

**BUSINESS MONITORING OF THE GEORGIAN ADMINISTRATIVE CODE
PARTNERSHIP FOR SOCIAL INITIATIVES (PSI)
FINAL REPORT
18 JULY 2002**

SUMMARY

The project set forth three main objectives: first, to use strategies and studied aimed at the business community to demonstrate how implementation of the rule of law can contribute to the democratic society; second, to build a coalition of business association to monitor the implementation of the Georgian Administrative Code; and, third, to develop a better climate of cooperation between the business community and members of Parliament.

We believe that the project was successful at meeting all three of these objectives. The project helped increase the level of understanding of the importance of the rule of law among a variety of stakeholders, in particular the business community, and enabled the business community to become a more engaged partner in building of the Georgian democracy. The building of the coalition was an very successful, not only for the purposes of this particular project, but in establishing a new model of coalition building in Georgia that moves away from a small NGO approach, to coalitions representative of a much broader spectrum of stakeholders. Yet the individuals and organizations participating in the implementation of this project are most excited about the new public-private partnership that has arisen as a result of the project's activities, by allowing the business community to become a more active and serious partner in decision making process by engaging the rights enshrined in the Administrative Code.

IMPLEMENTATION OF THE ADMINISTRATIVE CODE

The principal outcomes of the Business Monitoring of the Administrative Code can be summarized as follows:

- **One, Administrative Code as an interment for obtaining information—clear evidence exists that the Code works well as an instrument of obtaining information from government agencies, if you are supported by a strong legal team.**

Government agencies are generally inclined to provide the information requested, though at times with some delay. Because the Code provides for the ability to sue agencies in Court if they do not provide information by a specific deadline, it is almost always possible to obtain information through that route if the information is not forthcoming directly. PSI did have some problems with the Ministry of Finance in obtaining information, but after putting medium pressure (first level claim in the court) the situation was resolved. Government agencies are aware of the law and are usually cooperative if they are confronted with well organized and legally supported organizations. However, it is also clear that the Administrative Code does not work well for organizations or individuals who lacks of knowledge about their rights, which the Code aims to defend, or who have the image of being weak and do not have ongoing legal support.

At the same time, while executive government agencies (Ministries, etc.) are more or less aware of their responsibilities per the Code, this does not seem to be the case with the regulatory agencies which are by law independent of the political process and the regular executive agencies. As PSI has reported in the past, PSI has been trying to obtain information from the Energy Regulatory Commission regarding the determination that the increase in the cost of electricity was warranted based on the investment in the electricity market by the Tbilisi electricity provider. The Commission refused to provide this information, at which point PSI took it to Court. First, the Commission requested that the auditor, on whose information the recommendation to increase the cost was made, be included in the legal process. The Court granted this request, without fully clarifying why the auditor should be permitted to participate in this legal process. Second, the hearing of the dispute has been delayed twice, first due to the non-appearance at the hearing by the Commission, and afterward by the auditor. Seven months since the beginning of the Court process with the Electricity Regulatory Commission, we have not been able to reach the discussion of the substantive issues of the case, with hearings still focused on procedural issues. One of the reasons explaining the Commission's complete disregard for Code might be the fact that Georgian regulatory bodies are not controlled in any way by the Parliament (members cannot even be impeached). Thus, they itself are fully isolated from the democratic political process, and thus are less inclined to abide by the rule of law. However, the Coalition will follow this process to fruition, to ensure that this agency abides by the rule of law and the Parliament understands the danger of such uncontrolled agencies.

- **Second, Administrative Code as an instrument of decision-making—using the Code to become involved in the decision-making process.**

This is a power granted in the legislation which had never before been used before. However, the Coalition, by making use of the Code to involve itself in the decision-making process in the area of the development of the Poverty Reduction and Economic Growth Program (PREGP), among others, the project significantly empowered the Georgian business community and the non-governmental sector. It is necessary to emphasize that participation in decision-making process creates conditions for additional representation. This, in turn, challenges and prevents the great danger of power gathering, or in better words (i.e., power concentration) and at the same time, it is a condition for diffusion of power among different groups within the society.

We believe that the development of this component—the dissemination of power to stakeholders—is a critical element for democracy. It enables the members of the society to engage in active citizenship and allows the stakeholders to have greater control over their lives. Georgia in many significant respects is an example of soft authoritarianism—elections truly do take place, thus democracy is engaged every time there is a vote. However, this does not mean that Georgia is a liberal democracy, largely because decision-making is concentrated in the hands of the few, and citizens (or larger stakeholder groups) are left with little ability to influence the political process. The Administrative Code is extremely important in enabling the citizens and stakeholders to take control of the government. We are certain that the current project serves as an example for future involvement by the business sector (and of other, non-business stakeholders) in the decision-making process, in the business and economic areas, but also in other areas of decision-making, and offers an excellent framework for such involvement for stakeholders.

- **Three, the project made use of the Administrative Code to educate and increase the legitimacy of decision-makers.**

While the primary reason for stakeholders' engagement in the decision-making process is to put their stamp on the final decision (and this is where the Administrative Code is absolutely necessary), the participation by a group of stakeholders in decision-making also has an important indirect results. The stakeholders are able to educate the decision-maker, and open for him new horizons and new perspectives for approaching issues. Many decision-makers, in Georgia and probably elsewhere, are so busy undertaking the steps necessary to fulfill their specific projects (meet the budget, pass laws, implement regulations, etc.) that they often lose sight of the larger picture. Stakeholders, who come into the process from the outside, have a diverse view of this larger picture, which they are able to present to the decision-maker, who thus is educated about how his activities and decisions might effect the life outside.

In Georgia this is particularly true with Parliament, where critical decisions are made through the legislative process, but who often do not understand how laws might truly impact the areas that it is aimed to address, or areas that it impacts indirectly. This is especially the case with laws governing business life and the economy, because the understanding of economic freedom and the role that the business community must and can play in the life of the society is often lacking. This, in turn, increases the legitimacy of the decision-makers and makes the decisions far more effective.

- **Four, the project demonstrated to a variety of stakeholders (lawmakers, executive, judiciary, non-government, business sectors, and media) who have very different perspectives and interests, that it is possible to sit down and work together in a constructive dialogue, clarify problems and find solutions.**

An excellent example of this are the developments that arose surrounding PSI's policy recommendation to introduce non-judiciary arbitration of certain disputes that currently resolved through a lengthy legal proceeding. Currently all administrative disputes that arise, no matter how minor (such as a dispute over the quality of gas supplied by a private company to a government agency), have to be resolved through the administrative law and a Court hearing. Many of these disputes, according to PSI's analysis, would be better resolved through the civil legal process, particularly through the use of arbitration rather than a court proceeding. However, when this idea arose, the members of the judiciary who were engaged in this process outright rejected it. As this issue was discussed further, and as variety of Coalition members discussed this issue further with the judiciary and other opponents of this idea on the issue, and engaged the legislative branch in these discussions, the opposition to introducing of arbitration softened. When this issue was discussed during the final project conference, IRIS (a USAID contractor that was one of the main authors of the Administrative Code) strongly supported the idea. Members of Parliament have voiced support as well, including the most pro-business Parliamentary Faction leader. We are hopeful that the legislature will discuss a possible amendment to the Administrative Code necessary to accomplish this change in the near future. The Coalition and PSI hope to have an opportunity to lobby the Parliament on this issue throughout the fall.

OUTCOMES AND IMPACTS

1. Building the Coalition

Coalition which was created now possesses an instrument (the Code) and the knowledge of how to use it. Over the course of the project's activities, one of the significant long-term achievements is the education that Coalition members received in how to use the Code which can be used in the future to advance the Coalition members' interests. The second significant achievement is the strong relationship that has been built between the Coalition members of working together to advance mutual interests.

The project's Coalition was the first non-governmental coalition that included stakeholders other than only 'non-governmental organizations' strictly understood ever formed in Georgia. Before, the relationship between government and stakeholders was on an individual basis, or between a small group of non-governmental stakeholders and decision-makers. The Coalition, for the first time in the democratic development of Georgia, brought together a much larger group of stakeholders from a very broad specter. Its success in influencing decision-making was a significant example to other stakeholders. The Coalition was not only of successfully influencing the PREGP process, but in developing a set of recommendation for creation of the Accreditation Institution, which reduces administrative barriers and makes it easier for stakeholders to participate in decision-making. Using the Coalition's recommendations, an Accreditation Institution was established at Georgia's National Center of Intellectual Property, and currently work is underway to develop similar Accreditation Institutions in other governmental agencies. The Coalition's success brought it to the attention of the donor community and the Georgian government. As PSI has reported in the past, for example, the Eurasia Foundation is a potential funder of the accreditation process. The choice of Georgia's National Center of Intellectual Property was not an accident. Intellectual property is constantly under threat in Georgia because of the weak level of the rule of law in the country, and as a result making the government agency that protects intellectual property better is extremely important. (For additional information about the Accreditation Institution, please see Report No. 3).

2. Coalition as an Example for Empowerment of Stakeholders

By being successful, the Coalition showed to others in the non-governmental sector why it is important to bring stakeholders together into a group to influence decision making. Its experience also clearly showed that the Georgian political environment will benefit from the existence of a variety of medium sized, but strong, Coalitions, rather than one large Coalition. As a result, PSI has devoted significant time to working with other groups of stakeholders, both in the business and the non-business communities, to create new Coalitions on its own model, rather than convincing all potential parties to join its group. An excellent example of this is the Small Merchants and Micro Business Association, a group that PSI helped found and has guided since its formation. Since the implementation of the Administrative Code grant and the formation of the Coalition, PSI has served as a guide in coalition-building for a number of others including: Small and Micro Business Association, Movement for Dignified Future, Coalition Against Violence, Coalition Against Torture, and Coalition for Democracy. This cross-coalition building empowers the non-governmental sector, particularly the business community, and allows it to play a significant role in governmental decision making.

3. Business Community Involvement in Decision-making

The business community has significantly benefited from the project in a number of areas which have been noted above. An additional area is the state procurement system, which presents a significant problem for the business community. Because of Georgia's limited market, state procurement is an important source of income for many businesses. However, procurement is often hampered by corruption and without any participation by the business community in developing tenders, which are written in an extremely closed, non-transparent manner. During the work of the project, two businesses that are Coalition members (IPM and IMC International) raised the question that the tender that they had participated in was not conducted properly. Another Coalition member, the Association of Banks of Georgia, also raised the tender issue, pointing out that one of its member banks was severely hurt by one of the tenders. In all of the cases, interested parties were prevented from obtaining information about the tender decision-making. PSI and the Coalition, since it was working on implementing the Administrative Code, worked to obtain the information that these organizations requested; as it has reported, in one case PSI suffered significant threats from the government by pushing to obtain the information. The Association of Banks sued the implementing government agency using the information obtained by PSI and won.

In order to ensure that in the future it will be possible for the business community (directly and through representative associations) to play a more concrete and important role in the procurement decision-making process, PSI and the Coalition developed a conceptual framework that they hope to implement in all government agencies. This framework is based on the know-how the Coalition gained by working on the Administrative Code, and uses the Code as the key instrument of stakeholders' power. It has become apparent that potential donors exist to finance this process, and the Coalition has asked the Alliance for Business Environment Development (ABED), a Coalition member, to monitor the procurement law.

The Coalition's engagement with the legislative branch will continue in the long-term. July 21-23, 2002, a representative group from the Coalition including the Chairman of the Georgian Stock Exchange, leading health-care provider, PSI's President, and Head of the State Department of Informatics (cabinet-rank individual who was an extremely active participant in the project) will travel to a Parliamentary retreat expected to be attended by Factions and Committees leadership and other leading deputies. The retreat will aim to educate the members of Parliament on the Coalition's participation in the PREGP program.

4. Increased Public-Private Partnership

The Coalition's work, by serving as a guide for new coalitions and stakeholder alliances, has ushered a new era in the public-private partnership in Georgia. Before the Coalition's work, the public-private was work of one NGO or a group of NGOs with the government. With Coalition's activity, the question of the public-private partnership was brought to the forefront and put on the general agenda, significantly increasing the groups participating in a partnership with the government, including business, Parliament, media, executive bodies, and non-governmental organizations.

5. Positive Trend in Awareness

PSI's "KAP" survey at the conclusion of the project clearly indicates that the business community is beginning to better understand the rights vested in them by the Code, though the positive shift is not yet very large. However, it is also clear that the development of the positive trend cannot be attributed to positive changes in Georgia's economic situation, political developments, etc. The trend, however, is extremely important for democracy. At the same time, the questions asked in the survey allowed us to find out if the relationship between business and the government, stakeholders are seeing rights and opportunities for a betterment of the relationship. Finally, the business community very strongly supported the recommendations that PSI and the Coalition proposed. Seventy-six percent of those surveyed supported the recommendation regarding the creating of the court of arbitration for certain disputes, while eighty-two percent of those surveyed supported the creation of the Accreditation Institute. Sixty-three percent of those surveyed supported strengthening sanctions against those who violate the code (this was a recommendation that arose from the final conference). It is important to note that these recommendations were developed through a unified effort of PSI, the Coalition, and those participating in the conference.

6. Publication of the Booklet

PSI published a booklet aimed at assisting stakeholders in understanding the purpose and components of the Code. The Coalition analyzed and approved contents of the Booklet, which was then distributed to a wide range of stakeholders. The booklet included a legal analysis of the components of the Code; results of surveys of business and business associations; analysis of the use of Code by businesses and business associations; monitoring the cases of the Code; and analysis of implementation process.

FURTHER WORK

One area where the work still remains to be done is in influencing the legislature to implement the policy recommendations that have arisen as part of the project. While PSI and its Coalition partners have been successful in influencing the executive agencies, and working closely with the Parliament in a variety of areas, the current political environment makes it difficult to pass legislation through the lawmaking body. The Parliament is split between 15 different factions, most of which are protecting very narrow interests and many of them are not able to work closely together. Thus, it is often difficult to build a majority in Parliament. Thus, PSI plans to devote resources and time to implementing its policy recommendations, and expects to receive support from its Coalition partners.