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Ensuring Ethical Behaviour in Georgia's Public Sector: Rules, Training and Enforcement

POLICY BRIEF

Executive Summary

Since 2004, Georgia has made considerable progress in terms of combating corruption and has effectively eliminated bribery in public services. However, effectively addressing other, more complex types of corruption and ensuring consistent application of all anti-corruption rules and regulations in practice remains a problem, largely because the bodies responsible for their enforcement are either weak or non-existent.

Georgia's anti-corruption legal framework is generally strong and compliant with the international best practices in this field. The proposed Code of Ethics for civil servants also covers most of the relevant issues, although provisions on post-public employment of former civil servants are missing.

The EU Association Agenda requires the Georgian Government to take effective steps to prevent, detect and address corruption, especially high level corruption, and to implement administrative reform aiming at building an accountable, efficient, effective, transparent and professional civil service. Pursuant to these goals, the 2016 National Action Plan provides for training civil servants on public sector ethics.

The Civil Service Bureau has conducted 61 training sessions so far in 2016 and has trained over 1,000 individuals. The training sessions have covered all relevant areas and have combined theoretical learning with practical exercises, although they have been rather general in terms of content and have not been tailored to the specific needs of different sectors or the corruption risks that exist there.

The government must therefore continue to provide training to civil servants and include the representatives of the bodies that have not been involved thus far (e.g. independent regulatory bodies and state-owned enterprises). The government must also conduct an assessment of corruption risks in various parts of the public

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administration and design sector-specific training courses accordingly. Georgia would also benefit from a separate training programme on ethics for elected/political officials.

Georgia also needs to clearly assign the responsibility for the enforcement of different ethics/integrity rules to specific bodies and possibly also establish an independent anti-corruption agency to deal with the violations committed by political officials.

Introduction

Since 2004, Georgia has implemented a number of ambitious reforms that have almost completely eliminated petty corruption and bribery in the public services and have improved the overall performance of the government bureaucracy. At the same time, Georgia has not yet effectively dealt with more complex types of corruption and potential or actual conflicts of interest or ensured integrity in the public sector. While the country's legal framework has been improving over the last decade, proper application of the relevant rules and regulations in practice has proven a considerable challenge.

The Association Agenda adopted by the Georgian Government and the European Union following the signing of the Association Agreement in 2014 highlights Georgia's commitment to "[t]ake adequate measures at all levels of society to prevent, detect and address corruption especially high level corruption."¹ The Association Agenda also requires the Georgian Government to "[p]ursue administrative reform with emphasis on public administration and on building an accountable, efficient, effective, transparent and professional civil service." The Georgian Government's Action Plan for the implementation of the Association Agreement in 2016 obliges the Civil Service Bureau to "regularly train civil service employees on the issues of ethics, whistleblower protection, and human resources management."

In this context, it is important to consider the following questions:

- Does Georgia's primary and secondary legislation cover all major issues relevant for ensuring integrity in the public sector and ethical behaviour of public officials and civil servants?
- Are sound monitoring and enforcement mechanisms and procedures in place to ensure that the existing integrity rules are applied appropriately and consistently in practice?
- Do public officials and civil servants receive sufficient training, so that they are aware of the existing regulations and are capable of handling the challenges that they might face in real life?

¹ Association Agenda between the European Union and Georgia, http://eeas.europa.eu/delegations/georgia/documents/eap_aa/associationagenda_2014_en.pdf (accessed on 15 June 2016).

International Practices and Standards

The importance of establishing and enforcing the rules for ethical behaviour is reiterated in the UN Convention Against Corruption (UNCAC) whereby “each State Party shall promote, inter alia, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system” and will also “endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.” The UNCAC also includes the commitment of its signatories to “promote education and training programmes to enable [civil servants] to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions.”²

While there are bound to be considerable variations in the content of codes of conduct/ethics across different countries, any effective document of this kind should regulate a basic set of key issues. The Model Code of Conduct for Public Officials adopted by the Council of Europe's Committee of Ministers in 2000 is a good reference point in this context. It covers the following main areas:

- General principles of ethical conduct
- Reporting possible violations
- Conflict of interest, declaration of interests, and incompatible outside interests
- Political or public activity
- Protection of public official's privacy
- Gifts, reaction to improper offers, and susceptibility to influence by others
- Handling of the information held by public authorities
- Use of public and official resources
- Activities after leaving the public service (including post-public employment) and dealing with former public officials
- Integrity checking, supervisory accountability, observance of the code and sanctions.

Importantly, the model code states that it can also apply to employees of private organisations performing public functions.³

Needless to say, no code of conduct/ethics is likely to be effective, unless the public officials and civil servants who are expected to follow its provisions are aware of

² UNCAC, Articles 7-8

³ Recommendation No. R (2000) 10 of the Committee of Ministers to Member states on codes of conduct for public officials, adopted by the Committee of Ministers at its 106th Session on 11 May 2000.

its contents. Hence the need for a thorough and comprehensive training of public sector employees on the issues of ethics, integrity and prevention of corruption.

While the training offered to public officials and civil servants should cover all the relevant rules and regulations (ideally established through the relevant laws and codes), there are a number of further important things to consider:

Type of training - Officials and civil servants can be offered either (1) general training designed to promote understanding of corruption and of anti-corruption measures or (2) training adjusted according to the specific corruption risks that exist in a particular sector.

Needs assessment - Where a training course aims to address the specific challenges of a certain segment of the public sector, it should ideally be preceded by a survey that would identify the most likely integrity-related risks in that segment and the corresponding training needs.

Theory and practice - While passing on theoretical knowledge is important, modern training sessions should also include practical exercises reflecting the situations that employees of specific public institutions are likely to face in real life.

Selection of participants - Since the budget allocated for training is likely to be limited, it is important to choose the most relevant individuals for participation in the training sessions. The most obvious choices are new recruits as well as senior officials (who can pass on the knowledge to their subordinates) and the officials who are likely to face higher corruption risks.

Integration into a wider anti-corruption policy - Training programmes are unlikely to be effective unless they are designed within the framework of a general anti-corruption effort rather than being isolated one-off initiatives.⁴

Legal Framework in Georgia

The most important pieces of Georgian legislation in terms of public sector integrity, ethics and prevention of corruption include the new Civil Service Law (which is set to come into force on 1 January 2017) and the Law on Conflict of Interest and Corruption in Civil Service, as well as the upcoming government decree On General Rules of Ethics and Conduct in Public Institutions (referred to as "Code of Ethics" further in this text) which has been drafted and is expected to be formally adopted in the near future.

The Civil Service Law⁵ establishes the general principles of civil service in Georgia, including those related to the integrity of the service (e.g. impartiality, accountability, political neutrality, transparency), the rights and responsibilities of civil servants, the rules of recruitment, promotion, and dismissal, as well as disciplinary responsibility for violations (including the violations of ethics rules).

⁴ Ethics Training for Public Officials, A joint study prepared by the OECD Anti-Corruption Network for Eastern Europe and Central Asia (ACN) and SIGMA, March 2013, 9-10; Anti-Corruption Training in sectors - current approaches, experience, and evidence about effectiveness, U4 Anti-Corruption Resource Centre, 18 July 2014, 2-5.

⁵ The Georgian Law on Civil Service, adopted on 27 October 2015.

The Law on Conflict of Interest and Corruption in Civil Service contains more detailed integrity-related rules. In addition to establishing various anti-corruption regulations, it also includes a special chapter on “general rules of conduct of a civil servant.” The latter reiterates the general principles of the service established by the Civil Service Law, while establishing additional rules concerning access to public information, conflict of interest and gifts.

The Code of Ethics is yet to be adopted but its draft has been shared with stakeholders and civil society organisations (including Transparency International Georgia). Like the two laws discussed above, the Code reiterates the general principles of civil service but also establishes specific rules in a number of areas, including conflict of interest, gifts, freedom of expression of civil servants, independence in professional activities, equality, accountability, relations between supervisors and subordinates, whistleblowing, transparency, access to public information, and participation of citizens in the activities of the civil service. According to the draft, the Code will apply to professional civil servants as well as public officials (except for the president, the prime minister, Parliament members, ministers and judges). Importantly, the current wording of the draft suggests that it will also apply to advisors and other temporary employees of public institutions.⁶

While the draft Code of Ethics is generally sound and covers most of the key issues that a document of this type is supposed to regulate, one important omission is the lack of any provisions concerning the activities and the employment of former civil servants and public officials after leaving the civil service. The Council of Europe's Model Code of Conduct discussed earlier is a good reference point for such regulations. While the primary legislation (the Law on Conflict of Interest and Corruption in Civil Service) does include some provisions on post-public employment, they are not sufficiently detailed and do not apply to the officials and employees of local government bodies. Also, contrary to the recommendation in the Council of Europe's Model Code of Conduct, the Code does not apply to the employees of private organisations performing public functions.

It is worth mentioning that the National Anti-Corruption Strategy adopted in 2015, as well as the action plan for its implementation, refer to the need to revise the ethics and conflict of interest regulations and to improve the knowledge of these regulations among the civil servants through training programmes.⁷ This is a positive step in terms of the integration of ethics rules and training into a broader anti-corruption policy of the state.

Ethics Training for Civil Servants

According to the Civil Service Bureau, 31 training sessions on ethics and general rules of conduct have taken place in 2016 thus far and 556 people have been trained. Additionally, 30 training sessions on whistleblower protection have been held and 538 people have been trained. The participants of these training sessions included representatives of local government bodies and legal entities of public law. Further training sessions for civil servants from the central government bod-

⁶ Transparency International Georgia's correspondence with the Civil Service Bureau, September 2016.

⁷ The Georgian Government Decree #170 On Adopting the Georgian National Anti-Corruption Strategy and the Action Plan for the Implementation of the Georgian National Anti-Corruption Strategy in 2015-2016, 20 April 2015.

ies will take place before the end of 2016. The training sessions covered important issues, including general rules of ethics and conduct, conflict of interest, gifts, asset disclosure, disciplinary sanctions, revolving door (post-public employment) and whistleblower protection.

Importantly, according to the agenda of the sessions provided by the Civil Service Bureau to Transparency International Georgia, the training included role-play and modelling along with theoretical sessions. In the majority of cases, the participants of training sessions included representatives of human resources, internal audit and legal departments of the public institutions, which is a reasonable choice.⁸

At the same time, it appears that the content of the training sessions is identical for all public institutions/participants and that training is therefore neither based on the assessment of corruption risks in different sectors nor designed to address the specific needs of various parts of the public sector. This is a significant gap unless the current training sessions are only the first stage of the effort to be followed by sector-specific training later. It is not clear either whether any training sessions are planned for the employees of independent regulatory commissions and state-owned enterprises. Also, as recommended by the OECD ACN,⁹ Georgia would benefit from a separate training course on ethics for political/elected public officials who are not covered by the current training or the draft Code of Ethics.

Enforcement

While Georgia's legal framework is generally strong and compliant with international best practices, ensuring its consistent application and effective enforcement of the existing regulations remains a challenge.

A 2015 report by Transparency International Georgia found that, although most of the government ministries did have internal bodies responsible for the enforcement of ethics and integrity rules (internal audit units were such bodies in the majority of cases), those bodies were generally ineffective in practice as they had not identified any violations of the relevant rules in 2010-2015 despite multiple occasions where the media and the civil society organisations had reported such violations. The report also found that Georgia's independent regulatory commissions did not have any internal enforcement bodies. Meanwhile, as far as external enforcement is concerned, neither the Anti-Corruption Council nor the Civil Service Bureau had appropriate powers, while the State Security Service's Anti-Corruption Department was an extremely opaque body, which made it difficult to assess its work and effectiveness.¹⁰

The persistent political (partisan) influence on the civil service also continues to be a threat to its integrity as demonstrated by mass dismissals of civil servants after the change of government following the 2012 parliamentary elections.¹¹ The continued presence of security officers in public institutions is another factor, which endangers the independence and integrity of civil service.¹²

⁸ Transparency International Georgia's correspondence with the Civil Service Bureau, September 2016.

⁹ Ethics Training for Public Officials, 9.

¹⁰ Georgian Anti-Corruption Legislation: Implementation in Practice, Transparency International Georgia, 2015, http://www.transparency.ge/sites/default/files/post_attachments/georgian_anti-corruption_legislation_implementation_report_eng.pdf (accessed on 11 October 2016).

¹¹ Georgia National Integrity System Assessment 2015, Transparency International Georgia, 2015, 54-55.

¹² Transparency International Georgia, "And, Again, Security Officers", <http://www.transparency.ge/en/blog/and-again-security-officers> (accessed on 11 October 2016).

Conclusions and Recommendations

Georgia has taken important steps toward improving its legal provisions designed to ensure the integrity of the public sector. The proposed Code of Ethics for civil servants, if adopted, will be another step toward this goal.

The ethics training that the Civil Service Bureau has been conducting for civil servants in 2016 is equally important in terms of increasing the integrity of Georgia's public administration. The scale of the training programme suggests that it can significantly increase the knowledge of the existing regulations among the civil servants.

At the same time, a number of gaps remain in Georgia's legal framework, while effective enforcement of the current rules and regulations in practice is yet to be achieved. The training of civil servants also requires adjustment in order to better address the needs of different parts of the public sector.

The following proposed steps would help eliminate the remaining gaps in the legal framework and render the training of civil servants more effective:

- Conduct studies of corruption risks in different sectors of the public administration and develop sector-specific training programmes accordingly.
- Add provisions on post-public employment to the Code of Ethics and ensure that these are reflected in the training courses.
- Provide ethics training for the representatives of independent regulatory commissions and state-owned enterprises.
- Develop ethics training programmes for political/elected public officials.
- Take effective steps to eliminate political (partisan) influence on the civil service.
- Ensure effective enforcement of the existing integrity regulations, inter alia, by designating the bodies responsible for this task; consider the possibility of establishing an independent anti-corruption agency for dealing with possible violations committed by political officials.

