

Letter of the Government of Georgia in Response of the Request by the Civil Society Members of the Open Government Georgia's Forum for the Activation of the Rapid Response Mechanism

The Government of Georgia considers openness of governance, transparency, accountability and engagement of citizens in the decision-making process as basic values for a democratic society and therefore, faithfully continues to implement fundamental principles of the Open Government Partnership (OGP).

During recent years, Georgia has achieved significant progress in establishing transparent and accountable governance system and we are proud of the progress. At the same time, we fully acknowledge some challenges ahead of us. Government of Georgia has an ambition to tackle these challenges effectively, just as we did previously. Civil Society has contributed significantly to the process and we appreciate greatly their vital role in the future democratic progress of our country.

Therefore, we are baffled by the request for the activation of the rapid response mechanism from the civil society members of the Open Government Georgia Forum of November 1, 2018. In raising this claim the NGOs premise their request in the statements of Speaker of Parliament of Georgia, Mr Irakli Kobakhidze of October 2 and 8, 2018, Mayor of Tbilisi, Mr Kakha Kaladze of October 9, 2018, the Minister of Justice of Georgia, Ms Thea Tsulukiani of October 3, 2018 and Chairman of the ruling party Georgian Dream, Mr Bidzina Ivanishvili of October 23, 2018 the statements of which in this respect are relied upon by the undersigned NGOs in the letter of November 1, 2018.

The unfettered freedom with which the whole NGO community is enjoying speaks best of the Government efforts in having the core OGP values – openness, pluralism and democracy deeply embedded into a fabric of the Georgian society.

In furtherance of these values the NGOs who authored the letter of November 1, 2018 have both venues and meaningful opportunity to participate in a democratic law- and policy-making through 14 interagency councils hosted by the Ministry of Justice of Georgia that also involve other NGOs and international organizations. As a matter of fact the NGOs continue to participate in all fora (except of Interagency Task Force on Free and Fair Elections left by TI Georgia and GYLA) and interagency councils but one - Open Government Georgia's Forum. However regrettable this move might be it explains well the situation that emerged throughout past months and reached its height during the Presidential elections in Georgia in October this year.

Importantly, some of the undersigned NGOs have served as monitors in the October elections and had ample opportunities to advocate their arguments and freely level criticism to its extreme so that to call the Minister of Justice to resign in the media (see below). This was the case even at the OGP Global Summit in July 2018 where the authors of this letter actively participated in the panel discussions, including the high level opening of the Summit as well as organized some of the panels and workshops.

Moreover, in the present situation the undersigned NGOs do not shy away to put forward the misleading and inaccurate statements, in particular with respect to Georgia's 4th OGP National Action Plan.

As to the 4th OGP National Action Plan 2018-2019

Contrary to what is claimed in the letter of November 1, 2018, the new 4th OGP National Action Plan 2018-2019 was approved on the basis of no-objection by all members of the OGP Forum on July 13, 2018 including those representing the civil society in Georgia (only Mr Oniani, the Deputy Executive Director of TI Georgia chose to demonstratively leave the meeting). Two representatives of the Open Society Foundation, one of the lead partner civil society organizations, participated in the entire meeting. The endorsement was followed by several rounds of interagency consultations in July-October 2018 with the view of arriving at the shared understanding over the initiative of civil society organizations on introduction of new anticorruption mechanism that will be explained in more details below.

Consequently, the OGP Action Plan 2018-2019 was submitted to the Government of Georgia on November 2, 2018 and was adopted today.

The Open Government Georgia's Forum, established in 2014 as a permanent coordination mechanism for Open Government Georgia at the national level, and is comprised of local non-governmental organizations, international partners, public agencies, and academia. The forum ensures that government and civil society cooperation is comprehensive and not fragmented. It has two chairs – one representing the government and the other civil society - both elected by the forum. The forum is responsible for developing proposals on issues related to OGP, supporting the Action Plan elaboration process, planning and conducting public consultations, and monitoring and assessing the Action Plan implementation. The forum became a cornerstone of trust between government and civil society as it ensures co-creation of open government policies.

Commitments of the 4th National Action Plan were elaborated in the framework of the Forum *inter alia* based on the proposals and recommendations of the civil society, international organizations and business sector within the forum and bilateral meetings of the interested stakeholders.

The 4th Action Plan is comprised of 15 innovative commitments (taken by Government agencies) and 8 innovative commitments of 11 local municipalities of Georgia. These commitments respond to the five challenges of OGP. As mentioned above, many ambitious commitments, such as *Publication of court decisions in the unified database and creation of a search engine; Increase transparency of the Ministry of Internal Affairs; Increase citizens' involvement in supervision of public finances: introduction of effective feedback mechanisms for citizens; Increase transparency of state grant funding system; Enhancement of electronic innovations for more transparency and efficiency of public procurement; Strengthening openness and accountability of enterprises with state share etc.* were elaborated based on recommendations and proposals of civil society organizations, including IDFI, OSGF and other signatories of the letter of November 1, 2018 .

It is symptomatic that sometimes relentless campaign unleashed by the same NGOs targeted, amongst others, the Minister of Justice of Georgia Thea Tsulukiani whose leadership together with her team's efforts within the Government of Georgia led to building a culture of democratic-law making, transparency and partnership with civil society, a culture non-existent before the election and the

change of power in 2012.

As part of this campaign on May 31, 2018 as broadcasted on Georgian TV¹, 4 out of 7 undersigned NGOs demanded the resignation of Minister Tsulukiani because of her public disapproval regarding the Chief Prosecutor of Georgia quitting the post. On June 8, 2018 the Executive Director of TI Georgia, Ms Eka Gigauri once again reiterated the demand for the Justice Minister's resignation at the rally held under the slogan of "Thea go".² Notably, the rally was co-organized by the opposition party "United National Movement" (UNM) whom Ms Eka Gigauri has served as the high level political appointee before 2012.³ Given this premise, it should be clear that while engaged into the vicious political campaign one has to be open to take the critical arguments in response. The statements of the Minister of Justice and other officials cited in the letter of November 1, 2018 perfectly fit this category and once again constitute the very essence of the deliberative democracy⁴.

It is worth mentioning that the officials whose statements are criticized in the letter of undersigned NGOs are those who made substantial contribution to expanding the value and institutional reach of OGP in Georgia. In particular, Mr Kobakhidze, the Speaker of the Parliament has been advocating for the greater role and involvement of the Parliament in the OGP process. Mr Kaladze, the Mayor of Tbilisi led the local municipality efforts in implementing OGP principles at domestic level *inter alia* by promoting the participation of Tbilisi in OGP local program. Most importantly, Mr Bidzina Ivanishvili, the Chairman of the ruling party "Georgian Dream" led in October 2012 the political process that brought about changing the government to which the current Executive Director of TI Georgia and her Deputy had served as high-level officials.

As to the high-level Anticorruption Conference in Denmark

In Denmark, at the high-level Anticorruption Conference, the Session titled "Tackling Corruption through Open Government" was co-organized by the OGP Support Unit and Government of Georgia. At that meeting the aggressive political statements were made by Mr Giorgi Oniani, Deputy Executive Director of TI Georgia towards the Government of Georgia and its representative at this event Ms Thea Tsulukiani, the Minister of justice of Georgia. Therefore, the Minister a political appointee and a member of political (ruling) party, had to respond with a kind.

Mr Joe Powel was a moderator of that meeting and has the whole understanding and picture of that event.

This particular attack by Mr Giorgi Oniani, can be derived from his political affiliation and background since, before becoming the Deputy Executive Director of TI Georgia, he successively served different

¹ See <https://www.facebook.com/tigeorgia/videos/1964057760335490>.

² <https://www.youtube.com/watch?v=MyewnFwrxdE&fbclid=IwAR1oZufTAKkUgPjvXsfF4hVVQaViNRoSseJnmm6IoutpmPTaAixL3oilh3I>. See

³ https://www.myvideo.ge/v/3609156?fbclid=IwAR0X_qmK5C19tswkOvDLEDSXcfXFuKu_Ye1TxTIKcfLB_ABk7arLxujn7uE. See

⁴ For more detailed information please see the Annex of this Letter titled "Transcripts".

high-level political positions at the previous Government of Georgia, including being an adviser in the National Security Council, assistant to the Prime-Minister in international relations, and the chief adviser to the Primer-Minister before 2012 change of power.

The Minister in her response recalled amongst others the questions still unanswered by Ms Eka Gigauri, the Executive Director of TI Georgia and a former high-level law-enforcement official under the previous Government, widely known in Georgia. We hereby reserve the right to submit the documents in this respect to the OGP Subcommittee on Governance and Leadership at any stage of entertaining the issue of activation of the rapid response mechanism if necessary.

Finally and most importantly it's about making choices – our Government's choice has always been clear – to build an institutional democracy i.e. a system of functional institutions with built-in culture of democratic accountability, transparency and human rights. The institutional democracy presupposes existence of full-fledge political discourse with actors having an equal opportunity and freedom to criticize and get criticized so that no one is granted immunity from the criticism at its own liking, to make sure that through the discussions however heated they might get occasionally, facts are not supplanted by political speculations. In this context, good-faith participation and commitment to the OGP values would mean that the choices are not imposed as claimed on the behalf of the civil society, but offered, explained and transposed through persuasion. Regretfully, that is not the understanding of some civil society organizations in the OGP Forum. The good illustration of this could be the process of elaboration of Georgia's 4th OGP Action Plan. The issue of contemplation was the initiative of civil society organizations about introduction of a new anticorruption institution in the country. Taking into consideration the innovative co-creation and co-chairmanship model of Open Governments Georgia's Forum, where the civil society is at the heart of all that we do to respond to our citizens' needs, the Government of Georgia has duly reflected the needs of civil society, however, instead of introducing the new institution, after having discussed between the ministers and heads of respective law enforcement agencies, the Government of Georgia decided to take a commitment of strengthening existing National Anti-Corruption Institutions (Interagency Coordination Council for Fight Against Corruption, Criminal Prosecution Division for Corruption related crimes of the Chief Prosecutor's Office and Structural Unit of the State Security Service of Georgia - Anti-Corruption Agency). Therefore it is fully in compliant with the aim of and rational behind the proposal of civil society - to increase transparency, accountability and effectiveness with regard to fight against corruption. This was rejected outright by the said NGOs who followed radical approach – “take all or leave it” leaving no room for negotiated compromises. This radical approach by the said NGOs has been criticized among others by the Speaker of Parliament of Georgia, Mr Irakli Kobakhidze whose statement is relied upon by the undersigned NGOs in the letter of November 1, 2018.

To conclude, our commitment is firm and crystal-clear – to consolidate further an institutional democracy through the continued reforms in close partnership with civil society in Georgia and international community. As always, our doors remain open for a constructive dialogue with the civil society representatives.

Irakli Kobakhidze

TV show “Archevani”, topic concerning the NGOs, from the 30th minute, video available at: <http://rustavi2.ge/ka/video/36307?v=2>

Transcribed

Kobakhidze: At the time of the previous authorities, everything was monopolised, business, media... Do you remember the level of activity in relation to Girgvliani?

Gabunia: NGOs were speaking at that time as well

Kobakhidze: I do very well remember their tone and activity level then and now. This is also the merit of our authorities

Gabunia: What were you doing at that time? Were you talking about this topic?

Kobakhidze: At that time, I was taking part in the campaigns of the opposition as a participant, I was a staff member of an international organisation...

Gabunia: The non-governmental sector is still talking that the situation is very bad, and, taking into account the facts, there is no point in investigation. We indeed arrived at a situation, I am going to directly read out regarding the Parliament to make a periphrasis: The legal structures are being politicised, which makes it impossible to conduct an impartial investigation into the alleged crimes, including corruption crimes, of the members of the ruling group and persons affiliated with them...

Kobakhidze: Is this a serious statement?! This is absolutely an unserious statement.

Gabunia: 13 non-governmental organisations have signed it

Kobakhidze: In Georgia these are 13 men and women having somewhat biased political views.

Gabunia: For example, who?

Kobakhidze: I mean all the thirteen leaders in this case. A political association of citizens “Non-governmental Sector” has been formed in Georgia. This political association is detached, and, if it runs in the elections, it will not be able to receive even one per cent - everyone will agree with me.

Gabunia: What political vector do they have, whose interests do they serve, what do you mean?

Kobakhidze: As for civil society, civil society exists separately and the political association of citizens “Civil Sector” exists separately. This is the current situation”

Gabunia: What political interests do these organisations have?

Kobakhidze: I don’t want to go into this depth, I am giving my firm evaluation, but I don’t want to go into this depth for a variety of reasons, however I will repeat once again

Gabunia: When you accuse the non-governmental organisations, thirteen of them

Kobakhidze: What are these 13 organisations? Name these non-governmental organisations.

Gabunia: Transparency International, Association of Lawyers...

Kobakhidze: Do you remember how they were created? Do you remember from where they took and from where they brought people? Some of them came directly to NGOs from law-enforcement bodies, I don't want to go into these depths, the society is aware of everything.

Gabunia: Do you say that these non-governmental organisations also serve the interests of the National Movement?

Kobakhidze: The situation is as follows: there is a political association of citizens "Non-governmental Sector", which is sometimes referred to as the civil sector, and this has no connection to civil society. In fact, we gave the civil society the possibility to develop; however, unfortunately, the circle still remains closed, for which there are objective and subjective reasons, but the main thing is reality, isn't it? There are serious problems.

Gabunia: Is not there any governmental organisation in Georgia which interacts with society? Which non-governmental organisation expresses the society's opinion?

Kobakhidze: I give my evaluation and maintain it; as for the going into the depth, this is what I do not want to do... What these same non-governmental organisations say: they often made statements that, allegedly, the situation in the courts was better before 2012 than it is today. Imagine that, this is simply impudence. They compare the court of Adeishvili's times, when the judiciary system was operating directly under [the Ministry of] Justice, to the current system. I want to give you some statistical data, and I just want to confirm how unobjective their evaluations are. What is the situation in the court now - this is not just statistics, behind it there is the protected right of each individual, behind these statistics there are saved lives and freedom. For example, administrative cases, how many per cent of them were won by the citizens against the state, I want to show you how unobjective they are; you, probably, do not want that we show this to the public. If I make the public familiar with these data, they will be convinced that, when these 13 people say that before 2012 the situation in the court was better than it is today, this is impudence. When they say, based on these comic recordings, that there is allegedly a problem of corruption in the country, you are a non-governmental organisation without any proof, you are not the National Movement and a political party, at least formally, so when without a proof you are called a non-governmental organisation, at least formally, and you speak in affirmative form and say that there is a problem of corruption and informal governance in the country, this is impudence, or incompetence at best, which I think is not the only reason. This is why I wanted to show these data. What was the imposed penalty... administrative imprisonment, this is how the non-governmental organisations call it, and that the court of Adeishvili's times was better than today's court, it is a shame and impudence.

03.10.2018

Justice Minister's comment on NGOs

Question asked at the meeting of the Government: Do you share the opinion of the Chairperson of the Parliament, he openly criticised the NGOs, he said that their statements reveal political interests?

Thea Tsulukiani: Not only do I share Irakli Kobakhidze's position, I think, these 13 non-governmental organisations not only have political interests, but they, in fact, are political parties. Therefore, if they have political ambitions, as it appears, they are to become political parties formally, for which there is a Registry of Political Parties within the Public Registry of the Ministry of Justice, and we are ready to register them as political parties at any time. I consider many non-governmental organisations to be serious organisations, and their number is not just 13, they are 20 times 13. They are *inter alia* in the municipalities, villages, small towns, doing the job in the interests of the state and public interests. Whereas, those 13 non-governmental organisations, which violate the presumption of innocence, accuse innocent people, those, against whom no judgment has been delivered at least. For the so-called 13 non-governmental organisations, which never present facts, the main thing is what political parties supporting them will say, for them to start dancing after their pipe, this is unacceptable, and this throws shade at the entire civil society, in which dozens of dignified individuals with less resources do their job *inter alia* for the protection of the rights of children, including for the improvement of the condition of children working on the streets, including for the strengthening of the justice system, in the field of combat against trafficking, and if you doubt whether they exist, I offer to introduce them to you.

8.10.12. Irakli Kobakhidze

"I would like to reply on the statement of one of the leaders of the National Movement and the General Director of his own TV broadcaster, Nika Gvaramia, who made it on his Facebook page some days ago. Let me remind you shortly the content of this statement: We shall extremely harass, remember and exclude from all fields of the society life, be it business, culture or politics, everyone who supports or funds Salome Zurabishvili. A traitor and his/her supporters must be properly punished. This hysterical statement is related to the existing ratings of the candidates, according to which Salome Zurabishvili wins elections convincingly, and his and Nika Gvaramia's party candidate Grigol Vashadze may not take even the second place. This is the situation today. This is a statement of a loser and clumsy fascist, who was defeated in the fight against Georgian democracy, Georgian society and the truth. Nika Gvaramia might really hope that his statements will have an impact on the position of the society, but people and the engagement of the celebrity representatives of our society in the election campaign of Salome Zurabishvili prove the opposite.

For several days the society has been waiting for a clear position of the non-governmental organisations on Nika Gvaramia's fascist statement, but such a reply came from none of the NGO leaders. Furthermore, one of them, in particular, Mikheil Benidze even advocated Nika Gvaramia, or actually, did something despicable that is extremely alarming. The role of the civil sector and the idea of the civil society is the most important, including the context of Georgian-American, Georgian-European and Georgian-western relationships. Persons, who are the leaders of some organisations, unfortunately, share this idea because of the political engagement and political bias. The matter of our concern is the very fact that because of some politicised persons the idea itself and the role of the non-governmental sector in the formation of civil society is impaired.

I want to underline the statement that everyone who supports fascism is an accessory himself. Unfortunately, such persons are among the heads of the non-governmental organisations as well.

We passed to the past Georgian fascism in 2012 and we ensure, that it will never root. On October 28, we shall all together give the due answer to the hysterical and clumsy fascism of the National Movement once more and vote for truly European and worthy candidate Salome Zurabishvili.

A question of a journalist concerning ratings.

Irakli Kobakhidze: Every party conducts its own internal research. We have our own internal researches too and based exactly on these researches I state that Salome Zurabishvili wins these elections convincingly which is not a surprise for anyone. As for Grigol Vashadze, he might not even take the second place in this elections. This is a reality. We have never ever dared to bring our internal researches to the society, but the National Movement did. This is a real picture. Salome Zurabishvili wins this elections convincingly, that is not surprising for the society. As for Vashadze, the recent trend is that Grigol Vashadze would not take even the second place. This is that hysterical background on which Nika Gvaramia made this fascist statement.

Journalist: Could this mean that a part of non-governmental organisations is against Salome Zurabishvili?

Irakli Kobakhidze: This concerns concrete persons. We respect the civil sector, accordingly, we are the authorities, which gave them the opportunity for development after 2012, although, there are concrete persons who endanger this phenomenon. But we guarantee that the civil sector will develop in this country in the future as well.

Journalist: How healthy is a political process when you designate a part of the civil society as fascists in the political struggle.

Irakli Kobakhidze: It concerns a simple issue. The fascist statement was made and we all evaluate this statement as such, it is impossible to evaluate it differently; and it is alarming that firstly, no comments are made and, secondly, a concrete person advocates this. Supporting fascism is extremely alarming. Of course, this is a part of a political process, and this is why I emphasize it: he, who supports fascism, is an accessory himself, this is how fascism started in Germany, Italy.

Journalist: (hardly heard) He is a head of a non-governmental organisation, it's true, you are talking personally, but how could it be perceived by the international society?

Irakli Kobakhidze: It should be perceived very badly, when the head of a concrete organisation supports fascism, this should be the subject of the attention of the international partners. The reason of that could be only one, political engagement and bias. We appeal to our international partners to react to such fascist statements despite the fact that this is not their job, this is the job of the civil sector, of the non-governmental organisations, we draw the attention of our international partners to this fascist statement and also to the fact that the heads of the concrete non-governmental organisations support fascism. Fascism will no more exist in Georgia, but for the prevention, it is necessary to draw everyone's attention to such fascist trend.

8.10.17. Kakhi Kaladze

"The non-governmental organisations have been mainly established by the National Movement, they have been appointed by them, and today they are either enchanted by them or owe them. Accordingly, we should not be surprised because of those disgusting and inadequate statements, which were made by the head of the party TV broadcaster".

Statement of the Non-Governmental Organisations

Statement of the Non-Governmental Organisations regarding the briefing of Irakli Kobakhidze

8 October 2018

This is our response to the today's statement of the Executive Secretary of the Georgian Dream and the Chairperson of Parliament, which continues the aggressive rhetoric against non-governmental sector. Irakli Kobakhidze spoke at today's briefing as the Executive Secretary of the party, which makes us think that the opinions he articulated have been discussed and shared by the party, which shows the acuteness of the issue even more.

We would like to remind the society that the rhetoric of this kind from the representatives of the ruling party intensified as a response to the critics on the part of the non-governmental organisations and the statement, which was related to the situation in the country, corruption and the alleged facts of the informal governance and the signs of a political crisis.

Instead of a systematic and legal reaction, in fact, every day, some of the representatives of the ruling party suggest that the civil society draw its attention from the essence of the problem to the authors of the critics, and, by doing so, remove the main and key problems from the agenda.

It should be taken into account that the country is in a pre-election mode, which strengthens the risks of the polarity of the society and of the use of the issues with the purpose of political manipulations. In these conditions, it is critical that the election environment observer organisations work smoothly and are protected by every political group from groundless and deliberate discrediting.

We consider that statements of the Chairperson of the Parliament, made during the recent days, mainly serve for the delegitimisation of the organisations working on the election issues and human rights, as well as the discrediting them in the eyes of the society and the international observer organisations. It is very sad that in the pre-election situation, the issue is excessively politicised and polarised on the grounds of the statements of the members of the ruling party.

We appeal to the ruling party, the Chairperson of the Parliament of Georgia and other speakers of the party:

- to ensure the peaceful and fair pre-election environment in the country and not to hinder the work of the election observer organisations with their accusations;
- to use political and legal leverages at their disposal and demand the timely reaction to the alleged facts of corruption, informal governance or impunity, on the part of the relevant organs.

Signing Organisations:

Human Rights Education and Monitoring Center (EMC)

Article 42 of the Constitution

Georgian Young Lawyers' Association

Georgian Democracy Initiative (GDI)

Transparency International Georgia

Partnership for Human Rights (PHR)

International Society for Fair Elections and Democracy (ISFED)

Institute for Development of Freedom of Information (IDFI)

<https://www.transparency.ge/ge/post/arasamtavrobo-organizaciebis-gancxadeba-irakli-kobaxizis-bripingtan-dakavshirebit>

23.10.2018

Interview with Bidzina Ivanishvili

Kvesitadze: This statement of the non-governmental organisations (reads out) followed the statement of Kobakhidze that they are fascists; today we heard that they are the accessories of fascists

Ivanishvili: It is a lie

Kvesitadze: He said so, word for word, they are the accessories of fascists. Besides, Thea Tsulukiani said in Copenhagen today that Eka Gigauri had allegedly participated in the dispersion of the November 7 rally, and thus tried to completely smear the management of Transparency International Georgia. What would be your comment on the approaches of the representatives of your government with respect to non-governmental organisations? What do you think about Georgian non-governmental organisations?

Ivanishvili: When I withdrew from politics, I established the society called "Citizen". I tried my best to help civil society in order for them to have more influence in society and to strengthen their positions. In the schools, we wanted to instil these qualities into pupils to be active citizens. Consequently, I think I will not need to assert that I am not aware of the role of civil society. I very well understand it, and it is necessary that each citizen and civil society should be very active, this is important for the development of a democratic state.

Kvesitadze: Are they the allies of fascists?

Ivanishvili: *You mentioned Gigauri and November 7, she, by the way, does not appear in court. She was the one who filed a claim, she does complain, but insistently does not appear in court, because she is being convinced of having done the opposite, that she was a captain, that she participated in the November 7 [rally], and she has not appeared in the court several times. Eka Gigauri is not an example to follow and the best representative of civil society. We strongly respect civil society and so does Irakli Kobakhidze, who is well aware of the value of civil society. But, when you want to show the current or former members of the National Movement in this respect, which, using the same terminology, attacks today's government, including Salome Zurabishvili, this is not what you say. This is the active of the UNM that covertly entered the civil society. And, with this niche, they attack themselves; it is enough for someone to answer, they immediately interpret it as an attack, that they are being attacked. On the contrary, they are just as active and have the same position as the "National Movement".*

Kobakhidze made a reference to the specific cases and pointed to such statements of the head of your TV company, which he made with respect to Zurabishvili, and pointed out that, accordingly, those who consider themselves to be part of civil society did not have any reaction. I did tell Irakli that it would be better not to use fascism, nor other expressions, although these terms absolutely matched your director; should Kobakhidze's expressions been nicer, you would not be able to get hold of these terms...