the country and of readiness on the part of the public for such changes with the aim of endlessly protracting the local democracy development process.

## 2. Legal framework

In discussing the legal framework applicable to local self-governance, major legislative acts to be mentioned are the Georgian Constitution, the European Charter of Local Self-Government, the Organic Law of Georgia on Local Self-Governance and several other laws. In addition, provisions concerning competences of local authorities are found in several dozens of normative acts (industry-specific laws, mostly).

*The Georgian Constitution* (adopted in 1995) does not determine the country's administrative and territorial arrangement. Article 2(4) of the Constitution provides that “Territorial and State arrangement will be prescribed by a constitutional law based on the principle of division of competences after Georgia's jurisdiction is fully restored in the entire territory of the country; rules of creation, competences and relations of self-governance bodies with State organs shall be prescribed by an organic law.”

On 15 October 2010, the Georgian Parliament adopted a new version of the Constitution, which, *inter alia*, outlines self-governance principles (these articles entered into force on 1 January 2011). The Constitution now has a new Chapter VII<sup>1</sup>, which prescribes:

- the election right but without an indication of a tenure of local legislative authorities (Article 101<sup>1</sup>(1));
- the obligation to consult with the local self-governance unit before any changes are made to its territorial boundaries as well as when creating or abolishing a self-governance unit; (Article 101<sup>1</sup>(3));
- principles of separation of own competences and competences delegated by the central authorities (Article 101<sup>2</sup>);
- principles of separation of the property and finance of self-governance units (Article 101<sup>3</sup>).

In addition, self-governance units are now authorized to lodge constitutional lawsuits with the Constitutional Court of Georgia (Article 89).

These amendments have constitutionally reinforced guarantees of operation of self-governance units. At the same time, the new version of the Constitution has been amended to allow only locally registered citizens versus everyone residing in the locality to participate in local self-government (Article 2(4)). Almost none of the Venice Commission's recommendations were taken into consideration when the Constitution was amended, especially those related to inserting rules of specific division of competences, minimum guarantees for the protection of the subsidiary principle and core principles of fiscal decentralization.

***The European Charter of Local Self-Government*** was signed on 23 May 2002. On 26 October 2004, the Georgian Parliament ratified the Charter which entered into force on 1 April 2005.

However, Georgia did not accede to a number of provisions of the Charter, including Article 5 (no change of local authority boundaries without prior consultation with the local communities concerned). The principle of Article 5 of the Charter is enshrined in the Georgian Constitution notwithstanding Georgia's reservation.

***The Organic Law of Georgia on Local Self-Governance*** is a major legislative act governing the operation of self-governance authorities. The Law was adopted in 2005 replacing the previous Law on Local Governance and Self-Governance. In later years, the Organic Law has been amended many times eventually reducing the actual powers of local authorities and increasing the scope of issues in which the central authorities could exercise supervision and control. This topic will be dealt with in more detail in appropriate chapters of this Report.

***Other laws to mention*** are the Law of Georgia on the Capital of Georgia – Tbilisi (adopted in 2005), the Law of Georgia on State Supervision over the Operation of Local Self-Governance Bodies (adopted on 8 June 2007) and the Law of Georgia on the Distribution of Revenues among Budgets (adopted on 28 December 2007).

Analysis shows, unfortunately, that law-making process in Georgia is characterized with a series of problems:

- frequent changes in laws making the general environment not stable (virtually every single legislative act is amended dozens of times per year);
- despite the numerous amendments, more than a hundred laws governing different sectors still need to be made consistent with both the Georgian Constitution and the Organic Law on Local Self-Governance. Constitutional amendments were not followed by appropriate changes in the relevant laws and the constitutional guarantees are not further backed up in the legislation;
- applicable laws contradict not only the Constitution but also the universally recognized legal principles (such as property rights, the opportunity to defend own interests, subsidiary principle and so forth);
- moreover, conflict of laws is a frequent phenomenon and, even worse, it is not seldom for various provisions of the same law to contradict each other. This is true not only about conflicts between old and new laws but legislative acts adopted on the same date (some of the examples are the two self-contradictory changes in the Law of Georgia on the Capital of Georgia – Tbilisi on 25 December 2009 and amendments made to a number of provisions in the Law on State Supervision on 2 July 2010 that have already been changed on 22 October 2009).

Laws are seldom subjected to legislative expertise and often illustrate how spontaneous decisions of just a single individual may suddenly become mandatory rules of law. Furthermore, it takes no hard effort to become convinced of lack of reasonability of some of the legislative acts or individual clauses thereof. A classical example of a law that makes no sense is the amendment made to Organic Law on Local Self-Governance on 27 March 2009 which gave the local self-governance authorities the right to finance the functions of the central government using own local resources should the center "so request". Although this new rule contradicted the Georgian Constitution and the principles of the European Charter of Local Self-Government and the Government declared it would only have a

temporary nature, the validity of the rule was prolonged by amendment of 11 February 2011 until 1 January 2013 (Article 65<sup>2</sup>).

Another problem of a more serious type that is frequently encountered in day-to-day practice is the violation of the hierarchy of laws:

- often the orders issued by President-appointed envoys/governors or Government ministers contradict legislative acts but local self-governance bodies are still obliged to comply with the orders and not the legislative acts;
- in addition to obvious protection of the ruling party interests, one can observe intensified selfishness in the actions of local officials: the decrease in explicit financial corruption has developed into the increased number of conflict-of-interest-motivated decisions at the local level;
- a new other trend has also become obvious: public officials are now openly ignoring the recommendations of international organizations.

Finally, it is worth noting that changes into the legislative acts (governing financial and other issues) are no longer as frequent as they used to be and the law-making techniques are becoming more sophisticated which means that we will soon have a finally centralized system of movement of funds.

### 3. Territorial arrangement

#### 3.1. *Municipal arrangement*

The current territorial arrangement is based on the system of districts first formed in 1930s. The issue was much debated in the first years after Georgia regained its independence but no serious changes have taken place until 2006. Before 1 January 2006, there were three sub-national levels in the country:

1. Villages, rural communities and towns (1,004 units in total) were self-governing units with legislative and executive authorities;
2. Districts and towns subordinated to the center (65 units in total). This level functioned as both a local self-governance body and a decentralized body of the central government;
3. Nine *de facto* existing regions plus the Autonomous Republic of Achara and Tbilisi. The situation in the regions was under the control of President's envoys whose rules of operation were not prescribed by law.

Since the date the local self-governance election results were officially announced in 2006, the lowest level (comprised of villages, rural communities and towns) was completely annulled and municipalities formed within the former districts were declared as the only self-governing and territorial units.

A declared reason of the change was that small municipalities were ineffective in providing public services. However, those employing this reason were not mentioning that the municipalities have never been provided with adequate resources to function properly.

As a result of the reform, an average number of residents of each self-governing unit has increased from 4,354 to 66,235 (for the sake of comparison, in an overwhelming majority of the European countries as well as in many developed countries including the United States and Japan, the population of a municipality ranges from 7 to 18 thousand on average).

Because the lowest level of self-government was annulled:



- the gap between the citizens and the authorities increased: it became as difficult for a resident (especially for residents of smaller settlements) to meet with high-ranking officials of local self-governance authorities as with representatives of the central authorities;
- the State control over large self-governing units has increased and the self-government has become politicized (districts are too big for the center to try to use the local opportunities in its favor);
- improperly arranged districts no longer allow implementation of a uniform equalization policy (population of the districts range from 3 thousand to 500 thousand and some of the districts include several zones that are extremely different from each other such as mountainous, agricultural and urban zones);
- Residents from various settlements within the same self-governance units have unequal access to individual types of services provided by local self-governance authorities.

To deal with the negative consequences of the increased gap between the people and the government, local self-governance representatives were sent out to serve in the former rural communities located in the newly-created municipalities. However, it is obvious nowadays that this concept of representatives has not been fully successful: the representatives are accountable to the municipality governor and not to the rural community where he/she is appointed to serve. In addition, the representative do not possess any realistic levers for action (financial and human resources) to resolve problems of local importance. In fact, the only thing the representatives are doing is they are informing the population about the decisions of local self-governance authorities.

### ***3.2 Regional arrangement***

The regional arrangement issue has always been viewed differently in Georgia and one can notice it is become a topical issue again these days.

Legally, there is no such thing as a regional level in the country. There is, however, a post of presidential envoy/governor whose territorial scope includes several municipalities. In other words, there is a governor but no province (no relevant government structures within the governor's territorial jurisdiction). The matter is regulated by the Law of Georgia on the Structure, Competences and Rules of Operations of the Government of Georgia and the Presidential Decree No. 406 approving the Statute of State Envoys/Governors".

Since the 90s of the previous century, the political establishment and a large part of the society have been dominated by the view that adoption of the regional principle might have served as a precondition for Georgia's territorial disintegration. These fears were based on historical memories: the problems between the Georgian State and its ethnic autonomies (the Autonomous Republic of Abkhazia and the South Ossetian Autonomous District) have ended up with these territories finally turning into breakaway regions. In addition, the same period was marked with controversies with the leadership of the Autonomous Republic of Achara in spite of the fact that they were not ethnically-motivated by any means.

It is still feared nowadays that a formal creation of a regional level will not only strengthen separatist trends in areas densely populated by ethnic minorities (Samtskhe – Javakheti and Kvemo Kartli) but become an obvious precondition for Georgia's disintegration into sub-ethnic regions (Samegrelo, Svaneti, etc.).

It is increasingly becoming obvious that it is necessary to implement social and economic programs in the regions on a case-by-case basis, which seems too difficult given the unified approach of the central government. Although a Ministry of Regional Development and Infrastructure was set up in 2009 to see to implementing infrastructural projects in regions, the regions usually do not benefit from the projects implemented by the central government due to their low priority (for example, the government is doing cosmetic works in a region where the population is suffering from lack of water supply or bad roads, etc.).

Georgia's efforts directed at approximation with the European community is a factor that must be taken into account. The European Union is paying a great deal of attention to development of regions and, if Georgia is to implement the

European standards, its regionalization becomes a more and more realistic perspective. This is particularly true given the fact that the regions covered by the jurisdiction of State envoys are meeting the EU-authored NUTS 3 level requirements.

With the European Union support, the Georgian Government started working on elaboration of regional development strategies to tackle the existing problems (2010 – 2013) but, despite the fact that a special State Commission was created and the issue was declared as priority one, the undertaking was not paid due attention:

- no funds were allocated from the State Budget and the 17 million-Euro grant issued by the European Commission went into the State Budget in full in a way that no cent was spent on this direction;
- the strategy paper has been drafted but there is no long-term action plan to-date (no medium-term action plan for the years of 2011 – 2014 and no minimum requirements for public products and services).

After its defeat in the 1 October 2012 Parliamentary Election, the former ruling party is demanding that governors of the regions become elected officials. However, it is unclear what functions these governors should perform and by which bodies they should be assisted.

At the same time, ultra-nationalistic experts categorically opposing any attempt of creating regional structures have become more active.

On 1 March 2013, by its Individual Order No. 223, the Georgian Government approved "The general principles of the Strategy for the Georgian Government decentralization and self-governance development 2013 – 2014", which envisages "introduction of elements of self-governance in regional authorities".

## 4. The system of self-governance bodies

### 4.1. *Forming the self-governance bodies – elections*

An evident proof of changes taking place at self-government level is the frequent amendment of election rules and procedures. The past two decades have shown that municipal elections have been strongly affected by the results of the central government elections. Normally, a political party receiving sufficient votes to control the parliament and the government would win local self-governance elections too. At the same time, chances of political forces other than the ruling party of obtaining or retaining certain positions at least at the local level would diminish year by year.

In Spring 1991, Georgia held a multi-party municipal election for the second time in its history.<sup>1</sup> The election was based on a preferential system involving a single and transferrable voting right. This allowed small parties to win sufficiently high number of seats in self-governance bodies but the ruling party – "Round Table-Free Georgia" – still dominated at the local level (at a lower degree than at the central government level, though).

Due to the events of the first half of 1990s (the coup d'état, the civil war, two ethnic conflicts, the chaos in State bodies, especially in the regions), the self-governance bodies elected in 1991 have ceased their existence both factually and legally.

In the second half of the last decade of the previous century, self-governance elections were held twice in 1998 and in 2002 when then-new political force "Georgian Citizens' Union" was possessing strong positions and the country's life achieved a relative stability.

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<sup>1</sup> First self-governance election was held in the time of existence of the Georgian Democratic Republic (1918 – 1921) in 1919.

An interesting trend then was that despite the structure and the competences of local self-governance authorities, opposition political parties (first the Georgian Labor Party, the Industry Will Save Georgia and New Rights and later the newly-created United National Movement) were sufficiently widely represented in both the capital and the regions. Among other reasons, it was because President Eduard Shevardnadze's government was not trying to gain total control in local self-governance bodies. Since self-governance authorities had limited rights and scanty financial resources and the ruling political party was fully controlling the executive branches of local governments, a certain degree of opposition parties' success (especially in towns, villages and rural communities that now were virtually devoid of any function) did not constitute any real threat for the central government. On the other hand, however, this insignificant representation of opposition parties was sufficient to create an appearance of democracy in the eyes of the Western world simultaneously serving as a kind of means for "letting the steam out" for the population that was unhappy with the ruling party.

After the change of government in 2003, the new political team's attitude of turning self-governance officials into elected functionaries has drastically changed. Eduard Shevardnadze's policy directed at "balancing the forces" at the local level was now replaced with Mikheil Saakashvili's total control of local self-governance authorities.

On 5 October 2006, following the amendments into the election system in 2004 – 2006, regular local elections were held in Georgia. According to official data, 48% of voters participated in the elections. The United National Movement, a ruling party, obtained an overwhelming majority of seats in all of the local legislative bodies (85% under the proportional system and 92% under the direct election system).

The changing of the election system right before any particular election has continued to be a pattern. Legislative amendments enacted in 2009 – 2010 have improved the ruling political party's chances. A Mayor of Capital Tbilisi would now be a directly elected official. The multi-mandate election system in Tbilisi was replaced with a single-mandate system. A threshold of as small as 30% was introduced in a two-round election system (despite the criticism of the new system by international and local experts). These measures have eventually resulted in the failure of the system to adequately reflect the voters' attitudes (for example, in Tbilisi, the ruling party has received 52,5% of votes under the proportional system but took possession of 78% of the seats).

In addition to changing the election laws, the United National Movement was intensively using public resources in parliamentary, presidential and local elections:

- Number of staff employed by self-governance bodies would usually increase in the pre-election periods (in 2006 – 2012, the number of employees of the self-governance bodies increased from 6 to 12 thousand and the number of those employed at local public law entities reached 50 thousand excluding Tbilisi). Mostly, these individuals were National Movement activists who were to ensure the ruling party's success in the election.
- Pre-election periods would also be marked with more transfers of funds from the central government to local self-governments (for example, in 2010, the central government transferred 34% more funds to local self-governance bodies compared to the same index in 2009).
- In spite of the fact that local and international election-observing organizations were identifying a whole series of election-related violations, none of the election administration officials have been punished. On the contrary, such officials would often be commended and rewarded by the government.

As a result, the United National Movement collected 86,4% of mandates in the 30 May 2010 local self-governance election. The ruling party representatives occupied 100% of seats in many of the local legislative bodies with no single representative from any of the opposition parties.

The current self-governments are the most single-party-composed bodies compared to any of the previous convocations (as a result of elections held in 1919, 1991, 1998, 2002 and 2006).

Such a high-rate success of the ruling party does not really has to do much with its ideological base. Instead, a majority of members of the party's local offices were driven by specific mercantile interests such as good relations

with powerful individuals in the central government, since otherwise they would be unable to satisfy their selfish (political, clannish, legal or illegal) interests.

The above statement is reinforced by the fact that many of those in the leadership of local self-governance authorities have usually been moving to any winning political force with a majority of seats in the central government: following the "Rose Revolution" in 2003, more than 70% of representatives of local self-governance bodies became members of the United National Movement; the same happened after the coalition "Georgian Dream" won the parliamentary election in 2012 when more than a half of the members of local legislative organs in a majority of Georgia's municipalities (about 40 out of 64) have left the United National Movement to join the Georgian Dream.

#### **4.2. The structure of self-governance bodies**

According to the law, "a self-governing unit" ("a municipality") is a settlement (a self-governing town) or a group of settlements having an independent legal personality. A representative body of a local self-governance unit is a Sakrebulo elected for 4 years and an executive body is a Gamgeoba (or a mayor's office) headed by a Gamgebeli/Mayor.

**A Sakrebulo.** In 2010, the Organic Law on Local Self-governance was amended increasing the competences of Sakrebulo chairpersons: nowadays, a chairperson of a Sakrebulo is the highest political official within the relevant self-governing territory. The role of Sakrebulos has also increased: a Sakrebulo can approve the budget of a self-governance unit with its own corrections if a Gamgebeli/Mayor did not take these corrections into consideration at the time the budget was submitted (Article 78 of the Budget Code).

Despite this, the district Sakrebulos of the 1998 and 2002 convocations were much more diversified and representative of multiple party-interests unlike the currently-composed Sakrebulos. In terms of intensity of activities, today's Sakrebulos are comparable to only the lowest level (town, village, rural community) Sakrebulos, which had no real functions or levers for discharging such functions.

**Gamgeoba/mayor's office** consists of structural divisions and territorial offices. A Gamgeoba is headed by a Gamgebeli whom a Sakrebulo approves based on results of a competition held by a Sakrebulo's Bureau. Some experts and local self-governance officials are of the view that the fact that a Gamgebeli is not a directly elected official increases the chance of the central government or its various divisions exerting pressure upon Gamgebelis. That's especially true when a single party is the only ruling force. In effect, these circumstances turn a Gamgebeli into a mere local extension of the central government.

The role of Gamgeobas is also firmly increasing: amendments made into the Organic Law on Self-Governance in 2008 vested Gamgebelis with the power to unilaterally decide on how to use up to 10% of allocated funds without any control on the part of a Sakrebulo. The Organic Law was further amended raising this figure to 15% in 2009 and equaling it again to 10% in 2010.

The population has a better knowledge of Gamgebelis than of Sakrebulos. For example, according to a 2007 survey, the public knows Gamgebelis and mayors better (92.4% in Tbilisi and 61.8% in the regions) than chairpersons of Sakrebulos (27.6% in Tbilisi and 54.6% in the regions). Members of Sakrebulos are even less known to the population than the previous two categories of officials (35.6% in the regions).

These facts and circumstances lead to the following conclusions:

- In local self-governments, it is evident that Sakrebulos' rights are insignificant compared to the increasing rights of executive bodies (mayors and Gamgebelis). Although, since 2006, executive authorities are no longer elected and are formally appointed by Sakrebulos instead (being formally subject to Sakrebulos' control), the very Gamgebelis serves as local strongpoint for the central government.

- Gamgebelis act in the interests of the ruling party, at best, or in favor of individual groups, at worst (by announcing closed tenders, concluding single-source contracts, etc.).
- The staff of the executive organs lack qualification and are completely dependent upon the vertical hierarchy of government officials.
- Local self-governance units cannot even determine their own structure. This is done by the central government by both formal and informal ways.

## 5. Competences of local self-governance units

According to the applicable law, self-governance units have both own competences and delegated competences. Delegated competences are those conveyed to the self-government either on the basis of an agreement or by virtue of a statutory rule. According to Article 16(2) of the Organic Law on Local Self-Governance, a self-governance unit has the following own competences:

- **Finance and governance** – adopts local budgets; imposes, determines rates of and levies taxes and fees; manages the property of the self-governance unit, forests and water resources of local importance; is responsible for local purchases.
- **Planning and regulation of services and programs** – conducts land usage and territorial-spatial planning; approves construction regulation plans and rules; approves municipal programs to facilitate employment; regulates outdoor trading, marketplaces and fairs; regulates outdoor advertisement; determines car parking places and parking rules; issues construction permits and exercises supervision over construction; regulates issues related to regulation of gatherings, rallies and manifestations; provides fire safety and rescue services.
- **Municipal utilities** – provides planning of local motors roads and traffic rules; provides street cleaning services, outdoor lighting, public sewerage management and maintenance; responsible for waste collection and removal; takes care of cemeteries; responsible for improving public amenities and landscape gardening; responsible for naming and numbering streets and squares.
- **Education, public health, culture and social sphere** – founds pre-school and extra-school educational institutions and approves their statutes; organizes the activities of local libraries, museums, theaters, exhibitions and sports/recreational objects; creates municipal archives.

The lists of competences of local self-governance units has been shrinking for the last two decades. This trend has especially intensified since 2003: although the funding of projects implemented in the regions has increased, own tax revenues of local authorities have sharply decreased and, accordingly, they became way dependent upon the central government in political, administrative and financial terms.

Competences that are normally exercised by local self-governance bodies or, deriving from international practices and logic, should be exercised by them may be divided into three categories:

1. Competences, which are local by their nature but are exercised by the State such as development of the local infrastructure (installation and maintenance of outdoor lighting, repair of local roads, rehabilitation of communications, etc.)
  - In 1990s, local self-governments were deprived of rights such registration of civil status acts, registration of property title, protection of mothers and children, and decision-making on tutelage and caretaking;
  - The next decade saw further centralization of competences in the areas of water supply, forest usage permits and emergency medical assistance;

2. Local competences that are completely in the hands of the private sector and cannot be controlled by self-governance bodies (natural gas and electricity supply) but are viewed as part of responsibilities of municipal bodies when it comes to high tariffs or bad services.
  - In 1990s of the previous century, competences of self-governance bodies have diminished either because the relevant services were commercialized or because they just failed: building and distribution of residential apartments to citizens, issuance of permits of founding or reorganizing industrial and trade enterprises, personal services, heating services (centralized heating and hot water supply), cargo transportation, postal and landline services, electricity and natural gas supply.
  - In 2000s, issuance of outdoor trading permits and enforcement of sanitation rules were added to the list of competence the self-governance bodies were deprived of.
3. Competences that should be exercised by the central government but which have been entered into the local self-governments' responsibilities: municipal agencies' involvement in military drafting, responsibility for providing military reservists' camps with supplies, construction of buildings for the police in various regions at the expense of local budgets, etc.

The background analysis shows lack of strategically thought-through actions in terms of division of competences or their regulation. Below are some of the examples of irrational planning:

- Amendments made into the Organic Law on Local Self-Governance on 20 November 2007 deprived local self-governments of their water supply systems for a declared objective that they should have been privatized but attracting large investors turned out to be impossible. As a result, many municipalities started facing serious problems in terms of water supply in mid 2008. The central government thus could do nothing but to "task" again the local self-governments with financing the water supply service. However, the local authorities had already been deprived of this competence.
- In 2009, a list of competences of local self-governments became longer but a majority of the newly added competences were simply unrealistic given the situation in place (facilitation to attracting investments, implementation of employment programs, elaboration of municipality development programs). Furthermore, a year later, in 2010, executive bodies of local self-governance units were vested with the competence to approve social and economic development priorities in consultation with the State Envoys' offices, pursuant to the Budget Code. In other words, not only Sakrebulo have no role in drafting the priorities but they do not even discuss them.
- In 2006, the new Labor Code abolished the Law on Employment, which meant that the State refused to comply with its obligation under Article 32 of the Georgian Constitution (which is that the State must guarantee its support to unemployed citizens to get employed). Four years later, in 2010, local self-governance units were granted the competence of approving "municipal programs to facilitate employment" as an "own competence" but nowhere has this competence been used by local self-governments except in Tbilisi ("Start your business with the support of the Tbilisi Mayor's Office", "Free of charge computer and English courses", "Employment program for socially unprotected families with many children").

Another matter of concern is how the local self-governments are exercising the competences they have retained this far. Because of the excessive interference and inadequate provision of funding on the part of the central government, it is becoming obvious that self-governance units are unable to resolve the issues entrusted to them. One clear example is the statistical data about the projects implemented within the "Village Support Program": a majority of these projects are about repair of local roads and provision with potable water; in other word, these issues should normally be falling within the competence of local self-governments.

The lack of division of competences and inadequate provision of funding has resulted in ineffectively implemented activities. The more moneys are spent on individual priorities the less are results. This very circumstance made the

United National Movement lose the parliamentary election in 2002 in towns where they spent the most part of funds on infrastructural and other projects via both special and targeted transfers (Tbilisi, Kutaisi, Batumi).

## 6. Public services and their quality

The quality of provision of services in Georgia during its Soviet period was not something one could boast about. It became worse after Georgia regained independence in 1990s when the services sphere completely collapsed together with the collapse of State agencies.

One could not have high expectations about improvement of the situation due to the intermingled private, central government and local government competences (as discussed in the previous chapter). A whole series of all sorts of different services moved into the private sector and the local self-governments were no longer able to protect the citizens' interests as they found themselves lacking any levers of control over the private companies. Some of the companies (in charge of ports, railway hubs, etc.) are not only paying nothing to the local budgets but are not providing the local officials with any information about their activity.

On the other hand, the fact that the central government discharges competences related to local matters (repair of local roads, local public transport, etc) turns the local self-governance authorities into "good for nothing" agencies in the eyes of the public. Because of the high-level centralization coupled with bad management and lack of realistic local priorities, projects implemented by the central government are expensive and ineffective prompting the public to doubt that these excessive expenses are there simply to feed some high-ranking officials in the central government. The central government has a record of becoming especially active in implementing such projects in the pre-election period to increase the ruling party's ratings.

These projects are usually financed from not only the State Budget but also from funds loaned from international financial institutions. Often there is no clear understanding about the future of the projects: it is unclear, after the end of a given project, who will be responsible for operating the given object and, most important, with what funds.

When it comes to services already in place, attention is usually paid to collection of fees for the services but not to the quality of the services. Whenever fees for services are increased, the quality remains the same. Uncertainties related to provision of public services often result in unequal access of various strata of the society to individual public goods.

These circumstances explain why no significant progress has been achieved in the provision of public services despite the facts that local budgets have increased ten times for the past decade and the central government has been additionally allocating funds to implement numerous projects in the regions (333,3 million GEL in 2011 and 410 million GEL in 2012).

One more proof of ineffective spending of funds is that the projects within the Village Support Program were implemented in areas in which the State has already spent lots of money (rehabilitation of local roads and the water supply systems).<sup>2</sup>

One problem of a general nature is the lack of cooperation among the self-governments. This is because lack of appropriate legal framework, on the one hand, and bad division of competences and no willingness of local authorities to cooperate because of the total control exercised by the central government, on the other hand. There are only a few examples of such cooperation (Rustavi and Gardabani have worked together to arrange a shared landfill).

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<sup>2</sup> The Village Support Program has been launched in 2009 to deal with the problems in the regions (especially, in villages), which resulted from centralization of various public services. In 2009, 20 million Lari was allocated to the Program and more than 40 million Lari has been allocated each year since 2009. The amount of funds to be allotted (2-12 thousand Lari per village) is determined according to the number of residents of the villages. The funds are then spent on priorities identified through consulting with the local population.

Problems in public services can better be illustrated by discussing each subject separately:

**Water supply and sewerage** – Water supply to villages now falls within the responsibilities of local self-governance units. Available resources are clearly insufficient (5-6% of the entire budget of a local self-government). It was for this reason that more than 29 million GEL was spent on water supply within the Village Support Program in 2009 – 2012. Data about safety of the drinking water are not collected and its quality control is no longer provided since laboratories that were checking the water quality have been shut down almost everywhere due to the reforms implemented in the past decade.

The public sewage system is part of the unified water supply system according to both the industry laws and the “water supply tariffs”.<sup>3</sup> The real situation is quite weird: in towns where municipalities are responsible for the proper functioning of the sewerage the water supply system is centralized; in villages where water supply is the responsibility of municipalities, sewage systems simply do not exist. Consequently, local budgets are not receiving any income from the provision of sewage services.

**Local roads** – Because of the lack of funds in local budgets, the central government has assumed the responsibility to repair/rehabilitate local roads. After 2008, development of the road infrastructure has become one of the high priorities for the State. Infrastructure development programs are usually financed from the funds allocated for regional projects and the Village Support Program (36,8 million GEL was spent in 2009 – 2012 within this Program).

**Cleaning and waste collection** – municipal cleaning and waste collection are considered a single system despite the fact that the former is a general-type service and the latter depends on the will of the recipient. Applicable normative acts are not compatible to each other. There is no framework law on waste management. Legal acts now in force, which prescribe waste collection and transportation rules, have long been outdated. The waste removal issue has been more or less resolved in administrative centers of self-governing towns and self-governance units; however, this service is not provided in villages at all. Fees for removal of waste in municipalities cover only up to 30-40% of costs of the service. The service is subsidized and the uncompetitive environment impedes improvement of its quality. Transactional expenses are high. According to a study carried out in 52 municipalities, the cleaning quality has increased by 14% in the past 5 years but its expenses have gone up by 32%.<sup>4</sup>

To alleviate the *status quo*, by an amendment made into the Organic Law on Local Self-Governance on 16 March 2012 (in particular, Article 16(2)(j) of the Law), “arrangement of landfills” was deleted from the list of local self-governments’ competences and the Ministry of Regional Development and Infrastructure was assigned this task.

**Movement of passengers** – According to the law, only self-governing towns may introduce a system of permits for the movement of passengers. It is for this reason that municipalities lack the competence of providing passenger movement services or composing transportation routes and schedules.

**Social assistance and health protection** – The law says that provision of social assistance is a “voluntary competence” of a local self-government provided that assistance must not be granted individually but within a social program. About 5-7% of local budgets are spent on one-time aids (the sick, the socially unprotected and the elderly). Health protection bylaws have not been adopted yet meaning that local self-governments are not discharging this competence in practice. Only 1-1.5% of local budgets is spent on public health due to limited competences of local self-governance units.

**Kindergartens** – 5-7% of budgets self-governance units are spent on pre-school institutions. This amount covers only 60-70% of the expenses and so the beneficiaries (parents) pay the remainder. The way these institutions are arranged internally is unclear: sometimes one teacher takes care of about ten children and the same institution employs about 10 individuals to perform administrative tasks. The increase of staff of pre-school institutions in pre-election period were often used as one of the sources for funding the ruling party’s campaigning coordinators.

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<sup>3</sup> Resolution of the Georgian National Energy and Water Supply Regulation Commission No. 17 dated 17 August 2010

<sup>4</sup> Report on the project entitled “Public participation in local self-governance activities” (Urban Institute)



**Objects of culture** – In 2005, the central government started conveying a series of objects (libraries, etc.) to self-governance units but a majority of these objects were in deplorable conditions. Because local budgets did not have sufficient funds (in 2012, only 3-5% of the budgets were envisaged to cover such costs), many of the objects conveyed to the local self-governments (mostly the village libraries) were shut down.

**Permits** – Since 2005, an overwhelming majority of administrative services have been centralized. To date, local self-governments have retained only the right to issue construction permits.

## 7. Finances of local self-governance units

### 7.1. Revenues

Budgets of local self-governance units are independent from Georgia's State Budget and the budgets of the Abkhazian and Acharan autonomous republics. In order to discharge their competences prescribed by law, local self-governance units are receiving the so-called transfers (funds) from the central government, in addition to their own revenues.

Local budgets are obviously insufficient to perform their functions envisaged by law. The lack of funds is caused by scantiness of taxable resources and the resulting shortage of funds in the budgets of both the self-governments and the central government. In addition, the decentralization policy's low priority and the later trending towards centralization put the appropriateness and effectiveness of transfers from the center under a question mark.

In 1990s of the previous century, when local self-governments formally possessed broad competences, the consolidated (total) State budget was so small that one would not even think about any feasible financing of self-governance units. Prior to the reforms (2000-2002), the consolidated budget was 600 million GEL of which local self-governments were receiving 200-240 million GEL (30-35%). A large part of this amount was going to the budgets of Tbilisi and 4 self-governing towns (Kutaisi, Batumi, Rustavi and Poti) and only up to 40 million GEL would remain for local budgets at both levels (communities and districts) on the rest of Georgia's territory (meaning as little as 15 GEL per capita per year, according to the official statistical data).

In the period following the Rose Revolution, own revenues of local self-governments started to decrease year by year:

- **The number of taxes and self-governments' shares in tax revenues** decreased. Taxable resources diminished as well.<sup>5</sup> Liberalization of the tax system would be welcome if only the central government had not introduced tax advantages at the expense of local self-governments or had it provided the self-governments with appropriate compensation. Although the property tax rate increased 1.5/3 times in subsequent years, revenues from property tax, which are the only "own income" for local self-governments, constitute less than 9% of the self-governments' consolidated budgets. Other sources of own income are too insignificant. The share of local fees play a meager role in the revenues of a majority of municipalities. And the self-governments do not possess appropriate mechanisms to administer these revenues.
- **Tax revenues started to become centralized.** Recognizing a gap between the local self-governance bodies and the population, the reformers were justifying their decision to centralize the tax revenues by saying that enlarged municipalities would now have better financial resources at district level. In practice, however, things went in a completely opposite direction. After the lowest level of local self-governance was abolished and the self-governments moved up to the former district level, the central government now became keen to misappropriate the resources of enlarged self-governance units:

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<sup>5</sup> In 2002 – 2003, self-governance units were receiving 12 different types of local and shared taxes either in full or in party. After the number of taxes was reduced and shared taxes were abolished, the local authorities remained with only 4 types of taxes.

- Although, by the end of 2006, income tax revenues were declared to belong to self-governance units and the units additionally became entitled to finance their not only delegated but also exclusive competences, the profit tax that has been a shared tax since 1990s went to the central budget in full;
  - In 2007, the Law on State Budget stipulated that revenues from income tax must have been spent only on delegated competences of local self-governance units.
- ***The share of own tax revenues in the local self-governments budgets has decreased.*** If in 2007 own revenues made 50% of local self-governments' budgets, the same index went down to 15% in 2008. The share of self-governments' budgets in the consolidated budget also decreased sharply (amounting to 30% in 2002 and to 2,3% in 2010).
  - ***Unequal distribution of own tax revenues and other-than-tax revenues*** are another matter of concern. More than 2/3 of own revenues are generated by 5 self-governing town and the share of the latter is increasingly going up (64.4% in 2009, 66.7% in 2010, etc.).
  - ***The municipalities have constraints in terms of attracting additional funding:*** a self-governance unit may loan money or receive a grant from the Georgian Government or with the permission of the Georgian Government.

Along with reducing their budgets and their share in the consolidated budget, the State turned the so-called transfers into a main source of income for local self-governments, which resulted in making the latter financially fully dependent upon the central government.

Transfers are a new concept in Georgia. This is particularly true about equalization transfers. The introduction of this new concept of equalization transfers, the elaboration of an equalization formula and their back-up at a legislative level should be assessed as a positive step towards fiscal decentralization in spite of the technical shortcomings of the formula and the use of politicized approaches its application in practice.

Introduction of the policy of transfers was marked with a number of difficulties at its initial stage. According to the 2007 State Budget estimate, only 51 million GEL was envisaged to be allocated for self-governance units, which was a bit more than 1% of the entire State Budget (including an equalization transfer of 13 million GEL and a special transfer of 35 million GEL). The revenue from the income tax and the equalization transfers equaled 537.5 million GEL in total. In 2008, the plan was to allocate only 321 million GEL as equalization transfer, while own revenues decreased with 422.5 million GEL (66.6%) and capital revenues with 182.3 million GEL (57.1%) compared to 2007. In 2008, other-than-tax revenue factually increased by 709.9 million GEL (including the amount of transfers, which increased by 426.8 million GEL). Transfers amounted to about 1,079 million GEL in 2010, 859,05 million GEL in 2011, and 824,58 million GEL in 2012. Since 2013, equalization transfers are separated from total transfers and their total amount is 750,29 million GEL.

Such a frequent change in the amounts of transfers year by year shows that, although the matter is more or less regulated by law, the policy of transfers mostly depended on the will of the executive authorities (the Finance Ministry).

In other words, we have an increase in the revenues of local self-governments but not in the level of independence of local budgets. The increase is warranted by increased amount of transfers and program financing. 88.5% of self-governance units' revenues is the funds received from the central government. For example, in 2010, local self-governance units' tax revenue amounted to only 180,7 million GEL. Also, revenues of self-governing towns are increasing but municipalities' income is decreasing (for example, municipalities' income was 536 million GEL in 2008 and 447 million GEL in 2010).

There are three types of transfers, each characterized with specific problems:

**Equalization transfers:** at the time they were first introduced, the amount of transferrable funds would be calculated according to the municipalities' data; this method was significantly decreasing the amount of funds. In 2007, Tbilisi was included in the calculation data and so the sum of funds allocated to municipalities increased. Later, after 1 January 2008, not only the revenues but also the expenditures according to local budgets would be included in the formula. The share of equalization transfers in the aggregate sum of transfers started to grow (32% in 2009 and 48 % in 2010), which is a positive step. However, the unlimited powers of the Finance Ministry coupled with lack of legislative regulation create a threat of usage of equalization transfers as a means of exerting political influence.

**Targeted transfers** contain the same risk inherent to equalization grants but one of a higher level. Often funds are allocated due to the interests of the State or the central government without having regard to the actual needs of the relevant self-governance unit (for example, moneys are allotted to paint walls or improve some infrastructure while rehabilitation of irrigation systems is a number-one task for the municipality).

**Special transfers** also constitute a clear illustration of the above-mentioned threats. From the outset, this concept has been containing a very ambiguous term "other necessary costs". Since 2008, the special transfers have been used "to finance other payables", which is a violation of the principles of the European Charter of Local Self-Governments (Article 9(7) decGELng it inappropriate to finance special programs with subsidies). 182,6 million GEL was allocated in 2009 and 240 million in 2010 to finance various projects in the regions. In 2010, Kutaisi and Batumi received such transfers (196,6 million and 100 million, respectively) but without any indication as to what these sums should have been spent for. Another bad example is the allocation of 76,7 million GEL to construct a new building of the Parliament in Kutaisi while this sum was not even separately mentioned in the State Budget.

It can be concluded that aggregate of sums earmarked for local self-governance units is increasing (1,280 million GEL in 2008, 1,260 million GEL in 2009 and 1,567 million GEL in 2010). Sums allotted in the budgets of local self-governing units for expenditures and non-financial assets increased with 920 million GEL in 2011, 1,12 billion GEL in 2012 and 1,19 billion GEL in 2013. Financial dependence of local self-governments upon the central authorities is growing accordingly. However, effectiveness of the results of these measures implemented by the central government is invisible. In this regard, Georgia has already fallen behind with the relevant indicators existing in both European democracies and the countries of the Caucasus region.

## 7.2 Payments

It is natural, that the increase in local self-governments' income is accompanied by the increase in the volume of payments (e.g. 1.350 mln GEL in 2008, 1.239 mln GEL in 2009, 1.570 mln GEL in 2010, etc.)

In the area of spendings the biggest share (almost half) falls on the accommodation expenses and bill payments; funding of other sectors also increases. The only exception is education sector, where the expenses have been reduced.

At the same time, the trend of increasing expenses not directly related to the funding of the competencies of local self-governments has been observed. Such spendings are especially apparent in the payments sections of the local self-governments' budgets during the pre-election period, which clearly indicates that the purpose of these spendings is quite politicized.

- As mentioned above, the central government frequently pressured local self-governments to fund the expenditures of central government from their own budgets (funding of police stations, offices of the parliamentary majoritarian MPs, healthcare, general education, etc.). This informal pressure was legally finalized in 2009 and since then the share of such spendings has been steadily increasing (6.4% in 2007, 8.6% in 2008, 9.1% in 2009, etc.). As a result, the local self-governments do not have sufficient funds left for funding their (exclusive) competencies, which exacerbates the existing difficult social situation in the regions. One of the apparent reasons for launching special state programs ("Village Support State Program", etc.) is the compensation of such unreasonable costs, although, in this case, adequate compensation is not possible: only in 2008 on the basis of central government's "request" the municipalities

spent 130 mln. GEL, and the total sum of the amounts allocated for "Village Support State Program" in 2008-2011 is 120 mln GEL. The reasons why the central and local governments fund each other's exclusive competencies remain unclear, given the violations of the principles of constitutional and organic laws.

- Second major problem is the volume of administrative costs. In 2005-2006 the local structures of self-governments were optimized and as of today these structures require more funds for administrative costs (c. 175 mln GEL in 2008), which exceed the administrative and programmatic expenses of all levels of local structures before the implementation of the given reform.

In total 60% of local budget expenses falls on administrative costs and funding of similar activities (healthcare, education, etc.), which according to the current legislation, are not the competencies of the local self-governments.

One of the flaws of the local budgetary expenses is their unpredictability. Since the amount of revenues of local budgets is fully defined by the Ministry of Finance of Georgia (defining the basic settings of revenues, elaboration of quarterly revenue plans, administration of local payments and miscellaneous cost subsidies), due to the allocation of various transfers the budgets of local self-governments are frequently modified: during the fiscal year the budgets are modified 8-10 times in average and frequently they are changed by 100, 200, 300%.

Another major problem is the existing defect in the procedure of procurement of various services by the municipalities. Switching to the electronic system of procurements implemented during past several years improved the administration of budget amounts. At the same time, attention is being paid only to the price of the service rather than its quality; as a result, the public service offices have to accept cheap, but low quality services, what in the end leads to the need of repeated expenditures.

## **8. Property of Self-government**

The work on the legal framework related to the property hand-over to the local self-governments was finalized by adopting the Law on the Property of Local Self-Governing Unit (25 March 2005), which can be considered as one of the achievements of the decentralization process.

According to the Law on the Property of Local Self-Governing Unit adopted in 2005, the properties of local self-governing units are divided into two categories: basic (inalienable) and additional (which can be alienated under specific legislative measures).

By the end of 2005, after lasting debates, agricultural and non-agricultural lands (except for those under state ownership) were added to the list of self-government's properties, which can be considered as a major step forward.

The process of property hand-over to the local self-governments was afterwards slowed down due to several reasons:

- One of the major problems was (and still is) the absence of respective database. The list of the property to be handed over to the local self-governments had to be finalized by June 2005, although the process was delayed and has not been completed yet. Frequently the property included in the database does not exist anymore (e.g. the forest which was cut down in the middle of past century, the building which was destroyed more than twenty years ago, etc.). Frequently the owners of a particular property are unknown (and even more importantly, who stands behind the formal owner remains vague).
- Second problem is the flawed legal base: inconsistency and faultiness of the laws. The apparent example of inconsistency is the Organic Law on the Local Self-Governments (which names the local self-government as an owner of local forests) is not consistent with the Forest Code of Georgia (which does not recognize local self-government as a forest owner). The example of faultiness is the issue of water resource management – according to the organic law, locally significant water resources are owned by the self-governments, but currently there is no government resolution available which would provide a regulatory mechanism for addressing the given problem.

Since 2007 the issue of handing over the property to the local self-government has been further complicated by the obvious trend toward centralization. This is when the reduction of the area of the property base of the local self-governments started:

- In 2007, the self-government's right to independently choose the forms of property alienation and the list of the given forms were reduced (in particular, privatization of property through auction was removed from the list) as a result to the amendments made to the Law on Privatization of The State and Local Self-Government Unit's Property and Property Hand-over With Utilization Rights;
- That same year, based on the changes made to the organic Law on the Local Self-Government the local self-governments received agricultural and non-agricultural lands (forests of local significance) and water resources, although the right to privatize given property was granted to the Ministry of Economy and Sustainable Development of Georgia rather than the local self-government.
- According to the amendment made to the Law on the Local Self-Government on 21 July 2010 the pastures were removed from the list of property categories to be handed over to the local self-governments and the managing rights were granted to the Ministry of Economy and Sustainable Development of Georgia.

One of the conspicuous examples of limiting the property rights of the local self-government is the Clause 11 of the Article 19<sup>1</sup> of the Law on the Property of Local Self-Governing Unit of Georgia adopted in 2007, which grants the President of Georgia exclusive right to alienate the property of a local self-governing unit through direct sale. The given regulation is not consistent not only with the Constitution of Georgia, Organic Law on the Local Self-Governments and the European Charter of Local Self-Government, but also with the fundamental principles of property rights.

It should be noted that in 2010 according to the Article 101<sup>3</sup> of the VII<sup>1</sup> Chapter (Local Self-Government) added to the new edition of the Constitution of Georgia: direct management of property under self-government's ownership is prohibited. Although, from this point forward the above mentioned discretion of the President of Georgia became unconstitutional, in practice instead of the given constitutional provision the President's right is being implemented.

Under such circumstances, it is no wonder that the local self-governments often refuse to accept property from the state. Ambiguity and the fear of responsibility and punishment is a sound reason for refusing to accept the property. The cases of self-governments requesting and receiving property from the state are extremely rare (one of the successful cases of this practice was requesting of City Trolleybus Park by Kutaisi and its transfer to the municipal ownership).

## 9. State Supervision

The principles of state supervision of local self-government units are defined by the Constitution of Georgia; According to the Clause 3 of the Article 101<sup>3</sup> "the state supervision of the activities undertaken by local self-government units is implemented as prescribed by law. The purpose of implementing the state supervision is to ensure consistency of local self-government's normative acts with the Georgian Legislation and a proper implementation of delegated responsibilities. The state supervision is proportional to its goals".

The forms of supervision are defined by the Law on the State Supervision of the Activities Undertaken by Local Self-Government Units adopted on 1 August 2007. The given law is an attempt to regulate relations between the central government and local self-governments:

- The law defines two types of supervision: legal supervision (during the implementation of exclusive and delegated competencies) and a supervision based on expediency (during the implementation of delegated competencies);
- The supervisory units were relatively clearly defined – state trustees-governors (it was a first time when

previously de facto position of “Governor” was included in the legislation);

- The Prime Minister of Georgia is responsible for supervising the operations of self-government units of Tbilisi and the Autonomous Republic of Adjara;
- The supervisory units were granted rights to protect the state interests and control the activities of local self-governments (including the process of budgeting).

According to the Law on the Chamber of Control of Georgia the state supervision of financial sector was implemented by the Chamber of Control of Georgia, which controlled the spendings of local budgets, management of property of local self-governing unit and the financial and economic activities of those private legal entities, whose shares/stocks (more than 50%) are owned by the local self-governing unit (Article 6, Clause 2). According to the amendments made to the article 57 of the Organic Law on the Local Self-Governments on 24 November 2011 and 22 and 29 June 2012 the right to implement the audit of the local self-governments, within the frameworks of the competencies defined by the Law on the State Audit Office, was granted to the State Audit Office of Georgia. According to the same amendments, the right to invite the independent auditor to implement the audit of activities of local self-government units was granted to the City Assembly (Sakrebulo) instead of 1/3 of its members. The internal audit and inspection of activities of Gangeoba (City Hall) is implemented pursuant to the Law on the State Internal Audit and Inspection and the Regulation of Gangeoba (City Hall).

During the process of designing the legislation on the State Supervision over the Activities Undertaken by Local Self-Government the principles of implementation of state supervision in the democratic countries were considered to some extent. At the same time, the opinions of international and local experts were not considered, what resulted in inconsistencies of several regulations with the Constitution of Georgia and the principles of subsidiarity. Granting the right to implement financial supervision to the Chamber of Control and later to the State Audit Office:

- Contradicts the Clause 1 of the Article 97 of the Constitution of Georgia, according to which the Chamber of Control examines the activities undertaken by state bodies (and not the self-governments, whose competencies are separated from the ones of state bodies as per the Article 101<sup>2</sup> of the Constitution of Georgia);
- Also contradicts the Article 8 of the European Charter of Local Self-Government, according to which the supervision of the implementation of exclusive competencies of a self-government is permitted only in accordance with the law and not for the purposes of expediency and effectiveness;
- Supervision of the activities undertaken by the local self-governments of the Autonomous Republic of Adjara should be carried out by the Government of Adjara rather than the Prime Minister of Georgia.

Given defects of the legislation were aggravated by further amendments and introduction of the mechanisms of excessive control by the central government:

- In 2008 the amendments made to the organic Law on the Local Self-Government increased the number of state institutions implementing financial inspection, which are also responsible to coordinate inspection with the state trustee/governor in the regions. Law does not provide the list of these organizations and a description of respective procedures. The normative acts defining the given rights and procedures of their implementation are also missing. The meaning of general term “coordination” (whether it stands for consultation, permission or the authority to interfere in the force majeure emergencies) is not specified.
- According to the amendment made to the Law on the State Supervision of the Activities Undertaken by the Local Self Government Units on 28 December 2009 the rights of the self-governments were limited even more – previously, during the implementation of supervision the supervisory body was responsible for the termination of those normative acts which violated the basic human rights or caused the irreversible damage and afterwards had to refer to the court – after the amendment the list of restrictions was enhanced (e.g. limiting the activities delaying the proper operation of state institutions) and the supervisory body was

granted the authority to independently (without referring to the court) implement the respective activities (Clause 7, Article 8 and Clause 9, Article 9<sup>6</sup>.)<sup>7</sup>

In practice, the malfunctions of the legislative acts lead to severe consequences. There are sets of unclear issues alongside the declared principles, which may be interpreted incorrectly, given that the center (represented by governor) gradually increases the formal and informal control over the self-governments. One example of this issue is the right of governors "to coordinate" the activities of self-governments, which frequently places pressure on the local self-governments. Often local budget is designed in compliance with the requests of governors.

According to the Article 78 of the new Budgetary Code adopted in 2010 the Assembly of a local self-government has the right to approve the final budget with its amendments, in the case if the Gamgebeli/Mayor did not consider the given amendments while presenting the draft budget. This amendment would be useful in the case if the central government stopped its excessive interference in the activities of local self-government units – state trustees/governors interfere even in the processes of defining the priorities of self-governing units.

The situation has been aggravated further by the processes of centralization and concentration of state institutions since 2009. In particular, the territorial units of the Ministry of Justice were abolished and their functions were delegated to the Division of the Department of Legislation of the Ministry of Justice. This had a negative impact on the efficiency and quality of the decision making process. Department assigned four employees to this process. Considering the fact that only in 2010 self-governments introduced 2,740 normative acts (34,2% received a legal note, amendments were made to 28,7% and 8,2% were annulled), it is obvious, that more than 10 acts are being examined on a daily basis and the number of technical/legal errors as well as violations of the law are increasing.

Generally, the legal supervision was implemented on the basis of informal relations between the supervisory bodies (The Ministry of Justice of Georgia, state trustees/governors) and local self-governing units. Given that the leading party was represented at all levels, they addressed the identified problems quite smoothly as a rule. During past 9 years the supervisory bodies never referred to the court and only one case of a local self-government unit (Rustavi City Assembly) appealing to the court against the decision of the supervisory body was observed.

The following can be said as a conclusion:

- The system of State supervision is not systematized in the legislation. Nor are legal requirements implemented in daily practice.
- In fact it was only the presence of a mono-party system which prevented any probability of a conflict between self-governments and central authorities.
- Excessive supervision exercised by central authorities over the operation of local authorities inherently deprives the latter of the possibility to protect their rights.
- The policy of so called exemplary intimidation deserves serious consideration. Televised detention of 24 public servants of Kutaisi municipality is a clear demonstration of such policies. Importantly, the reason behind the detention was the compliance to an unlawful order issued by the central authorities by the detainees.
- The last but not least it should be noted that party and local/clannish interests are not mutually exclusive and often high rank officials of self-governments do not forget their own interests while taking care of those of a ruling party.

## 10. Self-government in Tbilisi

Local self-government in the capital Tbilisi differs from other self-governing entities in Georgia both structurally as well as in terms of delimitation of competences and the State's supervision. In addition, financial resources available in Tbilisi are more voluminous to compare those of small municipalities.

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<sup>6</sup> It is noteworthy that revoking the supervisory body's right to terminate individual and legislative act of the self-government contradicts the General Administrative Code of Georgia, according to which such action is inadmissible.

These differences stem from both the objective reality as well as a special treatment of Tbilisi by the central authorities. It is obvious that the city which homes approximately half of the country's population, is the largest contributor to Georgia's gross domestic product and at the same time has the functions of a capital with a concentration of an overwhelming majority of central government institutions requires a special approach. At the same time high level political decisions come at play as Tbilisi has the right to possess a large amount of resources. In addition, a mayor of Tbilisi was traditionally a member of a ruling party elite and therefore he enjoyed far wider range of competences at the expense of ignored legal norms.

**Legislation.** A legal status of Tbilisi as a capital city is regulated by the law on *Capital of Georgia – Tbilisi* while the rest of the municipalities are regulated by the organic law of Georgia on *Local Self-governance*. After its enactment in 1998 the law underwent 33 large and small changes which had eventually led to strengthening of a mayor's competences to the extent which provided more rights to a mayor than to a president of Georgia.

**Structure.** The council consisting of 50 members is the capital's representative body. 25 members are elected through a single majoritarian mandate, while the remaining 25 members are elected under a proportionate system. The executive branch of the city is represented by the government led by a mayor. Mayor's dominant position as compared to limited competences of the council catches an eye even at a glance:

- A rule for selecting members for self-government's representative body had been changed shortly before the 2010 self-government elections as a result of which multi-mandate election system was replaced with a single-mandate one thus enabling the ruling party to rise to power in the capital's representative body with an absolute majority.
- In spite of the above circumstance, when it comes to a majority of their competences, the council are restricted to independently make decisions that do not coincide with those of a mayor and therefore they lack effective influence over the course of matters. Since 2010 the council has no right to initiate vote of no-confidence towards a mayor or any high rank official of the executive branch while a mayor has the right to appeal to the president of Georgia to suspend or dissolve the council.
- In addition to the list of competences outlined in the law on Capital Tbilisi, mayor of Tbilisi is eligible to make decisions on any issues within the competence of Tbilisi council or the government of the capital
- The issues which go beyond the organization of the city council, the council has no right to make any decision. At the same time, it has no authorization to bring changes to matters initiated by the mayor unless the mayor himself or herself agrees to proposed changes. All those notorious and widely debated cases (parking regulation in Tbilisi, determining and administrating dues and fees for waste removal, attaching waste removal fees to electricity bills etc) corroborate the above said.

**Competences and Finances.** The increase in the competences of Tbilisi's self-government and more specifically those of the mayor is enshrined in the legislation:

- As a consequence of changes brought to the law of Georgia on Capital Tbilisi in 2011 (Article 91, Clause 3) the city had been granted not only more competences as of other self-governments but often these competences were just unrestricted: 'own competences of Tbilisi's self-government includes decision making on such issues which according to the legislation go beyond the scope of competences of any other authorities but are not forbidden for a self-governing units'. Considering the fact that implementing own competences affect a budget forming (i.e. determination of equalization transfer), Tbilisi authorities may be able to directly or indirectly influence the country's fiscal process. This had become obvious aftermath 2012 parliamentary elections.
- Another differentiating factor is extraordinary and increased competences and regulations that Tbilisi enjoys unlike other self-governments pursuant to the law on Capital of Georgia Tbilisi. These include fiscal competences of Tbilisi's self-government and fiscal processes, credit and property (land, natural resources, forests) competences, the competence according to which Tbilisi government is authorized to establish legal



bodies of public law. As a rule such Tbilisi city hall is the author of such changes which are initiated by the President of Georgia.

**State Supervision** - It is evident that the mechanisms available to the Georgian central authorities to supervise the implementation of competences by the Tbilisi authorities are not proportional to these competences. This is corroborated by an amendment in regard to the rule for filing an appeal on decisions made by a legal body of public law founded by Tbilisi government. According to this amendment the highest instance in resolving disputes is the mayor of Tbilisi while a role of court is not mentioned at all. In such cases even a president of Georgia is not authorized to make a decision. Nor is clear who a mediator will be when it comes to disputes arising between legal bodies of public law founded by Tbilisi city hall and the state – the Georgian state, central authorities represented by president, court or mayor of Tbilisi.

This ambiguity related to the delimitation of competences between Tbilisi and central authorities did not cause any problem as long as a single party controlled all levels of government. However, in light of different political forces dominating central and local levels, this configuration poses a serious hazard. A conflict between the government of Georgia and Tbilisi city hall around the issues of social protection or founding a civil agency for security at the Tbilisi city hall in 2012-2013 was not resolved pursuant to the law on State Supervision over the Local Self-government Bodies. In the case of social security dispute it had been regulated through amending the law on State Budget while the second dispute still remains unresolved and is likely to cause problems in the future.

## 11. Local Skills

The Georgian legislation does not differentiate between the statutes of public servants employed in local and central level structures. The activities of public servants are regulated by the law on Public Service of Georgia.

Another flaw within the legislation together with a whole range of unregulated issues (for instance, the law does not define political officials of self-governments) is that it has been changed too often. Since its adoption (October 31, 1997) 81 amendments have been made up to date.

Politicization of daily activities undertaken in the public service is the key challenge of the service. Assessment of public servants are not merit based rather decisions are made considering the loyalty to the ruling political force or immediate supervisors which means that the principles of meritocracy are totally ignored.

This situation has resulted in frequent changes (increase or decrease) in staff at various level of government structures. Aftermath the Rose Revolution the number of public servants had decreased considerably under a slogan of optimization. The lay-offs were followed by hiring new staff. Only in 2005-2006 the number of staff at the ministries was reduced from 102.571 to 66.615, in sub-agencies the reduction hit 8.237 from 23.769, while the staff at the local self-governments were reduced from 8.340 to 6.734.

In 2005 new staff members were recruited through a series of competitions held throughout Georgia. A council of public service had been set up at the administration of president of Georgia for the purpose of supervising the recruitment process. Sadly, this turned out to be an exception and the practice of recruitment of new staff members had not been applied since 2006. The council of public service was abolished in 2007.

Tendency of recruiting public servants in such an obscured manner had further reinforced in the years to come. After the optimization at the initial stage of public service reform, the increase in staff regained its pace. This tendency would particularly be evident during pre-election period. According to 2012 data, the number of public servants in self-government bodies was almost doubled and totaled 11.770.

It is obvious that unjustified increase in the number of servants which is based on political reasons entails an increase in administrative costs in the budgets. Up to 1006 salaries accounted for average 10.7 per cent of local governments' costs. By 2012 this figure had been increased to 23 per cent (in some of municipalities to 45 per cent).

Frequent changes of laws, high level of politicization (when a change of a head is followed by a change of the whole staff) and the absence of clear criteria for assessment for public servants prevents a stable environment in public services which in its turn negative affects the qualification of public servants and makes the development of professional staff a time consuming process.

The absence of a unified system for retraining of public servants deserves a special attention. Zurab Zhvania School of Public Administration is the only institution which provides training for public servants of local self-governments which is far from being sufficient. Although there are other higher education institutions in Georgia which prepare public servants in Georgia (Georgian Institute of Public Affairs etc), however, the training programs are not focused on self-governance. At the same time, those who can afford paying high costs for education courses as a rule aim for employment in either central authorities or international organizations rather than local self-governments which offers comparatively low remuneration.

Efforts undertaken by the international organizations and Georgian civil society towards capacity building at the local level cannot be evaluated as satisfactory. There was no coordination between programs and projects implemented by the international organizations and consequently they lacked efficiency. Nor did programs implemented by the Georgian civil society fit in the frames of the common strategy (as there was no such strategy). The analysis of the training programs implemented for the last 15 years demonstrates that a great majority of trainees did not stay long in the bodies of local self-governments. Together with the absence of a state strategy frequent changes of the donors' priorities also hindered the development of a stable system.

As a result most of servants employed at the local self-government structures are characterized by low level of qualification and poor motivation which is caused by instability of employment, a high level of politicization and strong dependence on personal relations with supervisors, lack of career advance and disabling environment which does not allow professional growth.

## 12. Public Attitudes

There are enough guarantees for civic participation in the activities of local self-governments and local decision making processes embedded in the legislation.

On December 28, 2009 a new Chapter X<sup>1</sup> on Civic Participation in the Implementation of Local Self-governance appeared in the organic law on Local Self-Governance. The chapter defines rules and procedures for citizens' participation in the process of governance. It should also be noted that pursuant to the transitional provisions of the organic law adopted in 2005 these norms and procedures should have been developed before September 1, 2006.

The changes aim to grant citizen the right to initiate normative act of local self-governments and take an active part in sessions of councils and council commissions. The changes oblige the self-government bodies to publish bills of approved projects, establish terms and procedures of discussions, make agendas transparent and publicize times and places of sessions, establish a system to ensure the implementation of decisions, codify and make available adopted normative acts pursuant to the rules set out by the Georgian legislation (Article 58<sup>1</sup>).

The right to initiate an issue through a petition deserves special attention: at least one per cent of registered voters in a self-governing unit have the right to file a petition and submit a bill of a council's resolution or propose to abolish or amend a normative act adopted by a council. A council shall review a bill of a normative act within a month from the day of its submission.

In addition, voters registered in a self-governing unit have the right to not only attend but also participate in sessions held by councils or council commissions, open hearing of reports presented by officials and council members. Official persons at the local self-governing bodies are obliged to organize an open meeting with a constituency at least once a year to report on activities undertaken during a reporting period.

In fact these rights are rarely exercised by their holders as:

- The reform implemented in 2005-2006 had further complicated already weak process of civic engagement in the implementation of self-governance. Lifting self-governance on a rayon level contributed to a gap between municipal bodies and population and a tie between a citizen and respective local authorities had become weaker.
- Part of the functions previously performed by self-governments are already centralized and therefore, there is no longer the need for the local population to address to local self-governments to respond many of local issues
- Public think (and in many cases this thinking is well grounded) that even when it comes to the implementation of their own competences, 'nothing is up to self-governments' and therefore, if population want to have their problems resolved they'd rather refer to central authorities.

As a consequence, the rate of referral to self-governments very low and so is the degree of satisfaction with services provided locally. As early as the early stage of the implementation of the reform in 2005-2007 when expectations towards positive outcomes and were high and United National Movement enjoyed trust and confidence, the surveys indicated both to decreased number of referrals to local self-governments as well as to growing frustration among the general public. Most of the referrals concerned communal issues, social problems and access to documentation. According to 2007 surveys 60.6 per cent respondents in 2007 and comparatively less in 2008 stated that they got what they had requested (32.7 per cent - communal sphere, 31.6 per cent - social issues, 17.5 per cent - request for documentation) while 53.2 per cent of respondents said they had never referred to self-governments as they did not need to. Importantly 34.6 per cent (2007) and 31.2 per cent (2008) of respondents declared that they had no hope whatsoever that they would achieve anything.<sup>8</sup>

The degree of involvement of local population in the activities of local self-governments was even smaller. A great majority of respondents (96.3 per cent – 2008) said they had never taken place in any of the meetings organized by self-government bodies. Generally the percentage of those who did not believe that there was any point in communicating with self-governments totaled 80.<sup>9</sup>

These sentiments had become even stronger in the coming years with the centrally authorities backing up the tendency. Resolving a whole range of issues of local importance by the central authorities ('Village Support Program, infrastructural programs implemented in the regions) reinforced a belief that it was possible to respond to great many problems bypassing local self-governments. The same feeling partially prevailed in self-governments' bodies – while opening fountains, primary healthcare units and other facilities high rank local officials tried to stand behind the president in other words they seemed in the public eye not initiators of activities or measures but those who stood close to central authorities considered to be factual caretakers.

Negative attitudes towards self-governments demonstrated by boarder public were further reinforced by attempts of the representatives of local self-governments to create an entourage of democratic processes at the local level by means of their trusted individuals and make a series of populist and often illegal statements as well as measures (bribing voters, creating additional but temporary employment for active supporters etc) for the purpose of mobilizing support in pre-election period.

### 13. Conclusions and Recommendations

While evaluating the course of local development over the course of past two decades, two qualitatively distinguished periods can be observed covering 1991-2003 and 2003-2012 respectively.

*The first period* can be further divided into two stages: the period following the collapse of the Soviet legacy when the self-governance system was defunct and the period of stabilization which saw the development of structured system.

The period is characterized with the handover of multi functions to the self-governments. However, these functions were mostly formal as local self-governments lacked both human and financial resources to implement their responsibilities. The state was failing to carry out its major functions let alone implementing the decentralization process and there was no capacity to take measures towards the local democracy development.

*The second period* can also be divided into two stages. Years following the Rose Revolution which saw a considerable increase in the efficiency of the state structures. At the same time the authorities, even though formally, would often speak about the need for decentralization (however, in fact it was implementing a plan of modernization in a rapid pace) and the period (from 2007 and especially from 2008) when a centralized course is legitimized and a style of hyper-centralized government is being implemented.

Unlike its predecessors the United National Movement had sufficient power to implement decentralization reform, however, the state policies became focused on ripping off the self-governments their minimum and mostly formal competences. If at the initial stage of the reform the state succeeded in increasing a gap between local self-governments and their constituencies, at the following stage they deprived local self-governments, already under the state's control, of their rights and resources.

The Georgian society had remained an outsider over the course of these periods (especially for the past decade). Decentralization did not seem to be a priority for the Georgian society and only narrow circles of experts had been trying to develop their visions on decentralization. Only since 1990s 11 visions and rationales have been developed but to no avail.

Visions developed since 2000s took two mutually exclusive course. Characteristics of each of the courses are provided below.

1. Implementation of fully-fledged decentralization: radical changes in every sphere (starting from the territorial arrangement all the way up to rethinking of state supervision). The supporters of this vision argue that a reform which is implemented only a half way is highly unlikely to change the system and yield effective outcomes. Furthermore, any new government tries to uphold a status quo with the hope to reinforce their authority.
2. Progressive implementation of decentralization stretching over a long period of time through implementing partial changes in some rather all of the spheres (changes should affect only fiscal decentralization and seek to transfer competences to local self-governments and contribute to their capacity building, while the existing model of territorial arrangement and internal structures of local self-governments should either be changed slightly or maintained in their current forms). The supporters of this vision maintain their argument (likewise as in 1991, 1997-1998 and 2005-2006) that a drastic dissolution of the system will take place before new structures are created.

There is yet the third undeclared vision (held by ethnic nationalists and the nomenclature) which is against any changes (its supporters deem it unacceptable to grant rights to ethnic minorities or to broader public as it is against their narrow clannish interests). Its supporters try to reinforce the existing system. In best case scenario these individuals support the second vision described above and are willing to hinder the decentralization process as long as they can.

What makes the situation even more complicated is that the actor, which is the public, is poorly informed, frustrated and mostly indifferent to the reform as a great many unfulfilled promises do not give the ground to be hopeful of any change.

As of today, the state has demonstrated a political will to effectively implement the decentralization. *Key Principles of the Government's Strategy for Decentralization and Local Development for 2013-2014* approved in March 2013 declares the need for effective and over-arching decentralization. It is up to future to show whether or not counter processes will gain a new momentum. What can be said for sure is that if there are no changes at this stage in few years the need for resolving this issue will become even more severe. But in this case, starting positions will be far more disadvantageous.

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<sup>8</sup> Annual reports on local democracy. Open Society - Georgia Foundation. 2007 and 2008

<sup>9</sup> Annual report on local democracy. Open Society - Georgia Foundation. 2008.

## PART II. LOCAL SELF-GOVERNANCE REFORM IN GEORGIA - 2013-2014

*David Losaberidze*

### 1. Precursors of the Reform

#### *1.1. Parts of Local Self Governance System*

A change of the government of Georgia aftermath the 2012 parliamentary elections has once again brought up the issues pertaining to local self-governance founded on democratic principles.

Similar to all previous attempts of decentralization, the new reality stirred controversies and fears as generally happens when it comes to introducing new policies. Debates around expediency of the introduction of the new system and the readiness of both the general public and the State to make a step forward have once again hit spotlights.

Georgia is no exception in this regard. Every attempt of decentralization of all times and countries has been challenged by various groups who wage particularly strong resistance in transitional democracies.

Decentralization of power has two ultimate goals in every context: 1) delegation of competences of delivering public service to local self-governments and 2) forming a system of governance which stands closest to people, implements policies tailored to local specifics and carries out the management based on best interests of local communities.

However, these two aims are coupled with two functions typical for transitional democracies which are to revive local political processes and to contribute to the integration of local interest groups (including minority groups) in general public processes through responding to legitimate requirement and needs of the local interests.

The implementation of self-governance and a process of decentralization entails answering questions as where and which entities self-governance must be established in, what the functions of self-governments are and what structures must be in place for self-government to attain its goals, what resources, both human and financial are available and who oversees the process. However, the most crucial question is who self-governments are for.

#### *1.2 Stages within the Formation of Local Self-Governance*

The period aftermath the restoration of Georgia's independence in 1991 has seen several attempts to establish and reform self-governance.

- Georgia inherited an extremely centralized Soviet system of governance with all level of the government formally enjoying equal rights while in fact the country was managed through a principle of so called 'democratic centralism'.
- After the first multi-party local elections in 1991 local representative and executive bodies, city halls and *Gamgeobeba* (an executive branch within local self-governments) were established. However, a tradition of

centralized management was still maintained through an institute of president appointed prefects. A coup de stat prevented public councils from taking effect as a mechanism for public engagement.

- 1992 saw an attempt to implement a wider decentralization agenda, however, a bill of law was not passed.
- There was no system of self-governance up to 1998. gamgebelis, who were appointed by the central government carried out managerial tasks.
- Further to the adoption of the Organic Law on Local Governance and Self-Governance in 1997 and aftermath the 1998 local elections the levels of self-government (cities, boroughs, communities and villages) and government (rayon) had been established.
- Further to amendments seeking to revise the existing system in 2001 self-government elections were held in 2002
- Between 1998 and 2006 self-governments enjoyed a whole range of competences. However, they were not backed up by effective mechanisms and financial resources to implement the competences.
- A new government making their way to power through the Rose Revolution voiced their commitment to reform self-governance in the country. However, as it appeared the reform did not appeal the country's political elite as a priority. On the very contrary, in light of an urgent need for the country's modernization the whole course was redirected to a fully ledged centralization.
- Further to the 2005 reform the lower level of self-governance was abolished (claiming more than 1.000 units) and municipalities based on the territories of the Soviet time rayons were declared as the only self-governance level which resulted in a considerable gap between the population and local authorities.
- Since 2007 limited competences of self-governments have further decreased at the expense of increased supervision, both formal and informal, by the central authorities. A great majority of taxes (including income and profit taxes) have been completely centralized.

As a consequence, the country developed the most centralized system in Europe whereby self-governments had effectively become local agencies of the central authorities.<sup>7</sup>

### ***1.3 Self-governance System in Georgia by 2013***

The absence of a political will of those being in power at different times throughout 25 years (Round Table, State Council, Union of Citizens, National Movement) has been so far the most powerful barrier hindering the establishment of effective self-governance in the country.

By 2013 it had become evident that the existing self-governance system had been failing to respond to actual needs of the society and that problems caused by the inefficient system were affecting every sphere.

- Territorial organization – since 2006 self-government authorities have been distanced from the communities and they are too large to capture and reflect on local interests. The issues related to the formation of a medium level of self-government (regions or any other forms) are still obscure.
- Competences – the completeness of the local self-governments are limited and even such services as water provision, which is under the competence of the local governments in every country, is centralized in Georgia.

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<sup>7</sup> A Report on Georgia's Local Democracy Development (1991 – 2012), International Centre for Civic Culture, 2013. Available in Georgian at: <http://www.lsg.ge/?cat=library&topic=71&lang=ka>

- Structure – rapidly changing electoral system and regulations of routine activities aimed at upholding the authority of a ruling party (in particular mobilizing supporters during elections) rather than responding to local needs. Local governments also suffer from overstaffing, which leads to cost-ineffective expenditures and embezzlement of scarce financial resources which could otherwise have been used for the implementation of specific programs.
- Economic foundations – revenues from taxes levied on the local level (mostly limited to a property tax) is scarce and self-governments have to rely on equalization, targeted or special transfers from the central government which are allocated pursuant to the Centre's political and economic interests. The State is the owner of the largest share of property and the process of handing over property to self-governments is currently at halt.
- Supervision – A number of mechanisms for formal and informal supervision have been increased which prevents self-governments from making impartial and independent decisions
- Local skills - qualifications of local servants are low and lack of incentives both financial and other (rapid changes in the structures, complete dependence on an immediate supervisor, the absence of a system of knowledge) hinder the establishment of highly qualified servants on a local level.
- Ineffective system of self-governance inflicts the minimization of civil engagement - a majority of constituency do not see much point in referring to self-governments. There are no public services available in many places especially in rural communities while where such services are available they are of low quality, politicized and as a rule expensive.
- Legal framework of self-governance requires further improvement to avoid collision and inconsistency between laws which is a common occurrence today. The practical implication becomes even more complicated as the negative effects of inefficient legislation is further reinforced by informal pressure from the central government.

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#### **1.4 Visions before the Reform**

Even though the decentralization was never a priority on a political agenda over the last decade of the past century and the first decade of the 21<sup>st</sup> century, some visions related to self-governance were nevertheless elaborated by some experts and political groups. Various groups under the political union *Round Table*, such as the *Union of Traditionalists of Georgia*, *Republicans*, *National-Democrats* and *Peoples* parties, the *New Rights*, *Union of Citizens* and the *United National Movement* had different opinions on the issue. In addition, several versions were being elaborated in the State Chancellery, academia and expert groups as well as in the unions of self-governments – *the Union of Cities of Georgia* and *the National Association of Local Self-governments*.

These visions are profoundly conflicting with regard to such critical aspects as the territorial arrangement (including a status of regions), competences, finances (transfers, local revenues), structure (rules regulating the formation and operation of executive and representative bodies of self-governments) etc. For instance, eleven various models of just territorial arrangement were introduced dealing with:

- The levels of the implementation of self-governance – whether or not self-government should be implemented in all settlements (3.600 units), in the communities existing prior to 2006 (1.000 units), on the territories of ex-Soviet rayons (60-70 units) or in the historically developed regions (10-20 regions).

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<sup>8</sup> A Report on Georgia's Local Democracy Development (1991 – 2012), International Centre for Civic Culture, 2013. Available in Georgian at: <http://www.lsg.ge/?cat=library&topic=71&lang=ka>



- The number of self-governance levels - how many levels should there be (one or two) and if a decision was to be made in favor of a two-level self-governance which units it should include: settlement-rayon, community-rayon, community-region or rayon-region.

These visions as a rule, represented a collection of general opinions which lacked in-depth analysis of critical issues pertaining to each of the directions.

The first attempts to analyze and unify existing visions on the level of a holistic concept emerged in the middle of the past decade when several SCOs including expert groups developed the following two concepts in 2004-2005:

1. A conceptual model of Georgia's administrative-territorial administration and for delimiting administrative, financial, property and legal competences between levels of the authority.<sup>9</sup>
2. A concept for the management and administrative-territorial arrangement of the capital Tbilisi<sup>10</sup>

Besides, international expert communities and those of the *National Association for Local Self-government* started working on developing stand-alone strategies of such fields as public service reform, delimitation of self-governments' competences and preparing framework for operational regulations of daily routine activities.

A new Georgian Dream coalition emerging on a Georgia's political arena in 2011-2012 based their visions on the principles embedded in the concepts developed by CSOs in 2005.

A group of authors of the 2005 concept under an aegis of the Research Institute for the Development of Georgia introduced *the Broad Concept of the Georgian Local Self-Governance System* based on a revised version of the 2005 document.

### **1.5 A New Political Reality**

The political power (the *Georgian Dream Coalition*) declared the establishment of effective self-governance as one of the key priorities with its leader Bidzina Ivanishvili often highlighting the importance of decentralization in his interviews with media.<sup>11</sup>

Issues related to self-governance occupied one of the central places in the Georgian Dream's pre-election program which at least formally highlighted the need for progressive improvement of public services. The new political force put a strong emphasis on commitments to profoundly change the system, implement an overarching reform and approximate the self-governance system to the country's population to the maximum extent possible.

It had been declared that 'the Georgian Dream having ascended to power with the will of people ... will establish a balanced model of the government agencies, an effective self-governance and a multi-party political system and for this purpose will implement a constitutional reform based on active civil participation'.<sup>12</sup>

The program also identified key reform directions concerning all fields of self-governance. More specifically, the following had been proposed in the program:

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<sup>9</sup> A conceptual model of Georgia's administrative-territorial arrangement and for delimitation of administrative, financial, property and legal competences between the levels of authority, Georgian Young Economists Association, 2005

<sup>10</sup> A concept for the management and administrative-territorial arrangement of the capital Tbilisi, the Civil Society Institute, 2005

<sup>11</sup> Bidzina Ivanishvili's meeting with the regional media, November 17, 2011

<sup>12</sup> Election bloc 'Bidzina Ivanishvili - Georgian Dream', an election program 2012. Available in Georgian at: <http://www.ivote.ge/images/doc/pdfs/ocnebis%20saarchevno%20programa.pdf>

- To hand over respective competences, finances and property to self-governments which must have elected representative and executive bodies to take over the largest part of public services instead of centralized management.
- Citizens must be able to directly participate in planning budgets of their own communities or towns and receive adequate services from the authority closest to them.
- To considerably increase budget revenues of self-governments through implementing effective fiscal decentralization. State property of local importance (including a large portion non-privatized arable and non-arable lands) must become the property of self-governments.
- To determine the status of every settlement (village, borough, town) as a legal body and grant the latter vital resources (land, water and real estates) critical for their development.
- To establish more or less self-sufficient communities in close partnership with the population and based on the local specifics.
- To elect town hall members and mayors/gamgebelis through direct elections. Foremen/forewomen must also be elected in every village.
- To create enabling environment for the establishment of regional self-governance and grant a territorial-legal status as well as sufficient resources and effective competences to the regions at the transitional stage. Measures need to be taken in order to establish democratic forms and mechanisms of governance including replacement of an institute of governors with effective system of regional authority based on the needs and interests of local population.
- To establish a well-developed system for training of local officials to provide continuous education and retraining.
- To establish a system of financial stimulation for the development of high mountainous zones of Georgia.<sup>13</sup>

After a victory in 2012 parliamentary elections Georgian Dream reiterated the need for a decentralization reform. At the Parliamentary Assembly of the Council of Europe Bidzina Ivanishvili stated that the self-governance reform stood the most important priority for the new government.

## 2. The preparation for the Reform

### 2.1 *The Beginning of the Preparation for Legal Framework*

In October-November 2012 after the formation of the new government, the Ministry of Regional Development and Infrastructure led by Minister David Narmania had been tasked to prepare a legislative framework for the self-governance reform.

Later on, in April 2013 a *department for the relations with the regional and local self-government authorities of the Chancellery of the Georgian Government* was set up in the office of Prime Minister Ivanishvili.

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<sup>13</sup> Election bloc 'Bidzina Ivanishvili – Georgian Dream', an election program , 2012. Available in Georgian at: <http://www.ivote.ge/images/doc/pdfs/ocnebis%20saarchevno%20programa.pdf>

These two structures under the coordination of the *Parliamentarian Committee for the Regional Policy and Self-Governance* started drafting legislation for the regulation of local self-governance.

It became evident that a strategy document of the Georgian government was to be developed at the initial stage to be followed by a new edition of an organic law regulating the field of local self-governance.

A new working group set up in the Ministry of Regional Development and Infrastructure started developing legislative acts. At the same a decision was made to create a mechanism to ensure public engagement in the preparation of the reform in a form of a council of advisors consisting of representatives of the civil society.

Under the Order 117/N of November 27, 2012 of the Minister of Regional Development and Infrastructure *Council of Advisors for the Development of Self-governance and Regional Policy* was created aiming to implement the decentralization process, develop recommendations and proposals on the issues related to local self-governance and regional policy, plan, support and monitor the reform implementation within its competences.

In order to attract organizations and experts with specific expertise and experience the Council set up thematic working groups uniting more than 70 experts and representatives of the civil society (lawyers, economists, financial experts, urbanists etc).

The working groups were open to any organization and expert willing to contribute with their visions on specific aspects of the reform and expressed desire to become members of any of the working groups.

One of the guiding principles agreed upon by the Council and working group members was not to ignore any idea or proposal regardless of a level of support and approval meaning that any controversial idea was to be submitted to the Ministry of Regional Development and Infrastructure.

The Council and working group members worked free of charge. Later on, after six months a USAID contractor organization Management System International (MSI) started providing financial and technical support for specific activities through Open Society – Georgia Foundation.

## **2.2. The Government's Strategy**

After undertaking a series of activities the Ministry of Regional Development and Infrastructure prepared and submitted a document on *Key Principles of the Strategy for the Development of Decentralization and Self-governance of the Government of Georgia for 2013-2014* which was approved by the Georgian government with the Resolution 223 of March 1, 2013.<sup>14</sup>

The strategy identified the following key directions:

**Public Self-governments in every settlement** - A law to ensure the engagement of rural communities in decision making processes was supposed to be adopted in 2013. Under a draft of the law village settlements would be granted a status of a legal body. It envisaged the creation of public participation mechanisms in rural communities through village gatherings to elect a lead body. The village gatherings would have the authority to select and monitor projects under the *Village Support Programs* as well as any other program targeting village communities. After the 2014 local elections the public self-government structures were to be integrated in the self-governance system. Public self-governments would run expense reports rather than having their own budgets. Respective municipalities would have the rights to hand over property, land and natural resources to public self-governments for further utilization.

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<sup>14</sup> *Key Principles of the Strategy for the Development of Decentralization and Self-governance of the Government of Georgia for 2013-2014*. Available in Georgian at: [http://www.government.gov.ge/index.php?lang\\_id=geo&sec\\_id=275&info\\_id=36295](http://www.government.gov.ge/index.php?lang_id=geo&sec_id=275&info_id=36295)

***Municipal self-governance*** - A level of self-governance smaller than the existing rayons and closer to the population would have been established in the country. Before 2014 local elections new self-governing entities would have been formed based on criteria developed by the government of Georgia and tailored to local needs. A representative body of a self-governing entity was to be elected through direct, equal and secret voting based on personal single transferable vote for two years. Heads of executive bodies would have been elected through direct elections. The draft of the law also stipulated the identification of a list of exclusive competences while transitional provisions would determine a timeframe of the transfer of part of competences to self-governments. Besides, self-governments would manage specific components (service and administration) of functions delegated by the central government.

***Regional Self-Government*** - Regional territorial-administrative entities would have been established based on the geographical scope of the state's representatives/governors with established key elements of regional self-governance (representative bodies, own competences and resources). Representative body would have consisted of the representatives of municipal self-governing entities within that particular region with the consideration of the representation of opposition or independent members. A head of a regional administration would have become a head of an executive body while a regional council would have been responsible for the selection and proposition of candidates to the Georgian government. Inter-regional issues that could not have been dealt with by self-governments (large social and economic infrastructure, as well as specific components of business/agriculture, large capital projects and national-wide programs) would have been delegated to the regions as their exclusive competences.

***A special status of the capital city*** - Tbilisi would have been granted functions of both municipal and regional self-governance. The capital would have been divided into municipalities/districts with their own representative and executive bodies. A new model of regional self-governance bodies and Tbilisi's authorities would have been developed in the wake of the 2014 local elections

***Delimitation of Finances and Property*** - It had been proposed to delimitate revenues of municipal and regional bodies with municipal and regional budgets to enjoy their own revenues (including income revenues, property management revenues, levies, other incomes, equalization transfers from the state budget). The proposed changes also suggested that a concept of shared tax (income tax) be introduced and a rule for the referral of income tax to respective budget be changed (to be based on a place of registration of an employee rather than an employer). This changes would be introduced gradually throughout 2015-2017. The law would establish a lower limit of an annual equalization fund while a share of local budgets in relation to Georgia's gross domestic product would increase progressively. The law would also establish norms for administrative expenditures and regulations of self-governments. The municipalities would regularly be handed over land (arable and farmlands, pastures, forests), water, real estates and assets.

***The state supervision*** - Legal supervision (looking at the compliance with the law) would be exercised over exclusive competences of self-governments while delegated competences would be subject to scrutiny to ascertain the content and quality of the attainment of aims and objectives as well as the extent to which the implementation of the delegated competences complied with the law.

***High-mountainous and special settlements*** - A special law on *High-mountainous and Special Settlements* was expected to be passed in 2013 to deal with high-mountainous, depressed and remote settlements as well as those areas with a strategic importance in terms of the prevention of migration. The law would grant special benefits and provide financial support programs to such areas.

The strategy sought to yield the following outcomes:

- Increased level of civic engagement in decision making regarding the issues of local importance.

- Improved delivery of public services that would be independent from unified decisions made on the central level
- Established two-level self-governance relevant to the arrangement typical to European countries of the similar size
- Fostered public responsibility on local level and decreased likelihood of confrontations between certain groups and the central authorities.
- Enabling local environment for the detection of active citizens and their career development which would contribute to overcoming a gap of qualified human resources in the country.

### 2.3. A working Process of a New Legislation

An organic law - *the Local Self-governance Code* finalized by September 2013 had been based on the Key Principles of the Strategy for Decentralization and the Development of Self-governance of the Government of Georgia for 2013-2014 approved by the government.

A process of the development of a draft code saw arguments and debates on visions and approaches between the experts within the thematic groups of the Council of Advisors on the Issues of the Regional Policy. Often the experts invited to the Council and working groups held diverse visions and opinions and some of them criticized documents developed by the Council from many angles. The following issues stirred the fiercest criticism:

- A title of the draft law – it had been stated that a self-governance code was not an accurate title as the code was supposed to regulate a specific area of public and state activities and that was the reason why international organizations disagreed with such a formulation of the title. However, later on the Council of Europe did not voice any remarks with regard to the title.
- The issues related to regional unification of self-governments – opponents argued that establishing regional unions was more of a subject of the state arrangement rather than the implementation of self-governments' activities and therefore, it went beyond the scope of the regulation of the self-governance as non-constitutional. The Council addressed the Georgian constitutionalists to provide their opinions with regard to this issue. The Georgian experts (doctor of law Gia Khubua, invited scientist from the Institute of Communal Sciences at Potsdam University Besik Loladze, constitutionalists Beka Kantaria and Avto Demetrashvili, experts Zurab Ezugbaia and Ekaterine Gogichaisvhili, doctor of law Kakhi Kurashvili) submitted their opinions according to which unions of self-governments did not represent a subject of constitutional regulation unless an independent government unit was created within the regions.<sup>15</sup>
- Risks to encourage separatism undermining the country's integrity - The concerns were related to granting the self-governments in the regions (especially those densely populated by ethnic minority group) the right to inter-coordinate their activities. - The issue had acquired a political shade later on despite a statement made by the Ministry of Justice on the exaggeration of the concerns.<sup>16</sup>
- Territorial optimization of self-governments - The opponents argued that the formation of new municipalities closer to the population was inexpedient as a rayon based arrangement originating from the Soviet times

<sup>15</sup> The time for self-governance, the International Centre of Civic Culture. Bulletin N2, 2013. Available in Georgian at: <http://www.lsg.ge/uploadedFiles/files/tvitmartvelobis%20biuleteni%20%232.pdf>

<sup>16</sup> The time for self-governance, the International Centre of Civic Culture. Bulletin N2, 2013. Available in Georgian at: <http://www.lsg.ge/uploadedFiles/files/kodeqsi%20meeqvse.pdf>

accurately reflected the needs of the country. The participation of the Georgian scientists in establishing rayons in the 20-30s of the past century brokered by the Communist regime was used as a justification even though the establishment of rayons had been a common practice in all countries under the totalitarian Soviet rule and had nothing to do with *Georgian specifics* let alone calculations and reports prepared by the Georgian scientists.

- Competences of the self-governments - a concern that the code focused mostly on the issues related to territorial optimization and ignored the need for increased competences had been repeatedly raised (Note: only 5 out of 197 articles dealt with the territorial optimization. 3 out of the 5 articles had been copied from the existing legislation without any changes). At the same time, the draft stipulated to increase a list of competences (i.e. in the field of water provision) of self-governments and grant adequate financial resources for the implementation of the competences.
- The cost of the reform and the distribution of financial resources – debates were mostly around the issues related to financing new municipalities and unrealistically high costs were named as a key argument against the reform (it was allegedly estimated that the implementation of the reform would cost several billion GEL at the initial stage). However, the Ministry of Regional Development and Infrastructure estimated that the initial stage of the reform would only cost 44 m GEL and that this sum was already available from the budget).

Later on, in June 2013, authors of an alternative vision introduced a draft developed under an aegis of the *National Association of Georgian Local Self-governments*. It was soon revealed that the member self-governments had not participated in the preparation of the draft as a result of which, a group of experts stated that the draft had been prepared by an independent group of experts.<sup>17</sup>

It should be noted that the alternative bill provided comparatively more explicit definition of the local competences and for this very reason the Council of Advisors asked the authors to present their visions to the members of the Council which eventually took place in July 2013.

Sadly, the Council and the authors of the alternative bill did not continue cooperation. Opponents of the bill of the Self-governance Code developed with the participation of the Council of Advisors started spreading inaccurate information among the state structures, international organizations and general public about both content as well as forms of the activities undertaken by the Council which ultimately led to creating rather an unhealthy context with regard to the bill of the code resulting in the emergence of negative disposition towards the reform in some public groups.

Prolongation of the working process till September 2013 was caused by consultations with various stakeholders including agencies, interest groups stretching over an extensive period of time and resulting in an arranged version of the law.

## **2.4 Awareness Campaign**

One of the key directions of the reform had been to raise awareness of every stakeholder as well as of general public on the changes to be brought about by the state's strategy and the self-governance code.

Open discussions regarding the principles reflecting in these documents started in December 2012. Both the Ministry of Regional Development and Infrastructure and the Council of Advisors on the Development of Self-

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<sup>17</sup> The time for self-governance, the International Centre of Civic Culture. Bulletin N3, 2013. Available in Georgian at: <http://www.lsg.ge/uploadedFiles/files/test%201.pdf>

governance and Regional Policy together with its member SCOs were actively engaged in processes aiming to raise awareness on the reform.

Working and introductory meetings had become particularly intensified since March 2013 and a series of meetings were organized and held not only in the capital Tbilisi but also in all regions of Georgia. The meetings were attended by the representatives of authorities, civil society organizations, groups of active citizens, media, political parties, international and donor organizations and diplomatic missions. In total several thousand individuals benefited from more than 100 meetings.

The reform process hit the headlines and enjoyed substantial media coverage through TV and radio programs and articles dedicated to self-governance reform.

Information on the activities undertaken by the Council of Advisors and documents developed in the course of their activities was placed on [www.droa.ge](http://www.droa.ge). Besides, both the members of the Council of Advisors and the representatives of the Ministry of Regional Development and Infrastructure met number of organizations and individuals who were interested in decentralization.

It goes beyond doubts that a twenty year period since the restoration of Georgia's independence never saw such an unprecedented scale and number of discussions and debates stirred by the bill of the law on decentralization.

However, as further developments proved, these efforts were not enough. In parallel with the activities undertaken by the supporters of the reform, a full-fledged propaganda was launched by opponents of the reform. There is a reasonable doubt that a campaign had been planned by a force holding not only ideologically different standpoints but also motivated by mercantile interests. A series of messages originated simultaneously within various interest groups corroborates this assumption.

## ***2.5. Intergovernmental Discussions***

The Ministry of Regional Development and Infrastructure completed a draft of the code in August 2013. On September 13 the draft together with annexes (including 7 bills of law related to the code) was submitted to all ministries. However, it turned out that the negative attitude towards an in-depth reform of the self-governance was not engrained only in public or political groups but also in various institutes of the Georgian central authorities.

The complexity of the reform in light of the need for a strong political will, as well as issues related to technical details of the reformation process raised legitimate questions among the representatives of the central authorities as well as among the members of the ruling Georgian Dream coalition. More specifically:

- Devolution of competences to local self-governments raised concerns over the potential loss of excessive control exercised by the central authorities over political process.
- There were concerns that the time constraints would not allow to implement the first phase of the reform before the 2014 local elections.
- The issues related to the distribution of financial resources were considered as the most burning. There were doubts that the formation of a new system would result in increased liabilities of the center while the existing mechanisms of control over the devolved financial resources would become weak and ineffective.
- Inefficient operation of the state structures and the lack of understanding of the existing context within the central government made the prospect of financial and property devolution complicated. In addition, the same problems would not allow to make an accurate inventory of the property.



- It was feared that the devolution of power to the municipalities would encourage various, not always legitimate groups to promote their interests which would increase the likelihood of corruptive deals on the one hand, and on the other would contribute to intensifying undesirable process and populist propaganda from the perspective of the state interests.

Because of these and other reasons, some of the ministries had denounced a series of the regulations stipulated by the self-governance code.

After the ministries expressed their opinions, a process to discuss the code article by article began as a result of which debated provisions were removed from the original version of the code (23 chapters and 222 articles) and the finalized version contained only 22 chapters and 197 articles).

It is worth noting that the authors of the bill never turned down any of the principle items of pre-election program or the state's strategy. The changes affected the timeframes for the implementation of some of the directions.

In the wake of time-consuming discussions and counter-compromises, the ministries came to agreement on a finalized version which was eventually submitted to the parliament. On October 30, 2013 the Parliament approved the code.<sup>18</sup>

## ***2.6. The Bill of the Self-governance Code***

The bill submitted to the parliament comprised 8 sections, 22 chapters and 197 articles. Each of the sections determined the rules for the regulation of specific directions of the reform.

**Section I – Definition of Self-governance** Contained chapters on general provisions, administrative-territorial arrangement of local self-governments and competences of the municipalities

- The idea to implement administrative-territorial optimization as a single act was rejected in the final version. Instead it had been suggested that the formation of new municipalities should initially affect 20 rather than 59 municipalities (with more than 10 thousand residents in centers), to be followed by 13 more municipalities (with more than 15 thousand residents in the centers).
- The list of competences of the local-governments had not increased substantially. However, water provision management, transport organization and some other small scale competences were handed over to the local self-governments (Article 15). A strong focus was made on effective implementation of already existing competences and adequate provision with the resources.

**Section II - Organs of Municipalities** described the framework for the administrative-legal acts issued by the representative and legislative bodies of the local self-governments as well as by their authorities.

- The bill of the code introduced a new procedure for the dismissal of a head of executive authority suggesting that 2/3 of a party list be authorized to dismiss the head, while 20 per cent of voters or 50 per cent of council members be able to put the dismissal as an agenda item.

**Section III – the Capital of Georgia Tbilisi** determined the status of the capital city as well as representative and executive bodies of the Tbilisi self-government and its administrative entities.

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<sup>18</sup> Press office of the Prime Minister, the Government's session of October 30, 2013. Available in Georgian at: [http://www.government.gov.ge/index.php?lang\\_id=geo&sec\\_id=274&info\\_id=38691](http://www.government.gov.ge/index.php?lang_id=geo&sec_id=274&info_id=38691)



- Establishment of representative bodies in Tbilisi's district stood out as one of the most important new additions (Article 68).
- Increased rights of the Capital's council.

**Section IV – citizens' participation in the implementation of local self-governance and public councils at the settlements** described the forms of civic participation in local self-governance, a definition and competences of public councils of the settlements.

- The code would introduce a form of direct democracy, that is public councils in each and every settlement (Article 90) which would have their own expenditure and property with the right to exploitation to be managed on a voluntary basis (Article 94).

**V Section - a budget of a municipality and economic foundations** covered the guiding norms for regulating the budget, property, property generation, privatization and entitlement to utilization of property

**VI Section – the State supervision, audit and direct state management** contained the following chapters: the state supervision over the activities undertaken by the local self-government, audit of the activities of the municipality authorities and direct state management, dismissal of the council, termination of activities and extraordinary termination of authorization.

**Section VII – regional association of municipalities** determined a status and competences of the association.

- Being a representative body of the association, the council (Article 167) ensured proportional participation (Article 169) of the representatives of self-governments which were members of the association (including the opposition).
- A state's representative-governor would be a lead of the association (Articles 167 and 175).

**Section VIII – transitional and conclusive provisions** identified the work to be undertaken by the central authorities at the initial stage of the reform, the order and timeframe of the implementation of the activities.

- Territorial optimization would have been implemented by the 2014 elections in those municipalities which had more than 15 thousands (13 entities) while the rest of the territory (46 entities) would be subject to the process by 2017 (Article 179).
- According to Article 193 budgets would have been separated by latest September 1, 2015.
- The rules for the transfer of the land and its volume to the municipalities would be determined by January 1, 2017.
- The standards for the calculation of the number of staff in the local municipalities were determined at the initial stage and the maximum for administrative costs for the local budgets was set at 25 per cent.<sup>19</sup>

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<sup>19</sup> Bill-organic law of Georgia local self-governance code. Available in Georgian at: <http://www.mrdi.gov.ge/ge/news/selfmanagment/529db93c0cf276b73b39d851>

### 3. Political Process and Attitudes of Stakeholders

#### 3.1 Attitudes of the Public Groups

After the approval of the bill of the code by the Georgian government, discussions of cons and pros of the proposed reform moved from academic debates to political circles.

Extra parliamentary political forces had been active from the very beginning of the process. Non-parliamentary opposition had been demanding stronger guarantees which would ensure more active engagement in the discussions. 13 political unions made a statement on November 20, 2013. As a response to the statement, the Ministry of Regional Development and Infrastructure reminded the political forces that the legislative process had been ongoing since March and there were no barriers for those who were willing to participate and at the same time invited them to participate in the discussion.

On November 30 the discussion of the bill snowballed into heated debates. A demand made by the non-parliamentary opposition consisted of 14 items including those issues which had already been referred to in the bill of the code (timeframes for the formation of new municipalities, number of members of councils, heads of public self-government bodies, rules for the election of Tbilisi district councils, the need for the introduction of shared taxes etc).

At the same time, the non-parliamentary opposition had been demanding to submit the bill for an international expertise (while the bill had already been submitted) and argued against the establishment of representative and executive bodies on the regional level because of alleged threats of separatism attached to the introduction of components of self-governance on the regional level by certain political forces.

It should be noted that before the introduction of the code these political parties were avid supporters of government structures in the regions and their party program made a strong emphasis on the issue.<sup>20</sup>

The key demand was to halt the parliamentary discussion until a wide political debate was over. This demand triggered a suspicion in supporter groups that there was an attempt to prolong time so that a new system would not be formed before the local elections and the process would be called off for at least several years.

A majority of the country's civil sector held the position which was radically different from that upheld by the political parties. Even amidst the government discussions (October 8, 2014), a group of civil society organizations called on the Georgian government to not hinder the reviewing of the law including by the Parliament.<sup>21</sup> The similar statement designed for the legislative body was made after the bill had been submitted to the Parliament.<sup>22</sup>

In addition to civil society organizations, other public groups (including ultra-nationalists ones) also voiced their opinions mostly suggesting that devolution of powers to local self-governments contained certain risks particularly in those regions which were predominantly resided by ethnic minorities.

Groups critically disposed towards the reform saw risks also in the regions with ethnic Georgian population. Not only tabloids but also TV channels would highlight increased likelihood of Megrelian, Svan and Gurian separatism.

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<sup>20</sup> The time for self-governance, the International Centre of Civic Culture. Bulletin N6, 2013. Available in Georgian at: <http://www.lsg.ge/uploadedFiles/files/kodeqsi%20meeqvse.pdf>

<sup>21</sup> The time for self-governance, the International Centre of Civic Culture. Bulletin N4, August-October, 2013. Available in Georgian at: <http://www.lsg.ge/uploadedFiles/files/biuleteni%20-%20vitmartvelobis%20droa%204.pdf>

<sup>22</sup> The time for self-governance, the International Centre of Civic Culture. Bulletin N6, 2013. Available in Georgian at: <http://www.lsg.ge/uploadedFiles/files/kodeqsi%20meeqvse.pdf>

It had become evident that phobias were not based only on opinions and fears of certain individuals but also some political and economic group had also been backing up these sentiments. These attitudes had become particularly strong after the Georgian Dream nominated non-Tbilisi born minister of the Regional Development and Infrastructure David Narmania as a candidate for the mayor of Tbilisi.

A new topic on non-Tbilisi origin of David Narmania hit media headlines and became extremely popular in social networks. The wave was accompanied by vitriol of activities undertaken by the Ministry of Infrastructure and Regional Development including the bill of the code. In fact those who wished to see the bill not being passed by the Parliament (even within the ruling coalition!) perceived that a fiasco would also affect the rating of the nominee for the mayor of Tbilisi.

The culmination of the public debates was a statement made by the Patriarch Ilia II on December 4, 2013 according to which 'the implementation of the code will entail the disintegration of Georgia'. The statement was much resonated in the Georgian public and the part of the society who had little knowledge of details of the decentralization process had become growingly concerned and afraid of consequences as declared by the institution enjoying a high level of trust.

As a consequence, the statement had contributed to the increase in the number of those who opposed the self-governance code. A majority of political leaders noted that there was a misunderstanding. At the same time, some made statements regarding overly interference of the Georgian patriarchate in the state. After these events, the authors of the bill made a promise to revisit some of the provisions stipulated by the code which eventually happened during the parliamentary hearings. However, David Narmania stated that 'the code of the self-governance never contained any threats'.<sup>23</sup>

### ***3.2. Attitudes at the Local Level***

The attitudes at the local level in the regions were somewhat different from those held by the Georgian political spectrum and various interest groups. Some of the public groups were hopeful that the reform would be implemented.

Right at the initial stage large groups of supports started mobilizing in two of Georgia's big settlements of Zugdidi and Gori where the local population had been demanding for the status of self-governing cities for more than two decades which they lost in the 1980s. As early as in the spring of 2013 the citizens of the two towns started collecting signatures. Eventually 3.300 and 1.500 signatures were collected in Zugdidi and Gori respectively.

The population of Jvari and its surrounding villages also demanded that a status of independent self-governing entities be granted to the town. It is worth noting that this was not the first case when such a demand be made (before 2009) but to no avail. The Georgian government and the Parliament were provided with the request and a package of relevant documents.

In the beginning of November 2014 the population of Chiatura town also demanded a status of a self-governing city and started preparing for a rally. However, the rally never took the place because of a promise made by a majoritarian MP according to whom the issue pertaining to Chiatura and similar towns (Zestaponi, Borjomi etc) would be regulated as exceptions.

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<sup>23</sup> The time for self-governance, the International Centre of Civic Culture. Bulletin N6, 2013. Available in Georgian at: <http://www.lsg.ge/uploadedFiles/files/kodeqsi%20meeqvse.pdf>

The similar demands were made in Borjomi, Sagarejo and Kobuleti. The population of Tusheti voiced their demand to split the Akhmeta municipality and form a separate Tusheti municipality in a high-mountainous zone. The representatives provided a well-developed economic justification for such a demand.

### **3.3. Parliamentary Hearing and Agreements with Acting Stakeholders**

On November 12, 2013 the Bureau of the Parliament of Georgia registered the bill of the self-governance code.

The end of November and the beginning of December saw the commencement of the committee hearing of the bill. Legal, Health and Financial-budgetary committees were the first to start the hearing at a joint session also attended by the non-parliamentary opposition.

Committee hearings took place in eight parliamentary committees including a leading *regional policy and self-governance committee*. The first deputy minister of Regional Development and Infrastructure Tengiz Shergelashvili was a key speaker during the hearing.

At that time the issue of the adoption of the code came to question once again. Dragging the process of the review of some of the articles indicated to the attempts of the opponents who had been trying to prolong the process so that it would have been impossible to approve the code before the spring session and because of alleged lack of time postpone the implementation of the reform after the 2014 local elections.

A final version was eventually finalized amidst the committee hearings, working meetings and mutual agreements. However, the final version was considerably differently from the original one as a series of original articles and provisions were either changed or omitted.

For instance, a whole range of provisions related to the selection of public self-governance body in the villages was deleted from the final version of the code. The first attempt to introduce this system under a separate law failed in May 2013 as an author of the bill of code parliamentary committee on regional policy and self-governance (E. Tripolski, G. Zhorzholiani) withdrew the bill. It was decided to incorporate the law in the self-governance code. However, G. Zhorzholiani took out the question from an agenda. Instead, an article was added to transitional provisions according to which the government was to submit a bill on additional civil engagement mechanisms to the Parliament by the end of 2014.

In mid-December 2013 *Congress of Local and Regional Authorities of Europe* of the Council of Europe submitted a preliminary conclusion on Georgian self-governance code according to which Council of Europe welcomed the intention of the government of Georgia to implement effective decentralization reform, positively evaluated a series of articles and provided recommendations to correct flaws within a number of articles.

It should be noted that the Council of Europe welcomed those articles (i.e. election of representative councils of self-governments in the districts of the Capital Tbilisi and regions) which had already been omitted from the bill.

In spite of compromises made by the authors of the bill, parliamentary debates clearly indicated that a camp of opponents was stronger than expected not only in executive authorities but also in the Parliament. As early as a day prior to the first hearing in the committee of regional policy and self-governance, there was a looming threat that proponents of the bill may fail to collect necessary number of votes.

The situation drastically changed on December 12 as a result of successful mobilization of support by the proponents of the bill. It is worth noting that the speaker of the Parliament met representatives of civil society on the very day. Up to 200 SCOs expressed their support by submitting signatures in support of the bill.

A speech made by the speaker of the Parliament was emotionally charged and firm as instead of reading out his own speech he cited an article written by Ilia Chavchavadze *On the Arrangement of a Village*. Three out of six subjects of the *Georgian Dream* (Republicans, National Forums and Conservatives) openly expressed their support to the bill.

On December 2013 the Parliament approved the organic law *Self-governance Code* at the first hearing with 82 positive votes against zero.

In spite of a preliminary agreed scheduled the code could not be heard at the 2013 autumn session.

The second hearing of the bill of code took place at an extraordinary session in January 2014. Following heated debates the Parliament approved the code at the second hearing as well on January 24, 2014 (84 positive votes against 16). A series of changes reflecting on the interests and requirements voiced by some of MPs was made to the code (i.e. regarding benefits enjoyed by heads of the parliamentary fractions, increase in the number of personnel in the municipalities).

In the very beginning of the spring session, on February 5, the code was approved at the third hearing without any particular complications. However, it should be noted that slightly more than half of the list members (77 votes against 7) supported the code which means that there was a chance that the bill would be dropped not because of political but 'technical' reasons.

In the process of the adoption of the code by the Parliament of Georgia certain political forces and some of SCOs made statements which aimed to underline their roles:

- Parliamentary opposition - United National Movement stated that self-governing cities should be formed not only in seven cities but in all cities with more than 10.000 citizens even though UNM was disposed skeptically to the idea to increase the number of self-governing cities in the beginning of discussions.
- Representatives of non-parliamentary opposition declared that thanks to their efforts 'threats of separatism contained in the code were eliminated'.
- Some of CSOs expressed their skepticism towards the rights of city councils to dismiss elected mayors and gambelbelis enshrined in Article 48 (however, these organizations had not raised the concern during the previous discussions). On the other hand, some CSOs offered an alternative to the above mentioned article.<sup>24</sup>

The period to follow has seen a new tendency demonstrated by those agency which had previously skeptical to the bill but now claimed credit for its adoption.

## 4. The Implementation Process of the Reform

### 4.1. *Beginning of Administrative-territorial Reform: New Self-governing Cities*

The division of the country into rayons as administrative-territorial units is a Soviet legacy. The system was based on the principles of socialist planned economy and the need to develop fields of "popular industry". However, there were cases of changing nomenclature apparatus according to subjective opinions.

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<sup>24</sup> The time for self-governance, the International Centre of Civic Culture. Bulletin N6, 2013. Available in Georgian at: <http://www.lsg.ge/uploadedFiles/files/kodeqsi%20meeqvse.pdf>

Since the restoration of the country's independence the administrative-territorial division has never been revisited to reflect on the need for the establishment of municipal arrangement in order to develop local democratic institutes. Even though a common sense would prompt the Georgian authorities of different times to adapt the administrative arrangement to new realities (for instance, resolution N321 of 14.05.1999 signed by the president of Georgia approved the rules for resolution of issues related to Georgia's administrative arrangement), however, the situation had remained unchanged due to the absence of a political will. Every new government would postpone the resolution of this problem for an unidentified period because of various reasons (maintaining stabilities at a local level, easiness of centrally managing the country etc).

Pursuant to a strategy approved by the Resolution N223 of March 1, 2013 by the Georgian government, territorial optimization of self-governments was declared as the top priority of the reform: '... settlements or a union of settlements shall be developed as self-governing entities, self-governing cities and communities... self-governing entities reflecting local specifics shall be formed based on criteria developed by the government... a list of self-governing entities and their borders to hold 2014 local elections will be approved'.<sup>25</sup>

The authors of a bill of local self-governance code submitted to the Parliament of Georgia in September 2013 envisaged the following stages of administrative-territorial changes: towns with more than 10.000 residents would become self-governing cities, while self-sufficient community municipalities would be formed on the remaining territory. However, after the approval of the bill by the Parliament the figure was changed and Clause 2 of the Article 3 read as follows: 'a self-governing city is a settlement with at least 15.000 registered residents, demonstrates a potential for urban attraction and development and has a status of a self-governing city'. However, during the first hearing in the Parliament following heated debates, the criterion was removed as a result of which a self-governing city was defined 'as a settlement within a city category, which either already has or will be granted a status of a municipality under the terms and the conditions of the Code'.<sup>26</sup> The ruling coalition (presumably after the political council of the Georgian Dream convened on December 3, 2014) deemed it expedient to grant a status of self-governing city to those towns which homed offices of state's representatives/governors. Pursuant to Article 151 of the Transitional Provisions of the Self-governance Code seven more towns (Telavi, Mtskheta, Gori, Akhaltsikhe, Ambrolauri, Ozurgeti and Zugdidi) were made self-governing cities (to add to existing five self-governing cities of Tbilisi, Rustavi, Kutaisi, Poti and Batumi).

The authorities declared the approval of the Local Self-Governance Code on 5 February 2014 the first phase of the reform to be followed by another phase aimed at fulfilling commitments outlined in *transitional provisions* of the Code. Setting up self-governing communities after seven towns had been granted a self-governing status. This was thought to test as a pilot for further wide-scale territorial reform.

In their statement voiced through printed media on 13 March 2013 the Government Commission on Regional Development invited a wider public 'to discuss the opportunities of creating one self-governing community in each of the territories left as a result of separation from self-governing cities. It is proposed that administrative centers of such self-governing communities be placed in self-governing cities'.<sup>27</sup> On 16 March Georgian NGOs criticized this proposal and issued a joint statement to declare that a government brokered model would fail to

- create a system of self-governance which would be able to bring constituencies and self-governments together and allow for the former's effective participation in local decision making processes
- create an enabling environment for the development of local interests based self-governments

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<sup>25</sup> Resolution of the Government of Georgia 223, 01.03.2013 *Fundamental Principles of the Decentralization and Self-Government Strategy of the Government of Georgia for 2013-2014*. Available in Georgian at:

[https://matsne.gov.ge/index.php?option=com\\_ldmssearch&view=docView&id=2209502&lang=ge](https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=2209502&lang=ge)

<sup>26</sup> A bill of the Georgian organic law Georgian Self-Government Code. Available in Georgian at:

<http://static.mrdi.gov.ge/529dc3c10cf276b73b39d85f.pdf>

<sup>27</sup> The Resonance newspaper, 13 March 2014, 065 (7707), p.4.

- establish new cultural, economic and social attraction centers in the territories which are connected both geographically and through shared infrastructure
- create enabling conditions for a village's development and for professional growth of local leaders and qualified public servants.<sup>28</sup>

The next day non-governmental organizations together with the members of the commission and majoritarian MPs discussed the self-governance reform. Up to 60 non-governmental organizations took part in the meeting. The CSOs presented the version of optimization pertaining to the territory left after the separation of the self-governing cities which had been prepared by the group of experts of the council of public advisors at the Ministry of Regional Development and Infrastructure and called on the Georgian government to review the plan.<sup>29</sup> SCOs demanded that non-governmental sector and the population be involved in discussions around the territorial arrangement issues to the maximum extent possible. A chair of the Regional Development Commission made a promise that the commission would be holding meetings population in all municipalities, however, the promise was never kept.

In addition to the government commission on regional development, the SCOs presented the plan for administrative-territorial arrangement to the communities of all seven municipalities. In spite of the fact that councils of Gori and Akhaltsike municipalities approved the idea of establishing more than one municipalities on the territories separated from self-governing cities<sup>30</sup> the Georgian government did not take this circumstance into consideration and on 31 March signed a resolution to propose to the parliament that one municipality be established on the territories separated from self-governing cities. A bill adopted by the parliament on 4 April 2014 contained the same content.<sup>31</sup>

It should also be noticed that in April-June 2014 the Ministry of Regional Development and Infrastructure successfully accomplished a mission aimed to divide property and responsibilities by preparing a legal framework for the separation of seven self-governing cities, while councils of the municipalities and central authorities prepared and enacted a number of relevant administrative-legal acts.<sup>32</sup>

Against all odds and fears that it would be difficult for newly established self-governing cities and municipalities to delimit budgetary balances and commitments taken in the beginning of a financial year,<sup>33</sup> the processes had also been successfully completed.<sup>34</sup>

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<sup>28</sup> An appeal by the CSO representatives to the Georgian government on a statement of March 13 made by the government commission on regional development. Available in Georgian at: <http://droa.ge/?menuid=9&lang=1&id=195>

<sup>29</sup> Proposals on the administrative-territorial optimization of Telavi, Mtskheta, Gori, Akhaltsikhe, Zugdidi, Ambrolauri, Ozurgeti and Tsalenjikha municipalities, Tbilisi, 2013. Available in Georgian at: <http://www.scribd.com/doc/213356389/ადმინისტრაციულ-ტერიტორიული-ოპტიმიზაციის-წინადადებები>

<sup>30</sup> Resolution 43 of Gori Municipality Council, 27 March 2014 on *Territorial Optimisation of Gori Municipality*, Minutes of Akhaltsikhe Municipality Council Session of 28 March 2014

<sup>31</sup> Decree N515 of March 31, 2014 of the government on Georgia on *Separation of Municipalities and Establishment of Self-Governing Communities – Municipalities* and Resolution N2205-11s, 4 April 2014 of the Parliament of Georgia. Available at in Georgian at: [https://matsne.gov.ge/index.php?option=com\\_ldmssearch&view=docView&id=2310718&lang=ge](https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=2310718&lang=ge)  
[https://matsne.gov.ge/index.php?option=com\\_ldmssearch&view=docView&id=2314070&lang=ge](https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=2314070&lang=ge)

<sup>32</sup> Resolution N363, 30 May 2014 of the Government of Georgia on *Approving Rules for Redistribution of Property and Responsibilities Between the Municipalities*. Available in Georgian at:

[https://matsne.gov.ge/index.php?option=com\\_ldmssearch&view=docView&id=2360525&lang=ge](https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=2360525&lang=ge)

<sup>33</sup> Transparency International – Georgia. *News on the Self-Government Code*. Available at: <http://transparency.ge/blog/tvitmartvelobis-kodeksis-dziritadi-siakhleebi?page=3>

<sup>34</sup> Resolution N384 of the Government of Georgia adopted 11 June 2014 on *Approving Interim Rules for Redistribution of Budgets, Budget Incomes and Payments to the End of 2014 for New Municipalities Created in accordance to Article 152 of the Organic Law of Georgia on the Local Self-Government Code*. Available in Georgian at: [https://matsne.gov.ge/index.php?option=com\\_ldmssearch&view=docView&id=2370947&lang=ge](https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=2370947&lang=ge)



## 4.2. Changes to the Election Legislation and 2014 Local Elections

The Local Self-governance Code has brought a significant changes to a rule for the election of the highest rank official in local self-government. Before the change only a mayor of Tbilisi city was elected by population. The code ruled that mayor/gamgebeli of each self-governing entity be elected through direct elections.

On March 7, 2014 the Parliament of Georgia adopted a series of changes which allowed for harmonization of the election legislation with the new self-governance code. The following amendments have been made to the election legislations:

1. **Introduction of 50 per cent threshold for the first run up when electing mayors and gamgebelis** - One of the most debated issues just before the adoption of the code had been the one around the introduction of high minimum threshold. Until 2014 Tbilisi had been the only city in Georgia to elect its mayor through direct elections and at 30 per cent threshold. Before February 17 the Georgian Dream Coalition had proposed that threshold for electing mayors in Tbilisi and other eleven cities be 40 per cent and 33 per cent for electing gamgebelis. The proposal saw a fierce protest by non-parliamentary opposition and a group for non-governmental organizations. The bottomline of the Georgian Dream Coalition members was that a higher threshold would allow increased chances for a second run-up and therefore entail much expenses. However, on February 17 the Prime Minister declared that the Georgian Dream agreed on 50 per cent threshold for electing mayors and gamgebelis.<sup>35</sup>
2. **Threshold for political parties had reduced to 4 per cent in city councils** - Up to 2014 a party or an election bloc which would manage to overcome a 5 per cent threshold in a specific election precinct would have been eligible to seats in a respective council. The respective threshold for Tbilisi was determined at 4 per cent. As a result of the changes the threshold was reduced from 5 to 4 per cent in the regions as well.
3. **A number of proportional mandates was increased in most self-governments** - Part of CSOs working on election related issues called on the authorities to replace a single-mandate precincts for electing majoritarian members by multi-mandate ones. It is true that the threshold were reduced for a proportionate system in municipality councils and party mandates were increased, nevertheless council election system largely remained the same, in other words mixed majoritarian-proportional.. At the same time while seats allocated under the proportionate system in most of councils were maximum ten, now it had increased to 15. The changes did not affect the number of seats in self-governing cities.
4. **Problems related with voters lists were resolved to some extent**
  - The trustworthiness of voters list has been an issue much discussed and talked by both international (OSCE monitoring mission aftermath 2008 parliamentary, 2010 local and 2012 parliamentary elections) and local monitoring organizations (ISFED developed conclusions of the same year). Identification of a voter only by his/her name, surname, personal number and address was not an effective mechanism for the protection from electoral fraud. It was often a case when the same voter had more than one entry in a voters list.<sup>36</sup> Legal body of public law *Agency for Development of Public Services* digitalized voters' photos and after the completion of the project a list of citizens above 18 years old was transferred to the Central Election Commission for putting together a voters list.

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<sup>35</sup> Civil Georgia, Tbilisi/February 17, 2014/ 17:32 *Gharibashvili: The Georgian Dream agrees to 50 per cent threshold for electing mayors and gamgebelis*. Available at: <http://www.civil.ge/geo/article.php?id=27831>

<sup>36</sup> For instance, several former high rank officials were detained on October 25, 2013. The police found thousands of faked IDs which had been used for the falsification of election results benefiting the ruling party in previous years. Names and surnames indicated in false IDs were in voters list, however, photos belonged to those individuals who were to vote for then ruling party.



- In order to make a unified voters list available publicly a version of the list which included digitalized photos of voters was handed over to political parties. Photos of each voters were included in voters lists used on an election day which made it possible to identify a voter based on a photos. This approach has minimized a risk of voting using other individuals' documents or fake identification documents.

At the same time there had been no response to some of the issues often raised by the society. One of the contested issues which many monitoring organizations focused on was the limitation set for independent candidates to run for a mayor or gamgebeli. In its recommendations issued aftermath 2010 local elections OSCE/ODIHR monitoring mission called on the Georgian government to allow independent candidates to run for local elections. However, the ruling coalition chose to maintain the above mentioned limitation for independent candidates.

In addition to changes to the rules for municipal elections and regulations, the law reinforced citizens' rights by introducing mechanisms for public control over activities undertaken by mayors and gamgebelis:

- There had been no legal mechanisms for no-confidence motion to a head of municipality before till 2014. Pursuant to the new code, a vote for no confidence can be initiated by 20 per cent of voters or ½ of council members while a decision is to be made by a municipality council with 2/3 of a total number of municipality council members. A mechanism for collecting signatures for the initiation of a no-confidence motion by population had been outlined in detail.
- In case of a no-confidence motion extraordinary elections must be held. Former mayor/gamgebeli is eligible to participation. Under no circumstances shall no-confidence motion be initiated within six months after elections are held and during a final year in office for mayor/gamgebeli. If a motion is terminated at any stage it cannot be resumed for the coming six months.

It is beyond the scope of the present document to evaluate local elections held on June 15, 2014. However, it is still worth focusing on some of statistical data pertaining to the elections:

- Many of candidates for mayor/gamgebeli failed to receive more than 50 per cent threshold and therefore a second round runoff was declared in Tbilisi and 21 more municipalities which was held on July 12.
- In total 12 mayors, 59 gamgebeli and 2.086 members of 71 councils had been elected. 16.190 candidates ran up to the elections throughout the country. 45.300 representatives of political blocs and candidates were present at election precincts while more than 16.000 observers monitored the operation of election commissions.
- A gender misbalance is still strong among elected officials in self-governing bodies. Out of 1.550 members elected in the councils in 2010 88.9 per cent was male and only 11.1 percent female. The elections in 2014 saw a slight increase in female members of the councils: out of 1.035 members elected proportionally 875 (84.54 per cent) were male and 160 (15.46 per cent) female, while 963 (91.89 per cent) male and 85 (8.11 per cent) female members were elected directly. It should also be noted that there is only one female among 71 directly elected mayors and gamgebelis.

#### ***4.3. Division of Competences between Central and Local Authorities***

In spite of a series of compromises and concessions as compared to declared strategy goals by the government of Georgia, a whole range of competences have been transferred to local self-governments under the Self-governance Code:

- Water supply provision (including technical) and sewage system maintenance, development of melloration system of local importance which had been a competence of the central authorities, more precisely legal body of public law *United Water Company*.
- Setting rules for minding pets and resolving issues related to stray animals.
- Developing adequate local infrastructure for persons living with disabilities, children and the elderly, including measures to adequately adapt and equip places for public gathering and municipal transport for an ease of access.

Yet another novelty introduced by the Code is that local self-governments are now able to determine a threshold of benefits for local servants, which was previously under competences of president of Georgia while self-government entities were deprived possibility to attract qualified human resources as per their needs. Community municipalities were not allowed to equalize payrolls with those enjoyed by public servants in self-governing cities, which were higher. Pursuant to the new code inter-organizational autonomy for the municipalities has been improved and now the amount of benefit is determined by a self-governing entity except for a maximum threshold for gangebeli/mayor and a head of a council, which is regulated by a resolution of the Georgian government. At the same time there is a limitation imposed on local self-governments in terms of the remuneration of labor which means that remuneration expenses should not exceed 25 per cent of budgetary expenses.

Pursuant to transitional provisions of the Code, the government of Georgia was held responsible to undertake following measures:

- Prepare necessary amendments to the law to ensure complete delimitation of state and municipality competences, identify areas in which competences would be delegated to municipalities if the need be and introduce adequate changes to the legislation before January 1, 2015.
- The Ministry of Regional Development and Infrastructure to prepare a bill on amending the legislation before December 31, 2014. The changes would identify terms and conditions for legal relations between municipalities, Georgian National Energy and Water Regulatory Commission and private providers to ensure the provision of municipalities with water and sewage systems (Note: the terms for the implementation of these changes were postponed to September 1, 2015 in December 2014).
- Prepare and submit a bill of law regulating issues related to local natural resources including water and land before January 1, 2016.

However, not all changes were positive. Pursuant to amendments to the Law on Civil Safety taking effect on July 30, 2014 emergency management agencies, fire brigades and/or rescue services (regardless of their status or title) currently under the management of local self-governing authorities will be liquidated on January 10, 2015. This competence together with assets and liabilities and relevant documents was transferred to the central authorities, namely to the legal body of public law *Emergency Management Agency* at the Georgian Ministry of Interior. It should be noted that local self-governments invested their own resource in developing properties for fire and/or rescue services including 2014 while central authorities failed to compensate them on this kind of expenses. Moreover, local self-governing entities were made responsible for providing necessary allocations to the Emergency Management Agency throughout 2015 pursuant to Article 31 of the Law of Georgia on 2015 State Budget.

#### ***4.4. Issues related to Property and Fiscal Decentralization***

Pursuant to Article 165, Clause 1, Paragraph C of the new code, the government of Georgia was responsible to determine rules for privatization of municipal property, utilization and transfer of management rights, initial privatization price, amount of lease on property transferred with management rights, initial lease price and terms for payment before June 1, 2014. However, the government failed to prepare a document before the deadline. It was only on December 8, 2014 when the government enacted a relevant normative act.<sup>37</sup>

Pursuant to the legislation adopted between 2005 and 2010 local self-governments were deprived of their right to register arable and farm lands which are subject to privatization according to the Law of Georgia on State Property (Law of Georgia on Local Self-governance, Article 47, Paragraphs C and I, 2005). Georgia is the only country in Europe where self-governments have no rights over pastures (amendments to the organic law of Georgia on Local Self-Governance of 2010). Pursuant to the new code pastures and farm and arable lands were declared property of local self-governments and a mechanism for transferring farm and arable lands to local municipal entities were developed. Self-governing entities were given the right to register arable and farm lands at their discretion. In addition, to ensure the transfer of arable and farm lands to the municipalities and pursuant to Article 162 of the Local Self-governance Code the Ministries of Justice, Regional Development and Infrastructure and Economy and Sustainable Development are to develop and submit to the government a timetable and rules for the transfer before January 1, 2017.

It should be noted that pursuant to the Self-governance Code the government of Georgia is responsible to develop and submit to the Parliament a bill of law for the identification of local natural resources including water and land resources.

Since 2006 income tax (administered and managed locally) was transferred to the state budget which left the local self-governments without a source of own income. Pursuant to the Local Self-governance Code the government of Georgia is responsible for determining the ratio for the division of income tax between central and local budgets and the revision of formula and a rule of distribution of equalization transfer.

The expediency to undertake this measure was underlined in a recommendation developed by the Congress of Local and Regional Authority of the Council of Europe according to which:

- A financial autonomy of local authorities still remains a problem while limited 'own revenues' make local authorities highly dependent on the government's grants
- Government of Georgia to improve financial capacities of local self-governments and encourage them to be able to generate their own resources will all possible means including broadened tax base
- Government of Georgia to improve a procedure for fiscal equalization (through increasing funds for both distribution and equalization).<sup>38</sup>

Pursuant to the Local Self-governance Code the government of Georgia (the Ministry of Finance) was to prepare above mentioned amendments before September 1, 2014 however it failed to do so. On September 30 the Ministry of Finance introduced draft amendments to the Georgian Tax Code together with a draft 2015 budget. According to

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<sup>37</sup> Ordinance of government of Georgia 669, December 8, 2014 on *Privatization, Utilization and transfer of Management Rights of municipal property, determining initial privatization price, price of rent, initial rental price and the rules for payment* Available in Georgian at: [https://matsne.gov.ge/index.php?option=com\\_idmssearch&view=docView&id=2605132&lang=ge](https://matsne.gov.ge/index.php?option=com_idmssearch&view=docView&id=2605132&lang=ge)

<sup>38</sup> Local and Regional Democracy in Georgia, Recommendation N334 (2013), Strasburg, March 19-20, 2013

proposed amendments<sup>39</sup> the government planned to make local self-governments eligible to some types of income tax (provided below). The changes would take effect on January 1, 2018.

- a) Income tax on an income received from activities of a natural person
- b) Income tax incurred on non-residents (except for an income received by a non-resident as a result of leasing of property)
- c) income tax on the surplus derived from sale of tangible assets by a natural person
- d) Income tax on the property transferred to a natural person as a gift
- e) Income tax on inheritance received by a natural person
- f) Income tax on income received by a natural person as a result of leasing his/her property<sup>40</sup>

According to a conclusion prepared by the Parliament's fiscal office, the Ministry of Finance adhered to the requirement of the code. As for other responsibilities, according to a statement issued by the fiscal office: 'the above mentioned entry goes beyond the Self-governance Code and relevant entries are not stipulated by the Tax Code. Therefore, existing rule and regulation applied to equalization transfer according to which the rule for the calculation is determined by a decree of the Minister of Finance and should be at least 4 per cent of GDP forecast for the specific fiscal year, remains valid.<sup>41</sup>

In his statement made on October 7, 2014 while presenting 2015 draft budget to the Parliament, the Minister of Finance declared that the government had been working in this direction: 'we began to consider more radical steps so that not only certain types of income tax but some of income taxes also remain in local budgets...it is absolutely infeasible that we start the reform on January 1, 2016'.

Another of positive developments was the government's refusal to transfer local self-governments and organizations set up by the latter to budgetary service. In his statement of November 26, 2014 the Minister of Finance said that 'legal bodies of public law, non-profit and non-commercial organizations, local self-governments and autonomous republics will be eligible to accounts in commercial banks in order to generate additional revenues... dividends on such accounts will consider as their income and they can manage it at their sole discretion.<sup>42</sup>

On December 12, 2015 the Parliament of Georgia approved of the changes to the Tax Code<sup>43</sup> according to which local self-governments will be eligible to the total share of the following taxes as of January 1, 2016: a) Income tax on an income received from economic activities of a natural person b) Income tax incurred on non-residents (except for an income received by a non-resident as a result of leasing of property) c) income tax on the surplus derived from sale of tangible assets by a natural person d) Income tax on the property transferred to a natural

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<sup>39</sup> An official webpage of the Parliament of Georgia, on *Amending the Georgian Tax Code* (Article 1, Paragraph 49, Clause B), N of registration: 07-2/251, date of registration: September 30, 2014, initiated by the government of Georgia. Author: Ministry of Finance. Available in Georgian at: <http://parliament.ge/ge/announcements-all/announcements-main/saqartvelos-2015-wlis-saxelmwifo-biujetis-sesaxeb-saqartvelos-kanonis-proeqti-da-tandartuli-masalebi.page>

<sup>40</sup> It should also be noted that according to many experts most of types of income taxes on the list are difficult to forecast and therefore the increase in the quality of independence of local budgets by means of these taxes is highly unlikely to happen.

<sup>41</sup> A conclusion on *Amending the Georgia's Budget Code* of October 20, 2014. Available in Georgian at: <http://www.parliament.ge/ge/saparlamento-saqmianoba/pbo/siaxleebi/daskvna-saqartvelos-sabiudjeto-kodeqssh-cvilebis-shetanis-shesaxeb-saqartvelos-kanonis-proeqtze2.page>

<sup>42</sup> *The Ministry of Finance Is Open to Remarks Expressed During the Discussion of a Bill of Budget Code*. November 26, 2014. Available in Georgian at: <http://mof.ge/News/6323>

<sup>43</sup> The Law of Georgia on Amending the Georgian Budget Code. 2935-Is 12/12/2014. Available in Georgian at: <https://matsne.gov.ge/ka/document/view/2636389>

person as a gift e) Income tax on inheritance received by a natural person f) Income tax on income received by a natural person as a result of leasing his/her property.

#### **4.5. Changes to a Regional level and system of State Supervision for Local Self-governments**

The legislation prior to the adoption of the code did not stipulate any institutional mechanisms for the engagement of local authorities in planning and implementing regional development projects. A new institutional mechanism in a form of regional consultation boards were created at the regional level to which representatives of local self-government authorities are also members. Regional consultation board is a venue whereby representatives of local authorities (gamgebeli/mayor, head and deputy head of council) on the one hand and a state representative-governor on the other, discuss plans for regional development and projects of regional importance.

Pursuant to the law, first sessions of regional consultation boards should have convened within 30 days after the announcement of official results of the local elections. However, as a result of the changes to the Code this period was increase to 60 days.<sup>44</sup> The result of the second-round runoff was summarized by Central Election Commission on July 22 and therefore, consultation boards should have convened before September 22. However, representative-governors only managed to convene the first sessions between October 10 and October 30.

It was not until 2014 that consultation boards actually started working. At that time the boards together with municipalities started developing and reviewing action plans for regional developments. The process had been initiated by the Ministry of Regional Development and Infrastructure for the purpose of decentralizing decision making process pertaining to funding of projects from regional development funds.

Before the adoption of the project, state representatives – governors implemented the state supervision over activities of local self-governments. The practical experience has demonstrated that the competence of supervision turned into an indirect mechanism of political dictatorship in the hands of governors. The Code identified prime minister as an agency for legal supervision over local self-government bodies. The Prime Minister exercise this function through relevant structural unit of the government's s administration. Before the adoption of the Code the Prime-Minister only supervised only the self-governing city of Tbilisi and municipalities within Adjara Autonomous Republic. The authors of the Code argue that this will hopefully restrict the opportunity for using the state supervision mechanism as a tool for political pressure.

Relevant ministries are determined by the Code to oversee the performance of centrally delegated competences by the municipalities. The Code also outlines the rules and procedures for exercising supervisory functions as well as rights and responsibilities of each party.

#### **4.6. Retraining Local Servants**

As per requirements outlined in the new legislation and with the ordinance N959 of May 29 2014 the government of Georgia approved a concept of continuous learning of public servants at local self-governments and an action plan

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<sup>44</sup> Organic law of Georgia on amending organic law of Georgia Local Self-governance Code, July 30, 2014, N2589-rs. Available in Georgian at:

[https://matsne.gov.ge/index.php?option=com\\_ldmssearch&view=docView&id=2447038#DOCUMENT:1](https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=2447038#DOCUMENT:1)

for the implementation of the concept.<sup>45</sup> According to the concept the following individuals and entities will be involved in continuous learning system: local self-governments, educational program providers, legal body of public law - Bureau of Public Service and Vano Khukhunaishvili Center for Effective Governance System and Territorial Arrangement Reform, the Georgian Ministry of Regional Development and Infrastructure and the advisory board for continuous learning system for local public servant which is an advisory body at the Ministry of Regional Development and Infrastructure consisting of representatives of the Ministry itself, Bureau of Public Service, municipalities, donor organizations and other government structures.

According to the concept the board will review standards to be developed for the purpose of learning program which will then be registered in the center of learning programs upon the prior approval by the Ministry. The Center will conduct annual assessment to identify learning priorities of public servants at the local level and develop annual curriculum. Learning programs will be funded by municipal budgets (Article 101 of the Code obliges self-governance entities to designate at least 1 per cent of total budgetary allocations for enhancing qualification of servants), as well as by the state budget, donor organizations and other funds raised by the Center.

The continuous learning system for local self-governments' staff will take effect in 2015.

Over the course of many years inadequate qualification of staff of local self-governments has remained a burning problem which stems out partially from the lack of normative regulation as well as from the bias demonstrated by managers and supervisors while selecting their staff members. Results of certification of the staff of Tbilisi City Hall in October 2014 corroborate the above said. 77 out of 563 employees did not show up to take tests and only 196 out of 486 participants managed to collect scores above a threshold.

On June 18, 2014 the government of Georgia adopted resolution N412 on the approval of the rule for certification of public servants pursuant to which any servant of local self-governments who has not gone through a certification process is obliged to do so before July 1, 2015.<sup>46</sup> Based on Article 134<sup>4</sup>, Clause 4 of the Law of Georgia on Public Service, the government of Georgia issued a decree N1536 on *Interim Rule for Conducting Tests as an Obligatory Stage for Conducting a Competition for Appointing an Individual as Local Self-government Body Employee and Tests as an Obligatory Stage of Attestation of a Local Self-government Body Employee*. Pursuant to the rule in order to conduct testing municipalities shall purchase relevant service from the National Examination and Assessment Center or LBPL Training Center of Justice of Georgia which will carry out tests in accordance to methodology and assessment criteria approved by the Bureau of Public Service.<sup>47</sup>

Some of local self-government body employees had worked as temporary employees over the course of many years. The flawed practice was restricted in 2012 through the law on Public Service. Interim employee can be appointed in a vacant position stipulated by Article 2 of the Law of Georgia on Conflict of Interests and Corruption in Public Service through a competition for maximum a year and for maximum for three month in other positions subject to competition. Under no circumstances shall the same individual be re-appointed in the same position'. However, enactment of the above mentioned clause has been postponed several times.

Through an amendment to the Law of Georgia on Public Service approved on October 2, 2014 the Parliament of Georgia ruled that competitions for relevant positions shall be conducted latest on December 31, 2014.

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<sup>45</sup> Decree N959 of the government of Georgia on the approval of *Concept of Continuous Learning for Public Servants of Local Self-governments* and *Action Plan for the Implementation of the Concept of Continuous Learning for Public Servants of Local Self-governments*. May 29, 2014. Available in Georgian at: [https://matsne.gov.ge/index.php?option=com\\_ldmssearch&view=docView&id=2365571&lang=ge](https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=2365571&lang=ge)

<sup>46</sup> Resolution N412 of the government of Georgia on the Approval of the Rule for Conducting Attestation for Public Servants. June 18, 2014. Available in Georgian at: [https://matsne.gov.ge/index.php?option=com\\_ldmssearch&view=docView&id=2376037&lang=ge](https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=2376037&lang=ge)

<sup>47</sup> Resolution N1536 of the government of Georgia *Interim Rule for Conducting Tests as an Obligatory Stage for Conducting a Competition for Appointing an Individual as Local Self-government Body Employee and Tests as an Obligatory Stage of Attestation of a Local Self-government Body Employee*. September 5, 2014. Available in Georgian at: [https://matsne.gov.ge/index.php?option=com\\_ldmssearch&view=docView&id=2508690&lang=ge](https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=2508690&lang=ge)

Another positive development in the implementation of competitions and attestations for local self-government body employees is the introduction of more impartial components by means of which testing has become mandatory and not limited by the scope of an institution.

#### **4.7. Discussions around Additional Mechanisms for Civic Participation**

In 2009 a new chapter *Participation of Citizens in the Implementation of Self-governance* was added to the organic law of Georgia on Local Self-governance. The provisions of the chapter were copied and inserted in a new organic law *Local Self-governance Code* (2014) as Chapter XI.

The changes taking effect in 2010 after the local elections were undoubtedly important for ensuring civil participation. However, the implementation of these changes is still critical. In order to ensure effective implementation of the changes, all necessary measures should have been under taken to inform public on their rights. The surveys demonstrated that a level of public awareness was alarmingly low and therefore, cases of exercising these rights were extremely rare.

A bill of self-governance code approved by the government of Georgia on October 30, 2013 stipulated the formation of public councils, as a mechanism for civil participation, at the level of villages as well as town districts. However, sadly these norms were taken out during the parliamentary discussions. At the same time, the new code obliged the government to draft a law to legally enshrine new mechanisms for democratic engagement later on (before January 1, 2015).

The Georgian society had become deeply involved in this process. A group of independent formed in summer 2014 under the aegis of Open Society – Georgia Foundation developed elaborated visions on one of the mechanisms of civil engagement and developed an analysis of alternatives for territorial public self-governance as a form of civil participation in self local-governance.<sup>48</sup> Based on the provisions developed in the document, a group of SCOs started implementing the project *Support to the Development of Additional Forms of Civic Participation in Local Self-governance* and held more than consultation meetings and roundtables throughout the country.

At a presentation *Challenges of Self-governance Reform – Prospects for Civic Participation in Self-governance* held on December 24, 2014 the participating organizations introduced own vision of a bill of law for civic engagement to civil society and authorities.

Currently it is difficult to foresee to what extent the Georgian authorities will consider these recommendations and what a bill of law to be discussed at the 2015 spring parliamentary session will look like.

#### **4.8. Implementation of other Commitments stipulated by the Code**

Chapter XX - transitional provisions provides a series of responsibilities to be implemented by the Georgian government at the next stage of the reform. The progress of implementation of some of these requirements was discussed above. Below is the list of those commitments which have not been implemented within the planned timeframe:

1. The Ministry of Justice of Georgia failed to perform the following task:

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<sup>48</sup> Open Society – Georgia Foundation, an analysis of alternatives for territorial public self-governance as a form of civil participation in self local-governance, 2014

- Article 160, Paragraph (a) of the Code: 'to submit to the government of Georgia a bill of a resolution for determining a rule for the identification of municipal borders for the latter's approval before July 1, 2014. The government of Georgia was to approve of the bill in the timeframe outlined in Article 165, Clause 1, Paragraph (a)
  - Article 160, Paragraph (b) of the Code: 'Ministry of Justice to submit respective state targeted program to the government of Georgia for its approval before June 2, 2014'.
  - Article 165, Clause 3: 'Ministry of Justice to ensure the approval of rules for registration, data update and publishing according to municipal registry entries before July 1, 2014'.
2. The government of Georgia failed to implement Article 165, Paragraph (b): 'the government of Georgia upon prior consultation with the council of heraldry to ensure that rules are defined for the selection and usage of municipal coat of armor, flag and other symbols before June 1, 2014'.
  3. Pursuant to Article 165, Clause 2 of the Code the Georgian government was to develop a set of legislative changes to ensure a complete delimitation of the state's and municipalities' competences and identify the areas for delegated competences and submit a bill of a law to the Parliament before January 1, 2015 which it failed to do so. In order to address this flaw, a respective change was made to the Code by the end of 2014 (on December 25) to extend the timeframe for six months i.e. till July 1, 2015.

There is still time for the authorities to fulfil other obligations stipulated by the transitional provisions of the code. However, in the knowledge that a whole range of government agencies have not started undertaken preparatory measures (for instance, those related to delimitation of the state and municipal property) it is highly unlikely that the agencies in charge will manage to fulfil their obligations within the remaining time. Therefore, it is expected that timeframes will further extend or consume much time.

## 5. Motivation of Stakeholders

### 5.1. Authorities

While assessing the completed stage of the decentralization reform, one needs to consider open or covert motivations of stakeholders without which it would be complicated to understand rationale behind their actions.

First of all it should be noted that in general public as well as in (particularly) authorities and political elites there are two essentially contradictory visions:

- Supporters of the first vision argue that the establishment of democratic principles are critical for the country's development and that there is no alternative to active civil participation in governance and granting effective rights to citizens. Moreover, this is the only way to successfully finalize the integration with the western democratic world.
- The supporters of the second vision hold that the Georgian society is not yet ready to take over the country's management which requires a long term preparatory measures to be undertaken by the country's elite (under political elites the supporters of this vision obviously imply themselves). As for the western integration, this seems to be a time consuming process and apparently less important than maintaining authority (for the purpose of the presence of good governance)

In light of more active engagement of the general public in a new reality, the supporters of the second vision were reluctant to openly promote their attitudes. In order to avoid undesirable outcomes, the latter often requested to



hold wide scale discussions with the hope that the process would drag in time, public become less interested and the situation would change for their favor..

**Executive authorities - government** The presence of two competing camps is obvious at this level.

- Heads of a whole range of government institutions (at each and every government) are sure (and most of them mean it) that only under the centralized governance will it be possible to address the challenges that the country faces. They are trying to prevent or minimize any attempt or chance to change the system of governance tested over decades. This camp consists mostly of law enforcement and economic agencies.
- The second group is smaller than the one referred to above. The members of the group rely mostly on public support however, in light of the presence of strong mercantile clan structures and the absence of a strong middle class, their influence is too weak. The latest change of authorities and a clear support demonstrated by Bidzina Ivanishvili towards this vision, has considerably reinforced positions of the second group. The group consists of more 'casual' individuals who have moved to politics from civil society, business and other fields rather than from the nomenclature background.

**Legislative branch – Parliament.** Unlike the government, the Georgian parliament is characterized with more diversified interests as unlike the previous one it is not subject to a single power dictatorship. The parties under the ruling coalition have diverse goals and the constitution of the lead Georgian Dream party is quite diverse in terms of standpoints of their members. The key challenge faced by the Georgian MPs is that many of them cannot tell the difference between presidential and parliamentarian models and therefore find it difficult to understand that in case of failure of the government policies they too (as a ruling force) will have to shoulder the burden of consequences. In general, the following groups can be distinguished in the Parliament:

- A group with liberal and democratic values
- Supporters of Georgian traditional ethnocentric values
- Supporters of libertarian, post-modern ideology
- Representatives of old, party-nomenclature system
- Groups united by local mercantile interests
- Individuals who consider the membership in parliament as a guarantee for upholding advanced social status
- Individuals without any ideological grounds and united around a leader

**Local authorities.** Unlike centers the representatives of the authorities in the regions often tend to refrain from expressing their positions and mercantile interests often prevails over the dynamics in self-governments (starting from attempts to protect business interests all the way through to hiring close associates in local structures). Ideology based confrontations are less evident at the local level while activities are undertaken pursuant to directives from or situations in the centers). The process involving preparation for the reform clearly demonstrated the dynamics within the disposition of local authorities:

- At the initial stage the local authorities thought the preparation for the reform was just a campaign activity and they simply followed instructions they would receive from the center.
- After the criteria for the reform had become more concrete, the local authorities started thinking of those benefits (increased funding, opportunity for being selected on higher positions in more municipalities etc) they could potentially gain from the reform and of those challenges that changes may entail (some do not approve

of the idea of direct elections and increased responsibilities of local authorities, many more try to maneuver between the two camps at the central level as it is difficult to detect a winner).

## 5.2. Society

**Opposition Political Spectrum.** Opposition parties (both in the Parliament and outside of it) struggle to strengthen their own positions.

- Parliamentary opposition constantly criticize the ruling coalition and therefore it is highly unlikely to acknowledge (and even more so to fully support) actions including correct ones undertaken by the ruling coalition for the fear to lose already declining political dividends.
- Non-parliamentary opposition spectrum enjoys even weaker public support. Many parties try to enter into a deal with ruling power and any of the groups within this power to hit other groups and gain political or material benefits in such a way.

**Civil Society Organizations.** The scope of operation of CSOs is quite broad. However, only few of them work on the issues related to decentralization (what is implied here is conceptual development rather than implementing projects targeting social, civil education etc in local municipalities). Therefore, awareness of most CSOs on more specific issues is quite low. Under such circumstances even though CSOs support the statements expressing support to the decentralization reform, they are yet to become multipliers of the decentralization ideas.

**Academia and experts.** In spite of the fact there is a great deal of expertise accumulated in many academic fields, there is still lack of qualification of modern standards of local self-governance and therefore many experts do not have in-depth knowledge of problems and consider the decentralization reform only from the perspective of their own specialization (economy, social field, ecology). Media spotlights which selectively focuses a limited circle of experts (so called celebrities) is yet another problem which fails to contribute to effective and qualified information campaign and awareness raising.

**Other interest groups and institutions.** Attitudes towards the decentralization reform differ greatly across a wide spectrum of other groups (churches, religious organizations, professional interest groups, private sector etc). However, it is still possible to divide these groups into two core groups:

- Groups that often fall under wrong influence (accidentally or purposefully) and are affected by visions delivered in a wrong manner (i.e. decentralization is linked with ethnic separatism, overestimated risks for embezzlement of public financial resources etc).
- Groups who are directly benefiting from overly centralized system (centralized state orders, other funding sources) negatively assess the reform while those who think that decentralization system will be beneficial for their businesses or activities support the implementation of profound changes.

**International and donor organizations.** In light of the lack of the state's long term visions and core visions of the country's development would change together with the changes in the government, the international organizations found it difficult to develop their long-term strategies as tailoring these strategies to new political realities has proved to be a complicated and time consuming process (replacing ultra-libertarian economic model with a welfare state, transforming highly centralized and modernization focused state system into a decentralized one etc). Therefore, programs and projects implemented by donor and international organizations have also depended on the state's policies as a result of which:

- Announcement of decentralization by the new government as their top priorities were met with skepticism of international organizations as there was fear that the reform would be just a façade for the government to make believe that they were actually working on the implementation of the commitments taken during a pre-election campaign.
- Later on when then the government of Georgia started preparing legal framework for the reform, many thought (often thanks to inaccurate information provided by the opponents of the reform) that the implementation of the reform in this manner was a whim of a single ministry, more specifically of a small group in that ministry.
- A dilemma of protecting professional honor should also be considered in this context: over the course of years many of international donor organizations praised reforms in the field of self-governance and admitting that hypercentralized system needed to be replaced would hit hard their reputation. .

The situation has changed after the adoption of the Self-governance Code (even with a curtailed version) by the Parliament and former opponents of the reform try to attribute the initiation of the reform to themselves. However, it can be assumed that it will take some time for international organizations to adapt to a new reality.

### ***5.3. Mistakes of the Reformation Process***

The process of the preparation for the reform saw fierce resistance from those powers who take least, if any interests in the implementation of effective decentralization in the country. Compromises taken by the initiators of the reform at various stage of elaborating a legal framework indicates to the extent of resistance.

However, the above said does not mean that the authors made no mistakes. Some of assumptions made in the beginning regarding the implementation of the reform had been inherently flawed. The lack of time and human resources let alone scarce financial resources badly affected the implementation process. There were flaws during the implementation phase in terms of resource allocation, promoting the goals of the reform and awareness raising as well as conducting political processes.

#### ***Flaws of Working Process***

- At the stage of preparing legal framework the authors of the bill of the code would often lose time in futile discussions with those who did not approve of the adoption of the code in its proposed content. Discussions often involved blame-shifting and overly sophisticated theoretical debates in light of pressing time.
- The authors of the reform from the authorities (the Ministry of Regional Development and Infrastructure, the State Chancellery, Department of Relations with Regions and Local Self-governance Bodies at the State Chancellery) failed to effectively address the issue related to ignorance demonstrated by other government agencies towards the reform. Often the ministries would be reluctant to provide requested information in a timely manner either purposefully or because the reform failed to hit their priority list.

#### ***Weak Resource Provision:***

- Human resources of those who ideologically supported the reform could not be fully mobilized resulted in the scarcity of qualified personnel and therefore key activities were often carried out solely by civil servants and a small group of CSO activists.
- The state failed to provide a solid material base for the process. Independent expertise was mostly provided by dedicated experts without any fee. Financial support provided by the international organizations over a

short period of time could not manage to cover all related expenses (i.e. per diem for regional outreach, consultation meetings etc).

#### ***Mistakes Made while Mobilizing Public Support:***

- In spite of a wide coverage of audience, the authors of the reform (because of time constraint or scarcity of human or financial resources) could not manage to meet with every interest or political group which would have been helpful for mobilizing public support for the reform.
- CSOs failed to set in motion a media campaign which would have contributed to raising of awareness of the public on the reform agenda.

#### ***Flaws of Political Character***

- Unconditional support of Prime Minister Ivanishvili was the key stronghold of the reform authors from the very beginning of the process. Although this assumption had its ground and the Prime Minister openly expressed his support on several occasions, later on after the formation of a new cabinet the opponents of the reform became more active as they saw a window of opportunity to suspend or at least slow down the implementation of the reform.
- Compromises made in relation to specific directions of the reform sought to gain opponents' support which was not the most reasonable approach in the knowledge of the absence of guarantees as opponents were never happy with compromises and always demanded new and unilateral one.

## **6. Situation up to Date and Future Prospects**

### ***6.1. Dynamics of the Reform Implementation***

If one compares pre-election program proposed by the Georgian Dream Coalition with the *Key Principles of the Strategy Decentralization and Development of Self-governance of the Government of Georgia*, also original and final versions of the Code and the implementation of the transitional provisions of the law, one will be able to observe the dynamics of the reform implementation.

***Public Self-governance.*** Unlike the government's strategy and an original version of the Self-governance Code, the final version of the law contains no reference to even a limited form of a public self-governance concept. The resolution of related issues is dragged in time and agencies in charge have failed to submit a relevant bill of law to the Parliament before the end of 2014.

***Territorial optimization of self-governments.*** According to the strategy new municipalities should have been established throughout the country (59 municipalities) before the 2014 local elections. In a working version of the code this figure was reduced first to 20 (municipalities with more than 10.000 residents in their centers), then to 13 (municipalities with more than 15.000 residents in the centers) and finally to 7 regional centers which did not have a status of self-governing cities. Optimization even in a form of a pilot did not take place in either of the seven dissolved municipalities as the change had not gone further than the separation of cities from the rest of the municipalities. Governing authorities of both types of municipalities (city and community) remain in former centers which undermines the guarantee of irreversibility of the process. Whether or not the process of territorial optimization for the rest of the municipalities be accomplished a year prior to the 2017 local elections as enshrined in the Code depends on the government's political will.

**Regional self-governance.** According to the government's strategy the introduction of some elements of self-governance should have taken place on the regional level through creating regional boards of local self-governments' representatives. A head of the board would be nominated by the board members and approved by the government of Georgia. Eventually, as the development of the bill of the code progressed, idea to establish regional boards was rejected and instead it was proposed to form a consultation council which would consist of heads of self-government bodies. An institute of governors appointed by the center was maintained in the regions. However, a regional level will have no competences or budget.

**The capital Tbilisi.** Representative and executive bodies should have been created at Tbilisi district level with respective competences and budgets. However, there is no entry in the approved organic law on setting up self-governance bodies at the district level in Tbilisi.

**Election system.** The strategy envisaged direct election of mayors and gamgebelis while councils would be selected based on personal proportional single vote system. However, currently, the Code only refers to the principle of direct elections for mayors and gamgebelis, while existing *mixed majoritarian proportional system* at the local level was only slightly affected by the changes to the Code undertaken in 2014. The authorities did not even consider holding open discussions around the possibility to introduce other systems.

**Economic foundations.** According to the government's strategy local self-governments' own revenues should have increased by introducing shared taxes, in other words, a part of income tax would be left locally. A process involving handing over a large portion of the property being in the State's ownership should have been handed over to the local self-governments. Instead of introducing shared (percentage) taxes as stipulated by a bill of amendments developed and submitted by the government to the Parliament in fall of 2014 now it is planned to give self-governments just specific types of income tax which are less in volume and difficult to forecast and therefore less likely to ensure fiscal independence of self-governments. Transitional provisions of the Self-governance Code indicated timeframe for the government of Georgia to start preparation for the transfer of property to municipalities. However, there are no sign of this process taking pace. .

In general the following assumptions can be made while assessing the impact of the changes:

1. Unlike the original visions, the enacted organic law does not contain many of novelties (regional boards, preferential election system) that were initially hoped for
2. A whole range of issues are regulated only partially and therefore likely to be prolonged (public self-governance, complete territorial optimization of the municipalities, transfer of finances and property to local self-governments)
3. In spite of the negative developments, there have still been positive systemic changes among which direct elections of gamgebelis/mayors and a tendency of disintegrating administrative vertical stand out as most important. However, these changes are at the initial state are yet to acquire an irreversible nature.

## 6.2. Future Steps

There are three possible courses that the decentralization reform in Georgian may take in future:

1. Pessimistic - the implementation of the decisions may suspend for technical or political reasons, or half-way implemented changes may fail to bring about positive impact which will allow the opponents of the reform to demand the restoration of centralized governance (a scenario similar to 2006 reform).

2. Mid-term – implement only those provisions that have been envisaged at the first stage of the reform without follow up processes (similar to a half way reform in 1997-1998)
3. Optimistic - approved changes are implemented successfully and they are followed by future steps scheduled to be undertaken for coming years and enshrined in the legislation so that all objectives outlined in the government's strategy are attained.

Considering the existing context, the implementation of the optimistic scenario is possible only under a strong public support. At the same time, there are other pre-requisites for the successful implementation of the reform:

- It is critical that the government keep the declared course and maintain the development of self-governments among the top strategic priorities in the future.
- The civil society needs to invigorate awareness raising campaign and encourage best practices and show cases so that there is the public demand and pressure on the authorities.
- International and donor organization to commit to a long term and targeted support to the decentralization process and thus help the civil society to achieve their goal.

It should be noted that lately the supporters of the reform have not shied away to openly express their positions:

- In October 2014 Republican Party declared that one of their priorities for the coming two years is 'to establish an effective governance which requires:...that no patronage is exercised over central and local governments or self-government bodies by special services and party structures, fostering the outcomes of the self-governance reform of the first stage (full exercise of competences by mayors, gamgebels and councils) and immediate commencement of the the second stage (enlarging financial and economic bases for the municipalities, structural optimization)... structuring prosecutor's office, police and special services in a manner which is synchronized with European standards, so that there is no room or opportunity for the restoration of police-repressive system.<sup>49</sup>
- A leader of Free Democrats, a party that was previously a member of the ruling coalition, Irakli Alasania, after resigning from the office of the Minister of Defense, stated that the self-governance reform has been significantly hindered. Speaking in a talkshow aired by TV channel Imedi Alsanias said the self-governments were underdeveloped. 'the fact that the reform has been failed is not the worst. What is worse is that the security service has a lead in policy making'<sup>50</sup>
- Just after a week in his appeal to the Parliament of Georgia the President of the country highlighted the importance of accomplishing the reform and the need for non-interference of central authorities in the affairs of local municipalities: 'Completion of the decentralization reform in due course is of utmost importance for our country's western integration. Socio-economic development of Georgia's regions can only be ensured by providing them with effective financial and administrative leverages. No illegal intervention in self-government bodies shall be tolerated from those individuals and authorities who have no legal agency to do so'.<sup>51</sup>

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<sup>49</sup> A statement of Republican Party on a Two Year Political Agenda. October 30, 2014. Available in Georgian at: <http://republicans.ge/index.php?module=News&func=display&sid=3858&lang=ka#.VGY9ozSuf84>

<sup>50</sup> *Interpressnews* 21:38 November 8, 2014. Irakli Alasania: Security service is a lead in policy making. Available in Georgian at: <http://www.interpressnews.ge/ge/politika/304253-irakli-alasania-politikis-tsarmmarthveli-aris-ushishroebis-samsakhuri.html?ar=A>

<sup>51</sup> A speech delivered by the President of Georgia in the country's supreme legislative body. November 14, 2014. Available in Georgian at: <https://www.president.gov.ge/ge/PressOffice/News/SpeechesAndStatements?p=9120&i=1>

On October 31, 2014 the government set up *Commission on the Reform of Georgia's Regional Development and Local Self-governance*.<sup>52</sup> The members of the commission were ministers, governors and few MPs while no members of the public were invited.<sup>53</sup> As for the team who implemented the local self-governance reform in 2013-2014, only deputy head of the minister of regional development and infrastructure can be invited as a member.

## 7. Conclusion

The reform of decentralization ongoing in Georgia is the fifth over the past two decades after the 1991, 1997, 2001 and 2006 reform. What makes the current reform different from its predecessors is that the need for the systemic changes is declared by the law. There is an obvious progress when it comes to the comparison with the previous reforms which provided just superficial changes. However, the implementation of profound changes has failed to gain momentum and therefore there is a risk of slowing down or suspend the reformation process.

Neither supporters nor opponents of the reform are happy with the course it has taken:

- Supporters of the reform (civil society, population in particular in the regions) argue that the reform had many flaws and failed to achieve the goals set in the onset of the reform and highlighted both the pre-election program of the Georgian Dream Coalition and the government's strategy approved in 2013.
- On the other hand the opponents of the reform argued that it involved too much of compromise and now the time has come to restore to the pre-reform situation in the whole range of directions and to an older governance vertical through using covert administrative leverages (prime-minister > governors > mayors/gamgebelis).

Success of the reform depends of which side will prove to be more enduring and with stronger willpower to turn their visions into reality.

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<sup>52</sup> Resolution N604 of October 30, 2014 *On Setting Up a Commission on the Reform of Regional Development and Local Self-governance and Approving its Statute*. Available in Georgian [https://matsne.gov.ge/index.php?option=com\\_ldmssearch&view=docView&id=2560070&lang=ge](https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=2560070&lang=ge)

<sup>53</sup> As of in the case of Mountain Development Commission (see a resolution N415 of June 25, 2014 of the government of Georgia on *Setting up Mountain Development State Commission and Approving its Statute*).