

CRIMINAL JUSTICE REFORM IN GEORGIA

- **September 2009** -

CRIMINAL JUSTICE REFORM IN GEORGIA

I. Introduction

The overall objective of the Criminal Justice Reform is to strengthen the rule of law and human rights protection in Georgia through developing a process of reforms in open and participatory manner. Criminal Justice Reform Inter Agency Council (hereinafter the Council) serves as tool leading this process and observing the pace taken by the Government in this direction.

Report covers not only the institutional developments of the Council and its accessories, but the continued process of the developments following adoption of the Strategy and Action. Establishment of the Secretariat of the Council and of the working level environment brought the Criminal Justice Reform on a new dimension where the adoption of the Strategy and the Action is not viewed itself as a final outcome of the process. Therefore, this report serves as an introductory document to the process that has been initiated with the creation of the Council and adoption of the Criminal Justice Reform Strategy/Action Plan. In addition to this, the Report briefly summarizes the activities that are already underway.

II. History of the Development of the Criminal Justice Reform and the Policy Behind the Idea

In 2004, the President of Georgia established the working group charged with a task of developing a strategy for reforming Georgian criminal legislation (the Strategy) that aimed at ensuring compliance with international standards. Subsequently, in 2005, when the Strategy was drafted, it was approved by the President of Georgia followed by elaboration of the Implementation Action Plan for the Strategy on Criminal Justice Reforms and its adoption on 12 June 2006.

The 2005 Strategy focused on the following aspects:

- amendments needed in the legislation of Georgia, including the Code of Criminal Procedure;
- changes in the competences and organization of key institutions;
- and changes in the education and training of legal professionals.

The working group, established in 2004, created nine subgroups for the implementation of the Strategy in following areas of law: 1. Police authorities and crime prevention; 2. The Prosecution; 3. The Bar and Advancement of the Legal Aid System; 4. The Judiciary; 5. Reforms of the Criminal and Administrative Violations' Codes; 6. Execution of Penalties; 7. The Criminal Procedure Code; 8. Reform of the Public Defender's Institute; 9. Reform of the Education of Lawyers. The subgroups were given a task to elaborate concept papers in respective areas.

However, upon the necessity the Strategy and Action Plan has had to be updated and refined in order to reflect achieved objectives, new challenges and ongoing developments. Therefore, by Decree No. 591 (*on "Approving the Composition and Statute of the Inter-agency Coordination Council implementing the Criminal Justice Reform"*) of 13 December 2008, the President of Georgia established the Criminal Justice Reform Inter-Agency Coordination Council that has been entrusted with the elaboration and implementation of the reforms in line

with the principles of rule of law and human rights protection. The Statute of the Inter-Agency Coordination Council defines its objectives, responsibilities and authorities, as well as its mode of operation, including the appointment of working groups to study particular issues and make recommendations.

Later, the Presidential Decree No. 591 of 13th December 2008 was amended by Decree No. 129 of 18th March 2009 and Decree No. 196 of 22nd April 2009 in order to reflect the institutional structure of Government's management of the sector, merging the Prosecutor's General's Office with the Ministry of Justice and creation of a new Ministry of Corrections and Legal Assistance dealing with prisons, probation and legal aid. According to the amended Decree the Minister of Corrections and Legal Assistance was appointed as the co-chairman with the Minister of Justice.

The Council has revised 2005 Criminal Justice Reform Strategy and respective Action Plan. At the same time, it is the main coordination body among relevant state institutions that apart from defining platform of action/reforms also monitors implementation of the reforms in respective spheres, such as:

- Criminal Procedure Code;
- Legislation on Administrative Offence;
- Juvenile Justice;
- Penal System Reform;
- Probation;
- Legal Aid Service;
- Prosecution;
- Police;
- Judiciary;
- Legal Education;
- Office of the Public Defender.

The primary objective of the Strategy is to list *in comprehensive manner guiding policy considerations in criminal justice sphere and develop a realistic, time bound implementation plan.*

In this regard, Criminal Justice Reform Inter Agency Coordination Council has created four Working Groups in the following spheres:

- Juvenile Justice
- Penitentiary
- Probation
- Legal Aid

The Working Groups were not only entrusted with the drafting of the respective Strategies and Action Plans, but responding to such challenges as prison overcrowding, measures aimed to improve situation of juveniles, *etc.* Recently, the Council has formalized the fourth Working Group on Statistics.

Other parts of 2005 Strategy/Action Plan has been updated by the respective state institutions, discussed at the *ad hoc* Working Group and adopted by the Council. The effective management of working of the Inter-Agency Coordination Council, as well as working groups and *ad hoc* working group is maintained through an assistance of the Secretariat placed at the Ministry of Justice.

Variety of Working Groups as well as establishment of the Secretariat as an institutional structure subordinated to the Council was primarily aimed to meet the demands arising out of the existing past experience:

- Need to create a proper working level environment that would allow all interested parties to participate in the process on permanent basis;
- To create an institutional memory where all respective information, proposals and technical needs are accumulated;
- To develop a system that would allow the Government through the Council observe the phase of the reforms and timely identify challenges faced by the relevant stakeholders while implementing the Strategy and Action Plan.

On the fourth session, on 27th July 2009, the Criminal Justice Reform Strategy and its Action Plan have been adopted. It represents a guiding policy document that was adopted by the Council through the active involvement of all relevant stakeholders and NGO sector. The Strategy underlines the challenges existing in criminal justice spheres and aims to develop comprehensive sectoral approach to such complex issues as juvenile justice, prison overcrowding, system of alternatives to detention, development of linkage between penitentiary and probation, importance of the National Preventive Mechanism under OPCAT and proper implementation of the new Criminal Procedure Code of Georgia.

The Council itself, Secretariat as well as representatives of the various Working Groups have on several occasions stressed the fact that *the Strategy and particularly its Action Plan is a leaving document and it does not coexist with the ongoing challenges in static manner*. At the same time, the Strategy as well as Action Plan aims to strike a balance between the existing challenges and the means available at the disposal of the government to address those issues in timely and proper manner.

III. Criminal Justice Reform Inter-Agency Coordination Council and Relevant Institutions

The Main Objectives of the Council are:

- To elaborate relevant recommendations regarding the Criminal Justice Reform in line with the principles of the rule of law and human rights protection in Georgia;
- To review and periodically revise Criminal Justice Reform Strategy;
- To coordinate intergovernmental activities in course of the elaboration of the Criminal Justice Reform Strategy;
- To elaborate proposals and recommendations regarding the issues related to penal reform, probation, juvenile justice and legal aid.

The Council has both general as well as specific type of objectives as the drafters of the Council's Statute envisaged on one hand to underline some of the priority areas (such as juvenile justice, penal reform, probation and legal aid) while retaining flexibility for the Council's discretion.

A. Composition and Structure of the Council

Composition of the Council and its functions are prescribed by the Statute of the Inter-Agency Coordination Council adopted on 13th December 2008. According to it, the Council is co-

chaired by the Minister of Justice and Minister of Corrections and Legal Assistance. Its composition includes governmental agencies, such as:

- Deputy Ministers of Justice, Internal Affairs, Labour, Health and Social Affairs, Education and Science,
- as well as the First Deputy of the Chief Prosecutor of Georgia;
- the Heads/representatives of the Department of Prisons of Ministry of Corrections and Legal Assistance, the Deputy Head of the National Service on the Enforcement of Non-Custodial Punishment and Probation Service of the Ministry of Corrections and Legal Assistance, the Director of the Legal Aid Service of the Ministry of Corrections and Legal Assistance;
- and two members of the Parliament of Georgia.

Apart from the abovementioned members, the Council includes respective representative from the Office of the Public Defender, judiciary, international/donor organizations, NGO sector and independent experts (representatives from the EC Delegation, OSCE, NORLAG and UNICEF, GYLA, Article 42, etc.).

Since the Council has been empowered with the task to revise the 2005 Criminal Justice Reform Strategy/Action Plan and meet requirements of relevant developments in the criminal justice sphere, the Criminal Justice Reform Inter-Agency Coordination Council has created aforementioned Working Groups. The scheduling of the meetings of working groups and *ad hoc* working group, as well as the preparation of relevant documents, falls under the responsibility of the Secretariat placed at the Ministry of Justice. The information regarding the abovementioned Working Groups, *Ad Hoc* Working Group and the Secretariat of the Criminal Justice Reform Council is provided in the detailed manner below.

The first session of the Council was of introductory character, outlining major objectives set forth before the Council, discussing prospects for its future activities. During the session, particular attention was paid to the establishment of working groups to support the development of that Strategy with respect to the Juvenile Justice, Penitentiary, Probation Reform and Legal Aid.

The following second session was held on 18th May 2009 where the Council adopted draft Strategies for Juvenile Justice, Penitentiary Reform and Probation prepared by the relevant working groups. The draft Strategies, including Actions Plans, for the Legal Aid and other relevant fields of the Criminal Justice Reform, except the draft Strategy and Action Plan of the Office of Public Defender, were adopted on the third session held on 2nd July 2009.

The Office of Public Defender Strategy and Action Plan was presented and approved at the fourth Inter-Agency Coordination Council session (held on 27th July 2009) along with final amended versions of the overall strategy and action plan.

The Council represents a final forum for adoption of the all respective documents and discussion of policy considerations; in addition to that it has an authority to instruct agencies to act in line with the criminal justice policy.

B. Composition and Structure of the Working Groups

The Working Groups are institutional bodies within Council that meet on regular basis. The membership of the working groups is open to the representatives of relevant governmental

agencies, donor/international organizations, NGOs and individual experts. The mandate of the Working Groups has been defined and agreed by each Working Group and the Council. Their functions include *inter alia*:

- Drafting of the strategy and action plan
- Revision of legislative developments and draft laws in relevant sphere;
- Discussion of the various issue and presentation it before the council;

The decision to create Working Groups in aforementioned four priority areas was triggered by the need to address ongoing reforms in detail manner. Namely, the 2009 Strategy and Action Plan identify two new components – Juvenile Justice and Probation in comparison with the 2005 strategy and action plan. In addition, the institutional challenges within the penitentiary required development of comprehensive strategy, while the Legal Aid Service represents a newly established institution.

The membership of the Working Groups and the terms of reference have been determined by the respective Working Groups with the assistance of the Secretariat; although upon the request from the interested parties the composition of the Working Group has been amended (adding new members).

Each Working Group has Rapporteur/Co-Rapporteurs whose responsibilities include:

- guidance of the meetings according to the agenda and time available;
- insurance that all discussion items end with a decision, action or definite outcome;
- review and approval of the draft minutes before distribution.

Co/Rapporteurs have been elected by the respective Working Groups upon the proposal of the Secretariat. The meetings of the Working Groups are held based on necessity but at least once per month.

Secretariat of the Council provides all technical assistance required for the arrangement of the Working Group meetings.

1. Working Group on Juvenile Justice

The Criminal Justice Reform Inter-Agency Coordination Council established the Working Group on Juvenile Justice System. The mandate of the Working group is to elaborate the revised strategy for Juvenile Justice reform. The following components fall under the Juvenile Justice sector and its Action Plan:

- Develop Strategy for the Juvenile Justice Plan in line with the international standards (CRC recommendations)¹;
- Improved education and living conditions for juvenile prison inmates² (sentenced and

¹ Juvenile Justice Strategy is primarily based on the draft proposal prepared by UNICEF and thus incorporates major recommendations underlines by CRC;

² The Ministry of Education and Science along with the Ministry of Corrections and Legal Assistance is working on the programs dealing with the educational activities of the juveniles. The activity report has been presented to the JJ Working Group by the MOES (including the written report of future activities). Secretariat has also

- pre-trial), refined service provision for juveniles on probation³;
- Draft outline of the training programme for probation officers dealing with juvenile probationers (official training module). In addition, all probation officers that deal with juvenile offenders to receive special training on the needs and rights of juveniles under probation (official training module available, list of participants, dates, training reports)⁴;
- Review of legislation in juvenile justice sphere⁵

2. Working Group on Penal System

The Criminal Justice Reform Inter-Agency Coordination Council established the Working Group on Juvenile Justice System. The following components fall under the part of Strategy for Prisons and Action Plan:

- Revision of the part on the penal system of the Strategy of Criminal Justice Reform⁶;
- Revision of the Action plan and including specific costed actions on the penal system for Criminal Justice Reform⁷;
- Review of legislation and internal controls procedures in line with Council of Europe recommendations (Code on Imprisonment)⁸;
- Revision of the Strategy and Action Plan in line with the CPT recommendation to develop a strategic approach to combat prison overcrowding⁹;
- Revision of criminal legislation with regard to length of sentencing in comparison with other European countries¹⁰;

3. Working Group on Probation System

received updated information regarding the ongoing activities in Avchala Facility – to be presented for consideration to the JJ Working Group in the upcoming future;

³ The draft Code on Imprisonment includes additional safeguards in relation to juveniles including the automatic submission of the juvenile files (subject eligibility) to the parole boards once in every three months; In addition, emphasis is paid to the pilot projects oriented on the juveniles in probation (PRI/UNICEF Project – MCLA) and specialized training of the probation officers;

⁴ The training module for probationers is being drafted by the UNICEF experts in coordination with the Training Center for Probationers and Prisoners, MCLA. Subject to finalization of the module it would be shared with the JJ Working Group;

⁵ JJ Working Group has discussed draft proposal on diversion presented by Rapporteur Mr. Giorgi Jokhadze as well as discussed the issue of the raising of the criminal responsibility age up to 14 years – this particular provision is also included in the JJ Strategy;

⁶ PR Working Group has revised the Strategy taking into account the development of the draft code on Imprisonment and the challenge of prison overcrowding;

⁷ PR Action has been revised respectively;

⁸ See supra note 6; In addition to that, the Draft Code on Imprisonment has been submitted for the expertise to CoE;

⁹ See supra note 6;

¹⁰ The document is in drafting process;

The Criminal Justice Reform Inter-Agency Coordination Council established the Working Group on Probation System. The following components fall under the part of Strategy for Probation and Action Plan:

- Improved education and living conditions for juvenile prison inmates (sentenced and pre-trial), refined service provision for juveniles on probation¹¹;
- Draft outline of the training programme for probation officers dealing with juvenile probationers (official training module)¹²;
- Development of the Strategy and Implementation Action Plan¹³;
- Launching of the review of primary and secondary legislation to identify necessary amendments with involvement of Council of Europe international experts¹⁴;
- Growth in number of Probation Service offices (in comparison with January 2008) - establishment, proper equipment and staff;¹⁵

4. Working Group on Legal Aid

The Criminal Justice Reform Inter-Agency Coordination Council establishes the Working Group on Legal Aid System. The following components fall under the Legal Aid Strategy and its Action Plan:

- Expansion of the Capacity and Outreach of the Legal Aid Service¹⁶;
- Increase in number of professional staff and growth in the number of legal aid bureaus¹⁷;
- Launching of the Legal Aid website (design and activation)¹⁸;
- Introduction of unified communication system/computer network for Legal Aid Service¹⁹;

¹¹ See supra note 1;

¹² See supra note 4 (the Probation Working Group and JJ Working Group have been informed of this cross cutting issues by the Rapproteurs – decision has been taken that thematically it would be covered in JJ Working Group by the Probation Working Group remain informed and involved in the process);

¹³ Probation Strategy and Action Plan has been drafted as a separate chapter of the overall criminal justice strategy and action plan;

¹⁴ MCLA representative has informed the Council at its 4th Session that they would launch the review of the Probation legislation and the Probation Working Group will serve as a forum discussion; the Secretariat has officially asked the CoE to take part in the process and provide expertise;

¹⁵ Probation Working Group has heard the presentation from the Deputy Minister of Corrections and Legal Assistance on this matter during the Probation Working Group Meeting held in September 2009;

¹⁶ Legal Aid Strategy/Action Plan include the information regarding the additional LA office to be opened; In addition to that, the LA Working Group has been presented by the presentation from the LA Service covering information regarding the development in 2009;

¹⁷ See supra note 16 – activity report submitted to the LA Working Group;

¹⁸ See www.legalaid.ge ;

¹⁹ See supra note 16 – activity report submitted to LA Working Group'

- Issuance of the reviewed Legal Aid Strategy and Action Plan²⁰;

5. Working Group on Statistics

Working group on Statistic is aimed to support the development of a comprehensive crime statistics in Georgia. It comprises two tire of the membership:

- Representatives from the relevant governmental agencies – policy making gorup;
- IT expert group.

The working group is currently working on several issues such as²¹:

- Assessment of the current situation in crime statistics;
- Development of integrated case management system;
- Organization of the Georgian Crime Survey;

6. Ad Hoc Working Group of the Council

Apart from four working groups, the Council has established *ad hoc* working group for the discussion of the Strategy/Action Plan in the areas of the criminal justice reform not covered by the existing Working Groups²². Namely:

- Criminal Procedural Legislation;
- Legislation on Administrative Offences;
- Prosecution;
- Police;
- Judicial System;
- Legal Education and Professional Training;
- Public Defender.

On 20th July, 2009, the Secretariat convened the *ad hoc* Working Group Meeting of the Criminal Justice Reform Inter-Agency Coordination Council. The aim of the Meeting was to enable Council members in detail discuss 2005 Strategy and respective action plans presented at the 3rd Session of the Council. In addition, the Meeting served as a forum to discuss Public Defender's Draft Strategy. Meeting followed the Agenda presented by the Secretariat and has been attended by the members of the Council (apart from the Co-Chairs). At the end of a meeting, relevant amendment were made to the Strategy/Action Plan 2009 that lead to adoption of all parts of Strategy/Action Plan on the fourth session of Inter-Agency Coordination Council (27th July 2009).

C. Secretariat of the Council

²⁰ Legal Aid Strategy and Action Plan has been updated and revised by the LA Working Group;

²¹ Next Working Group is schedules for 24th of September and would devote the meeting to the discussion of the aforementioned issues;

²² The Minutes of the Ad Hoc Working Group is available in English and has been send out by the Secretariat to all Council members and other Working Group representatives;

The Criminal Justice Reform Inter-Agency Coordination Council is assisted by a Secretariat placed at the Ministry of Justice. The Secretariat comprises of the Secretary of the Council and National Coordinator. The Secretariat is the resource for all Council members.

The Secretariat through the National Coordinator in general provides administrative and technical support to the Council, working groups and independent experts. The National Secretary of the Council is entrusted with coordination of the activities undertaken by the state institutions.

For that reason, the responsibilities of the Secretariat include:

- Preparation of the agendas and issuing notices for meetings, and ensuring all necessary documents requiring discussion or comment are attached to the agenda.
- Scheduling meetings and notifying working group members;
- Invitation of the specialists to attend meetings when required by the Council;
- Taking notes of proceedings and preparing minutes of meeting;
- Distributing the minutes to all working group and Council members after the meeting and be made available to all staff;
- Coordination of the Donor Support Activities;

Apart from this, upon the Council's Decision at its 4th Session on 27th July 2009, the Secretariat has been entrusted with the task of monitoring implementation of the respective action plans. It is also entrusted with the preparation of the activity reports that would be submitted before the Council for assessment.

D. Monitoring Implementation of the Strategy/Action Plan 2009

Pursuant to the decision of the Council adopted at its 4th Session, management of the monitoring process is the obligation of the Secretariat. The Council has entrusted its Secretariat to monitor realization of the strategy and action plans on permanent basis. Activity reports prepared by the Secretariat would be submitted to the Council for proper analyzes and evaluation. In addition, the Secretariat has been advised to employ existing Working Groups as a forum for discussion of the activity reports and on-going challenges arising in context of the Strategy.

Each institution engaged in the process (governmental agency and international/donor organization) has designated a contact point who will be responsible for providing details of activity reports in line with the implementation of the Action Plan to the Secretariat once every two months. At the beginning, contact points have been asked to submit reports with respect to summer activities 2009. From September, the contact points have been asked to present activity report on two-month basis. Secretariat shall prepare reports that would be publicly available²³.

A six-monthly progress report shall be submitted for discussion to the Inter-Agency Coordination Council. Since the monitoring phase requires proper evaluation of the implemented activities, the Secretariat has embarked upon the new process that aims to develop the information gathering process with the identification of the appropriate

²³ The Ministry of Justice of Georgia is under construction of the new website that would include Criminal Justice Reform Component with all relevant information and documents enclosed;

indicators²⁴. As a first step, it would include implementation of a common information fact sheet for all actors involved in the reform process; As a next step, the Secretariat aims to propose development of indicators that would serve as an evaluation tool for the Council.

IV. Participation of Civil Society and Donor Community

Considering uniqueness of this opportunity and importance of creating a participatory process, Council as well as four Working Groups/*Ad Hoc* Working Group served as a forum open to all relevant stakeholders, international/donor organizations and non-governmental organization; thus, enabling engagement of all interested parties in the process.

Council itself considers that the civil society and donor community participation in the process ensures transparent and effective implementation of the criminal justice reform in Georgia. Therefore, from the beginning it was decided that Inter-Agency Coordination Council should have a participatory character with the direct involvement of the international community, civil sector and relevant experts as invited members in the Council.

For that reason, initial letters of invitation were sent to wide range of non-governmental organizations active in the relevant fields of criminal justice reform, as well as to donor organizations. Those that responded and proposed a representative were included among the list invited by the Presidential Decree No. 591 to participate in the activities of criminal justice reform²⁵.

Secretariat acknowledges that the current criminal justice process is unable to fully cover all interested parties and encompass such target groups as regional NGOs or representatives of the civil society who potentially can be involved in program/projects covered by the Strategy and Action Plan. Therefore, the decision taken by the Council has entrusted the Secretariat to prepare presentation of the Criminal Justice Reform Strategy to the community as well as organization on yearly basis in a form of a conference aimed to discuss ongoing implementation of the Strategy and Action Plan. Respectively:

- Presentation of the Criminal Justice Reform Strategy has been organized on the 5th of August 2009 for the wide spectrum of audience including government institutions/agencies, donor/international community/organizations, diplomatic community and non-governmental sector²⁶;
- Preparation of the one day round-table/ conference in mid January 2010 for discussion of the one year report with the public audience;

²⁴ Secretariat is being assisted by EC Funded/Human Dynamics led project (expert); The draft reporting document has been prepared and shared for comments with the contact points;

²⁵ Only one organization has refused direct participation in the Council due to lack of sufficient resources on spot, while the other institution has kindly asked to be included in Working Groups without having the formal representative at the Council although they are invited and present at all Council meeting. Secretariat does not name those institutions in this report as no proper authorization has been taken from the respective organization to be named in this paragraph;

²⁶ Minutes of the Meeting are publicly available; Notably, the comment made by the various representatives during the Launch of the Criminal Justice Reform Strategy in relation to Strategy and Action Plan has been taken on board by the Secretariat and Council – including respective amendments into the Strategy and Action Plan;

Significant part of the Criminal Justice Reform Strategy rests upon the coordinated efforts of the relevant institutions/agencies and donor community. Therefore, the Secretariat in parallel to all other respective activities is actively engaged in the development of donor coordination mechanism.

For Donor Community, presentation of the reform programs has been held at Bazaleti Donor Conference on 18th of February 2009, with the follow up Donor Conference to be held on 25th of September 2009 in Tbilisi, Georgia.

This is a new initiative taken on board by such a government institution as the Council and its respective Secretariat. Currently, donor community have been asked like all other participants of the process to submit activity report once in two months that would allow the Secretariat to trace all the ongoing activities. Although, the Secretariat acknowledges that this is only part of the proposed activities and a more structured approach/rules of engagement is required. Therefore, the Secretariat with the support of international expertise is planning to develop a comprehensive donor coordination mechanism that would go beyond monthly donor round table meetings²⁷.

²⁷ EC Funded/Human Dynamics run project;