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to the United Nations
Convention against Corruption**

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**Review of implementation of the United Nations
Convention against Corruption**

Executive summary

Note by the Secretariat

Addendum

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II. Executive summary

Georgia

1. Legal system

The United Nations Convention against Corruption (“the Convention”) was ratified by the Parliament of Georgia on 4 November 2008. The power to enter into treaties is contained in Article 65 of the Georgian Constitution, and requires the signature of the President and ratification by Parliament.

The 1995 Constitution represents the supreme law of Georgia. In 2010, the Parliament approved amendments to strengthen coherence with international legal norms and standards. The amendments significantly transformed the structure of the Government, enhanced the protection of private property, strengthened judicial independence and local governments and increased the role of political parties.

The judicial system is comprised of the Regional (City) Courts, the Appellate Court, the Supreme Court and the Constitutional Court. Binding international treaties are self-executing, and prevail over domestic laws other than the Constitution.

Overview of the anti-corruption legal and institutional framework

Anti-Corruption Interagency Coordination Council

Established in 2008, it is chaired by the Minister of Justice and includes representatives of each branch of Government as well as non-governmental and international organizations. Its mandate includes developing national anti-corruption policy and monitoring its implementation. The Analytical Department of the Ministry of Justice serves as a permanent Secretariat for the Council.

Public Council of the Prosecution Service

It was created to increase the transparency and public supervision of recruitment, retention, promotion and dismissal of staff of the Prosecution Service. The Public Council participates in selection and training, and also supervises the implementation of the Strategy and Action Plan for the Reform of the Prosecution Service.

Anti-Corruption Department of the Prosecution Service of Georgia

Established in 2010, its primary mandate is to investigate and prosecute significant corruption cases, including those against high-level officials.

Office of the Public Defender (Ombudsman)

It is an independent body with jurisdiction to review and investigate public complaints of human rights violations in Georgia, which can include corruption offences.

National Anti-Corruption Strategy and Action Plan

Adopted for the first time in 2005, it defined the main anti-corruption principles and focused on eradicating public corruption. This included the development of clear anti-corruption policies, vigorous prosecution and new approaches to good governance.

In 2010, a new Strategy was adopted, designed to consolidate achievements and outline priority areas. This was followed by the development of a new Anti-Corruption Action Plan, focusing on the prevention of corruption and proposing several objectives, including: (a) Modernization of the public service; (b) Competitive and corruption-free private sector; (c) Enhancing the administration of justice; (d) Increased inter-agency coordination; and (e) Prevention of political corruption.

A significant innovation is the recent establishment of Public Service Halls in major cities throughout Georgia, which offers all public services for citizens under one roof to obtain passports, register property or interact with the Government in other ways. Five locations are open, with eleven more to follow. In addition, Georgia will establish Village Development Centers to serve rural areas.

2. Implementation of Chapters III and IV

Criminalization and Law Enforcement (Chapter III)

2.1.1. Main findings and observations

Bribery offences; trading in influence (articles 15, 16, 18, 21)

Active bribery of national public officials is addressed in Article 339 of the Criminal Code (CC), which makes it an offence to promise, offer or give, directly or indirectly, money, securities, other property, material benefit or any other unlawful advantage to an official or third party beneficiary. Passive bribery is addressed in Article 338, and covers both requests and acceptance of money or other benefits to perform or not perform a particular act. Foreign public officials and officials of foreign public international organizations are included in these Articles.

Article 339 makes both active and passive trading in influence a criminal offence, and conforms to the requirements of the Convention. This statute encompasses both acting and refraining from acting, and does not require that influence was actually exerted or desired results were achieved.

Active and passive bribery in the private sector are criminalized in Article 221. Passive bribery goes beyond the minimum requirements of the Convention, and prohibits either the request or the receipt of benefits by private sector officials.

Laundrying of proceeds of crime; concealment (articles 23, 24)

Georgia has adopted comprehensive criminal provisions to address money-laundering in Articles 194, 194¹ and 186. Significantly, in 2010, the Government prioritized the investigation of money-laundering and financial aspects of criminal activity in Georgia. As a result, from 2009 to 2011, money-laundering prosecutions rose from 6 to 143, while convictions rose from 1 to 123.

Money-laundering is defined broadly in Article 194 to include “giving a legal form to the illegal and/or undocumented property [...] for purposes of concealing its illegal and/or undocumented origin”. The inclusion of “undocumented property” extends liability to include property that is suspected of being derived from criminal activity. Articles 186 and 194¹ also criminalize the knowing use, acquisition, possession or realization of proceeds derived from criminal activity without the additional purpose of concealment. The scope of Article 194 was amended to

include conversion or transfer of criminal proceeds with the purpose of helping another person evade the legal consequences of the underlying criminal activity. In addition, Article 124¹ of the Criminal Procedure Code (CPC) permits law enforcement monitoring of bank accounts to identify suspicious financial transactions and to facilitate asset tracing.

Predicate offences are not enumerated so as to maximize the scope of the money-laundering provisions. The definition of property includes both tangible and intangible property, including intellectual property and licensing rights.

Georgia plans to officially furnish copies of its money-laundering legislation to the Secretary-General of the United Nations in the near future.

Embezzlement; abuse of functions; illicit enrichment (articles 17, 19, 20, 22)

Embezzlement is criminalized in Article 182 and makes illegal the unauthorized appropriation or embezzlement of another's property, including in the private sector.

Article 332 criminalizes the abuse of official authority by public officials who act to the detriment of the public interest for the purpose of deriving profit or advantage. Criminal liability is extended to intentional, as well as reckless and negligent, behaviour, thereby going beyond the minimum requirements of the Convention.

Although Georgia has not specifically criminalized illicit enrichment, it is considered that such cases are covered by the money-laundering provisions. In addition, the recent implementation of an online asset declaration mechanism for senior public officials aids in monitoring and investigation.

Obstruction of justice (article 25)

Article 372 prohibits conduct to influence witnesses, victims, experts or interpreters to induce false testimony. Legal persons may be held criminally responsible, with penalties including suspension of licences, fines or liquidation.

Articles 364 and 365 prohibit the use of physical force, threats or intimidation to interfere with the exercise of the official duties by a judicial officer or law enforcement official. Such protections are expressly extended to jurors and defence attorneys. Such offences committed by a public official are subject to enhanced penalties.

Liability of legal persons (article 26)

The scope of such liability, defined in Article 107,² comprises money-laundering, commercial bribery, passive and active bribery and trading in influence. Penalties include liquidation, deprivation of business licence, fine and/or forfeiture of property. Criminal liability of legal persons does not extend to misappropriation or embezzlement.

The release from criminal responsibility of the natural person who committed the act shall not be a basis to relieve the legal person from criminal responsibility. In addition, the criminal liability of legal persons is without prejudice to the criminal liability of the natural person who committed the offence.

Participation and attempt (article 27)

The CC criminalizes aiding and abetting, attempt and preparation for both perpetrators and co-perpetrators. The joint participation of two or more persons in the commission of a crime is covered by Articles 23 to 25, which divides participants into “organizers”, “instigators” and “accomplices”.

Attempt to commit a crime, including corruption offences, is covered by Article 19. In addition, Georgia has criminalized the preparation to commit a crime under Article 18.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (articles 30, 37)

Courts must take into account the gravity of the offence and the person’s criminal history at sentencing. Sentences can include restriction of liberty, imprisonment, deprivation of the right to hold a position, deprivation of a business licence, correctional labour and community service. Sanctions imposed are without prejudice to the exercise of disciplinary power against civil servants.

Article 173 of the CC defines the scope of immunity from arrest. Except with regard to the President or a person with diplomatic status, immunity from arrest does not apply in cases where the person is caught during the commission of a crime. The CPC allows for immunity from prosecution, but not criminal investigation. In addition, immunity can be lifted by Parliament.

Articles 16 and 166 of the CPC convey discretionary power to initiate criminal prosecution only to the Office of the Prosecutor, acting in the public interest.

Preventive measures to ensure that a defendant appears in court are set forth in Article 198, and left to the discretion of the presiding judge. Such measures include bail and pretrial detention, among others.

Early release or parole from a sentence upon conviction is governed by Article 72 of the CC, which allows for conditional release if completion of the sentence is no longer necessary for the correction of the sentenced person. Rehabilitation and reintegration into society are fundamental principles governing both the imposition of sentence and decisions regarding early release.

Georgian law sets forth procedures in corruption cases for the removal, suspension or reassignment of public officials, while safeguarding the presumption of innocence. Officials convicted of a corruption offence are deprived of the right to occupy an official position or pursue a range of public sector activities, including holding office in an enterprise owned by the State, for a period of time governed by the CC.

Persons who participate in criminal activity are encouraged to provide useful information and assistance to law enforcement for investigative and evidentiary purposes. Georgia permits release from criminal liability in cases where active bribery of public officials, trading in influence or commercial bribery has been reported. This applies to the bribe-giver, but not to the bribe-taker.

Protection of witnesses and reporting persons (articles 32, 33)

Georgia has had in place witness protection measures since 2006. In 2011, a new protection programme covering witnesses, victims and their families was established. Protective measures include withholding identity, closing proceedings, sealing documents, allowing for shielded testimony, applying special security measures and temporary relocation. Victims have certain rights, enumerated in Article 57 of the CPC, including the right to give a statement to the court regarding sentencing and damages incurred.

In 2009, Georgia adopted amendments to the Law on Conflicts of Interest and Corruption in Public Service that prohibit, among other things, discriminating against, intimidating or exerting pressure on whistle-blowers; initiating criminal, civil, administrative or disciplinary proceeding against whistle-blowers; or dismissing or temporarily discharging whistle-blowers from their official position.

Freezing, seizing and confiscation; bank secrecy (articles 31, 40)

Article 52 of the CC permits the criminal confiscation and forfeiture of property that was acquired through criminal means. These measures extend to objects and instrumentalities of the offence and encompass all crimes. Proceeds of crime that have been intermingled with legitimate property are subject to confiscation up to the assessed value of the intermingled proceeds. The rights of bona fide third parties are protected by provisions of the Civil Code.

There are two mechanisms for the application of an order to freeze assets. First, under Article 154 the prosecutor submits a motion to the court to freeze particular assets, which the court shall determine within 48 hours of filing, with or without a hearing. The second, in Article 155, enables the prosecutor to adopt an emergency temporary freeze without a court order when there is probable cause that the property will be hidden or destroyed.

In addition, pursuant to Chapter XLIV¹ of the Civil Procedure Code, authorities can execute civil forfeiture of illicit or undocumented property which is not directly connected to underlying criminal activity.

Frozen and confiscated property is administered by the investigative body which executed the order. Confiscated assets are managed by the Service Agency of the Ministry of Finance, and subject to an online public auction via the eAuction system.

Neither commercial nor professional secrecy are barriers to tracing and identification of assets, including search and seizure.

Statute of limitations; criminal record (articles 29, 41)

Article 71 sets forth limitations periods based on the gravity of the offence: less serious (6 years), serious (10 years) and especially serious (25 years). For certain corruption offences (abuse of authority, bribery and trading in influence), the limitations period is enhanced to 15 years or, if particularly serious, 25 years. The time begins to run from when the offence is committed, and is suspended if the criminal suspect absconds from justice, and resumes from the moment of arrest. The statute is also suspended for the term during which a criminal suspect is under protection of immunity.

Pursuant to Article 53 of the CC, courts must take into account the gravity of the offence and the person's criminal history in determining an appropriate sentence upon conviction.

Jurisdiction (article 42)

Article 4 of the CC establishes jurisdiction over all criminal offences committed within the territory of Georgia. A crime shall be deemed to have been committed in the territory of Georgia if it began, continued or terminated in the territory of Georgia.

Article 5 establishes jurisdiction for criminal offences which took place outside of the territory of Georgia if committed against the interests of Georgia. Extraterritorial jurisdiction may be extended to citizens of foreign States for serious offences. Article 5 extends jurisdiction to foreign citizens acting outside of Georgia if they are exercising public authority on behalf of Georgia and commit any enumerated corruption offence, which includes active and passive bribery, commercial bribery or trading in influence.

Consequences of acts of corruption; compensation for damage (articles 34, 35)

Under Article 54 of the Civil Code, a transaction that violates rules and prohibitions determined by law, or that contravenes the public order or principles of morality, is void. Corruption is considered a relevant factor to annul or rescind a contract. The Civil Code also permits private lawsuits in property transactions that are conducted in bad faith.

Under Article 992 of the Civil Code, a person who causes harm to another person by unlawful, intentional or negligent action shall be held liable to compensate the injured party. Article 309¹⁶ of the Civil Procedure Code allows legal proceedings against the criminally responsible party for damage caused.

Specialized authorities and inter-agency coordination (articles 36, 38, 39)

Georgia employs a multiagency approach to corruption. In addition to the institutional structure described in section 1.2, there are several investigative divisions responsible for corruption cases and law enforcement coordination, including within the Chief Prosecutor's Office, the Ministry of Internal Affairs and the Ministry of Finance. Their mandates include receiving information on corruption allegations, investigating offences and referring cases for prosecution. The Anti-corruption Department of the Prosecutor's Office supervises corruption investigations for all of the Ministries.

Regarding internal investigation, Inspectorates General (IGs) of the Ministry of Justice and Ministry of Interior, and Internal Audit Departments of other Ministries, have been established to verify legal compliance, detect fraud and investigate unethical behaviour.

The investigative bodies cooperate through a regular exchange of information, including through the Anti-Corruption Interagency Coordination Council described in section 1.2 and the creation of ad hoc joint investigative teams. In addition, several agencies have adopted memoranda of cooperation between them. Law enforcement cooperation was significantly enhanced by the launch, in 2011, of the

Integrated Criminal Case Management System, which is an electronic platform maintained by, and shared among, law enforcement agencies and prosecutors.

2.1.2. Successes and good practices

Overall, the following successes and good practices in implementing Chapter III of the Convention are highlighted:

- The recent implementation of an online asset declaration mechanism for senior public officials, accessible to the public free of charge, facilitates the gathering of information and aids in monitoring and investigation.
- Abuse of official authority by public officials who act to the detriment of the public interest extends to intentional, reckless and negligent behaviour.
- The release from criminal responsibility of the natural person who committed the criminal act shall not be a basis to relieve the legal person from criminal responsibility.
- Legal persons may be held criminally responsible for the offence of influencing or coercing witnesses in criminal cases, with penalties including suspension of licences, fines or liquidation.
- The eProcurement system allows citizens to bid on and purchase confiscated property, provides for more transparent procurement practices and aids in the detection and investigation of corruption offences.
- Jurisdiction extends to foreign citizens acting outside of the territory of Georgia if they are exercising public authority on behalf of Georgia and commit any enumerated corruption offence, which includes active bribery, passive bribery, commercial bribery or trading in influence.

2.1.3. Challenges and recommendations

The following steps could further strengthen existing anti-corruption measures:

- Continue to implement the National Anti-corruption Strategy and the Anti-Corruption Action Plan.
- Continue to prioritize the investigation and prosecution of money-laundering and financial aspects of criminal activity, particularly in corruption cases.
- Amend Article 107² (liability of legal entities) of the CC to include in its scope of application Article 182 (misappropriation or embezzlement).
- Consider incorporating into the domestic legal system appropriate measures to provide protection to persons in the private sector who report offences of corruption to the competent authorities.
- Continue to support existing mechanisms and consider additional measures to facilitate and encourage cooperation between national investigating and prosecuting authorities and the private sector entities in corruption matters.

2.2. International cooperation (Chapter IV)

2.2.1. Main findings and observations

Extradition; transfer of sentenced persons; transfer of criminal proceedings (articles 44, 45, 47)

International cooperation, including extradition, is covered by the law on International Cooperation in Criminal Matters of 2010.

Georgia has bilateral treaties containing provisions on extradition with 7 regional countries, and is party to several multilateral treaties. Being of general nature, they cover all types of crimes punishable under the CC, including corruption offences.

Georgia also considers the Convention as a legal basis for extradition based on the principle of reciprocity. If no treaty is applicable, the Ministry of Justice is authorized under Article 2 to conclude an ad hoc agreement for a specific case with the appropriate foreign authorities.

Since 2009, one extradition request regarding a corruption offence was received and 12 were sent. None was based on the Convention but on the European Convention on Extradition or bilateral treaties.

Dual criminality is a prerequisite under Article 18. The offence for which extradition is sought must be punishable by the laws of both Georgia and the foreign State by the deprivation of liberty of at least one year. In case of a judgement, the sentence must be at least four months of imprisonment. The dual criminality requirement is examined broadly, based on factual circumstances and underlying conduct.

Extradition requests can be transmitted through the channels of communication established by a treaty or ad hoc agreement or, in case no regulation exists, through direct channels or INTERPOL (Article 3). The request does not require prima facie evidence. Although Georgia does not recognize simplified extradition proceedings, the final decision is made within the shortest terms, especially when the fugitive is under provisional arrest.

Although extradition may be refused for political offences, a crime is not considered to be political if Georgia has an obligation to extradite under an international treaty or ad hoc agreement. Requests cannot be refused on the ground that the offence involves fiscal matters.

Extradition of Georgian nationals is restricted. If no such treaty exists, Georgian law provides for domestic prosecution (Articles 21 and 42). Between 2007 and August 2010, 46 such cases were transferred to the relevant authorities; 23 of them, including 3 cases from 2007, are still pending. Evidence submitted by the requesting State has equal legal force as evidence obtained in Georgia, provided that it is collected in observance of the procedures and rules of the foreign State.

If extradition, sought for enforcing a sentence, is refused on the ground of nationality, enforcement under domestic law is only possible if a relevant international treaty or ad hoc agreement so permits. In direct application of the Convention, this would be decided on a case-by-case basis.

Due process and enjoyment of rights under the CPC is observed at all stages of the extradition proceeding (Article 34).

Georgia is a party to bilateral and multilateral agreements regarding transfer of sentenced persons. In the absence of a treaty, cooperation can be carried out on the basis of an ad hoc agreement or the reciprocity principle.

Georgia has no specific provision regulating the transfer of criminal proceedings in cases of concurrent jurisdiction. However, in case of conflict, an ad hoc agreement could be concluded as well as the use of extradition or mutual legal assistance.

Mutual legal assistance (article 46)

Georgia has bilateral mutual legal assistance (MLA) agreements with 6 regional countries and is party to several multilateral treaties. Article 46 of the Convention (e.g. Para. 9-29) can be applied directly due to the self-executing nature of international treaties. If no treaty provides the possibility of rendering assistance, the Ministry of Justice is authorized to conclude ad hoc agreements, or to cooperate on the basis of the reciprocity principle.

The law on International Cooperation in Criminal Matters does not define specific types of procedural actions, which means that all kinds of assistance are available for foreign States, if the Georgian investigative authorities are authorized to conduct such actions in domestic cases.

The Ministry of Justice is the central authority responsible for sending and receiving MLA requests. Requests are to be made in Georgian or English. Georgia has never received or sent an MLA request on the basis of the Convention, but has received and sent several requests in regard to corruption offences based on other multi- or bilateral treaties. The average time needed for execution was 2-3 months. MLA requests can be transmitted through any communication.

MLA can be refused if granting the request would prejudice the sovereignty, security, public order or other essential interests, if execution of the request would contradict legislation or if the crime for which the assistance is requested is a political or military offence. A request shall also be refused if it may prejudice the universally recognized rights and fundamental freedoms of an individual. Bank secrecy is not a ground for refusing a request. The only requirement is that the disclosure of the requested information should be authorized by a court or other competent body of the requesting State. The requesting State must be notified of the reasons for refusal.

In case the foreign authority requests the execution of coercive measures (e.g., search and seizure), dual criminality is a precondition. Assistance may only be afforded if it is also authorized by the competent authority of the requesting State.

Although Georgia has never received a request for confiscation based on a foreign judgement, such request could be executed under Article 52. In these cases, Georgia becomes the legal owner of the confiscated property and a Georgian court may thereafter order the asset be transferred to the requesting State. Alternatively, ad hoc agreements or decisions are possible. Georgia can recognize and enforce foreign non-criminal confiscation orders in accordance with the procedures defined by law.

Any information or other materials obtained through MLA shall not be used for any purpose other than indicated in the request unless prior consent is given.

Georgia will generally bear the ordinary costs of executing requests (Article 4).

Law enforcement cooperation; joint investigations; special investigative techniques (articles 48, 49, 50)

Regarding police cooperation, Georgia has concluded several international agreements. Almost all have provisions for Convention offences. Georgia aims to conclude further such bilateral treaties as well as a strategic agreement with Europol.

The agreements identify the competent authorities responsible for cooperation, and facilitate rapid and effective assistance. The Georgian contact point is the Criminal Police Department in the Ministry of Internal Affairs. In case of urgency, some agreements allow for verbal requests, which subsequently shall be confirmed in writing.

The Ministry of Internal Affairs actively cooperates with neighbouring countries, international organizations, and its counterparts of GUAM (Georgia, Ukraine, Azerbaijan, Moldova) in the field of counter-terrorism, organized crime and other dangerous crimes, and with police attachés of the European Union Member States.

The Law on “Operative Searching Activity” provides a broad range of special investigative techniques, which can be used to gather evidence, conduct surveillance and undercover operations. In 2010, monitoring of Internet activity and gathering electronic evidence to prevent and fight cybercrime were added.

Special investigative techniques can be initiated upon the request of foreign law enforcement authorities on the basis of international agreements. In the absence of an agreement, law enforcement authorities may cooperate to the fullest extent under an ad hoc agreement or on the basis of the reciprocity principle.

2.2.2. Successes and good practices

Overall, the following successes and good practices in implementing Chapter IV of the Convention are highlighted:

- Effective law enforcement cooperation, which enables direct contact and facilitates the provision of timely cooperation based on the “one phone call” principle, in the framework of GUAM, among others.
- Availability of plentiful methods of assistance for foreign States, which are available throughout the course of criminal investigations.

2.2.3. Challenges and recommendations

The following steps could further strengthen existing anti-corruption measures:

- Continue efforts to strengthen the capacities and collaboration of law enforcement authorities in the fight against transnational crime through the conclusion of further bilateral and multilateral agreements.
- Continue to examine dual criminality as broadly as possible, including in cases in which an extradition request is based on the Convention, and consider concluding further bilateral and/or multilateral treaties to implement simplified extradition procedures.

- In case extradition of Georgian nationals is refused and proceedings are transferred to national authorities, take decisions on pending cases within a reasonable time after all evidence has been received from the foreign State.
- Continue to prioritize international cooperation in corruption offences and to consider the potential of the Convention as a basis for extradition and mutual legal assistance in relevant cases.

3. Technical assistance needs

Georgia has identified no technical assistance needs at this time.
