

Information by Georgia on implementing chapter II of the UNCAC as foreseen at the ninth inter-sessional meeting of the Working Group on Prevention from 6 to 7 September 2018<sup>1</sup>

I. Information requested from State parties in relation to preventing and managing conflicts of interest (art. 7, para. 4)

1. Measures/steps the country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with these provisions of the Convention, and in particular to adopt, maintain and strengthen systems that promote transparency and prevent conflict of interest.

*Restrictions under the Law on “Conflict of Interest and Corruption in Public Service”*

The legal framework regarding the conflict of interest is set under the law of Georgia on “Conflict of Interest and Corruption in Public Service” (CoI). This Law establishes **basic principles of prevention, discovery and elimination of conflict of interest and corruption in public institutions and basic principles of responsibility of perpetrators of corruption, and the basis and mechanisms of legal regulation**. The law defines the conflict of interest as the conflict of property or other private interests of a civil servant and public officials (Public Servant), with the interests of a public institution.

**The incompatibility issues and restrictions of action** are covered by the Chapters II and III of CoI, according to which the Public Servants are restricted to:

- Use official powers or opportunities related to them to the prejudice of the interests of public institutions or for the solution of issues outside their official powers;
- Disclose or use for unofficial purposes information containing official secrets or any other confidential information, the public availability of which is restricted under the legislation of Georgia and of which they have become aware in the course of official duties;
- Receive or require compensation in the form of pecuniary or other benefit for the services, which are free of charge;
- Receive or require compensation higher than it is established;
- Receive any compensation for publishing information created or obtained in the public sector or for publishing works, reports or other material on the basis of such information.

Public Servants are not allowed to purchase property of a public institution entrusted to him/her, enter into a transaction with a public institution in which he/she works, with his/her business entity, political party or other public institution or with his/her family member or close relative as a public servant.

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<sup>1</sup> Information is presented by the Civil Service Bureau of Georgia <<http://csb.gov.ge/en/home>>

CoI regulates the ***restrictions of outside activities*** of Public Servants. According to law, Public Servants may not perform any kind of paid work (except for scientific, pedagogical or creative activities), hold another position in any public institution or legal entity under private law, or be a member of a representative body of any level, or perform any kind of paid work or hold a position in a body or institution abroad, also receive income from an organization that is under his/her official supervision or be assigned to supervise the organization, in the supervising body of which his/her family member is employed.

In order to avoid ***the conflict of interest*** the public servant is limited to be a representative or a proxy of any natural or legal person, or represent or defend him/her/it in criminal law, civil law or administrative law cases before or against any public institution, except when he/she is a guardian, care giver or supporter of this natural person.

A public servant may not hold a position in any enterprise, be a permanent head of a business entity, or a member of a controlling, a supervisory or an auditing body or carry out entrepreneurial activities. Regarding the entrepreneurial activities the restrictions is considered as well for Public Official or his/her family member, who are not allowed to hold a position or perform any kind of work in an enterprise registered in Georgia, the control of entrepreneurial activities of which falls within the powers of this official or his/her office and also, an official or his/her family member may not hold stocks or a capital share in an enterprise, the control of activities of which falls within the powers of this official or his/her office.

CoI defines also the areas of activities where there could not be the risk of conflict of interest by letting public servants perform paid work only within the system of the same public institution, where they are employed and also hold stocks or a share in an enterprise, but for the term of her/his office, under a trust agreement, transfer to other persons for management a capital share (block of stocks) of an enterprise of the business entity owned by her/him.

For ***preventing the risk of potential conflict of interest*** in recruitment process, the CoI defines additional restrictions for Public Officials on appointing an Public Official's close relative as an officer on the basis of an agreement under public law or an employment agreement to a position that is under official supervision of that official (except when appointed through a competition). Under Close relatives the CoI considers family member, direct ancestor or descendant, stepchild, sibling, as well as a stepchild of his/her parent or child. Additionally, the law obliges an Official of submitting documents certifying the elimination of his/her incompatibility or his/her family member to the superior official (body), under whose immediate subordination he/she is, and to the human resources management unit.

In case of incompatibility, the Public Official or his/her family member shall resign from an incompatible position or terminate incompatible activities within 10 days after the appointment of this official, unless otherwise provided for by the Constitution of Georgia or by law.

As for the sanctions, according to CoI, unless otherwise provided for by the Constitution of Georgia and the organic law, an official shall be dismissed if:

- He/she or a member of his/her family violates the incompatibility provisions under this Law;

- It is confirmed by a court decision that he/she owns illegal and/or unsubstantiated property.

Beside the penalties, in order to prevent the conflict of interest and incompatibilities, the CoI determines the responsibility of public official, within one year after dismissal, to complete and submit an official's asset declaration within the respective month of completion of the previous declaration, unless he/she is appointed to any other position. As a result, affecting on the reputation of public officials could also be considered as a mechanism of deterring the conflict of interests and incompatibilities.

The CoI defines also the measures aimed at preventing the Conflict of Interest concerning former public officials. A dismissed public servant may not, within one year after dismissal, start working in the public institution or carry out activities in the enterprise which has been under his systematic official supervision during the past three years. Within this period, he/she also may not receive income from such public institution or enterprise.

### ***Restitutions under General Code of Ethics and Conduct for Civil Service***

Further ***restrictions and standards of behavior regarding the prevention of conflict of interest*** is also defined and regulated by the decree of Government on “General Code of Ethics and Conduct for Civil Service” (Ethics Code), adopted on 20<sup>th</sup> of April, 2017, creating the ethical environment by developing the professional standard of Civil Servants and implementing the fundamental principles and values in Civil Service.

According to the Ethics Code, Civil Servant does not accept any offer that causes or may cause conflict of interests with the position occupied by him/her or/and may affect performance of his/her official duties. She/he avoids the circumstances that may be deemed as the direct or indirect influence of private interest over his/her service activities.

In case of ***conflict of interest or/and possible emergence thereof***, a civil servant does not participate on behalf of the public institution in the process of contract drafting or/and conducting negotiations with another institution/organization; a civil servant neither participates in the process of formation of policy, making a decision of public interest or/and providing consultations to any other institution or/and civil servant. In case of detection of conflicts of interest during the performance of the abovementioned authorities, a civil servant notifies the public agency, on behalf of which he/she works as well as ensures a self-withdrawal.

The Ethics Code regulates the ***limitations on receiving additional income or other benefits***. In the process of carrying out official duties a civil servant does not demand or/and receive tangible or intangible benefit, except for the cases envisaged by the legislation, either from a physical person or legal entity and does not use official power for the private interests. Except for the cases defined under the legislation, a civil servant is not paid for the activities that he/she was requested to perform as the representative of the public agency and which implies sharing the knowledge acquired during the performance of his/her official functions to the interested persons or wide society in the course of business or non-working hours.

A civil servant does not uphold advantages of natural persons or legal entities that were related to him/her on a private or official basis. In the course of performing his/her official duties a civil servant does not give any advantage to his/her family members, close relatives or/and any person related to him/her. In case of doubt regarding this occasions, a civil servant discloses the information to his/her direct supervisor.

### *Training and Awareness Raising Campaign on Ethics and Anti-corruption mechanism*

Since 2015, Civil Service Bureau conducts the trainings on ethics, anti-corruption and Whistleblowers protection mechanisms, for the representatives of governmental institutions (line ministries, Legal Entities of Public Laws (LEPLs), Administration of President, members of the apparatus of the Parliament, administration of state trustees – Governors, central institutions of the Autonomous Republics). As a result, during 2015-2017, 1341 civil servants and public officials were trained.

Within the framework of Awareness Raising Campaign, the Handbook on Ethics and Code of Conduct of Civil Servants was updated, published and distributed throughout the civil service, Guidelines on Code of Ethics and new Law Civil Service was elaborated and published, a module on ethics for political appointees as well as the concept of an E-learning module on ethics were developed.

## **2. The actions required ensuring or improving the implementation of the measures described above and any specific challenges might be facing in this respect**

The main challenges regarding the conflict of interest is related to the developing the proper legislative and regulatory framework. As the CoI of Georgia was adopted in October, 1997 most of the regulations lack the possibility to respond the resent difficulties related to conflict of interest, restrictions and limitations does not create the sufficiently effective framework for managing and preventing the conflict of interest. To respond the recent challenges regarding the Conflict of Interest in Georgian Civil Service, the CoI needs to be amended or new legislative or regulatory framework developed.

## **3. Technical assistance is required in order to allow you to fully implement this provision**

**Legislative assistance:** the assistance in developing the modern legislative or regulatory framework for preventing the Conflict of Interest.

**Capacity building:** build the capacity of Staff of Civil Service Bureau by providing the trainings on more effective tools and mechanisms for detecting, preventing or fight against the Conflict of Interest, sharing the knowledge regarding the effective existing awareness raising mechanism.

**Research/data gathering and analysis:** the assistance in providing the Regulatory Impact Assessment (RIA) on CoI.

**Facilitation of international cooperation with other countries:** sharing the experience of other countries regarding the detecting and preventing the conflict of interest in civil service.

## II. Information requested from State parties in relation to asset and interest disclosure (art. 8, para. 5)

### 1. Measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with the respect to their functions as public officials

#### *Asset Declaration Collection*

The legislative and regulatory framework of public official's asset declaration's collection and monitoring is defined by the CoI and by the Decree of the Government of Georgia on "Adoption of the Instruction for Monitoring Asset Declarations of Public Officials". ***The basic principles of collecting the Asset Declarations are to discover and eliminate the conflict of interest.*** As for the Monitoring of Asset Declarations, the main aim is to ensure compliance of the submitted asset declarations with the legislation and verification of completeness and accuracy of data declared by public officials, detecting and preventing violations of law.

The law requires the completion and submission of official's asset declaration to the Civil Service Bureau of Georgia during and after the term of office. Public Official should submit an asset declaration within two months after an appointment and then during his/her term of office annually complete and submit within the respective month of completion of the previous declaration. After dismissal, public official submits an asset declaration within the respective month of completion of the previous declaration.

Under the term of "Public Official" CoI includes the following categories of officials:

- State-Political Officials – President, Members of Parliament, Ministers and
- Heads and deputy heads of Office/administration of Parliament, President and Government'
- Assistant to President and Prime-Minister;
- Heads and Deputy Heads of structural units of Office/administration of Parliament, President and Government, as well as heads and deputies of structural units of Ministries and State Ministers Offices;
- Heads of subordinated institutions of Governments and Autonomous Republic, Heads and deputy Heads of Legal Entities of Public Law (LEPL);
- Head of the State Security Service of Georgia and his/her deputies, the heads and their deputies of structural divisions of the State Security Service of Georgia, chief administrations and administrations within these structural divisions, as well as persons equivalent to them;
- General Auditor, his/her deputy, members of the Presidium of the State Audit Office, heads of Departments, Regional and City Bureaus, heads of structural units of the Autonomous Republics;

- President of the National Bank of Georgia and members of the Board of the National Bank of Georgia;
- Members of the advisory body of the President of Georgia;
- Members of the High Council of Justice of Georgia;
- Members of the National Regulatory Commission of Georgia;
- Chairperson of the Central Election Commission of Georgia, his/her deputy and the secretary of the Commission;
- State trustees - the Governors and their deputies;
- officials of the representative and executive bodies of municipalities defined in the Organic Law of Georgia - the Local Self-government Code, district Gamgebelis (head of local administration) of the Tbilisi municipality, their deputies, and the heads of structural units of district Gamgeobas (local administration);
- Judges;
- Chief Prosecutor of Georgia and his/her deputies, the heads of the Departments of the Chief Prosecutor's Office and persons equivalent to them thereto, regional and district prosecutors and prosecutors of Tbilisi and the Autonomous Republics;
- The Personal Data Protection Inspector and his/her deputy;
- The heads of non-entrepreneurial (non-commercial) legal persons founded by the state or by local self-government bodies (except for those established for cultural, educational, scientific, research, sport and religious activities);
- The heads of enterprises, 100% of stocks or share of which is owned by the State or a local self-government body, as well as the heads of subsidiaries of such enterprises;
- Any other person elected, appointed or approved under the Constitution of Georgian.

The number of Public Officials submitting the declaration varies year by year. For the year 2018 the number of Declarations submitted are: 6041.

***The official's asset declaration shall contain the information about the official and his/her family members*** (spouse, minor child, stepchild, or a person permanently residing with him/her), covering the issues related with:

- Immovable property and movable property (each property valued at more than GEL 10 000 (approx. 4000 EUR), the identity of the owner (as well as the co-owner of the property and the percentage of the share of the person and his/her family member if the property is in joint ownership), the date of purchase, form of purchase, the amount paid, total area and location of the property;

- Securities, the issuer of securities, the owner of the property, the type of securities, the amount paid, nominal value and quantity;
- An account and/or deposit in a bank and/or credit institution in Georgia or abroad, name of the bank and/or other credit institution, type of the account and/or deposit, balance (credit or debit) on the account and/or deposit;
- Cash (amounting to more than GEL 4 000 (approx. 1600 EUR), the identity of the cash owner, the source of cash and the amount of cash in the respective currency;
- Direct or indirect participation in entrepreneurial activities in Georgia or another country, form of participation, names of partners, the full company name and legal address of the enterprise, registration body and registration date, equity percent, the amount of the enterprise capital, the period of participation, and the amount of income gained from the enterprise during the accounting year, equity percent of the enterprise in the capital of another enterprise;
- Any paid work performed in Georgia or abroad - the identity of the person performing paid work, place of work where the person holds/held a position or performs/performed paid work, name of the position or type of work, income received from the performance of work within a reporting period;
- Any agreement concluded in Georgia or abroad, valued at more than GEL 3 000 (approx. 1200 EUR) (including trust agreements, irrespective of their value) - the type of the agreement, the identity of the parties to the agreement, subject and value of the agreement, the date of entering into the agreement and its duration, the body that performed state registration and attestation of the agreement, material benefit received from the agreement within the reporting period;
- Any gift valued at more than GEL 500 (approx. 200 EUR) - the identity of the person receiving the gift, the person presenting the gift, the relationship between them, type of the gift, and market value of the gift;
- Any income and/or expenditure within a reporting period, amounting to more than GEL 1 500 (approx. 580 EUR) in each case - the person and his/her family members who received income and/or had expenditure, type of income and/or expenditure, and the amount of income and/or expenditure;
- Secret field - the type of property and the identity of the person and/or his/her family members related to the property, the connection of the person and/or his/her family members to the property, market value and/or amount of the property.

***The responsible institution for collection of asset declarations is Civil Service Bureau (CSB).*** The declarations are submitted electronically via the official web-page [www.declaration.gov.ge](http://www.declaration.gov.ge) administered by the CSB and public access is ensured. The CSB ensures the receipt of official's asset declarations, the public availability of property conditions of relevant officials and the control over the submission of declarations. For the purposes of this Law, the CSB: prepares instructions on the



proper completion of official's asset declarations, ensures an unhindered access of officials to the Unified Declaration Electronic System, receives and keeps the official's asset declarations completed by officials and monitor their compliance with the legislation of Georgia, ensures the public availability of the content of official's asset declarations. ***The current model of declaring assets is one of the most successful among the existing e-declarations systems.*** It is equipped with a ***quick search engine*** which helps the user to find the desired declaration through a key word. Moreover, to raise data protection standards the entire e-declarations system is connected to a new highly protected server which complies with international requirements.

In order to comply with Public Officials disclosure-related obligations the CSB is providing Hotline and Online support for public officials, additionally there is also the possibility for Public officials to get the information from the official web-page ([www.declaration.gov.ge](http://www.declaration.gov.ge)) Frequently Asked Questions (FAQ).

Failure to submit an official's asset declaration within the time limit defined by the CoI shall be subject to a fine in the amount of GEL 1 000 (approx. 400 EUR), for which an individual administrative act - a decree imposing a fine - shall be issued.

### ***Monitoring and Verification of Asset Declarations***

The Government of Georgia has introduced the ***asset declarations monitoring system*** with the primary goal to increase transparency and trust of citizens in public administration by monitoring disclosed information on assets of public officials as well as to prevent conflicts of interest and promote integrity within public institutions. The CSB was granted the authority to monitor declarations and to determine and verify accuracy and competence of the information; also, while detecting the violations, to forward the declaration and materials of the proceedings to the relevant law enforcement body or issue an administrative fine in case of unintended offence of the rules of filling the asset declaration. The CoI considered the elaboration of the Government Decree on "Adoption of the Instruction for Monitoring Asset Declarations of Public Servants" (Instruction); which has been adopted on the February 14, 2017.

According to the CoI law and instruction, ***the grounds for initiating the monitoring of an official's asset declaration*** shall be: a) a random selection by the electronic system and b) justified written statement (application). In addition, declarations are selected by the independent commission (hereinafter - commission) established by the Head of CSB. Total number of selected declarations by electronic system shall not exceed 5%, the total number of selected declarations by the commission shall not exceed 5% as well. Thus, annually, the total number of selected declaration both by the electronic system and commission shall not exceed 10%. This could vary year by year, because additionally the number of justified written statement should be considered. The results of the monitoring shall be proactively published at the end of each calendar year. Commission, composed of 5 members (3 representatives of the NGOs and 2 representatives of Academia), selects declarations for monitoring of state-political officials and on the basis of specific factors (positions of State-political officials, particular risk of corruption, high public interest and violations revealed as a result of the monitoring).



The official's asset declaration is assessed negatively if the information and documents requested by the Bureau are not submitted or are incomplete, incorrect or incompatible data. If incomplete or incorrect data are entered into the official's asset declaration willfully and there appears essential elements of an offence, the Civil Service Bureau shall forward the respective declaration and materials of the proceedings to the relevant law enforcement body for further response.

Additionally, in order to strengthen and improve the effective functioning of monitoring process, the CSB in cooperation with the Administration of the Government, adopted and published online the multi-annual action plan 2017-2020 for the implementation of the assets declarations system and related activities. The action plan defines the baselines, targets and indicators for implementation of monitoring system.

The CoI determines also the fine for violation in asset declaration detected through the verification process. The amount of fine is 1000 GEL (approx. 400 EUR).<sup>2</sup>

The electronic system ensures obtaining the data necessary for verification of the completeness and the accuracy of the data on asset declared by public officials from the electronic data bases administered by public authorities, namely:

- The electronic data base of the LEPL Public Service Development Agency under the Ministry of Justice of Georgia allows identification of a public official and his/her family member by name, last name, personal 11-digit number, date of birth, as well as provides the data on persons registered on official and actual addresses stated by a public official in the declaration;
- The electronic data base of the LEPL National Agency of Public Registry under the Ministry of Justice of Georgia allows the electronic system to obtain the information on: the asset, on which a property right of a public official concerned, as well as his/her family members is registered; the enterprise, non-entrepreneurial (non-commercial) legal entity in the establishment of which the public official / his/her family member is a shareholder and/or the chairperson/authorized representative/member of supervisory board of which the public official / his/her family member is;
- The electronic data base of the LEPL Notary Chamber of Georgia under the Ministry of Justice of Georgia allows the system to obtain the information about the deals concluded by the public official / his/her family member within the declaring period;

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<sup>2</sup> At the end of 2017 the CSB has measured the effectiveness of penalties for existence violation in asset declarations and outlined the practical difficulties and the violations that were not essential for the purpose of Asset Declaration Monitoring. Based on the 2017 Monitoring result the draft amendments of CoI was prepared and initiated by the Parliament. According to the amendments, in order to ensure the principle of proportionality, instead of imposing a fine of 1000 GEL for every violation, the public official will be fined in the amount of the percentage of the salary, in particular in the amount of 20% of monthly salary. However, the minimum amount of penalty is declared, which will be 500 GEL. The abovementioned amendment is not subject to fining of an official for non-essential violations. Nevertheless, the non-essential errors, which are determined by the amendment, are still considered as a violation and warnings will be exposed. The amendment considers that in case of identifying the non-essential violation during the next monitoring process, the declaration will be assessed negatively and the official will be subject to fine.

- The electronic data base of the LEPL of the Ministry of Internal Affairs of Georgia provides the information about the means of transport and weapons on which a property right of a public official / his/her family members is registered;
- The electronic data base of the LEPL Revenue Service under the Ministry of Finance of Georgia provides the information about the expenditures born by taxpayers, as well as financial benefits/incomes received by the public official / his/her family member as declared in annual income declarations;
- The electronic data base of the LEPL State Procurement Agency provides the information about the enterprises connected with the public official / his/her close relative / his/her family member in the calendar year in which the declaration was submitted.

In 2017 the Civil Service Bureau monitored 287 declarations in total, whereas 284 declarations were randomly selected and 3 as a consequence to documented written applications. As a result, 224 declarations were assessed negatively and 56 positively. The monitoring procedure was discontinued on one of the declarations because of the death and in 6 more cases because of the expiry of the term. Statistically, the number of positively assessed declarations constitutes to 20% of the total number of the declarations inspected during 2017, while 78% of the inspected declarations have been assessed negatively and the monitoring of 2% of the declarations has been discontinued.

The result (with the list of Public officials verified during 2017) of the monitoring of year 2017 was proactively published on December 2017 on the web-page of the CSB and was sent to Prime-Minister with an official letter afterwards.

The Number of Staff responsible for collection of Asset Declarations are 5 Employees and number of Staff responsible for Monitoring and verification of submitted asset declarations are 8 employees.

## **2. Actions required to ensure or improve the implementation of the measures described above and any specific challenges might be facing in this respect**

The difficulties that could arise in the process of monitoring, is connected with gathering complete and proper information. CoI provides the CSB with authority to get any information from electronic databases of public institutions, for the purpose of which the special electronic system was elaborated. But this is only few part of full information, which is needed for complete monitoring of asset declarations. As mentioned above, in asset declaration there is also information about an account and/or deposit in a bank and/or credit institution in Georgia or abroad, name of the bank and/or other credit institution, type of the account and/or deposit, balance (credit or debit) on the account and/or deposit and any income and/or expenditure within a reporting period, amounting to more than GEL 1 500. This kind of information is not saved in databases of public institutions, but according to the monitoring instruction the public officials are requested to submit the information to Declaration Monitoring Department of the CSB.

## **3. Any technical assistance is required in order to allow you to fully implement the provision**

**Legislative assistance:** the assistance in developing the legislative or regulatory framework for checking and preventing the illicit enrichment.

**Capacity-building:** Providing the training for the staff responsible for collecting and monitoring, providing the ToT for staff to train the declarants how to fill the complete and corrects information in Asset Declarations.

**Facilitation of international cooperation with other countries:** sharing the experience of other countries regarding the monitoring and collecting the Public Officials' asset declaration.