



**LEGAL PROFESSION REFORM
INDEX
FOR
GEORGIA**

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VOLUME II

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Introduction

The Legal Profession Reform Index (LPRI) is an assessment tool implemented by the American Bar Association's Rule of Law Initiative (ABA ROLI). It was developed by the ABA's Central European and Eurasian Law Initiative (ABA/CEELI), now a division of ABA ROLI, together with its other regional divisions in Africa, Asia, Latin America, and the Middle East/North Africa. Its purpose is to assess the process of reform among lawyers in emerging democracies. The LPRI is based on a series of 24 factors derived from internationally recognized standards for the profession of lawyers identified by organizations such as the United Nations and the Council of Europe. The LPRI factors provides benchmarks in such critical areas as professional freedoms and guarantees; education, training, and admission to the profession; conditions and standards of practice; legal services; and professional associations. The LPRI is primarily meant to enable ABA ROLI or other legal assistance implementers, legal assistance funders, and emerging democracies themselves to implement better legal reform programs and to monitor progress towards establishing a more ethical, effective, and independent profession of lawyers. In addition, the LPRI, together with ABA ROLI's companion Judicial Reform Index (JRI), Prosecutorial Reform Index (PRI), and Legal Education Reform Index (LERI), also provides information on such related issues as corruption, the capacity of the legal system to resolve conflicts, minority rights and gender equality, and legal education reform.

ABA ROLI embarked on this project with the understanding that there is no uniform agreement on all the particulars that are involved in legal profession reform. In particular, ABA ROLI acknowledges that there are differences in legal cultures that may make certain issues more or less relevant in a particular context. However, after more than a decade of working on this issue in the field, ABA ROLI has concluded that each of the 24 factors examined herein may have a significant impact on the legal profession reform process. Thus, an examination of these factors creates a basis upon which to structure technical assistance programming and assess important elements of the reform process.

The technical nature of the LPRI distinguishes this type of assessment tool from other independent assessments of a similar nature, such as the U.S. State Department's COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES and Freedom House's NATIONS IN TRANSIT. This assessment will *not* provide narrative commentary on the overall status of the legal profession in a country. Rather, the assessment will identify specific conditions, legal provisions, and mechanisms that are present in a country's legal system and assess how well these correlate to specific reform criteria at the time of the assessment. In addition, it should be noted that this analytic process will not be a scientific statistical survey. The LPRI is based on an examination of relevant legal norms, discussions with informal focus groups, interviews with key informants, and on relevant available data. It is first and foremost a legal inquiry that draws upon a diverse pool of information that describes a country's legal system at a particular moment in time through the prism of the profession of lawyers.

Scope of Assessment

Assessing legal profession reform faces two main challenges. The first is defining the terms "legal professional" and "lawyer." The title Legal Profession Reform Index is somewhat of a misnomer. The LPRI focuses its attention on lawyers; however, most of the world's legal professions are segmented into various categories. For example, the Council of Europe lists several distinct categories of legal professionals, including judges, prosecutors, lawyers, notaries, court clerks, and bailiffs. ABA ROLI could have included all of these professions, and perhaps others, in its assessment inquiry; however, the resulting assessment would likely become either overly complex or shallow.

In order to keep the LPRI assessment process manageable and to maintain its global applicability and portability, the LPRI focuses on professions that constitute the core of legal systems; i.e.,



professions that are universally central to the functioning of democratic and market economic systems. As a result, ABA ROLI excluded from the LPRI such professions as notaries, bailiffs, and court clerks, because of variations and limitations in their roles from country to country. In addition, ABA ROLI decided to exclude judges and prosecutors from the scope of the LPRI assessment, in order to focus this technical tool on the main profession through which citizens defend their interests vis-à-vis the state. Independent lawyers, unlike judges and prosecutors, do not constitute arms of government. Furthermore, ABA ROLI has developed the JRI, which focuses on the process of reforming the judiciaries in emerging democracies, the PRI, an assessment tool for prosecutors, and the LERI, an assessment tool for assessing the state of legal education in a given country.

Once ABA ROLI determined which category of legal professionals would be assessed by the LPRI, the remaining issue was to define the term “lawyer.” In the United States and several other countries, lawyers constitute a unified category of professionals. However, in most other countries, lawyers are further segmented into several groups defined by their right of audience before courts. For example, in France, there are three main categories of advocate lawyers: *avocats*, *avoués à la Cour*, and *avocats aux Conseils*. An *avocat* is a lawyer with full rights of audience in all courts, who can advise and represent clients in all courts, and is directly instructed by his clients and usually argues in court on their behalf. An *avoué à la Cour* has the monopoly right to file pleadings before the Court of Appeal except in criminal and employment law cases, which are shared with *avocats*. In most cases, the *avoué à la Cour* only files pleadings but does not argue before the court. He has no rights of any sort in any other court. The *avocat aux Conseils* represents clients in written and oral form before the Court of Cassation and the *Conceil d'Etat* (the highest administrative court of France). See Sanglade & Cohen, *The Legal Professions in France*, in *THE LEGAL PROFESSIONS IN THE NEW EUROPE: A HANDBOOK FOR PRACTITIONERS* at 127 (Tyrrell & Yaqub eds., 2nd ed. 1996). In addition to rights of audience, other factors further complicated efforts to define the term “lawyer,” including the large number of government lawyers and corporate counsel who are not considered independent professionals and the practice in some countries of allowing persons without legal training to represent clients.

These issues posed a dilemma, in that, if ABA ROLI focused exclusively on advocates (generally understood as those professionals with the right of audience in criminal law courts), it could potentially get an accurate assessment of perhaps a small but common segment of the global legal profession, but leave the majority of independent lawyers outside the scope of the assessment, thus leaving the reader with a skewed impression of reform of the legal profession. For example, according to the Council of the Bars and Law Societies of the European Union, there were 22,048 lawyers practicing law in Poland in 2002. Of that number, only 5,315, or 24%, were advocates. If, on the other hand, the LPRI included all persons who are qualified to practice law, that might also produce an inaccurate picture, in that it would include non-lawyers and lawyers who are not practicing law. In order to keep its assessment relatively comprehensive yet simple, ABA ROLI decided to include in the universe of LPRI lawyers those advocates and civil practice lawyers that possess a law degree from a recognized law school and that practice law on a regular and independent basis; therefore, excluding government lawyers and corporate counsel if necessary. In addition, because some of the factors only apply to advocates, ABA ROLI decided to expand and contract the universe of lawyers depending on the factor in question.

Methodology

The second main challenge faced in assessing the profession of lawyers is related to substance and means. Although ABA ROLI was able to borrow heavily from the JRI in terms of structure and process, there is a scarcity of research on legal reform. The limited research there is tends to concentrate on the judiciary, excluding other important components of the legal system, such as lawyers and prosecutors. According to democracy scholar Thomas Carothers, “[r]ule-of-law promoters tend to translate the rule of law into an institutional checklist, with primary emphasis on the judiciary.” CAROTHERS, *PROMOTING THE RULE OF LAW ABROAD: THE KNOWLEDGE PROBLEM* at 8, (CEIP Rule of Law Series, Working Paper No. 34, Jan. 2003). Moreover, as with the JRI, ABA

ROLI concluded that many factors related to the assessment of the lawyer's profession are difficult to quantify and that "[r]eliance on subjective rather than objective criteria may be ... susceptible to criticism." ABA/CEELI, JUDICIAL REFORM INDEX: MANUAL FOR JRI ASSESSORS at ii (revised ed. 2006).

In designing the LPRI methodology, ABA ROLI sought to address these issues and criticisms by including both subjective and objective criteria and by basing the criteria examined on fundamental international and regional standards, such as the *United Nations Basic Principles on the Role of Lawyers*; the International Bar Association's *Standards for the Independence of the Legal Professions, General Principles of the Legal Profession*, and *International Code of Ethics*; the Union Internationale des Avocats' *Turin Principles of Professional Conduct for the Legal Profession in the 21st Century*; the Council of Europe's *Recommendation R(2000)21 on the Freedom of Exercise of the Profession of Lawyer*; and the Council of Bars and Law Societies of Europe's *Charter of Core Principles of the European Legal Profession and Code of Conduct for European Lawyers*. In addition, ABA ROLI was able to rely on best practices ascertained through more than 10 years of its technical legal assistance experience reforming the profession of lawyers in emerging democracies.

Drawing on these sources, ABA ROLI compiled a series of 24 aspirational statements that indicate the development of an ethical, effective, and independent profession of lawyers. To assist assessors in evaluating these factors, ABA ROLI developed a manual that provides a guiding commentary of the factors and the international standards in which they are rooted, clarifies terminology, and provides flexible guidance on areas of inquiry. A particular effort was made to avoid giving higher regard to common law, as opposed to civil law concepts, related to the structure and function of the profession of lawyers. Thus, certain factors are included that a common law or a civil law lawyer may find somewhat unfamiliar, and it should be understood that the intention was to capture the best that leading legal traditions have to offer rather than model the LPRI on one country's legal profession system. The main categories incorporated address professional freedoms and guarantees; education, training, and admission to the profession; conditions and standards of practice; legal services; and professional associations.

In creating the LPRI, ABA ROLI was able to build on its experience in creating the JRI and the newer CEDAW Assessment Tool¹ in a number of ways. For example, the LPRI borrowed the JRI's factor "scoring" mechanism and thus was able to avoid the difficult and controversial internal debate that occurred with the creation of the JRI. In short, the JRI, and now the LPRI, employ factor-specific qualitative evaluations; however, both assessment tools forego any attempt to provide an overall scoring of a country's reform progress since attempts at overall scoring would be counterproductive.² Each LPRI factor, or statement, is allocated one of three values: *positive*, *neutral*, or *negative*. These values only reflect the relationship of a factor statement to a country's regulations and practices pertaining to its legal profession. Where the statement strongly corresponds to the reality in a given country, the country is given a "positive" score for that statement. However, if the statement is not at all representative of the conditions in that country, it is given a "negative." If the conditions within the country correspond in some ways but not in others, it is given a "neutral."

The results of the 24 separate evaluations are collected in a standardized format in each LPRI country assessment. As with the JRI, the PRI, and the LERI, there is the assessed correlation and a brief summary describing the basis for this conclusion following each factor. In addition, a more in-depth analysis is included, detailing the various issues involved. Cataloguing the data in this way facilitates its incorporation into a database, and it permits users to easily compare and contrast the performance of different countries in specific areas and – as LPRI's are updated –

¹ CEDAW stands for the UN Convention on the Elimination of All Forms of Discrimination Against Women. ABA ROLI developed the CEDAW Tool in 2001-2002.

² For more in-depth discussion on this matter, see C.M. Larkin, *Judicial Independence and Democratization: A Theoretical and Conceptual Analysis*, 44 AM. J. COMP. L. 605, 611 (1996).



within a given country over time. There are two main reasons for borrowing the JRI's assessment process, "scoring," and format. The first is simplicity. Building on the tested methodology of the JRI enabled a speedier development of the LPRI. The second is uniformity. Creating uniform formats enables ABA ROLI to cross-reference information generated by the LPRI into the existing body of JRI, PRI, and LERI information. This gives ABA ROLI the ability to provide a much more complete picture of legal reform in target countries.

Two areas of innovation that build on the JRI experience are the creation of a correlation committee and the use of informal focus groups. In order to provide greater consistency in correlating factors, ABA ROLI forms an ad hoc committee that includes the assessor, relevant Country Director and local staff, and select ABA ROLI D.C. staff. The concept behind the committee is to add a comparative perspective to the assessor's country-specific experience and to provide a mechanism for consistent scoring across country assessments. The use of informal focus groups that consist of not only lawyers, but also judges, prosecutors, NGO representatives, and other government officials is meant to help identify issues and increase the overall accuracy of the assessment.

The follow-on rounds of implementation of the LPRI will be conducted with several purposes in mind. First, they will provide an updated report on the legal professions in emerging democracies by highlighting significant legal, judicial, and even political developments and how these developments impact the independence and quality of legal profession. They will also identify the extent to which shortcomings identified by earlier LPRI assessments have been addressed by state authorities, legal professionals, and others. Periodic implementation of the LPRI assessments will record those areas where there has been backsliding, note where efforts to reform the profession of lawyers have stalled and have had little or no impact, and distinguish success stories and improvements in legal profession reform efforts. Finally, by conducting LPRI assessments on a regular basis, ABA ROLI will continue to serve as a source of timely information and analysis on the state of legal profession independence and reform in emerging democracies.

The overall report structure of follow-on LPRI reports as well as methodology will remain unchanged to allow for accurate historical analysis and reliable comparisons over time. These reports will evaluate all 24 LPRI factors. This process will involve the examination of all laws, normative acts and provisions, and other sources of authority that pertain to the organization and functioning of the legal profession, and will again use the key informant interview process, relying on the perspectives of several dozen or more lawyers, judges, NGO leaders, and journalists who have expertise and insight into the functioning of the lawyers. When conducting the follow-on assessments, particular attention will be given to those factors which received negative values in the prior LPRI assessment.

Each factor will again be assigned a correlation value of positive, neutral, or negative as part of the follow-on LPRI implementations. In addition, all follow-on assessment reports will also identify the nature of the change in the correlation or the trend since the previous assessment. This trend will be indicated in the Table of Factor Correlations that appears in the LPRI report's front-matter and will also be noted in the conclusion box for each factor in the standardized LPRI report template. The following symbols will be used: ↑ (upward trend; improvement); ↓ (downward trend; backsliding); and ↔ (no change; little or no impact).

Social scientists might argue that some of the criteria would best be ascertained through public opinion polls or through more extensive interviews of lawyers and court personnel. Being sensitive to the potentially prohibitive cost and time constraints involved, ABA ROLI decided to structure these issues so that they could be effectively answered by limited questioning of a cross-section of lawyers, judges, journalists, and outside observers with detailed knowledge of the legal system. Overall, the LPRI is intended to be rapidly implemented by one or more legal specialists who are generally familiar with the country and region and who gather the objective information and conduct the interviews necessary to reach an assessment of each of the factors.

The LPRI was designed to fulfill several functions. First, the LPRI provides governments and legal system stakeholders with a comprehensive assessment of the state of legal profession in the country, thus enabling them to prioritize and focus reform efforts. Second, ABA ROLI and other rule-of-law assistance providers will be able to use the LPRI's results to design more effective programs that help improve the quality of independent legal representation. Third, the LPRI provides donor organizations, policymakers, NGOs, and international organizations with hard-to-find information on the structure, nature, and status of the legal profession in countries where the LPRI is implemented. Fourth, combined with the JRI, the PRI, and the LERI, the LPRI contributes to a comprehensive understanding of how the rule of law functions in practice. Finally, the LPRI results can also serve as a springboard for such local advocacy initiatives as public education campaigns about the role of lawyers in a democratic society, human rights issues, legislative drafting, and grassroots advocacy efforts to improve government compliance with internationally established standards for the legal profession.

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Assessment Team

The Georgia LPRI 2007 Analysis assessment team was led by Kristine Womack, with the support of ABA ROLI-Georgia Senior Staff Attorney Irina Lortkipanidze, Staff Attorney Irina Japharidze, and Criminal Law Junior Staff Attorney Mamuka Mamatsashvili. The team received strong support from members of ABA ROLI's staff in Tbilisi and Washington, D.C., including Europe and Eurasia Division Director Donna Wright, Research and Program Development Director Simon Conté, Research Coordinator Olga Ruda, Program Manager Julie Garuccio, and Program Officer Tamara Senikidze. ABA ROLI's Legal Analyst Brie Allen served as editor and prepared the report for publication. The conclusions and analysis are based on interviews that were conducted in Georgia in September-October 2007 and relevant documents that were reviewed at that time. Records of relevant authorities and a confidential list of individuals interviewed are on file in the Washington, D.C. office of ABA ROLI. The assessment team is extremely grateful for the time and assistance rendered by those who agreed to be interviewed for this project.



Executive Summary

Brief Overview of the Results

The 2007 LPRI assessment for Georgia shows a legal profession that is rapidly changing. The laws governing the profession have seen hundreds of changes in the past few years, and these reform efforts have produced some tangible, positive results. Of the 24 factors analyzed in this assessment, the correlations for 10 factors improved since 2005, while only two factors (those relating to access to clients and lawyer-client confidentiality) evidenced a decline. Overall, five factors were upgraded from a Negative to a Neutral correlation, and five factors were upgraded from a Neutral to a Positive correlation. Notable positive developments in the legal profession included the creation of the Georgian Bar Association (GBA), and its commencement of activities. This development is tied to another achievement: promulgation of the Code of Ethics for advocates and establishment of a disciplinary procedure for the enforcement of the Code. Another constructive development has been the recent adoption of the Law on Legal Aid, and accompanying creation of Legal Aid Bureaus in several cities.

Of the two factors which deteriorated in the 2007 Georgia LPRI, one factor correlation was downgraded from a Neutral to a Negative, and another from a Positive to a Neutral. The downgrading of these two factors reflects a growing problem in the Georgian justice system: the exclusion of defense counsel from legal proceedings. The introduction of a new plea bargaining process has meant that criminal defendants frequently enter into binding agreements regarding fines and sentences without ever consulting defense counsel. In addition, crowded detention facilities and the monitoring of meetings between advocates and detained individuals can hamper the efforts of advocates to establish a defense for their clients. Furthermore, nine factors analyzed in this LPRI maintained the same Negative or Neutral ratings as in 2005. These unchanged factors evinced several ongoing challenges facing the legal profession. Georgia's judicial system still follows an inquisitorial model, as a result of which advocates representing criminal defendants do not enjoy the same rights as the prosecution. In addition, a lack of financial and legal resources was reported throughout the country, especially outside of Tbilisi.

Positive Aspects Identified in the 2007 Georgia LPRI

- Georgia's ***unified bar association, the GBA, was established in January 2006***, after having successfully overcome the initial resistance on the part of many lawyers and the resulting court challenges to its constitutionality and legitimacy. The GBA is an independent, self-governing, and self-regulating bar association, membership in which is mandatory for all licensed advocates. It serves as the ***the official licensing body*** for the legal profession, and has ***adopted a Code of Ethics*** for advocates, as well as a ***disciplinary mechanism*** implemented through its Ethics Commission. Since its inception, the GBA's membership has almost quadrupled – from 900 members to 3,672 members. It should be noted that, as a new organization, ***the GBA is facing several challenges to its functioning***, including the inability to secure a quorum for its General Assembly's meeting in 2007 and problems with collecting dues from its members.
- ***The primary organizations of legal professionals*** – the GBA, the Georgian Young Lawyers' Association (GYLA), and the Georgian Law Students Association (GLSA) – ***are all active in providing member services***. The GBA provides trainings and free continuing legal education opportunities, and publishes quarterly journals. In addition to providing training opportunities to its members and other professionals, the GYLA is also active in informing the general public regarding their legal rights and duties. The GLSA promotes practical legal skills training and has made efforts to increase the dialogue between law students and legal professionals.

- Recent advances in legal education are another positive development. **National standardized university entrance exams** and **institutional accreditation** have now been in place for several years, with program accreditation scheduled to begin in 2008. Universities are **reorganizing their curriculum** in accordance with the Bologna Declaration on the European Space for Higher Education; **interactive teaching methods and analytical exercises are slowly being incorporated** in the classroom; and **legal clinics are beginning to offer students practical skills trainings** while providing assistance to the community.

Concerns Relating to the Structure of the Legal System

- Despite recent legislative changes, Georgia's **judicial system still follows an inquisitorial model, which gives the prosecutors a significant advantage in the courtroom**. This problem is prominent in criminal cases, with advocates continuing to experience **difficulties in obtaining information from the prosecutor's office** in a timely manner. In addition, inefficiency in the courts has also caused some problems for advocates seeking access to relevant case information, including court decisions in their own cases. Nonetheless, most advocates are hopeful that the **pending Draft Code of Criminal Procedure**, which adopts an adversarial trial process, **should eliminate some obstacles to the achievement of equality of arms**.
- **Advocates are hamstrung by the recent Criminal Law Guidelines (CLG)** introduced in 2007 with the aim of standardizing judges' sentencing practices, as well as **the introduction of a plea bargaining process**. The CLG have become automatic mandatory directives for judges, and prosecutors rely on this adherence to coax defendants into accepting plea bargains. **Advocates are frequently excluded from the plea bargaining process until after their clients have reached an agreement with the prosecution**. As a result, advocates feel relegated to the role of negotiating a more lenient sentence, without the opportunity to advocate for their client's innocence.
- **Problems relating to obtaining access to criminal defendants**, especially those deprived of their liberty, as well as to **maintaining confidentiality of communications with these defendants**, are growing **increasingly common**. Advocates are reportedly subject to searches when entering and leaving detention facilities, including searches of documents identified as confidential. Detention facilities are overcrowded, without adequate meeting space, and video surveillance of meeting rooms is commonplace. In addition, advocates are unable to access detention facilities in the evenings.

Concerns Relating to the Lack of Adequate Resources

- Advocates suffer from a lack of financial resources. Although advocates' fees vary widely and they were reluctant to reveal the actual monetary amounts they charge their clients, they all agreed that **their income is significantly less than that of prosecutors**. Low salaries are especially common in the regions. Financial constraints are also the **primary obstacle to the formation and expansion of independent law practices**. Additionally, advocates who serve as counsel for indigent defendants reportedly experience **problems receiving remuneration for their services from the government**.
- **Advocates also do not have access to necessary legal resources**, which has adverse implications for the quality of legal services provided. This is especially problematic outside of Tbilisi, as most libraries and legal resource centers are concentrated in the capital. Legal resources available in print form and via the Internet are **generally cost-prohibitive for the average advocate**. Additionally, **free legal publications do not always reach the advocates in the regions**. Even when

resources are accessible, they are sometimes only available in Russian, and not in Georgian. Both the GBA and the GYLA have made efforts to expand access to legal materials; however, their efforts are hampered by lack of funding.

- While passage of a new Law on Legal Aid and the government's establishment of a Legal Aid Service (LAS) in 2007 represent progress in the provision of legal aid, **the demand for legal assistance in criminal cases is not currently being met by the LAS**. Given this lack of capacity to satisfy the existing legal aid needs, there are doubts among many advocates as to the LAS's ability to provide legal aid in civil and administrative cases, which is currently anticipated to begin in January 2009. Additionally, although the LAS is defined as an independent public entity, **it operates within the Ministry of Justice system, which presents a challenge to its independence**. In order to succeed, the LAS will need to maintain quality control mechanisms to prevent undue governmental influence.

Other Concerns Identified in the 2007 Georgia LPRI

- Notwithstanding the rapidly increasing number of licensed advocates, the **inequitable distribution of advocates throughout Georgia** negatively affects the availability of legal services. **Nearly half of Georgia's licensed advocates are located in Tbilisi**, though the city accounts for less than one fourth of Georgia's total population. As a comparison, there is one advocate for every 714 Tbilisi residents, while Georgia's second and third largest cities, Kutaisi and Batumi, have ratios of, respectively, one advocate for every 1,890 residents and 2,440 residents.
- Advocates are currently permitted to obtain licenses from the GBA after passing either the general, civil law, or criminal law bar exam (which are administered by the GBA), or a prosecutorial or judicial exam (administered by the High Council of Justice). There is apparent **disparity in the quality, content, and oversight of the different bar exams**, which **undermines fair, rigorous, and transparent entry into the profession**. Most advocates believe GBA membership should require passage of a single, unified exam, to standardize the quality of the profession.
- Despite recent amendments, **non-advocates (called "representatives") are permitted to represent clients in court in limited circumstances**. These representatives are not required to be licensed by the GBA or meet any academic requirements. There is overwhelming agreement among Georgia's advocates that, in order to ensure the quality of legal representation, only licensed advocates should be permitted to represent clients in legal proceedings.
- While adoption of the Code of Ethics and establishment of a disciplinary procedure for advocates is a positive development, **legal professionals are generally unaware of their existence**, while those familiar with the Code of Ethics and disciplinary procedure are **doubtful as to their capacity to deter unethical behavior**. Only one of the approximately 100 disciplinary complaints brought so far has resulted in an advocate being sanctioned. The **GBA is attempting to educate advocates about the new disciplinary mechanisms**, but these ad hoc initiatives are **hampered by the lack of resources**.



Georgia Background

Georgia is a south Caucasus country that borders Russia, Armenia, Turkey, and Azerbaijan. Georgians trace their roots back to mythic Prometheus and Jason. The first settlements in modern-day Georgia date back more than two million years. Georgia's early story is one of invasion and domination by Romans, Turks, and Persians, alternating with periods of unification under strong kings. Georgia was the second country to convert to Christianity, after Armenia. In the 13th century, Georgia was subjugated by the Mongols. At the beginning of the 19th century, it was annexed by Russia. Georgia asserted its independence for a few years in 1918, but once again succumbed to Russian domination as the Soviet Army captured the country.

In 1991, with the collapse of the Soviet Union, Georgia became independent, but civil war soon broke out with devastating social and economic effect. Two regions – South Ossetia and Abkhazia – broke away from Georgia with Russian support. These two regions remain outside the control of the central government and are ruled by de facto, unrecognized governments. Over 200,000 internally displaced persons from those regions fled to Georgia, where they still suffer economic deprivation. In 1995, former Soviet Foreign Minister, Eduard Shevardnadze, was elected President after an interim period as head-of-state. He succeeded the ultra-nationalist leader Zviad Gamsahurdia, who was deposed in 1992. Shevardnadze led the country until November 2003, when an attempt by the incumbent government to manipulate national legislative elections touched off widespread protests – known as the “Rose Revolution” – that led to Shevardnadze's resignation. New elections in early 2004 brought Mikheil Saakashvili, then 35 years old, and his National Movement Party into power.

Initially, the Rose Revolution brought optimism and promise of democratic reform and an improved economy. President Saakashvili sought reform through extensive changes in legislation. The government has implemented anti-corruption measures, democratic institution building, judicial reforms, and economic campaigns. However, implementation of these legislative changes proved difficult in the rapidly evolving legal environment, and President Saakashvili's government has been criticized for concentrating too much power in the executive branch. In November 2007, protests swept the country, and President Saakashvili declared a state of emergency. President Saakashvili initially ignored the opposition protestors' calls for his resignation, but on November 25, 2007, he resigned from the office of the presidency and called for elections to take place in January 2008. The Speaker of Parliament, Nino Burjanadze, was installed as interim president pending the swearing-in of a new president after the January elections.

Legal Context

Georgia is a republic with a unicameral, parliamentary form of government. The country is organized into regional and urban administrative units. Since independence, Georgia has made a major effort to advance its legal profession and the rule of law. Georgia adopted a new Constitution in 1995 that contains guarantees of basic human rights, including the right to effective assistance of counsel for those accused of committing a crime. THE CONSTITUTION OF GEORGIA arts. 18(5), 42(3) (*adopted* August 24, 1995, *as amended*) [hereinafter CONSTITUTION]. The Constitution also mandates the separation of powers and the independence of the judiciary. *Id.* arts. 5(4), 82(3). The Constitution was amended in February 2004 to establish a new governmental structure. The President serves as head-of-state and exercises special jurisdiction over the Ministry of Interior and the Ministry of Defense. *Id.* arts. 69(1), 73(1)(c). The Government of Georgia is composed of the Prime Minister, who heads the Government, and the ministers. *Id.* arts. 78(2), 79(1). The Constitution was amended again in 2005 to reduce the number of members of Parliament from 235 to 150, of which 100 are proportionally elected and 50 are elected by a majority system, for a four-year term. *Id.* art. 49(1). President Saakashvili's party currently enjoys an approximately 70% majority in Parliament, with the upcoming election slated for spring 2008. The judiciary is organized into a three-tiered court system, consisting of



regional (city) courts, which serve as courts of first instance; appellate courts; and the Supreme Court, which serves as the court of cassation. In addition, the Constitutional Court has sole jurisdiction over constitutional matters.

In 2001, Georgia became a member of the Council of Europe [hereinafter COE]. As a member of the COE, it must bring its legislation into conformity with European standards. It is also a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms [hereinafter European Convention], and thus complaints regarding violations of the Convention can be made before the European Court of Human Rights [hereinafter ECHR] in Strasbourg after all domestic remedies have been exhausted.

Historical Context

More than 15 years after the collapse of the Soviet Union, the Georgian legal profession is still struggling with the legacy and problems of the Soviet past. During the Soviet era, the prosecutor controlled the outcome of cases, particularly when a perceived political interest was at stake or when one party had the right personal connections. Despite the Soviet Constitution's guarantees of a right to counsel and presumption of innocence in criminal cases, in practice, the advocate's role was circumscribed and his/her representation more *pro forma* than real. The guilt of the defendant was assumed, and judges would yield to the prosecutor's suggestions on how a case should be decided. The advocate's job was simply to negotiate a more lenient sentence, if possible. In political cases, "telephone justice" prevailed, whereby Communist Party leaders would instruct the judge how a case should be decided. Judges rarely ignored such directives. Civil cases were largely confined to domestic matters and minor property disputes, since the state owned all of the large commercial and industrial interests. Private legal practice, as it is known in the West, was largely non-existent.

The role of the advocate has changed significantly since Georgia gained its independence, and accordingly, several laws have been passed to address the role of the advocate in post-Soviet Georgia. The primary legislative source concerning the legal profession is the Law of Georgia on Advocates (Law No. 976, *adopted* June 20, 2001, *as amended*) [hereinafter LOA]. Originally enacted in 2001, the LOA has been amended several times since then. The LOA guarantees the independence of the legal profession, regulates the practice of law, and establishes requirements for admission to the legal profession. It also provides for an integrated national bar association, the Georgian Bar Association [hereinafter GBA], charged with administering the bar exam, as well as licensing and disciplining advocates.

In addition to recent changes to the legal profession, the fundamental nature of the justice system is undergoing significant changes. While the legal system is formally based on civil law tradition, the judiciary generally appears to be moving away from it, in favor of a common law system. The judicial system is expected to further evolve in 2008, with the anticipated implementation of a new Code of Criminal Procedure [hereinafter DRAFT CODE OF CRIM. PROC.] and anticipated amendments to the Code of Civil Procedure (Law No. 1106, *adopted* November 14, 1997, *as amended*) [hereinafter CODE OF CIV. PROC.].³ The Draft Code of Crim. Proc. would radically alter the legal landscape by establishing an adversarial criminal justice system. Unlike the existing Code of Criminal Procedure (Law No. 2287, *adopted* July 22, 1999, *as amended*) [hereinafter CODE OF CRIM. PROC.], the Draft Code of Crim. Proc. will contain a chapter on trial by jury, a right

³ The Draft Code of Crim. Proc. is scheduled to be enacted on June 1, 2008. If passed, it will consist of half the number of articles as the existing Code of Crim. Proc. – a change from over 600 articles to approximately 300. However, due to political uncertainty and pending elections, it was unclear at the time of the drafting of this LPRI assessment whether the Draft Code of Crim. Proc. would be enacted by the anticipated June date. The version of the Draft Code of Crim. Proc. cited in this LPRI has passed the first reading in Parliament, but is still to go through two additional readings. Thus, the currently cited version of the Draft Code of Crim. Proc. may differ from the version that may eventually be enacted.

that was set forth in the Constitution in 2004. Juries would consist of up to 12 people, drawn randomly from voter lists and subject to a voir dire process by the judge and parties to the case. These jurors would hear criminal cases, deciding on questions of fact. The jury's acquittal of a defendant would be final, without any opportunity for appeal.

Overview of the Legal Profession

The following categories of legal professionals are currently present in Georgia:

- **Judges**, who sit on the regional (city) courts, appellate courts, the Supreme Court, and the Constitutional Court;
- **Magistrate judges**, who are authorized to conduct civil trials where the amount at stake is less than GEL 2,000 (approximately USD 1,130)⁴ and have a limited authority to oversee criminal trials in municipalities that do not have a regional (city) court;
- **Prosecutors**, who oversee criminal investigations and prosecute criminal defendants;
- **Investigators**, who are charged with carrying out pre-trial investigation of criminal cases and are part of the law enforcement apparatus of the police department, the prosecutor's office, and several other government offices;
- **Advocates**, who are independent legal professionals licensed to represent clients in criminal and civil cases before the court;
- **Notaries**, who are authorized, *inter alia*, to authenticate signatures on documents, approve written agreements, issue certificates of property ownership, issue certificates of inheritance, and approve translations of documents;
- **Representatives**, who are non-advocates authorized to represent clients in civil proceedings before courts of first instance, although employees of central and local government agencies may appear before higher instance courts in cases concerning their respective agencies.⁵

For reasons outlined in the LPRI Introduction, the scope of this assessment is limited to advocates, although some factors, such as those pertaining to legal education and preparation for practice, can be applied to the broader legal profession as outlined above.

The LOA defines the practice of law to include the provision of legal advice to clients, representation of clients in courts, arbitration, and preliminary detention facilities in constitutional, criminal, civil, or administrative cases, preparation of legal documentation for third parties and presentation of any documentation on behalf of clients. LOA art. 2. To become licensed as an advocate by the GBA, an individual must have a law degree and pass a civil, criminal, or general bar exam, or a prosecutorial or judicial exam, in addition to practicing law for one year as an advocate's intern. *Id.* arts. 10-11. After fulfilling these requirements, the individual must apply to the GBA for a license to practice civil law or criminal law, or both, depending on which bar exam he/she passed. Once licensed, an advocate is a member of the GBA and is subject to its disciplinary process. *Id.* art. 21.

⁴ In this report, Georgian Lari [hereinafter GEL] are converted to their approximate equivalent in U.S. dollars [hereinafter USD] at the average rate of exchange when the LPRI interviews were conducted (USD 1.00 = GEL 1.77).

⁵ Amendments to the Code of Civ. Proc. have been introduced in Parliament to prohibit representatives from appearing before first instance courts. However, as of the time of the drafting of this assessment, those amendments were still pending.



Organizations of Legal Professionals

GBA

Enacted in 2001, the LOA contemplated the creation of an integrated national bar association. However, it was not until late 2004 that advocates began preparing to establish such bar association. With the sponsorship of ABA/CEELI, an inaugural congress of the GBA convened on February 27, 2005 and continued on March 11-12, 2005, with the participation of 904 legal professionals. These initial meetings, however, did not result in the formal establishment of the GBA. This was due to the lack of clarity in certain provisions of the LOA and resistance to the GBA on the part of many lawyers, which resulted in the legal status of the GBA being challenged in court. One lawsuit was initiated challenging the legitimacy of the GBA because of alleged procedural defects during its inaugural congress; and the second lawsuit was brought in the Constitutional Court challenging the constitutionality of the provision of the LOA mandating an integrated bar association for the country. These legal challenges were resolved in favor of the GBA by the end of January 2006.

On January 21, 2006, the GBA was formally established as the country's official bar association, with the power to license and discipline advocates and provide continuing legal education [hereinafter CLE]. Membership in the GBA is mandatory for all advocates. Since its creation, the GBA has begun to engage in a number of activities to reform the legal profession. For instance, in April 2006, the GBA General Assembly convened to adopt the GBA Advocates' Code of Ethics and the Regulations for Disciplinary Proceedings against Lawyers. In May 2006, the GBA held its first bar examination. Prior to the inaugural meeting of the GBA, the High Council of Justice [hereinafter HCOJ] administered the bar exam, but pursuant to the LOA, the GBA assumed responsibility for administering the bar exam upon its creation. However, due to the two lawsuits, the GBA was initially unable to fulfill its responsibilities. Thus, from the fall of 2004 until May 2006, no bar exams were held and no advocates were licensed. Since the first exam in May 2006, three more bar exams have been held, bringing the GBA's current membership to 3,672.

Georgian Young Lawyers' Association

The largest, most successful, and influential voluntary association of advocates is the Georgian Young Lawyers' Association [hereinafter GYLA]. The GYLA was established in 1994 as a democratic, voluntary organization for law students and advocates under the age of 40. Currently, the GYLA has over 800 members. It is independent of government influence and enjoys a reputation for attracting bright, young, competent lawyers who are uncorrupt, who fight against corruption in the government, and fight for human rights.

According to its Charter, the main purpose of GYLA is to increase public awareness of the rule of law, develop the legislative basis for civil society and the rule of law, protect human rights and freedoms, and develop the legal profession. The GYLA's main office is in Tbilisi, with two branches in Kutaisi and Batumi and five regional offices in Rustavi, Dusheti, Telavi, Gori and Ozurgeti. All of its offices have libraries available to non-members, and in some of its offices, GYLA advocates offer free legal consultations and/or representation of indigent clients. The GYLA's members have been involved in a number of seminars to educate both GYLA members and the general public on legal topics, and the GYLA is also active in lobbying to reform laws relevant to the legal profession.⁶

⁶ For purposes of transparency, it is important to note that, from 2004 until the end of 2007, the GYLA received funding from ABA ROLI (through a grant from USAID) for a variety of programs and projects.



Georgian Law Students Association

The Georgian Law Students Association [hereinafter GLSA] was founded in 2002. It is a non-profit organization, headquartered in Tbilisi, with a branch office in Akhaltsikhe. The GLSA's leadership consists of a General Assembly, and when it is not in session, a six-person Executive Board directs the GLSA's activities. Its membership is open to law students, young advocates, and non-advocates interested in legal issues. The GLSA was formed with several primary aims, which include addressing the need for practical legal education in Georgian law schools and providing legal materials to law students. In addition, it strives to promote a dialogue between law students and legal professionals, given that many students graduate from law school without having met an advocate, a prosecutor, or a judge. To that end, the GLSA, with the support of ABA ROLI, has begun to implement a moot court competition for law students, as well as the National Olympiad on Criminal, Civil, and Administrative Law in cooperation with the Supreme Court.



Georgia LPRI 2007 Analysis

While the correlations drawn in this exercise may serve to give a sense of the relative status of certain issues, ABA ROLI emphasizes that the factor correlations and conclusions possess their greatest utility when viewed in conjunction with the underlying analysis and compared to the Georgia LPRI 2005. ABA ROLI considers the relative significance of particular correlations to be a topic warranting further study. In this regard, ABA ROLI invites comments and information that would enable it to develop better or more detailed responses in future LPRI assessments. ABA ROLI views the LPRI assessment process as part of an ongoing effort to monitor and evaluate reform efforts.

Table of Factor Correlations

Legal Profession Reform Index Factor		Correlation 2005	Correlation 2007	Trend
I. Professional Freedoms and Guarantees				
Factor 1	Ability to Practice Law Freely	Neutral	Neutral	↔
Factor 2	Professional Immunity	Positive	Positive	↔
Factor 3	Access to Clients	Neutral	Negative	↓
Factor 4	Lawyer-Client Confidentiality	Positive	Neutral	↓
Factor 5	Equality of Arms	Neutral	Neutral	↔
Factor 6	Right of Audience	Neutral	Neutral	↔
II. Education, Training, and Admission to the Profession				
Factor 7	Academic Requirements	Neutral	Neutral	↔
Factor 8	Preparation to Practice Law	Negative	Neutral	↑
Factor 9	Qualification Process	Neutral	Neutral	↔
Factor 10	Licensing Body	Neutral	Positive	↑
Factor 11	Non-discriminatory Admission	Neutral	Neutral	↔
III. Conditions and Standards of Practice				
Factor 12	Formation of Independent Law Practice	Positive	Positive	↔
Factor 13	Resources and Remuneration	Negative	Negative	↔
Factor 14	Continuing Legal Education	Negative	Neutral	↑
Factor 15	Minority and Gender Representation	Neutral	Positive	↑
Factor 16	Professional Ethics and Conduct	Negative	Neutral	↑
Factor 17	Disciplinary Proceedings and Sanctions	Negative	Neutral	↑
IV. Legal Services				
Factor 18	Availability of Legal Services	Negative	Negative	↔
Factor 19	Legal Services for the Disadvantaged	Negative	Neutral	↑
Factor 20	Alternative Dispute Resolution	Neutral	Neutral	↔
V. Professional Associations				
Factor 21	Organizational Governance and Independence	Neutral	Positive	↑
Factor 22	Member Services	Neutral	Positive	↑
Factor 23	Public Interest and Awareness Programs	Neutral	Neutral	↔
Factor 24	Role in Law Reform	Neutral	Positive	↑



I. Professional Freedoms and Guarantees

Factor 1: Ability to Practice Law Freely

Lawyers are able to practice without improper interference, intimidation, or sanction when acting in accordance with the standards of the profession.

Conclusion	Correlation: Neutral	Trend: ↔
<p>The majority of legal professionals report they are usually able to practice law independently without intimidation or sanction. However, reports of state interference persist. In criminal cases, prosecutorial dominance and sentencing guidelines detract from an advocate’s ability to impact the outcomes of cases. Similarly, advocates in civil cases experience interference from government officials when state interests are involved.</p>		

Analysis/Background:

The Constitution explicitly guarantees the separation of powers and the independence of the judiciary, but it does not specifically address the independence of the legal profession. CONSTITUTION arts. 5(4), 82(3). The LOA codifies the autonomy of advocates, stating that advocates must act independently, and that any interference in an advocate’s professional activities is prohibited. LOA art. 38(1). Additionally, an advocate is a member of an “independent profession,” who answers to the Code of Ethics and similar laws. *Id.* art. 1(2). “Independence and freedom of legal practice” and “non-interference in advocate’s activities” are also included among the principles of the legal profession. *Id.* arts. 3(b), 3(d). Finally, the Criminal Code includes sanctions against persons who commit violence or threaten to commit violence against parties to judicial proceedings, including advocates. CRIMINAL CODE OF GEORGIA art. 365 (Law No. 2287, adopted July 22, 1999, as amended) [hereinafter CRIMINAL CODE].

In practice, most interviewees reported that they do not generally face direct interference by government authorities in the form of suggestions or directions regarding the conduct of their representation. However, there were numerous complaints of less direct interference in the legal profession. The majority of the instances of interference reported were the result of pressure on the judiciary from the prosecutor’s office in criminal cases, though there were also reports of interference occurring in civil cases. Advocates practicing criminal law felt that their role has reverted back to the role of the advocate in Soviet times, when the guilt of the defendant was assumed and the advocate’s job was limited to attempting to negotiate a more lenient sentence.⁷ Specifically, advocates believe that the Supreme Court’s introduction of sentencing guidelines has further hampered their ability to prevent their clients from being sentenced to pretrial detention, as well as their ability to affect the sentence that their clients receive.

In the spring of 2007, a commission staffed by criminal law judges studied sentencing practices in regards to the types of cases which are most frequently reviewed by the courts. In response to the disparity in the way many of those cases were being handled, the commission created sentencing guidelines, titled the Criminal Law Guidelines [hereinafter CLG]. In large part, the CLG are modeled off of the U.S. Federal Sentencing Guidelines. They were created with the aim of supporting the principles of equity in sentencing, unified judicial practice, and deterrence of extraneous appeals. The CLG provide a sentencing schedule based on variations of the crime committed, with a plus or minus 6 month deviation from a set term of punishment. The CLG are intended to be instructive on best practices when sentencing for particular types of crimes.

⁷ In 2006, only 37 out of 16,948 defendants were acquitted. FREEDOM HOUSE, NATIONS IN TRANSIT 2007: DEMOCRATIZATION IN EAST CENTRAL EUROPE AND EURASIA 244 (2007) [hereinafter NIT 2007].

Judges have the discretion to deviate from the CLG when sentencing defendants, but if they do so, they must give a written justification for arriving at a different sentence.

In practice, the CLG have become automatic mandatory directives for judges and useful leverage for prosecutors who are seeking plea bargain agreements. Advocates interviewed by the assessment team reported that a typical criminal case now proceeds in the following manner: Once the defendant is detained, the prosecutor informs the defendant of the mandatory sentence he/she is facing under the CLG unless the defendant agrees to a plea bargain. At the pretrial hearing, there is no need for an advocate because the issue of detention will be automatically determined by the CLG. If a plea bargain is reached, it will consist of a monetary fine in an amount determined by the prosecutor.⁸ If the defendant agrees to a plea bargain, then an advocate is needed to simply sign off on the agreement. Advocates report that they are not involved in the plea bargain negotiations; they only confirm the agreement after it has been established between the prosecutor and defendant.⁹

Sometimes a defendant opts for a trial rather than a plea bargain. In such instances, advocates report that they are often unable to effectively represent their client due to judges' almost total submission to the will of the prosecutor. Advocates believe that the majority of judges systematically ignore the evidence that they offer in favor of the prosecutor's evidence. Lastly, advocates stated that once guilt is confirmed by the court they have no power to alter the defendant's sentence from what is set forth in the CLG. One advocate summed up the situation by saying, "I would not call it interference; we are simply non-entities in the judicial system. It does not matter if we are there or not, the outcome is pre-determined."

In civil matters, government interference in trials is reported in cases where one of the parties has a strong connection to the government, where there is a particularly strong government interest, or in cases involving a significant amount of money. In regards to both civil and criminal cases, a 2007 Freedom House report found "widespread allegations that the political leadership exerts hidden pressure on judges who, at least in politically sensitive cases, hardly dare to disappoint the demands of the prosecution." NIT 2007 at 244. Advocates reported that the outcomes of civil cases are tainted by a similar process as occurs during criminal cases with plea bargaining. If the defendant in a civil case will pay a monetary amount or sign over property to the plaintiff, the charges against him/her (which were often erroneous) are dismissed. As stated by one practitioner, "the state has taken the place of the mafia – where it used to be called black money [referring to a black market], it is now called white money because the money goes to the state."

Although interviewees believed that corruption in the traditional sense of paying bribes through advocates to judges has been eliminated, formal state-sanctioned bribes in civil suits (as described above) have flourished. The Soviet practice of "telephone justice" (whereby judges would follow instructions from higher government officials on how to decide a particular case) has been replaced with the functionally similar reliance on the sentencing guidelines set forth in the CLG.¹⁰ To the advocate the effect is the same; in many instances, regardless of the abilities of

⁸ According to the Ministry of Justice [hereinafter MOJ], 90% of the income it receives from enforcing judgments takes the form of administrative fines (i.e., fines resulting from motor vehicle violations) and fines arising from criminal cases (i.e., fines resulting from plea bargain agreements). As of August 2007, the amount collected was GEL 12.8 million (approximately USD 7.2 million).

⁹ If passed, the Draft Code of Crim. Proc. would explicitly guarantee defense counsel to persons in the process of negotiating plea bargains. DRAFT CODE OF CRIM. PROC. art. 47(f).

¹⁰ Several laws have been enacted to address the practice of "telephone justice." See, e.g., LAW OF GEORGIA ON PROCEDURE OF COMMUNICATION WITH THE JUDGES OF COMMON COURTS art. 3 (prohibiting interested parties from communicating with the judge throughout all stages of a legal proceeding); see also LAW ON CONFLICTS OF INTERESTS AND CORRUPTION IN PUBLIC SERVICE arts. 2, 9(1) (providing that judges may not ask for or receive compensation of any kind for their services).



the advocate, no amount of research or effort will affect the outcome of a case. Despite this common complaint, many advocates opined that it is still possible to be independent. However, these same advocates are opting out of the traditional practice of law. They report that it is preferable to provide clients with consulting services rather than litigation services, due to the futility of the court process.

Factor 2: Professional Immunity

Lawyers are not identified with their clients or the clients' causes and enjoy immunity for statements made in good faith on behalf of their clients during a proceeding.

Conclusion	Correlation: Positive	Trend: ↔
<p>The LOA grants advocates professional immunity in relation to their representation of clients, although there are no legislative prohibitions regarding the identification of advocates with their clients' views. In practice, advocates enjoy professional immunity, and while they may be perceived as politically biased as a result of the clients they represent, they are generally not identified with their clients' causes.</p>		

Analysis/Background:

There is no legislative prohibition on the identification of advocates with their clients' views. However, the LOA guarantees advocates professional immunity in respect to their representation of clients. This guarantee exists for statements advocates make before a court or an administrative agency on behalf of their clients, regardless of whether the statements are in written or oral form. LOA art. 38(4). There is no further clarification regarding the instances when advocates may be subject to prosecutions based on their professional activities, other than clarifying that "any criminal case" brought against an advocate will be heard by the regional (city) court that has jurisdiction in that instance. *Id.* art. 38(8). An advocate is also prohibited from being called as a witness in a case where he/she is representing a party, regardless if whether the party is the plaintiff or the defendant. *Id.* art. 38(3). Defamation is established as a civil, but not a criminal, offense, with the possibility of sanctions allowed by the Civil Code if defamation is found to have occurred. CIVIL CODE OF GEORGIA art. 18 (Law No. 824, *adopted* June 26, 1997, *as amended*) [hereinafter CIVIL CODE]. However, the Civil Code does not address immunity for advocates regarding defamatory statements that are made in good faith and in the course of establishing a defense for a client.

The assessment team did not receive any reports of advocates being subjected to criminal or civil liability resulting from statements they made on behalf of clients. Advocates unanimously agree that professional immunity is recognized and respected in practice. Advocates generally agree that they are not identified with their clients or the clients' causes. However, some advocates feel that they are perceived as having a political bias based on the political activities of the clients they represent, although they did not report any adverse consequences related to those perceptions.

Factor 3: Access to Clients

Lawyers have access to clients, especially those deprived of their liberty, and are provided adequate time and facilities for communications and preparation of a defense.

Conclusion	Correlation: Negative	Trend: ↓
<p>Legislation guarantees advocates the right of access to clients and requires adequate facilities for confidential consultations. In practice, though, the situation is generally deteriorating in regards to access to criminal defendants, especially those who have been deprived of their liberty. Detention facilities are reportedly overcrowded, with inadequate meeting space, and communications between advocates and detained individuals are monitored. Frequently, advocates are excluded from legal proceedings until after a plea bargain has been secured by the prosecutor.</p>		

Analysis/Background:

The Constitution and several other legal sources guarantee the right to legal assistance to persons detained by the state, and the advocates' rights to have access to their clients. Arrested and detained persons may request the assistance of counsel upon arrest or detention, and that request must be granted. See CONSTITUTION art. 18(5). Suspects are to be advised of their right to counsel at the time that they are detained. CODE OF CRIM. PROC. art. 72(3). A detainee's request for defense counsel must be satisfied at the time of arrest, and if that is not possible, counsel must be allowed sufficient time to adequately carry out the defense. *Id.* art 72(5). Advocates have the right to protect a client's interests, rights, and freedoms in all courts and at all stages of the proceedings. LOA art. 4(1)(a). Advocates are also guaranteed the right to meet and communicate personally with a detained or imprisoned client without obstacles or interference. *Id.* art. 4(1)(c).

In criminal matters, an advocate is guaranteed the right to meet with his/her client immediately, in private, without any surveillance and without any restrictions on the duration or frequency of such meetings, with only a few exceptions. CODE OF CRIM. PROC. art. 84(3)(b). Restrictions on the right to meet are allowed only in the form of reasonable time limits. The decision to impose reasonable time limits, which is made by the court overseeing the investigation, must be based on the best interests of the investigation. *Id.* art. 73(1)(d). If passed, the Draft Code of Crim. Proc. would allow restrictions on lawyer-client communications involving a defendant in custody "only by means of visual control," without the time limitation found in the existing law. See DRAFT CODE OF CRIM. PROC. art. 45(3).

Advocates reported some problems with gaining access to detained clients, and they also voiced concerns that such problems are growing increasingly common. Advocates complained they are often made to wait outside the pretrial detention facilities and penitentiaries for extended periods of time without explanation. Video surveillance of meeting rooms in detention facilities is commonplace. One advocate explained that he is so fearful that the prison administration will plant evidence on his clients that, in order to prevent any accusations of improper behavior, the advocate instructs the clients to sit with their arms on the table in plain sight of the video cameras at all times. In addition, detention facilities are reportedly overcrowded and lack adequate meeting space. Advocates further state that there is no access to detention facilities after 6:00 p.m., which is problematic as they do not have sufficient time to access their clients.

Another obstacle faced by individuals in accessing an advocate revolves around the plea bargaining process introduced in 2005, as was discussed in Factor 1 above. The judicial system's increasing reliance on plea bargaining has reportedly had the negative effect of curtailing an advocate's role in his/her client's case. This problem is exacerbated by the fact that



criminal defendants remain largely uneducated about their legal rights, and are often intimidated or coerced by the prosecution. Advocates report that as a result they often do not have the opportunity to become involved in a client's case until after the plea agreement has been negotiated and agreed to by the defendant.

Factor 4: Lawyer-Client Confidentiality

The State recognizes and respects the confidentiality of professional communications and consultations between lawyers and their clients.

Conclusion	Correlation: Neutral	Trend: ↓
The law establishes the right to confidential communication between advocates and their clients. In practice, confidentiality is generally respected, except in instances where clients are deprived of their liberty.		

Analysis/Background:

Communications between lawyers and their clients are protected by the law, and any information that an advocate obtains from a person seeking legal advice from him/her must be treated as confidential. LOA art. 38(6). An advocate bears a duty to maintain the secrecy of information obtained during the representation of a client. *Id.* art. 7(1). However, no specifics are provided regarding the duration of time for which information must remain confidential.¹¹ *Id.* As discussed in Factor 3 above, the LOA also guarantees an advocate the right to meet and communicate personally with a detained or imprisoned client without obstacles or interference. *Id.* art. 4(1)(c). Eavesdropping and reporting of conversations between clients and advocates is likewise prohibited. *Id.* art. 38(7). Moreover, an advocate may not be called as a witness regarding a case where he/she was an advocate. *Id.* art. 38(3).

As discussed in Factor 3 above, an advocate has the right to meet with his/her client in private, without any surveillance, subject to a few exceptions. CODE OF CRIM. PROC. arts. 84(3)(b), 73(1)(d). The same protections are also available to convicted persons, in regards to their correspondence or meetings with their advocates. *Id.* art. 136. Furthermore, an advocate may not be heard as witnesses in a criminal case regarding any facts that the advocate has learned about a client during his/her service as defense counsel in a criminal case, or in regards to facts that became known to him/her while serving as counsel for a civil plaintiff, defendant, or victim. *Id.* arts. 95(1)(a)-(b). This protection exists even when the advocate's client is an organization, or is simply receiving legal assistance prior to the establishment of a formal lawyer-client relationship. *Id.* arts. 95(1)(c)-(d). Similar protection exists for advocates against being forced to testify in civil cases regarding facts made known to them during the performance of their duties as criminal defense counsel. CODE OF CIV. PROC. art. 141(c). If implemented, the Draft Code of Crim. Proc. would further guarantee public defenders, as well as advocates in administrative proceedings, the right to refuse to testify or to provide documents containing information relevant to the case at issue if they are actively participating in that case. DRAFT CODE OF CRIM. PROC. art. 57(4).

The newly adopted Advocates' Code of Ethics also includes protections of confidentiality for information that the advocate learns in connection with his/her professional activities. GBA ADVOCATES' CODE OF ETHICS art. 4(1) (*adopted* April 15, 2006) [hereinafter CODE OF ETHICS]. This protection has no time limit, and an advocate generally may only release such information after

¹¹ In addition, the same confidentiality protections apply to law school graduates who have not yet been licensed, but are serving as advocates' interns. See LOA art. 16(4).

gaining written permission to do so from the client. *Id.* art. 4(2). Exceptions exist when revealing the information is necessary to protect the advocate from charges brought against him/her. *Id.* These confidentiality guarantees extend to anyone employed with or by the advocate, or anyone working with the advocate in the course of providing legal services. *Id.* art. 4(3). Violations of the protections of lawyer-client confidentiality in the Code of Ethics and the LOA may result in disciplinary proceedings against lawyers. See LOA art. 7(2); see also REGULATIONS FOR DISCIPLINARY PROCEEDINGS AGAINST LAWYERS art. 2(2) (*adopted* February 26, 2005) [hereinafter DISCIPLINARY PROCEEDINGS REGULATIONS].

In practice, the confidentiality of communications between lawyers and their clients is usually respected, with the exception of communications between advocates and detained clients. In non-criminal cases, advocates usually enjoy confidentiality of communications. There were no reports of search and seizure of advocate’s files; demands for work product, evidence, or documentation; or of an advocate being interrogated or questioned with respect to his/her representation of a client. By contrast, the same is not true for criminal cases, especially where the client is deprived of his/her liberty. In such instances, advocates are reportedly subject to searches of their files when entering and leaving detention facilities, including searches of documents they identify as confidential. Advocates also reported that the meeting rooms inside detention facilities have video cameras. All advocates interviewed by the assessment team unanimously believe the cameras are recording both video and audio and, consequently, they counsel their clients not to speak freely. One advocate reported that employees at a prison facility have admitted to him that they listen to conversations between detainees and their counsel.

Factor 5: Equality of Arms

Lawyers have adequate access to information relevant to the representation of their clients, including information to which opposing counsel is privy.

<i>Conclusion</i>	<i>Correlation: Neutral</i>	<i>Trend: ↔</i>
<p>By law, advocates are guaranteed the right to access information relevant to the representation of their clients in both civil and criminal cases. However, interviewees reported some problems obtaining information from the prosecutor’s office in a timely manner. In addition, inefficiency in the courts has caused some problems for advocates seeking relevant information.</p>		

Analysis/Background:

The right to equality of arms is protected by law in both civil and criminal proceedings. All legal proceedings before adjudicative bodies, including courts and arbitration panels, must be conducted based on the principles of equality between the parties involved and in an adversarial manner. CONSTITUTION art. 85(3); CODE OF CRIM. PROC. art. 15(1); CODE OF CIV. PROC. art. 83(1); see also ORGANIC LAW ON COMMON COURTS OF GEORGIA art. 6 (Law No. 767, *adopted* June 13, 1997, as *amended*) [hereinafter LAW ON COMMON COURTS]; see also LAW OF GEORGIA ON PRIVATE ARBITRATION art. 25 (Law No. 656, *adopted* April 17, 1997, as *amended*) [hereinafter LAW ON PRIVATE ARBITRATION].

All advocates are equal before the law. LOA art. 38(2). Advocates in both civil and criminal proceedings have the right to request and receive documents, evidence, and information that they need in order to protect their clients’ interests. *Id.* art. 4(1)(b). An advocate representing a criminal defendant has the rights to: produce evidence and participate in the investigative actions involving the defendant; know the substance of the suspicion and charge against his/her client; have access to and consult the defendant’s arrest and detention warrants and records; petition



the court to conduct investigations necessary to establish a defense; and consult relevant statements or testimony given by a client, records of investigative actions, forensic evidence, and expert opinions. CODE OF CRIM. PROC. arts. 84(3)(a)-(l). Further, the court is not charged with prosecuting or defending the parties before it. Instead, the court is required to create the “necessary conditions for the prosecution and the defense to produce evidence, for their comprehensive and complete verification.” *Id.* art. 15(5). Similarly, in civil cases, advocates for all parties have equal rights to copy material from the case file, produce and verify evidence, question witnesses, submit statements to the court, and dispute the other party’s motions before the court. CODE OF CIV. PROC. art. 83(1).

Despite these guarantees, some advocates continue to experience difficulties in obtaining information regarding pending criminal proceedings from the prosecutor’s office in a timely manner. Most advocates interviewed by the assessment team attribute this problem to the inquisitorial criminal justice system that is still in place. They are hopeful that, if the Draft Code of Crim. Proc. becomes law, it will eliminate some obstacles to the achievement of equality of arms. Among other changes, the Draft Code of Crim. Proc. adopts an adversarial trial process, wherein at any stage of the proceedings, the parties must exchange evidence on the basis of reciprocity. This includes requiring that five days prior to the pretrial hearing, the parties exchange all information available at that moment on the evidence to be submitted to the court, as well as requiring the prosecution to immediately comply with the defense’s request for the production of evidence at any point during a criminal proceeding. If the prosecution fails to comply with this rule, the evidence will become inadmissible, with a few exceptions. See DRAFT CODE OF CRIM. PROC. art. 89. Nonetheless, advocates interviewed by the assessment team reported that, while the current lack of a mechanism for the timely exchange of information is in theory an obstacle to preparing an effective defense, timely access to information would not make a difference in the outcome of most hearings or trials.

Interviewees also shared a few anecdotes related to practical difficulties in obtaining relevant information from the courts. Most advocates recognize that judges have a heavy caseload and are short-staffed, thereby creating problems related to bureaucratic inefficiency. However, two reported instances go beyond inefficiency. In one case, the judge refused an advocate’s multiple requests for information, stating he was “too busy” and “did not have time” to provide the relevant information. In a second example, a judge’s assistant initially refused to provide a copy of the court’s decision at the close of a case and eventually only provided an unsigned, unsealed, unofficial copy of the judgment.

By contrast, civil law practitioners report they do not face the same obstacles as criminal defense counsel in obtaining evidence from other parties or from the court, unless the case at issue involves a strong government interest or a dispute over a significant amount of money.

Factor 6: Right of Audience

Lawyers who have the right to appear before judicial or administrative bodies on behalf of their clients are not refused that right and are treated equally by such bodies.

Conclusion	Correlation: Neutral	Trend: ↔
<p>With a few reasonable exceptions, advocates have the right to appear before judicial and administrative bodies on behalf of their clients in both civil and criminal cases, and this right is generally respected. However, advocates expressed concern over the fact that non-advocates are still permitted to represent clients in limited instances.</p>		

Analysis/Background:

There are established legal protections of the right of audience. The Constitution guarantees equality before adjudicative bodies, requiring that all legal proceedings be conducted based on the principles of equality between the parties involved and in an adversarial manner. CONSTITUTION art. 85(3). All advocates are equal before the law. LOA art. 38(2). Advocates have the right to appear before adjudicative bodies, and to represent and protect their clients' rights before the courts, administrative agencies, and during arbitration. *Id.* art. 4(1)(a). Any advocate, regardless of his/her specialization, also has the right of audience in constitutional proceedings.¹² *Id.*

The courts' obligation to provide parties the right of audience is further reinforced by the applicable procedural codes. Thus, criminal proceedings must be conducted on the basis of equality and adversarial positions of the parties. CODE OF CRIM. PROC. art. 15(1). Parties in civil cases enjoy an equal right to prove their claims and to refute the claims of the other party." CODE OF CIV. PROC. art. (4)(1). Similarly, parties in administrative proceedings are equal before the courts and administrative agencies, and any illegal restrictions on the rights of parties appearing before administrative agencies or any illegal discrimination against parties appearing before administrative agencies are prohibited. GENERAL ADMINISTRATIVE CODE OF GEORGIA arts. 4(1)-(2) (Law No. 2181, *adopted* June 25, 1999, as *amended*) [hereinafter GENERAL ADMINISTRATIVE CODE].

The Code of Ethics contains one of the few limitations imposed on advocates' right to appear before judicial or administrative bodies. Advocates must cease representation of a client when a conflict of interest arises between that client and another client, or if a conflict arises regarding an advocate's client and a client represented by the advocate's law partner. CODE OF ETHICS arts. 6(1)-(4). An advocate must also withdraw from representation of a client if his/her independence might be impaired, or if there is a risk that lawyer-client confidentiality will be breached. *Id.* art. 6(4).

In practice, an advocate's right to appear before judicial and administrative bodies on behalf of his/her clients is generally respected. One concern regarding the right of audience, expressed by advocates interviewed by the assessment team, is that non-advocates (called "representatives") are still permitted to represent clients in court in limited circumstances. See CODE OF CIV. PROC. art. 93.¹³ Representatives are empowered to act based on a power of attorney assigned to them. A 2006 amendment to LOA limited the right of representatives to appearing only before courts of first instance, although employees of central and local government agencies may appear before higher instance courts in cases concerning their respective agencies. *Id.* art. 94; LOA art. 40(4). The court may strip a representative of his/her ability to represent a client if the court finds that the representative lacks the qualifications needed to protect the interests of the client. CODE OF CIV. PROC. art. 97. There were no reports of unequal treatment of these representatives; however, legal professionals unanimously agree that the existing law should be amended to require that a licensed advocate serve as counsel in all court proceedings.¹⁴

¹² An advocate can specialize in criminal or civil law, or take a general exam allowing certification in both fields. LOA arts. 11(3)-(8); see also Factor 9 below for additional details on the advocates' qualification process.

¹³ Non-advocates do not have a corresponding right in criminal proceedings, as only advocates are permitted to represent criminal defendants. See CODE OF CRIM. PROC. art. 680.

¹⁴ Amendments to the Code of Civ. Proc. have been introduced in Parliament to prohibit representatives from appearing before courts of first instance. However, as of the time of the drafting of this assessment, those amendments were still pending.



II. Education, Training, and Admission to the Profession

Factor 7: Academic Requirements

Lawyers have a formal, university-level, legal education from institutions authorized to award degrees in law.

Conclusion	Correlation: Neutral	Trend: ↔
<p>Advocates must have a university-level law degree, though non-advocate representatives, who do not have to fulfill any academic requirements, continue to assist clients in limited circumstances. The Law on Higher Education calls for the creation of state agencies to accredit both universities and specific professional programs at universities. While institutional accreditation has begun, the agency charged with program accreditation has not yet begun its work.</p>		

Analysis/Background:

By law, advocates must possess a higher legal education degree, although non-advocate representatives, who are still permitted to represent clients in court in limited circumstances, do not have to meet any academic requirements. LOA art. 10(1)(a). LAW ON HIGHER EDUCATION art. 2(m) (Law No. 688, *adopted* December 21, 2004) [hereinafter LAW ON HIGHER EDUCATION]. Regarding the quality of higher education provided to law students, the Constitution requires the government to ensure that educational programs comply with international rules and standards. CONSTITUTION art. 35(2). To this end, the Law on Higher Education requires universities to organize their curriculum in accordance with the Bologna Declaration on the European Space for Higher Education. Accordingly, law faculties must offer three different degree cycles, consisting of a three- or four-year long bachelor's program, a two-year long master's program, and an at least three-year long doctorate program. See LAW ON HIGHER EDUCATION arts. 46(1)-(2).

In addition, the Law on Higher Education provides for institutional and program accreditation. The institutional accreditation process is overseen by the State Accreditation Service. *Id.* arts. 63(2)-(3). Accreditation evaluations are carried out by a team of experts, lead by a chair who is appointed by the State Accreditation Service. *Id.* art. 64. Accreditation decisions are made based on the institution's material, financial, and human resources, and whether they are compatible with its ability to issue the type of degree it is granting. *Id.* art. 68. Once accredited, institutions must undergo periodic review of their accreditation, at a time specified on their initial accreditation certificates. *Id.* art. 70. The Law on Higher Education has also set forth criteria for the revocation of accreditation. *Id.* art. 72.

In addition to the review of a university's degree-granting ability, law programs within universities are also subject to additional accreditation standards and procedures, as defined by the State Accreditation Service and approved by the Ministry of Education and Science.¹⁵ Program evaluations must include qualitative goals and standards and encourage substantive content and interactive teaching methodology. See *id.* art. 71. The National Education Accreditation Center defines program accreditation conditions and procedures for all regulated professions, in cooperation with "professional associations envisaged by the law, other relevant organizations or stakeholders working within the field." *Id.* arts. 75(3), 77(1)-(2). Thus, the GBA will be

¹⁵ Law is one of the four regulated professions (along with medicine, teaching, and social work), which are required to undergo program accreditation. LAW ON HIGHER EDUCATION art. 75(2).

represented when developing program accreditation standards for the law faculties.¹⁶ Program accreditation in all regulated professions, including legal education, is to be implemented by 2010.

Over the past several years, the academic requirements for a law degree have undergone significant reform. In 2005, the government instituted a compulsory nationwide standardized entrance examination for all state and private accredited institutions of higher learning. The multi-cycle degree programming (consisting of bachelor's, master's, and doctorate programs) has been instituted. Law degree programs have also instituted a credit system consistent with the Bologna Declaration, which requires law students to complete 60 credits per year, for a total of 240 credits to attain a bachelor's degree and an additional 120 credits to attain a master's degree.

All members of the legal profession agree that the reforms initiated in the education field have thus far had a positive impact on the profession. The implementation of an institutional accreditation process reduced the number of universities from approximately 240 to 38 institutions.¹⁷ Of those accredited and newly licensed universities, it is reported that 28 currently have law faculties and will be accepting students during the 2008-2009 academic year. The most notable effect of the introduction of the accreditation process is the significant decline in corruption as it concerns legal education. However, program accreditation has yet to begin, and, as discussed in Factor 6 above, non-advocate representatives are still allowed to represent clients in certain settings, without having completed any academic training.

Factor 8: Preparation to Practice Law

Lawyers possess adequate knowledge, skills, and training to practice law upon completion of legal education.

<i>Conclusion</i>	<i>Correlation: Neutral</i>	<i>Trend: ↑</i>
<p>In the past, legal education has been heavily focused on the theoretical aspects of the law, with little instruction to develop practical skills of law students. Ongoing reforms to curriculum and teaching methods are continuing to shift the focus towards interactive teaching methodology as well as the development of practical experience and analytical skills.</p>		

Analysis/Background:

Historically, law curriculum taught at universities has emphasized theoretical lectures and rote memorization rather than skill-building and practical experience. Advocates reported a lack of instruction on legal analysis and practical application of the law, with professors instead focusing on theory-based discussion of legal problems. See ABA/CEELI, GEORGIA LEGAL EDUCATION ASSESSMENT: FINAL REPORT 10-11 (2005). Recent reforms, brought about partially because of the passage in 2004 of the Law on Higher Education, have resulted in some changes in teaching methods.

The Law on Higher Education reflects the government's efforts to live up to the constitutional mandate that educational programs be compatible with international rules and standards. See

¹⁶ The GBA's participation in this process also flows from its goal of supporting legal education and development of the legal profession, and its obligation to engage in activities to implement this goal. See CHARTER OF THE GEORGIAN BAR ASSOCIATION arts. 5(5), 6(2) (approved by the GBA General Assembly on February 26, 2005) [hereinafter GBA CHARTER].

¹⁷ There are also 12 newly licensed institutions of higher education that have yet to undergo institutional accreditation.



CONSTITUTION art. 35(2); see also Factor 7 above. While the Law on Higher Education does not specifically address legal education, it outlines institutional and curricular reform generally for all higher education institutions. Nevertheless, the Law on Higher Education has had the effect of producing reforms in law school curriculum, faculty development, and practical training. For example, legal education programs have historically focused on legal theory, with an emphasis on rote memorization; but in recent years, law faculties have started developing and implementing interactive teaching methods. Legal research and writing is being introduced in the bachelors' programs. The masters' programs are generally practice-oriented, focusing on legal clinics, which emphasize practical and analytical skills, and professional writing skills.

Several clinical programs have been developed in recent years. For instance, an ABA ROLI-funded project introduced a pilot legal clinic in Batumi State University in 2006, staffed with students who assist apartment owners in property litigation. In 2007, ABA ROLI established a civil and administrative law clinic at Kutaisi State University. Both Batumi State University and Kutaisi State University have incorporated these clinical programs into their master's curriculum. Additionally, Tbilisi State University has officially incorporated a street law program (earlier administered by ABA ROLI) into its master's curriculum. Under this program, law students teach secondary school students about the rule of law and human rights. ABA ROLI still continues to implement Street Law programs in five other cities: Batumi, Kutaisi, Akhaltsikhe, Gori, and Telavi. All students enrolled in these programs complete an academic component specifically designed to complement their practical work in the clinics. They also attend various skills training courses given by ABA ROLI and other organizations, including the basic advocacy skills trainings designed by ABA ROLI. In addition to these clinical programs, the GLSA, with support from the Supreme Court and ABA ROLI, has conducted nationwide moot court competitions and olympiads in criminal, civil, and administrative law.

Factor 9: Qualification Process

Admission to the profession of lawyer is based upon passing a fair, rigorous, and transparent examination and the completion of a supervised apprenticeship.

<i>Conclusion</i>	<i>Correlation: Neutral</i>	<i>Trend: ↔</i>
To become licensed as an advocate, law graduates are required to pass a civil law, criminal law, or general bar exam, or a prosecutorial or judicial exam. In addition, the candidate must have at least one year of work experience as an intern. Disparity exists in the quality of these exams, which undermines a fair, rigorous, and transparent admission process.		

Analysis/Background:

To become qualified as an advocate, law graduates are required to pass either a bar exam, a judicial exam, or a prosecutorial exam, and are also required to practice law for at least a year as an advocate's intern before becoming licensed. LOA art. 10(1). There are three different bar exams, each covering different subject areas: a general bar exam, a criminal law bar exam, and a civil law bar exam. An advocate who passes the general exam may practice both criminal and civil law. An advocate who passes the criminal law exam may practice criminal law only. Likewise, passing the civil law exam entitles an individual to be licensed to practice civil law only. See generally *id.* art. 11.

The first bar exam administered by the GBA took place in May 2006. Since that time, the GBA has held exams twice a year, as mandated by the LOA.¹⁸ *Id.* art. 11(2). The Executive Council of the GBA determines the regulations of the Qualification Committee that oversees the exams. *Id.* These regulations are subject to the approval of the General Assembly. *Id.* art. 24(2)(c); GBA CHARTER art. 12(2)(c). The GBA Executive Council is also responsible for coordinating the implementation of the exam, including setting the date for the exams and developing the content for the exams. LOA arts. 11(2), 26(4)(b); GBA CHARTER art. 15(b).

The bar exams consist of 100 multiple choice and true/false questions randomly selected from a larger pool of over 5,000 questions. There are no essay questions. The general bar exam covers the following subjects: constitutional law; international human rights law; administrative law and procedure; criminal law and procedure; and civil law and procedure. LOA art. 11(5). The criminal law bar exam covers the same subjects as the general exam, except that questions on the civil law and procedure are excluded. *Id.* art.11(7). Similarly, the civil law bar exam covers the same subjects as the general exam, except that questions on the criminal law and procedure are excluded. *Id.* art. 11(6). Respondents generally reported that the exams are fair and transparent, but not rigorous.

The following table shows the passage rates from the four most recent bar exams administered by the GBA.

GENERAL, CIVIL, AND CRIMINAL LAW BAR EXAM PASSAGE RATES

Exam Date	No. of Candidates and Passage Rates	Criminal Law Exam	Civil Law Exam	General Bar Exam	Total
May 2006	No. of candidates	1,056	930	737	2,723
	% passed	62	61	44	53
Nov. 2006	No. of candidates	832	726	481	2,039
	% passed	57	55	49	54
June 2007	No. of candidates	405	525	320	1,250
	% passed	41	55	32	44
Nov. 2007	No. of candidates	610	664	392	1,666
	% passed	49	48	36	45

As of June 2007, persons seeking to be licensed by the GBA may pass the prosecutorial exam in lieu of the bar exam. *Id.* art. 10(1)(b). This exam is administered by the HCOJ. It is held twice a year and consists of 100 multiple choice questions randomly selected from a pool of approximately 1,000 questions. According to the Prosecutor General’s Office, the substance of the prosecutorial exam is very similar to the criminal law bar exam. Both exams cover the Constitution, international human rights law, administrative law, the criminal law, and the criminal procedure law. However, advocates interviewed for this assessment reported that the prosecutorial exam does not cover the same fields of law as the criminal law bar exam, but instead focuses only on the criminal law and procedure. A sample prosecutorial exam was not provided for the assessment team to review. Regardless, advocates felt that prosecutors have an unfair advantage because the test bank for the prosecutorial exam contains one-fifth the number of questions as found in the bar exams’ test bank. Advocates were also concerned regarding the lack of oversight for the prosecutor’s exam. The general consensus is that the prosecutorial exam is easier than the bar exam. Since the prosecutor’s exam became an

¹⁸ Prior to the formation of the GBA, the HCOJ was responsible for administering the exams (see *id.* art. 40(1), and it did so in November 2003 and September 2004. The pass rates for those two exams were 71% and 62%, respectively. It should be noted that advocates interviewed by the assessment team speculated that, in the future, the HCOJ might once again take over responsibility for administering the bar exam from the GBA.



acceptable substitute for the bar exams in 2007, 600 members of the GBA have been licensed based on passage of this exam.

The Judicial Qualification Exam can also be taken in lieu of the bar exam. *Id.* It is reported to be a more rigorous exam than the prosecutorial or the bar exams; however, unlike those two exams, it also includes a subjective interview process. The judicial exam covers similar subjects as the general bar exam: constitution law, criminal, civil, and administrative law and procedure, international human rights laws, and international treaty law. LAW ON COMMON COURTS art. 68(3). The judicial exam is also administered by the HCOJ. The written portion of the judicial exam includes six essay questions and 100 multiple choice questions randomly selected from a pool of approximately 1,000 questions. The oral interview is conducted by 10 members of the HCOJ. There is no set schedule for the exam, but it is reportedly held two or three times a year. Since 2004, seven exams have been held, with the most recent exam in September 2007. While the bar exam averages 2,000 examinees, the judicial exams average 25-30 examinees.¹⁹

In light of the apparent disparity in the quality of the different exams that potential advocates can sit for, interviewees reported that the government is strongly considering amending existing legislation so that a single bar exam would be used to license advocates, rather than relying on a general, civil, and criminal bar exams, or a prosecutorial or judicial exam.

After passing the bar exam, candidates are also required to complete at least one year of work experience as an intern for an advocate before they can be licensed. See LOA art. 10(1)(c). An intern may perform functions otherwise restricted to advocates, if instructed to do so by an advocate. *Id.* art. 16(3). Moreover, an amendment to the LOA in June 2007 now requires the sponsoring advocate or law firm to inform the GBA regarding its decision to accept or refuse individuals applying for internships. *Id.* art. 16(1). In the past, advocates were largely responsible for finding their own internships, and they had to rely heavily on personal connections. State universities provided students with rotating internships that consisted of a few months at various government agencies. However, these state internships were reportedly not very substantive, and typically did not provide much opportunities for students to gain practical work experience.

Respondents are also hopeful that the legal clinics offered through the master's programs will mitigate some of the problems that graduates face when seeking to be placed in the required one-year internships. For example, Tbilisi State University reports an enrollment of 250 master's program students who will be working with the courts, Parliament, private law firms, as well as a street law program within secondary schools. In addition, the Caucasus School of Business places its law graduates in internships with law firms, through an agreement with the GBA. There are plans to expand this program and to institute a competition to select students for placement with firms.

¹⁹ Generally, the annual pass rate for the judicial exam has been around 10%-15%. However, in 1999, the success rate was 41%, and in 2003, the success rate was 90%. These discrepancies lead to doubts regarding the integrity of the exam during those two years. TRANSPARENCY INTERNATIONAL GEORGIA, REFRESHING GEORGIA'S COURTS: TRIAL BY JURY at 1-2 (2007) [hereinafter TRANSPARENCY INTERNATIONAL, REFRESHING GEORGIA'S COURTS]. A total of 130 new judges have been appointed since 2004.

Factor 10: Licensing Body

Admission to the profession of lawyer is administered by an impartial body, and is subject to review by an independent and impartial judicial authority.

Conclusion	Correlation: Positive	Trend: ↑
<p>Admission to the legal profession is overseen by the GBA Executive Council, whose members are democratically elected by the GBA General Assembly. The Executive Council's admission decisions are subject to review by the courts.</p>		

Analysis/Background:

An advocate is a person who is a member of the GBA and who obeys only the laws and the Code of Ethics. LOA art. 1(2). Thus, individuals become licensed advocates by joining the GBA. The criteria for admission into the GBA are set forth in the law, and there is an appeals process for those who are denied admission. Membership in the GBA requires a university degree in law,²⁰ passage of one of the three bar exams, a judicial exam, or a prosecutorial exam, and at least one year of work experience as an advocate or an advocate's intern. *Id.* art. 10(1).

To apply for the GBA membership, an applicant submits a petition for membership to the GBA, which must include: the applicant's name and date of birth; the applicant's law firm affiliation and contact information; the applicant's specialization, if he/she has specialized in criminal or civil law; and an explanation of whether the applicant has passed the bar exam. *Id.* art. 21(2). Applications for membership to the GBA are reviewed by the GBA Executive Council. *Id.* art. 21(1). The Executive Council consists of nine members, eight of whom are elected by the GBA General Assembly for three-year terms. The ninth member of the Executive Council is the Chairman of the GBA (who is also selected by the General Assembly). *Id.* arts. 26(2)-(3), 27(1); see also GBA CHARTER art. 15(a). The Executive Council has 10 days from receipt of an application to accept or reject the applicant. LOA art. 21(1). The Executive Council makes admission decisions based on the majority vote, and a majority of its members must be present for voting to occur. The Chairman is responsible for casting the decisive vote in the event of a tie. *Id.* art. 26(6). Membership can be denied if the applicant does not have a university degree in law, has not passed the required exams, or if seven or more years have elapsed since the applicant passed the exams. *Id.* arts. 21(3)(a)-(b). In addition, an advocate may not have been convicted of certain types of crimes, unless that conviction has since been annulled or expunged. *Id.* art. 10(2). Moreover, an advocate may not concurrently hold one of the government positions enumerated in the the Law on Conflicts of Interest and Corruption in Public Service. LAW ON CONFLICTS OF INTEREST AND CORRUPTION IN PUBLIC SERVICE art. 2 (Law No. 982, *adopted* October 17, 1997); see also *Id.* art. 10(3).²¹

If an applicant is denied membership in the GBA, he/she can appeal that decision to a court within one month after receipt of rejection. *Id.* art. 21(3)(g). The law does not contain any further details regarding the appeals process, nor what standard of review is applied by the court that hears the appeal.

²⁰ Currently, no legislation defines whether a bachelor's, master's, or doctorate degree in law satisfies the LOA's requirements. See ABA/CEELI, GEORGIA LEGAL EDUCATION ASSESSMENT: FINAL REPORT 9.

²¹ The law lists the following positions: the president, members of parliament, heads and deputy heads of the representative bodies in Abkhazia and Ajaria, the heads and deputy heads of a number of government ministries and city governments, as well as a number of other government officials. LAW ON CONFLICTS OF INTEREST AND CORRUPTION IN PUBLIC SERVICE art. 2.



The assessment team did not receive any reports of improper denial of applicants or any court cases challenging denials of admission.

Factor 11: Non-Discriminatory Admission

Admission to the profession of lawyer is not denied for reasons of race, sex, sexual orientation, color, religion, political or other opinion, ethnic or social origin, membership in a national minority, property, birth, or physical disabilities.

Conclusion	Correlation: Neutral	Trend: ↔
<p>Equality of opportunity is guaranteed by the Constitution and the LOA, and ethnic minorities and women are well represented among the advocates, although at somewhat lower percentages than among the general population. There are no reported instances of discrimination against ethnic minorities, women, or disabled persons regarding entry into the legal profession. However, some types of discrimination may be masked by other social factors, including language and the physical conditions of facilities such as courthouses or university buildings.</p>		

Analysis/Background:

Legal protections exist to prevent overt discrimination in admission to the legal profession. The Constitution sets forth the general principle of equality before the law, regardless of race, color, language, gender, political or other opinion, national, social, or ethnic origin, property, or residence. CONSTITUTION art. 14. The LOA echoes the Constitution in applying the principles of non-discrimination and equality before the law to advocates. LOA arts. 3(c), 38(2). Despite these principles, advocates are required to be citizens of Georgia, and candidates who sit for one of the bar exams must also speak Georgian, because the exams are administered in Georgian. *Id.* arts. 10(1), 11(9).

Ethnic Georgians make up 83.8% of the population of Georgia. The remaining 16.2% includes ethnic Azeris, Armenians, Russians, and “other” ethnicities. *Georgia, in CIA World Factbook, available at* <https://www.cia.gov/library/publications/the-world-factbook/geos/gg.html>. According to the GBA, 11.38% of its members are ethnic minorities. Although the assessment team received no reports of actual instances of discrimination against minority candidates regarding entry into the legal profession, it is possible that ethnic discrimination may be masked by other social factors. For example, requiring advocates to take the bar exam in Georgian may affect the number of non-Georgian speakers in the profession. However, one advocate interviewed by the assessment team dismissed this concern by stating that legal proceedings are always conducted in Georgian, so regardless of a person’s ethnicity he/she would already have to be able to read, write, and speak Georgian in order to practice law.²² Other interviewees likewise agreed that minorities seeking to be licensed as advocates are already fluent in Georgian. However, in 2005, interviewees expressed concern that, traditionally, members of the Armenian and Azeri minorities were educated in Russian, not Georgian, and were therefore less likely to be fluent in Georgian.

Discrimination against women was similarly not viewed as a concern by respondents. Both male and female interviewees denied that there is discrimination against the entry of women into the legal profession. In practice, women are fairly well represented in all areas of the law – as judges, prosecutors, advocates, and law professors. According to the GBA, 40.35% of its members are women.

²² It should be clarified that, in fact, criminal proceedings in Abkhazia may also be conducted in Abkhazian in addition to Georgian. See CODE OF CRIM. PROC. art. 17(1); see also CODE OF CIV. PROC. art 9(4) (requiring all civil proceedings to be conducted in Georgian only).

Interviewees also denied the existence of discrimination regarding the entry into the legal profession of physically disabled persons, although the assessment team did not receive statistics as to representation of persons with disabilities in the GBA. However, the existing facilities do not always accommodate the needs of the disabled. For example, the current conditions of many courthouses and universities present an insurmountable obstacle for disabled advocates, though the assessment team observed that renovations at some courthouses and universities are facilitating greater accessibility for disabled persons.



III. Conditions and Standards of Practice

Factor 12: Formation of Independent Law Practice

Lawyers are able to practice law independently or in association with other lawyers.

Conclusion	Correlation: Positive	Trend: ↔
Legislation guarantees advocates the right to practice law independently or in association with other lawyers, and this right is generally freely exercised and limited only by personal finances.		

Analysis/Background:

The Constitution guarantees the right to form and join public associations, including trade unions. CONSTITUTION art. 26(1). This right can be restricted if the association’s activity is aimed at overthrowing the government, infringing on Georgia’s sovereignty, propagandizing war or violence, or provoking ethnic or religious hatred. *Id.* art. 26(3). However, any restriction on the right to joint and form public associations must be based on a court decision. *Id.* art. 26(6).

The LOA also provides advocates the right to freely choose how they wish to carry out legal activities. Specifically, advocates have the right to practice law either independently, or with other persons. LOA art. 18(1). Law firms have the right to independently determine their own organizational structure and rules. *Id.* art. 18(3). Law practices must be registered with the GBA Executive Council within 10 days following their creation. *Id.* art. 18(2). The registration information provided to the Executive Council must include general contact information for the firm and a listing of the members of the firm, including their specializations. *Id.*

The GBA is required to maintain a database with information on the country’s advocates and law offices. See GBA CHARTER art. 6(1)(10). The database is available in Georgian on the GBA’s website, <http://www.gba.ge>. Currently, there are 313 law offices registered with the GBA. The assessment team did not encounter any reports of advocates experiencing problems establishing the type of practice they wished to carry out. Most advocates are in solo practice or in small law firms, consisting of a few advocates who practice both criminal and civil law. Advocates working in law firms report that the benefits of firm practice include the ability to consult with colleagues on legal issues and the exposure to a larger client base. However, due to financial constraints, law firms tend to remain small.

Factor 13: Resources and Remuneration

Lawyers have access to legal information and other resources necessary to provide competent legal services and are adequately remunerated for these services.

Conclusion	Correlation: Negative	Trend: ↔
Advocates practicing outside the capital do not have adequate access to legal information and other resources necessary to provide competent legal services. Although reluctant to reveal the actual amounts of their earnings, many advocates reported that remuneration for legal services is not enough to make a living solely from the practice of law.		

Analysis/Background:

The significant political and legal changes that have occurred in Georgia since 1991 have resulted in the introduction of many new laws and reforms, and access to the up-to-date legislation required to remain current is problematic for many advocates. Although advocates in Tbilisi reported fewer difficulties in accessing legal information, advocates living outside of the capital have very little access to legal resources. Advocates in the regions do not have adequate libraries, and advocates in Tbilisi and elsewhere lack the financial ability to purchase legal publications. In addition, all legal institutions face the problem that materials written in the Georgian language are still deficient.

Libraries and other legal resource centers are concentrated in Tbilisi. The Supreme Court and the Tbilisi office of the GYLA have adequate libraries with a diverse inventory. Tbilisi State University has recently completed its new library, which provides a plethora of resources in hard copy as well as computer access to online resources. Several other locations outside of Tbilisi, including universities and the GYLA's regional branch offices, also have libraries, but with a much more limited supply of materials. Generally, however, academic institutions in the regions lack the legal resources and materials to adequately teach and train the law students.

While legal codes are published by a variety of publishers, they are typically available for purchase only in stores in Tbilisi. The price for such publications is reported to be between GEL 15-20 (approximately USD 8.50-11.30). There also is a legal periodical that publishes amendments to the codes. This periodical reportedly costs GEL 4 (approximately USD 2.25). Laws are also accessible through a computer database known as Codex, which costs reportedly between GEL 330-600 (approximately USD 186-339) – an exorbitant amount for most advocates. In order to benefit from the Codex service, advocates would also have to pay the expenses associated with Internet access, and there are problems with Internet service providers and inconsistent Internet access. In addition, interviewees located outside Tbilisi reported that if they experienced any problems with the Codex database they would have to perform any repairs themselves, because Codex does not provide any technical support in the regions.

International NGOs have provided financial support for the publication of various court decisions. For example, ABA/CEELI published the Constitutional Court's decisions from 1996-2002, decisions from the Tbilisi District Court in 2002, and select human rights cases from the Supreme Court. In addition, ABA/CEELI (with funding from USAID) provided support to maintain a database of the Supreme Court's decisions available on the Court's website, <http://www.supremecourt.ge>.

Respondents (particularly those located outside of Tbilisi) report that only wealthy advocates have adequate access to legal resources. Advocates almost unanimously agreed that books are too expensive for most of them to afford; and, with the rapidly changing laws, most advocates cannot afford to keep buying updated periodicals. The GBA is trying to address the lack of legal resources outside of Tbilisi by establishing regional offices with a library and computers with Internet access. However, the GBA itself has limited resources to contribute to this effort. For example, the GBA office in Batumi, which services the 70 registered bar members in Adjara, has one computer, which was delivered in October 2007 and is located in the same room that hosts three desks shared by all the Association's staff. Most often, the resources currently available and relied upon by advocates are limited to their own personal collections and those of their colleagues.

Additionally, free legal publications do not always reach the advocates in the regions. For example, the new sentencing guidelines were reportedly published and distributed to all judges, prosecutors, and advocates. However, the assessment team received multiple complaints from advocates in the regions that they did not receive a copy of the CLG. Even more disturbing are the reports from advocates that prosecutors and judges use the CLG when justifying a sentence recommendation, but refuse to allow defense counsel access to the information.



Currently, the problems associated with access to legal resources hinder the ability of advocates to provide competent legal services. This situation will become even more problematic in light of the judiciary’s apparent move towards a common law system. Since Georgia’s legal system operates based on civil law tradition, publications of court opinions are not necessary, as there is no need for advocates to cite anything other than the law itself. Reforms are moving the judicial system towards using case law as precedent in legal proceedings; thus, access to judicial opinions will be imperative.

The situation in regards to remuneration for legal services also reflects a persistent lack of resources. As discussed in Factor 12 above, respondents explained that the formation and expansion of independent law practices is limited primarily by a lack of funds. The LOA addresses remuneration for legal services, providing for the right to contract for legal services and requiring that an advocate present proof of a contract to the court hearing the case. LOA arts. 19(1)-(2). In addition, pursuant to a 2006 amendment, a non-commercial entity implementing a legal aid program is now permitted to issue such proof based on its agreement with an advocate. *Id.* art. 19(2)¹. The Code of Ethics also establishes the right to contract for legal services, instructing that lawyers must inform their clients of the expected costs of representation and ensure that their fees and rates are known and accepted by the client in advance of providing services. CODE OF ETHICS arts. 8(6), 8(8). Lawyers are permitted to vary their fees based on the complexity and duration of a case, advocates workload and expertise, and, in the case of property disputes, on the value of the object in dispute. *Id.* art. 8(8). In addition, an advocate is required to furnish, upon request by a client, information on the payments made by that client. *Id.* art. 8(12).

In practice, most advocates report that they typically contract for a flat fee and renegotiate their fee if the case is prolonged or if it becomes more complicated. Only a few advocates reported charging an hourly fee, and they acknowledged that this is not the norm. The fees charged by advocates vary widely, and although respondents were reluctant to reveal the actual monetary amounts that they charge clients, they all agreed that their income is significantly less than that of prosecutors. Advocates working in state-funded legal aid bureaus in Tbilisi make GEL 900 (approximately USD 508) per month, while those working in regional legal aid bureaus earn, on average, GEL 800 (approximately USD 452) per month. Many advocates in the regions report they accept as many cases as they can because the pay per case is so low. Most admit that it is difficult to make a living solely from providing legal services. Respondents claimed that only a small percentage of advocates (generally those based in Tbilisi) actually prosper.

Factor 14: Continuing Legal Education

Lawyers have access to continuing legal education to maintain and strengthen the skills and knowledge required by the profession of lawyer.

Conclusion	Correlation: Neutral	Trend: ↑
The GBA has begun offering free CLE classes to its members. CLE courses are also available through the support of various international NGOs. However, CLE is not yet mandatory for advocates, and access to classes by advocates outside Tbilisi is still limited.		

Analysis/Background:

The GBA is responsible for the professional training of advocates. LOA art. 23(3). One of the organization’s goals is to support legal education and professional development of its members. GBA CHARTER art. 5(5). To achieve this goal, the GBA is charged with establishing and managing an advocates’ training center. LOA art. 23(3); GBA CHARTER art. 6(1)(2).

In the fall of 2007, the GBA began offering its members free CLE classes. These classes were offered in five different areas of the profession: administrative law, criminal law, civil law, advocacy skills, and ethics. The same classes were open to non-GBA members for a fee of GEL 200 (approximately USD 113). The GBA Executive Council selected a nine member expert group to develop and present the CLE courses. The classes were offered three days a week for three months. The GBA reports that 350 members (approximately 10% of its membership) have participated in this program.

CLE is not yet mandatory to maintain an advocate’s license; however, the GBA hopes to amend the LOA to make CLE obligatory. The GBA is lobbying for a requirement that advocates with general licenses take 12 credit hours of CLE per year, and those with specialized licenses take eight credit hours in their specialization per year. Included in the mandatory hours would be a minimum number of credit hours in ethics. The GBA acknowledges that the idea of mandatory CLE classes is not strongly supported within the legal community at this time. However, the Chairman of the GBA believes that, in time, advocates will understand that the purpose of such requirements is to strengthen their knowledge of the law and advance the standards for the profession. To achieve its goal of introducing mandatory CLE requirements, the GBA must lobby to amend the LOA and then lobby the General Assembly to change the GBA’s Charter. In the meantime, according to the Chairman, the GBA will continue to offer CLE in the form of voluntary classes.

In addition to the CLE classes offered by the GBA, international NGOs continue to conduct CLE courses themselves, and they also provide funding for local NGOs to conduct CLE courses. However, these programs are sporadic and often available only in Tbilisi. Advocates in the regions report that they frequently need to travel to Tbilisi at their own expense to attend training workshops or seminars. They anticipate that geographically convenient trainings will be offered by the GBA once it becomes more established.

Factor 15: Minority and Gender Representation

Ethnic and religious minorities, as well as both genders, are adequately represented in the profession of lawyer.

Conclusion	Correlation: Positive	Trend: ↑
Georgia is predominately a mono-ethnic, mono-religious state. Women and minorities are represented in the legal profession at roughly similar levels to their representation in the general population.		

Analysis/Background:

The population of Georgia is 4.6 million, with 83.8% of the population consisting of ethnic Georgians. The remaining 16.2% consists of ethnic Azeris (6.5%), Armenians (5.7%), Russians (1.5%), and “other” ethnicities (2.5%). *Georgia, in CIA World Factbook, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/gg.html>.* In regards to religion, 83.9% of Georgia’s population are Orthodox Christian, with the remainder consisting of Muslim (9.9%), Armenian-Gregorian (3.9%), Catholic (0.8%), “other” religions (0.8%), and no religious affiliation (0.7%). *Id.*

According to statistics provided by the GBA, 11.38% of its members are ethnic minorities, a number slightly smaller than what would be expected, given the distribution of ethnic minorities in the rest of the Georgian population. While respondents reported that there are Azeri, Armenian, and Russian advocates, the GBA does not keep exact statistics regarding the specific ethnic



composition of its membership. Although statistics on the religious affiliation of the GBA members are also not available, the Chairman of the GBA affirms that different religions are represented in the Association.

Regarding the representation of women in the legal profession, 40.35% of the GBA members are women, a percentage that is slightly smaller than would be anticipated based on the fact that women comprise approximately 50% of the general public. As discussed in Factor 11 above, female attorneys generally did not experience discrimination regarding admission into the legal profession or the practice of law.

There are no professional organizations or programs in place to encourage the training, placement, or advancement of female or minority advocates. However, the GBA has contemplated opening branch offices in the regions of Abkhazia and South Ossetia, both of which are populated largely by ethnic minorities.

Factor 16: Professional Ethics and Conduct

Codes and standards of professional ethics and conduct are established for and adhered to by lawyers.

Conclusion	Correlation: Neutral	Trend: ↑
<p>The GBA has adopted an Advocates' Code of Ethics, which imposes a number of specific rules on licensed advocates. However, many advocates are not aware of the professional standards that the Code requires, and many advocates do not see the Code as a deterrent of unethical behavior.</p>		

Analysis/Background:

The LOA imposes a number of ethical rules on advocates, and in addition, it mandates the adoption of a professional Code of Ethics within three months of the first GBA General Assembly meeting. LOA art. 44. Accordingly, the newly established GBA adopted a Code of Ethics on April 15, 2006. The GBA was also required to create an Ethics Commission to investigate and impose disciplinary measures for violations of the Code of Ethics. *Id.* arts. 23(1), 28. Therefore, GBA Ethics Committee members were elected during the founding General Assembly held on May 21, 2006.

In order to become a member of the GBA, an advocate must pledge himself/herself to: protect the Constitution and the laws of Georgia; be loyal to the ideas of justice; adhere to the Code of Ethics; and protect the rights and freedoms of participants in legal proceedings. *Id.* art. 5. The Code of Ethics similarly imposes a number of both general and more specific obligations on licensed advocates. For instance, advocates are required to maintain lawyer-client confidentiality. CODE OF ETHICS art. 4. Advocates must also avoid conflicts of interest, and are required to cease representation of their clients if a conflict arises out of their service to another client, or the service of another advocate in their firm. *Id.* art. 6. Examples of the more specific standards of professional conduct regarding the interactions between an advocate and his/her clients, the court, and other advocates include the prohibitions against: commingling client funds with their personal funds (*see id.* art. 8(13)); giving false evidence (*see id.* art. 9(3)); or receiving any compensation from referring their clients to other advocates (*see id.* art. 10(3)).

While advocates are not required to receive trainings regarding the new Code of Ethics, the GBA Ethics Commission is involved in several initiatives to educate the lawyers on the content of the Code. In particular, the GBA's efforts have included eight regional trainings in Mtskheta, Dusheti,

Gardabani, Rustavi, Sagarejo, Bolnisi, Marneuli, Gori, and Tskhneti, during which approximately 190 advocates were trained on the Code of Ethics. The Ethics Commission also holds weekly meetings for advocates in Tbilisi, to update them on legal ethics developments. To date, approximately 285 Tbilisi advocates have attended these meetings. However, despite these efforts, many advocates interviewed by the assessment team were unaware of the professional standards imposed by the Code, and were not knowledgeable about the work of the GBA’s Ethics Commission.

Respondents generally acknowledge that the adoption of the Code of Ethics was necessary to professionalize the practice of law. Nonetheless, respondents familiar with the Code of Ethics expressed that they do not view it as a deterrent of unethical behavior. This opinion was based largely on the advocates’ belief that the Ethics Commission is too weak to discipline advocates. When asked to explain why the Ethics Commission was unable to discipline advocates, respondents opined that the Ethics Commission does not act independently, but rather that its behavior is politically motivated. However, some respondents reported that the Ethics Commission is independent of outside influence, but that it lacks the resources and power needed to properly investigate and discipline unethical behavior.

Factor 17: Disciplinary Proceedings and Sanctions

Lawyers are subject to disciplinary proceedings and sanctions for violating standards and rules of the profession.

Conclusion	Correlation: Neutral	Trend: ↑
<p>There is a disciplinary mechanism in place within the GBA. However, the mechanism is not being fully utilized due to a lack of awareness about the procedure. Only one of the approximately 100 disciplinary complaints brought so far has resulted in an advocate being sanctioned.</p>		

Analysis/Background:

The GBA is responsible for developing the disciplinary system for advocates. GBA CHARTER art. 6(1)(11). The GBA’s General Assembly is charged with adopting rules regarding disciplinary responsibility and disciplinary proceedings against advocates. LOA arts. 24(2)(e), 28(8). To fulfill this requirement, the GBA adopted Disciplinary Proceedings Regulations at the time it adopted the Code of Ethics. These rules are implemented through the GBA’s Ethics Commission, which oversees the disciplinary process by investigating complaints against advocates and deciding about disciplinary responsibility of advocates. *Id.* art. 28(6). The Ethics Commission is an independent body comprised of nine members elected by the General Assembly for three-year terms. *Id.* arts. 28(1)-(2). Any GBA member who is at least 30 years old and has been practicing law during the last five years can be elected to the Ethics Commission. GBA CHARTER art. 20(3). However, an advocate may not be elected to the Ethics Commission if he/she has not fulfilled property obligations imposed by a court’s decision; has been charged of a crime; or has been subject to discipline for an ethics violation during the last three years. LOA art. 30(1). In addition, no two advocates representing the same law firm may serve on the Ethics Commission at the same time. GBA CHARTER art. 20(4). Ethics Commission members may not receive a salary or other compensation for their service. *Id.* art. 20(5).

The Ethics Commission operates through three collegiums, each consisting of three Commission members (and including both criminal and civil law specialists) designated by the Commission’s Chairman for a one-year term. DISCIPLINARY PROCEEDINGS REGULATIONS art. 6(1); *see also* GBA CHARTER art. 23(3). One of the collegiums serves as the process collegium, which receives and



evaluates all incoming complaints and decides on initiation of disciplinary proceedings. Each of the collegiums performs these functions on a rotating basis, for one-month terms. DISCIPLINARY PROCEEDINGS REGULATIONS art. 6(3). The other two collegiums are designated as hearing collegiums, with the function to hear charges against advocates. *Id.* art. 6(4). The Chairman of the Ethics Commission assigns cases to one of these two collegiums on a rotating basis. *Id.* art. 10(1); *see also* GBA CHARTER art. 23(2).

An advocate may be subject to disciplinary proceedings for violating the Code of Ethics, for failing to have professional liability insurance, or for failing to live up to the duties of an advocate set forth by the LOA. LOA arts. 5, 9, 32(1); DISCIPLINARY PROCEEDINGS REGULATIONS art. 2. These duties include the duty of professional honesty, the duty to protect the rights of participants in the legal process, the duty to respect lawyer-client confidentiality, the duty to immediately inform a client of a conflict of interest, and duties established by procedural legislation. LOA art. 5. There is a three-year statute of limitations for disciplinary actions. LOA art. 32(2); DISCIPLINARY PROCEEDINGS REGULATIONS art. 3(1).

Disciplinary proceedings against advocates can be initiated by submitting a written complaint or notification to the GBA Ethics Commission. The Chairman of the GBA, Ethics Commission, Audit Commission, proceeding agency, or any person who believes his/her rights and interests were violated by an advocate's action may file a complaint. DISCIPLINARY PROCEEDINGS REGULATION art. 7(1). The use of anonymous letters or messages as the basis for disciplinary inquiries is prohibited. LOA art. 28(7). Instead, a uniform complaint form was created in 2007, and the GBA is in the process of drafting instructions on bringing ethics complaints. These instructions will be available, along with complaint forms, in brochure form. Once the process collegium receives a complaint, it has 30 days to examine case materials and decide whether sufficient grounds exist to initiate disciplinary proceedings against the advocate. DISCIPLINARY PROCEEDINGS REGULATION art. 7(2); LOA art. 33. During this stage, the collegium must obtain explanations from the complainant and the advocate in question, and may also request the submission of additional documents and relevant materials to elaborate on the complaint. DISCIPLINARY PROCEEDINGS REGULATION art. 6(3)(c). The process collegium may not initiate disciplinary proceedings if: the complaint does not provide grounds for discipline; the statute of limitations for disciplinary proceedings or imposition of disciplinary sanctions has elapsed; the materials examined clearly indicate criminal misconduct on behalf of the advocate; or the advocate's membership in the GBA has already been terminated. *Id.* art. 7(3). Otherwise, if the collegium finds that the lawyer has committed the misconduct alleged, it will submit the case to the Chairman of the Ethics Commission, for assignment to one of the hearing collegiums. *Id.* art. 9(1).

The hearing collegium must hold a hearing on the complaint within 50 days of receiving the case. *Id.* art. 11. The collegium is required to decide the case in a fair and impartial manner, based on the principles of equality and adversarial proceedings. *Id.* art. 10(3). The hearing collegium must promptly notify the advocate about the place, date, and time of the hearing. It may also question parties and other persons invited to participate in the hearing, request additional documents and information, and summon witnesses. *Id.* arts. 13(3), 13(4), 13(8). The advocate subject to the proceedings has the right to appear before the hearing collegium, and if he/she fails to appear when requested by the collegium, the hearing will be postponed for 10 days, or, if the advocate is unable to appear due to a serious illness or for other valid reasons, the proceedings may be suspended for up to 30 days. However, his/her subsequent absence without a valid reason does not prevent the collegium from going forward with the proceeding. LOA art. 35(4); DISCIPLINARY PROCEEDINGS REGULATIONS arts. 14(2)-(3).

Disciplinary hearings begin with a presentation of the case by the chair of the hearing collegium, which includes reading the process collegium's report and recounting facts and circumstances of the alleged misconduct and materials gathered during the investigation. DISCIPLINARY PROCEEDINGS REGULATIONS art. 13(5). After that, the chair of the hearing collegium presents the charges. The chair of the process collegium is expressly prohibited from requesting any specific disciplinary sanction for the advocate. *Id.* art. 13(6). The advocate must then be given the

opportunity to respond. He/she also has a number of other due process rights, including the right to use assistance of a counsel, question witnesses, present evidence, file motions requesting additional documents and information, and request the appearance of additional witnesses. *Id.* In addition, the advocate may also seek recusal of any member of the collegium or of the entire collegium, which must be granted if there are real and substantial doubts as to their impartiality. *Id.* art. 12.

If the hearing collegium finds the advocate guilty of disciplinary misconduct, it may impose one of the following disciplinary sanctions: warning, suspension of the right to practice law for a period of 6 months to 3 years, or termination of membership in the GBA. LOA art. 34(1); DISCIPLINARY PROCEEDINGS REGULATIONS art. 4(1). The sanction should take into account the substance and gravity of misconduct, the resulting harm, and the degree of advocate's fault. DISCIPLINARY PROCEEDINGS REGULATIONS art. 19(1). Only one type of sanction may be imposed, even if there are multiple counts of misconduct. *Id.* arts. 18(5)(d), 19(2). The collegium may also decide to terminate the advocate's membership in the GBA Executive Council, Ethics Commission, or Audit Commission, and this measure may be applied either separately or together with any of the above sanctions. LOA art. 34(2)(b); DISCIPLINARY PROCEEDINGS REGULATIONS arts. 4(2)(b), 19(2). As an alternative to disciplinary sanctions, the collegium may decide to issue a private letter of reprimand to the advocate concerned, containing recommendations and advice for measures the advocate can take to overcome problems related to the performance of his/her professional duties and to avoid future violations. LOA art. 34(2)(a); DISCIPLINARY PROCEEDINGS REGULATIONS arts. 4(2)(a), 18(5)(c), 19(2). This letter is filed in the advocate's disciplinary file in a sealed envelope, and may only be opened in connection with other proceedings against the same advocate. DISCIPLINARY PROCEEDINGS REGULATIONS art. 18(5)(c). Such private letter if reprimand is not considered a disciplinary sanction. *Id.* art. 26(3).

Any decision of the collegium must be in writing, be reasonable, and requires a majority vote of the collegium's members. Any dissenting opinions must be attached to the majority decision. LOA arts. 35(1), 35(5); GBA CHARTER art. 23(4); DISCIPLINARY PROCEEDINGS REGULATIONS arts. 18(2)-(4). If the proposed sanction is either suspension of the right to practice law or termination of the GBA membership, the hearing collegium must refer the case for a hearing before the entire Ethics Commission. DISCIPLINARY PROCEEDINGS REGULATIONS arts. 6(5), 18(5)(d), 23(1). This decision requires the consent of at least seven members of the Ethics Commission. GBA CHARTER art. 23(4).

Although the Ethics Commission's sessions are closed to the public, its decisions must be announced publicly. LOA art. 35(3). A Decision must also be sent to the advocate within five days of its adoption, and included in the advocate's personal file along with minutes of the hearing collegium's proceedings. *Id.* art. 35(5); DISCIPLINARY PROCEEDINGS REGULATIONS arts. 21-22. The advocate has the right to appeal a decision of the hearing collegium or the Ethics Commission to the Supreme Court of Georgia within a month of receiving a copy of it. LOA art. 35(6); DISCIPLINARY PROCEEDINGS REGULATIONS art. 24. Disciplinary decisions become effective upon expiration of the appeal term or enactment of the Supreme Court's decision, and are enforced through the GBA Executive Council. DISCIPLINARY PROCEEDINGS REGULATIONS arts. 25(1)-(2). Provided that the advocate in question is not involved in subsequent misconduct, any sanctions imposed against him/her are expunged as follows: 6 months from the imposition of the warning, and one year from the last day of suspension of the right to practice law. *Id.* arts. 26(1)-(2). If the advocate's GBA membership has been terminated, he/she may request renewal of membership after 5 years from the effective date of the Ethics Commission's decision. *Id.* art. 25(3). In addition, the advocate may not be subject to additional disciplinary proceedings or sanctions for the same misconduct as the matter already decided. *Id.* art. 27.

The Ethics Commission estimates that approximately 100 complaints against GBA members have been filed since 2005. Of the 68 complaints heard by September 2007, 56 were brought by clients, 10 were brought by the courts, one was brought by the MOJ, and one was brought by the procuracy. Out of these, 37 complaints were dismissed as not containing grounds to prove a



misconduct; 14 were dismissed because the alleged misconduct occurred before the adoption of the Code of Ethics; 10 were dismissed because they were brought against individuals not licensed by the GBA; 7 were referred for hearings; 3 were withdrawn by the complainant; and 2 were settled. Only one of the 68 claims heard as of September 2007 resulted in the imposition of a disciplinary sanction against an advocate.

The Commission reports that the majority of the complaints it receives are from clients who are dissatisfied with the outcome of their case. The Commission admits there is a lack of awareness and understanding of the Code of Ethics and the Commission's work. Indeed, the majority of advocates interviewed by the assessment team were unaware that the Ethics Commission is, in fact, conducting disciplinary proceedings. Advocates in the regions were particularly uninformed of the activities of the Ethics Commission. Respondents who were aware that the Ethics Commission is functioning expressed concern regarding its ability and willingness to actually impose sanctions. The majority of advocates attributed this concern to the perceived lack of independence in the Commission's work, believing instead that its behavior was politically motivated. Others, however, were of the opinion that, although the Commission is independent of outside influence, it lacks the resources and power needed to properly investigate and discipline unethical behavior. The Ethics Commission confirmed that it is trying to educate advocates regarding the Code of Ethics and the new disciplinary mechanism, and has reportedly trained 200 advocates on the principles of the Code of Ethics. However, these trainings were held at the Commission members' own initiative and expense, and the Commission lacks the resources needed to conduct more extensive trainings.

IV. Legal Services

Factor 18: Availability of Legal Services

A sufficient number of qualified lawyers practice law in all regions of a country, so that all persons have adequate and timely access to legal services appropriate to their needs.

Conclusion	Correlation: Negative	Trend: ↔
<p>Although the number of licensed advocates is rapidly increasing with each bar examination, there is still an insufficient number of qualified advocates for the country. In particular, the western regions of the country have a disproportionately low number of advocates.</p>		

Analysis/Background:

Since 2005, the number of licensed advocates has increased from roughly 900 to 3,672.²³ Although the current number of advocates in Georgia represents a significant increase, there is still an insufficient number of qualified advocates for the country. The population of Georgia is 4.6 million. Accordingly, the current ratio of advocate to citizen is about 1 advocate for every 1,253 Georgians. In terms of the geographical distribution of advocates, 1,664 advocates are practicing in the capital, and 2,008 advocates in the regions.²⁴ This means that Tbilisi, which, with the population of roughly 1.1 million, accounts for slightly less than a quarter of the country's population, is home to approximately 45% of Georgia's advocates, giving it a ratio of 1 advocate for every 714 citizens. Because of the large number of advocates located in Tbilisi, the majority of Georgia's advocates are located in the eastern regions of the country, with 2,718 advocates in the eastern regions (of which 1,054 practice outside of Tbilisi), and 954 in the western regions. With so many advocates practicing in Tbilisi, towns in the western regions have an unbalanced ratio of advocates to citizens. For example, the population of the third largest city in Georgia, Batumi, is approximately 122,000. See Statistics Georgia, *Population by Regions for the Beginning of the Year*, available at <http://www.statistics.ge/main.php?pform=47&plang=1>. However, the Batumi Office for the GBA reports that only 70 advocates practice in Batumi. Accordingly, citizens living in Batumi have approximately 1 advocate for every 2,440 people. Another western city, Kutaisi (the second largest city in Georgia) has a population of approximately 189,000, and the Kutaisi Office of the GBA reports that 100 advocates practice in the city – 1 advocate for every 1,890 people.

²³ As of February 2005, 1,204 advocates were qualified to become members of the bar association, but only approximately 900 advocates took the oath at the inaugural session of the GBA. The GBA accepted 1,673 applications from individuals wishing to sit for the most recent bar exams, which were held in November 2007. 1,666 candidates participated in the bar exams that month, and 758 candidates (45%) passed.

²⁴ Prior to the admission of candidates who passed the November 2007 bar exams, there were 1,542 advocates in Tbilisi and 1,889 advocates in the regions.



Factor 19: Legal Services for the Disadvantaged

Lawyers participate in special programs to ensure that all persons, especially the indigent and those deprived of their liberty, have effective access to legal services.

Conclusion	Correlation: Neutral	Trend: ↑
<p>The right to legal representation is guaranteed to defendants in criminal cases. However, government- and NGO-provided legal aid programming is not currently meeting the demand for criminal legal assistance. Beginning in 2009, legal aid will be legislatively guaranteed to qualifying individuals in civil and administrative cases, though current shortcomings have raised doubts about the implementation of this promise.</p>		

Analysis/Background:

The right to legal representation is one of the fundamental rights guaranteed to all Georgians. See CONSTITUTION arts. 18(5), 42(3). The state has the obligation to provide legal aid to indigent persons. CODE OF CRIM. PROC. art. 80. Appointment of defense counsel is required in certain instances in criminal proceedings, and the waiver of the right to counsel is explicitly prohibited if the suspect, accused, or defendant is a minor, has a physical or mental disability that impedes his/her right to counsel, does not speak the state language, has committed an offense punishable by life imprisonment, or is undergoing psychiatric evaluation. Further, the right to counsel may not be waived if there are contradictions between the interests of the parties and at least one party has counsel; the victim or civil plaintiff has representation; a plea bargain is being negotiated with the accused; or a special protective measure is being used towards a participant (with the exception of special physical protective measures). *Id.* arts. 81(a)-(i).

On July 2, 2007, the Law of Georgia on Legal Aid was adopted, with provisions governing legal aid for civil, criminal, and administrative cases. See *generally* LAW OF GEORGIA ON LEGAL AID (Law No. 4955, adopted June 19, 2007) [hereinafter LAW ON LEGAL AID]. The Law on Legal Aid establishes the Legal Aid Service [hereinafter LAS], an independent and self-governing public entity which oversees the provision of legal assistance. *Id.* arts. 9(1), 9(3). Interference with the LAS activities is prohibited; however, the MOJ supervises the spending of financial resources by the LAS. *Id.* art. 9(3). The LAS is financed through special-purpose funds allocated from the state budget, which must be sufficient to guarantee the effective functioning of the LAS. *Id.* arts. 25(1)(a), 25(2). It is also authorized to receive donations and grants, as well as other sources of financing permitted by the law. *Id.* art. 25(1). In addition, if a civil or an administrative case is decided in favor of the legal aid recipient, or if the recipient provided false information regarding his/her financial status, the losing party or the recipient, respectively, are required to reimburse to the LAS budget all court-ordered attorney fees and litigation costs. *Id.* art. 8.

The LAS is governed by a Director and a Coordination Council, which oversee Legal Aid Bureaus and Consultation Centers. *Id.* art. 9(2). The LAS Coordination Council consists of seven members, including one MOJ representative, one nominee of Parliament's Committee on Legal Issues, one judge nominated by the Supreme Court, and four nominees proposed by the Coordination Council itself. All members are appointed by the Minister of Justice for four-year terms. *Id.* arts. 11(2)-(5). Among other functions, the Coordination Council oversees the LAS's activities and makes policy decisions regarding the provision of legal aid; assesses the effectiveness of legal aid delivery mechanisms; approves quality standards and assessment mechanisms proposed by the LAS Director and oversees their implementation; establishes and dissolves Legal Aid Bureaus and Consultation Centers, as well as appoints and dismisses their heads; and promotes coordination between all participants of legal proceedings in order to enable fulfillment of duties by public advocates. *Id.* art. 12. The Council also conducts the competition to select the LAS Director, and submits candidates for approval of the Minister of Justice. *Id.* arts.

12(k), 16(1). To be eligible for appointment as the LAS Director, a candidate must be a citizen of Georgia who is at least 25 years old, has higher legal education, and has at least three years of experience in the area of human rights defense. The Director serves for three years and may not simultaneously work as an advocate or perform any other paid work. *Id.* arts. 16(1)-(4). The Director's functions include, *inter alia*: managing the LAS and supervising the activities of Legal Aid Bureaus, Consultation Centers, and legal aid providers; recommending measures for improvement of the LAS's work; ensuring and monitoring the quality of legal aid provided by public attorneys and Legal Aid Bureaus; appointing, disciplining, and dismissing Legal Aid Bureaus' staff; reviewing complaints against the work of Consultation Centers, Legal Aid Bureaus, and legal aid providers; organizing CLE seminars for the LAS advocates; and representing the LAS in public relations. *Id.* art. 17.

The provisions of the Law on Legal Aid which pertain to legal aid in civil and administrative cases will enter into force on January 1, 2009. *Id.* art. 28(2). At that time, a party in a civil or an administrative case will be provided legal assistance if he/she is indigent, and if the case at issue meets certain criteria set forth by the LAS Coordination Council of the Legal Aid Service. *Id.* art. 6(3). For the purposes of establishing eligibility for civil and administrative legal aid, a person's status as an indigent is determined based on whether he/she is registered in a government database of persons living below the poverty line.²⁵ *Id.* art. 2(f). The Legal Aid Bureaus and advocates providing legal aid are authorized to request information from the relevant administrative body in order to determine an individual's ability to pay for legal aid services, and the administrative body is obligated to furnish that information upon request. *Id.* art. 7(2). Any refusal to provide legal aid in civil and administrative cases must be well-founded and may be appealed to the LAS Director. *Id.* art. 24(4).

State-sponsored legal aid services will be available in all criminal cases throughout the entire country, irrespective of the property and income status of a defendant, until January 1, 2009. *Id.* art. 26(3). It is anticipated that the government will create the database of indigent people in Georgia by this January deadline, after which the free legal services in criminal cases will be provided only to those who will be listed in this database. Legal aid in criminal cases is provided upon a request by the defendant or his/her close relative, or by the appropriate procedural body. *Id.* art. 24(1).

There are three models for providing legal aid services: (1) through the above mentioned Legal Aid Bureaus; (2) through law firms or individual advocates under contract with the LAS; or (3) through advocates registered in the Register of Public Advocates.²⁶ Legal Aid Bureaus are structural units of the LAS, staffed with advocates who are selected on a competitive basis and are required to go through an interview process before a panel, which is chaired by the LAS Director and includes MOJ and NGO representatives. They are responsible for providing legal aid within their respective territorial boundaries. *Id.* art. 20. Contract providers are also selected on a competitive basis, and the application process is open to all law firms and advocates. *Id.* art. 21. The Register of Public Advocates consists of a list of advocates available to provide legal aid when requested by the LAS. Advocates must apply to the LAS and pass an interview process to be included in this register. *Id.* art. 22. The LAS is charged with setting payment amounts for contract providers and registered advocates, though the pay scale has not yet been established. The monthly salary for a LAS advocate in Tbilisi is GEL 900 (approximately USD 508), which is the same as the average monthly salary of a Georgian prosecutor. The monthly salary for

²⁵ According to statistics provided by the Ministry of Economy and the Department of Statistics, the poverty line in 2007 was calculated as 60% of median consumption. By this standard, 21.3% of the population was below the poverty line.

²⁶ In addition to representation in judicial and other legal proceedings, the legal aid system envisions the creation of Consultation Centers, which provide legal consultation and advice on any legal matter, the duration of which may not exceed one hour. These consultations are to be available to everyone, regardless of residence and property status. LAW ON LEGAL AID arts. 3, 2(b).



consultants, who provide legal advice but do not try cases in court, is GEL 800 (approximately USD 452).

In 2006, the LAS opened two Legal Aid Bureaus, one in Tbilisi and one in Imereti. These bureaus employ a staff of 27 advocates and 11 advocates, respectively. By the end of November 2007, the LAS has plans to open six additional bureaus, with a combined staff totaling 109, including both advocates and legal consultants. These additional bureaus will be located in Zugdidi, Poti, Batumi, Kutaisi, Gori, Mtskheta, Rustavi, and Telavi. Territories not covered by these bureaus will receive legal aid through a combination of contract providers and registered advocates. For instance, Gudia region is provided legal aid through registered public advocates, while Guriea, Akhaltsikhe, and Samteskhe-Javakheti regions are provided legal aid through both registered public attorneys and contract providers. The LAS reported that its bureaus handled a total of 400 cases in 2006, and that demand for legal aid has steadily increased between 2006 and 2007. As of October 2007, the LAS reported working on a total of 676 cases (including 282 closed cases and 394 open cases). On average, a bureau staff advocate working in Tbilisi maintains a workload of 30-35 open cases. In 2008, a public awareness campaign will be initiated to increase public knowledge regarding the availability of legal aid services.

Respondents expressed several concerns regarding the legal aid system. The biggest issue is the independence of the LAS and its advocates. Most advocates believe the MOJ is heavily involved not only in the selection of LAS bureau staff, but also in deciding who is chosen to be a contract provider and who is included in the Register of Public Advocates. Interviewees suggested that only “pocket advocates” are selected to provide legal aid.²⁷ However, reports from NGOs working with the LAS rebut these allegations of governmental influence, and point to the introduction of quality control mechanisms as a successful means of preventing influence.

Another concern expressed by respondents relates to the overall shortage of legal aid services. There is a huge need for legal aid that the LAS is currently required to satisfy. As discussed previously, no legal aid is available in administrative and civil cases until January 2009. Advocates question the ability of the LAS to provide assistance in civil and administrative cases in the near future, because the LAS does not currently have the capacity to meet the legal aid needs in criminal cases. This concern is especially pronounced in regards to the availability of legal aid outside of Tbilisi.

In addition to the limited availability of government-sponsored legal aid, NGOs around the country continue to provide legal aid services with financial support from international technical assistance providers. For example, the GYLA offers legal assistance in several different ways. GYLA’s Legal Aid Center provides consultations both in person and via online consultations and a telephone hotline, and GYLA advocates offer representation in civil, criminal, and administrative cases. Article 42, the Human Rights Center, and Century 21 also provide legal assistance in human rights cases. Four years ago, ABA ROLI and the Center for the Protection of Constitutional Rights began providing free legal consultations and court representation for women regarding domestic violence, family law, and labor law related issues. The Center has also established a hotline in Tbilisi, Gori, and Telavi, for women to call in and receive legal assistance. Finally, university legal clinics also provide some legal aid services. However, it is widely recognized that the need for free legal aid across the country is not being fully met by the currently available services.

²⁷ “Pocket advocate” is the term used to describe an advocate who cooperates with the investigator in criminal cases, and who stereotypically does whatever he/she is instructed to do by the prosecution – as opposed to rigorously defending the rights of his/her clients.

Factor 20: Alternative Dispute Resolution

Lawyers advise their clients on the existence and availability of mediation, arbitration, or similar alternatives to litigation.

Conclusion	Correlation: Neutral	Trend: ↔
<p>The Code of Ethics requires advocates to advise their clients to settle a case or find alternative ways to resolve a dispute. However, the only formal alternative dispute resolution available is arbitration, and its use is generally limited to small-scale disputes between individuals. Formal mediation does not exist; however, advocates often advise their clients to settle matters outside of the courtroom.</p>		

Analysis/Background:

Generally speaking, advocates are required to consider alternative methods of resolving cases when representing their clients. Thus, advocates should always attempt to represent their clients with minimal expense to the clients, and as part of this requirement, advocates must advise clients to settle their cases or find alternative means of resolving dispute, when possible. CODE OF ETHICS art. 8(11). Advocates are also specifically authorized to represent clients in arbitration proceedings. LOA art. 4(1)(a). However, neither the LOA nor the Code of Ethics address any specific issues that may arise during an advocate's provision of arbitration or mediation assistance.

The Law on Private Arbitration addresses arbitration in the context of civil disputes, providing for the availability of arbitration to individuals involved in such disputes, upon the agreement of the parties involved. LAW ON PRIVATE ARBITRATION art. 1. Arbitration agreements must be concluded in writing. *Id.* If, during arbitration, a criminal trial is initiated on the subject matter of the dispute, with the possibility of influencing the outcome of the proceedings, the relevant court may terminate the arbitration proceedings. *Id.* art. 3. Arbitration may be conducted by permanent arbitration firms or by temporary arbitration panels created to hear specific disputes. *Id.* arts. 1, 7. Anyone can serve as an arbitrator, unless he/she lacks the relevant legal capacity, is a politician or a public employee, has been convicted of an intentional crime, or is closely related to one of the parties to the arbitration. *Id.* art. 8. Like court proceedings, arbitrations must be conducted based on the principle of equality between the parties involved. *Id.* art. 25. Arbitration decisions are binding and subject to limited appeal to the courts. Courts are permitted to overturn decisions reached in arbitration only when the arbitration award violates criminal or administrative offenses laws, or if the award is in violation of the rules of arbitral procedure agreed upon by the parties to the arbitration. *Id.* art. 43.

In practice, alternative dispute resolution continues to exist on a limited basis. Interviewees reported that arbitration is sometimes used in civil disputes between private individuals, though it is not the most common way that such disputes are resolved. The assessment team was informed that arbitrators are always advocates, and most are also former judges. There are enough matters referred to arbitration to support at least a handful of advocates who have active arbitration practices. Respondents had mixed feeling regarding the utility and effectiveness of arbitration. Some advocates encourage their clients to use arbitration because cases are resolved faster than through the court system. Other advocates are not in favor of arbitration because it features such a limited right of appeal.

By contrast, arbitration is rarely employed by businesses as a means of settling their disputes. Due to lack of relevant legal provisions, businesses do not have widespread access to commercial arbitration. In 2004, arbitration was introduced in the Tax Code to provide businesses an alternative to litigation. However, the Tax Code was amended in April 2005 to



remove arbitration as a means of resolving payment disputes. Advocates interviewed by the assessment team link the change in the law to the loss of several monetarily significant cases by the government.

While there is no formal mediation process, interviewees reported that mediation does occur infrequently and on an informal basis. For instance, judges report that they encourage parties to settle disputes outside the courtroom. Suggestions have been made about the utility of introducing a formal mediation process for the resolution of criminal cases and administrative disputes. The use of mediation in such instances was encouraged, as long as all parties in a case agree to mediation and as long as the complaint at issue does not allege a serious breach of human rights. See, e.g., EU JUST THEMIS RULE OF LAW PROJECT, STRATEGY OF THE REFORM OF THE CRIMINAL LEGISLATION OF GEORGIA at 21, (October 2004).

The majority of advocates interviewed by the assessment team admit that they always try to settle cases or find alternative ways for resolving disputes, even before that practice became a requirement under the Code of Ethics. NGOs also reported sometimes playing the role of mediator in trying to settle cases without the involvement of the judiciary. The assessment team was informed that, given the widespread perceptions of judicial corruption, citizens are often willing to attempt to resolve their disputes via alternative methods.

V. Professional Associations

Factor 21: Organizational Governance and Independence

Professional associations of lawyers are self-governing, democratic, and independent from state authorities.

Conclusion	Correlation: Positive	Trend: ↑
<p>The primary professional association of advocates, the GBA, is a self-governing, democratic, and independent association. In addition, a voluntary association of young lawyers, the GYLA, similarly functions as a self-governing, democratic, and independent organization. There is also an independent GLSA, which includes young lawyers in its membership.</p>		

Analysis/Background:

Enacted in 2001, the LOA contemplated the creation of an integrated national bar association. However, it was not until late 2004 that advocates began preparing to establish such bar association. With the sponsorship of ABA/CEELI, an inaugural congress of the GBA convened on February 27, 2005 and continued on March 11-12, 2005, with the participation of 904 legal professionals. These initial meetings, however, did not result in the formal establishment of the GBA. This was due to the lack of clarity in certain provisions of the LOA and resistance to the GBA on the part of many lawyers, which resulted in the legal status of the GBA being challenged in court. One lawsuit was initiated challenging the legitimacy of the GBA because of alleged procedural defects during its inaugural congress; and the second lawsuit was brought in the Constitutional Court challenging the constitutionality of the provision of the LOA mandating an integrated bar association for the country. These legal challenges were resolved in favor of the GBA by the end of January 2006.

The GBA was formally established in January 2006 as the country's official bar association. Membership in the GBA is mandatory for all licensed advocates, and the Association currently has 3,672 members and offices in Tbilisi, Batumi, and Telavi. In April 2006, the GBA General Assembly officially adopted its Charter and elected its leadership. Since that time, it has been functioning as the primary professional association for advocates.

The GBA is a self-governing association of lawyers. Respondents unanimously agreed that the organization operates free from government influence. The current management structure of the GBA consists of the General Assembly and the Executive Council (which are defined as the governing bodies), as well as the Chairperson of the GBA. LOA art. 23(1); GBA CHARTER art. 11.

The General Assembly is the highest governing body in the GBA. LOA art. 24(1); GBA CHARTER art. 12(1). As the governing body of the Association, the General Assembly approves the operational rules of the Advocates' Training Center; approves expenses for the upcoming year and allocates funds; hears reports from the commissions on their activities; and sets membership dues, as well as salaries and administrative expenses for the GBA staff. It also approves the program and rules for bar exams, adopts the Code of Ethics, and approves rules for disciplinary proceedings against advocates. Finally, it adopts the Association's Charter and elects, by a secret ballot, the Chairman of the GBA, as well as members of its Executive Council, Ethics Commission, and Audit Commission. See LOA art. 24(2); GBA CHARTER art. 12(2). The GBA General Assembly is obligated to meet at least once a year. LOA art. 24(1); GBA CHARTER art. 13(1). All GBA members are entitled to participate in the General Assembly, and a quorum of more than half of the GBA's members is required in order for the GBA to be able to adopt any



decisions; if the quorum is not present, a new meeting is to be called within five days. GBA CHARTER arts. 13(2), 13(9).

The quorum requirement poses a challenge to the effective operation of the GBA General Assembly. While the General Assembly was able to meet twice in 2006 – once in January to elect its governing bodies, and once in April to adopt its ethics and disciplinary rules – it has not yet met in 2007. The GBA's Executive Council is reportedly researching alternatives to this quorum requirement, so that a smaller meeting could take place. However, any amendments to the Charter will also require the quorum and the approval of the majority of the General Assembly. In addition, with a membership of over 3,000, the GBA is currently facing some challenges in finding an appropriate and large venue in order to hold the General Assembly's annual meeting.

The GBA Executive Council exercises day-to-day management of the Association. It is required to meet on a monthly basis and consists of eight members elected by the General Assembly for three-year terms, as well as the Chairman of the GBA. LOA arts. 26(1)-(3); GBA CHARTER arts. 14(1)-14(2). Among other functions, the Executive Council approves and publishes the membership list for the GBA; coordinates the implementation of the bar exams; decides upon applications for the GBA membership and on suspension and termination of membership; maintains a list of law firms, as well as personnel files on advocates and their interns; mediates disputes between the GBA members, as well as between advocates and their clients; implements the decisions adopted by the General Assembly, the Ethics Commission, and the Audit Commission; and represents the GBA in international relationships. LOA art. 26(4); GBA CHARTER art. 15. All Executive Council decisions require a quorum of the majority of the Council's members, and are made by the majority of members attending the meeting. The Chairperson of the GBA casts the decisive vote in an event of a tie. LOA art. 26(6); GBA CHARTER arts. 14(9)-(10).

The Chairperson of the GBA is charged with representing the GBA before governmental organizations and other third parties. He/she also heads the Executive Council and oversees the General Assembly's meetings. LOA arts 27(2); GBA CHARTER arts. 17(2), 13(11), 18(1)(b), 18(1)(e). In addition, the Chairperson leads activities of the GBA, manages the Association's property, signs its official documents, hires and dismisses the Association's staff, and coordinates development and implementation of the GBA's programs and projects. GBA CHARTER art. 18. Like other members of the Executive Council, the Chairperson is elected by the General Assembly for a three-year term, based on a preliminary written consent of the candidate. LOA art. 27(1); GBA CHARTER art. 17(1). The Chairperson exercises his/her functions on a full-time basis, and is therefore prohibited from practicing law during his tenure and receives salary solely from membership dues. LOA art. 27(3); GBA CHARTER arts. 17(3)-(4).

In addition, the organizational structure of the GBA includes an Ethics Commission and an Audit Commission. LOA art. 23(1). The nine-member Ethics Commission is an independent body charged with investigating complaints and conducting disciplinary proceedings against advocates. Members of the GBA who are at least 30 years old and have practiced law for the past five years can be elected by the GBA General Assembly to the Ethics Commission, for a three-year term. *Id.* art. 28; GBA CHARTER art. 20. The three-member Audit Commission exercises control over financial activities of the GBA, and is elected by the General Assembly for a two-year term. LOA art. 29; GBA CHARTER art. 24.

The GBA operates under an independent budget approved annually by the General Assembly. GBA CHARTER art. 29. The primary source of the GBA's income are the annual membership dues. *Id.* arts. 27(1)(1), 28(1), 28(3). The current annual fees are charged at a rate of GEL 200 (approximately USD 113), although the Executive Council may decide to decrease these dues in special circumstances. *Id.* arts. 28(4)-(5). Membership dues are set forth by the GBA Charter and can only be changed by amending the Charter. *Id.* art. 28(6). In practice, the GBA has experienced problems with collecting members' dues; since 2005, approximately 2,500 GBA

members have failed to pay their dues. In addition to dues revenue, the GBA may seek funding from other sources, such as bar exam fees, CLE tuition fees paid to the Advocates' Training Center, and external contributions. Accordingly, the GBA collects GEL 60 (approximately USD 34) from each candidate who sits for the bar exam. In the fall of 2007, it has also offered CLE classes to non-GBA members for a fee of GEL 200 (approximately USD 113). ABA ROLI is also currently providing some funding to the GBA, through a grant from USAID; this funding is being used to pay for some of the GBA's overhead expenses. The GBA does not receive any funding from the Georgian government.

The other main professional organization for lawyers is the GYLA, which was founded in 1994 and continues to operate as a democratic, voluntary association of advocates, interns, and law students under the age of 40. CHARTER OF THE GEORGIAN YOUNG LAWYERS ASSOCIATION art. 4(1) (*adopted by the GYLA General Assembly on September 9, 1994, amended October 30, 2005*) [hereinafter GYLA CHARTER]. Headquartered in Tbilisi, the GYLA also has two branches in Kutaisi and Batumi, as well as five regional offices in Rustavi, Dusheti, Telavi, Gori, and Ozurgeti. The main purposes of the GYLA are to increase public awareness of the rule of law, to develop the legislative basis for civil society and the rule of law, to protect human rights and freedoms, and to develop the legal profession. *Id.* art. 2. The governing body of the GYLA is the General Assembly, which meets annually in October. *Id.* art. 6(1). All GYLA members are entitled to participate in the GYLA General Assembly. *Id.* art. 5(1). A quorum of 25% of the General Assembly members must be in attendance for its meetings to take place, and its decisions are made by a majority vote. *Id.* art. 6(3). The General Assembly is responsible for adopting or amending the GYLA's charter, electing the GYLA Board members, approving annual and financial reports, adopting the Association's strategic plans, and making decisions regarding termination of GYLA membership. *Id.* art. 6(4). There is also a 21-person GYLA Board, which is elected by the General Assembly for a three-year term and works alongside the Assembly to manage the GYLA. *Id.* art. 8(1). The Board meets monthly and is charged with: electing and dismissing the GYLA chairperson and deputy chairperson; appointing and dismissing the GYLA executive director, and decides on his/her functions; making decisions on membership in the Association; sets salary rates for the GYLA staff; establishes and liquidates the GYLA's branches and regional offices; and performs any other duties not specifically reserved to the General Assembly. *Id.* arts. 8(2)-(3).

In addition to the General Assembly and the Board, the GYLA's management structure also includes a Chairperson, an Executive Director, an Audit Commission, and an Advisory Council. The Chairperson is elected by the Board for a one-year term and represents the GYLA externally, as well as manages the Association's property and funds. *Id.* arts. 9(1)-(2). The Chairperson is a salaried full-time official of the GYLA and may not simultaneously hold any public position or engage in activities that interfere with his/her duties. *Id.* art. 9(5). The Executive Director is appointed for three years and acts on behalf of the Association and represents it before any third parties, as well as coordinates the GYLA's day-to-day activities and programming. *Id.* art. 10.

Individuals apply to join the GYLA by submitting a written application for membership to the GYLA Board, including recommendations from two current GYLA members. The GYLA Board replies to all membership applications within 6 months of receipt. *Id.* art. 4(2). Currently, the Association has over 800 members.

The GYLA is independent of government influence and enjoys a reputation for attracting bright, young, competent lawyers who are active in fighting corruption in the government and advocating for human rights. Like the GBA, the GYLA does not receive funding from the Georgian government. In addition to collecting dues from its members, the GYLA may also receive contributions from members and third parties and engage in auxiliary commercial activities. *Id.* art. 13(1). The GYLA receives financial support from several international organizations. For instance, from 2004 until the end of 2007, the GYLA received funding from ABA ROLI (through a grant from USAID). This funding enabled the GYLA to draft domestic violence legislation, as well as a government action plan to combat violence against women and to monitor court cases



concerning domestic violence. GYLA currently continues to receive funding from the Council of Europe, the Organization for Security and Cooperation in Europe, and several other donors.

The third major association of legal professionals in Georgia is the GLSA. It was founded in 2002 as a non-profit organization headquartered in Tbilisi, with a branch office in Akhaltsikhe. The GLSA’s leadership consists of a General Assembly, and when it is not in session, a six-person Executive Board directs the GLSA’s activities. Its membership is open to law students, young advocates, and non-advocates interested in legal issues. The GLSA was formed with several primary aims, which include addressing the need for practical legal education in Georgian law schools and providing legal materials to law students. In addition, it strives to promote a dialogue between law students and legal professionals, given that many students graduate from law school without having met an advocate, a prosecutor, or a judge. To that end, the GLSA, with the support of ABA ROLI, has begun to implement a moot court competition for law students, as well as the National Olympiad on Criminal, Civil, and Administrative Law in cooperation with the Supreme Court.

In regards to other organizations of legal professionals, there formerly existed a Collegium of Advocates in Georgia, but this organization has disbanded, and the majority of its members have become members of the GBA.

Factor 22: Member Services

Professional associations of lawyers actively promote the interests and the independence of the profession, establish professional standards, and provide educational and other opportunities to their members.

Conclusion	Correlation: Positive	Trend: ↑
<p>The GBA actively promotes the interests and independence of the legal profession. It has established professional standards through the bar examination process and the Code of Ethics. The GBA provides educational and other opportunities to its members and is working to strengthen the association and member services. Likewise, the GYLA, a voluntary association of lawyers, also actively promotes the interest of the profession and provides educational services to its members.</p>		

Analysis/Background:

The GBA is legislatively responsible for promoting the interest and independence of the legal profession, establishing professional standards, and providing education opportunities to its members. For example, the GBA is tasked with establishing a qualification committee to oversee the development and implementation of the bar exam. LOA arts. 11(2), 24(2)(c); see also Factor 9 above for a more in-depth discussion of the bar exam. The GBA is also mandated to adopt a professional code of ethics and corresponding disciplinary measures. See Factors 16 and 17 above for a more in-depth discussion of the Code of Ethics and disciplinary standards. In terms of professional development, the LOA requires that the GBA establish a training center for advocates. *Id.* art. 23(3); see also Factor 14 above for a description of the GBA’s continuing legal education activities.

The GBA Charter also provides details regarding the organization’s mission. Among others, the GBA’s goals include: promoting justice and the protection of the rule of law; advancing the profession of advocates; protecting advocates’ rights, professional integrity, and independence; protecting advocates from interference in their professional activities; supporting legal education and the development of the profession; supporting the system of legal aid; ensuring observance

of advocates' ethical standards; and providing for the social welfare of advocates. GBA CHARTER art. 5. The GBA may achieve its stated goals through involvement in any of the following types of activities: organizing the bar examination; establishing and managing the advocates' training center; conducting seminars, discussions, and roundtables for advocates; publishing a journal; conducting fundraising activities; developing a code of ethics; participating in the drafting of laws; creating a social aid fund for advocates; reviewing court procedures and practices; creating and maintaining an information database of advocates and law offices; and developing an incentives system and a disciplinary system, and ensuring their implementation. *Id.* art. 6.

Although the GBA is a relatively young association, it is actively involved in the development of the legal profession. As discussed in greater detail elsewhere throughout this assessment, it administers the bar exam; it has adopted a Code of Ethics and has a functioning disciplinary body; it is providing legal education opportunities to its members; and is actively involved in legal reform issues. The GBA is also working to strengthen the Association and expand its member services. For instance, in December 2006, the GBA began publishing quarterly journals. The first journal issue included several relevant laws, including the Code of Ethics, as well as articles by GBA members and legal scholars.

While respondents acknowledge the GBA's work in promoting the legal profession, they also expressed the wish for the GBA to provide more member services. In particular, advocates would like to see more professional training opportunities. In this context, advocates express frustration at the resources and opportunities available to the judiciary and procuracy. For instance, the Prosecutor General's Office reportedly offers the prosecutors at least 100 professional development trainings per year, and respondents would like the GBA to provide equivalent amount of trainings for advocates.

Like the GBA, the GYLA was founded with the aim of promoting the rule of law, ethical standards, and human rights, and assisting in the development of legal skills for advocates. GYLA CHARTER art. 2(1). To accomplish these goals, the GYLA may engage in activities that include provision of educational opportunities for lawyers, provision of legal aid, development of law libraries, lobbying efforts to promote human rights, and involvement in informational and legal awareness campaigns for the public. *Id.* art. 3(1). The GYLA has been active in promoting the legal profession since its founding in 1994. For example, it hosts frequent workshops, seminars, and roundtables on laws effecting the profession for its members and the legal profession at large. In May 2005, the GYLA established the Fund for the Promotion of Legal Education. When the Fund announced competition for spots in a training course on civil, criminal, constitutional, and international law to take place in 2005-2006, 200 advocates applied for placement into one of 130 positions. This course lasted for 7 months and cost each student GEL 200 (approximately USD 113).

One of the GYLA's primary achievements has been the establishment of a Legal Training and Information Center [hereinafter LTIC] in 1997. The LTIC's activities are aimed at increasing the professional skills and experience of advocates and other professionals through trainings and seminars. The LTIC's programs consist of weekly training classes and professional seminars, which are aimed at law students and recent law school graduates. These classes have covered a range of topics, including international human rights law, comparative law, banking law, arbitration, legal writing, and advocacy skills training. The courses are structured to include two exams and a moot court competition. Graduates of the LTIC training classes receive a diploma and a letter of recommendation to present to potential employers.

In addition, the LTIC offers professional seminars and specialized trainings, targeted at various professions and addressing different fields of law. For example, in 2006, after the new Civil Code and Tax Code were enacted, the LTIC organized seminars on the new Codes for NGOs. 300 participants from 200 NGOs participated in these seminars. In 2002-2003, approximately 200 journalists participated in a training focusing on the role of the media in elections. After enactment of the General Administrative Code and the Administrative Procedure Code in 1999,



the LTIC organized seminars on the new Codes for judges; these seminars were attended by most administrative law judges in the country. The LTIC has also conducted trainings for police officers, including a human rights course at the Police Academy and a seminar on “Police and Civil Society,” which was attended by 700 officers.

Factor 23: Public Interest and Awareness Programs

Professional associations of lawyers support programs that educate and inform the public about its duties and rights under the law, as well as the lawyer’s role in assisting the public in defending such rights.

Conclusion	Correlation: Neutral	Trend: ↔
The GBA does not offer public legal education programs, nor is public education included as one of its objectives. However, the GYLA, various universities, and some local NGOs are involved in public interest and awareness programs.		

Analysis/Background:

The GBA is not actively involved in any public legal education programs, and it is not required to offer such programs by either the LOA or the GBA Charter.²⁸ With the GBA not actively involved in public legal education, most education programs are implemented by local NGOs, with funding from international organizations. For instance, NGOs have used public service announcements, aired on television, to educate the public concerning their constitutionally guaranteed human rights. The Center for the Protection of Constitutional Rights has also distributed booklets on human rights, and Article 42 has handed out a brochure titled *Know Your Rights When You Are Arrested*. Another NGO, Former Political Prisoners for Human Rights, has also focused several of its publications on prisoners’ rights.

Unlike the GBA, the GYLA is actively involved in public legal education, and raising public awareness of legal issues is listed as part of the organization’s objectives. See GYLA CHARTER art. 2(1). To that end, the GYLA advocates have been involved in a number of seminars around the country to educate both the GYLA members and the general public on legal topics. The Association also publishes educational materials and produces television programs. These outreach efforts have addressed a number of legal topics, including human trafficking, domestic violence, property rights, and freedom of information. In addition, all of the GYLA’s branches and regional offices have libraries available to members and non-members alike, and in some of its offices, the GYLA advocates offer free legal consultations and/or representation of indigent clients.

Respondents unanimously agree that public legal education is critically needed. There were numerous complaints of citizens’ rights being abused (especially detainees) because they were unaware of their rights and duties under the law. The assessment team received frequent reports of suspects, accused individuals, and detainees being easily coerced and intimidated by the prosecution. Advocates also believe that public education is needed regarding the process of trial by jury, because the Draft Code of Crim. Proc. anticipates the introduction of jury trials, a

²⁸ However, the GBA is generally called upon to promote justice and the protection of the rule of law. See GBA CHARTER art. 5(1).

right that was set forth in the Constitution in 2004.²⁹ TRANSPARENCY INTERNATIONAL, REFRESHING GEORGIA'S COURTS at 5.

Factor 24: Role in Law Reform

Professional associations of lawyers are actively involved in the country's law reform process.

<i>Conclusion</i>	<i>Correlation: Positive</i>	<i>Trend: ↑</i>
<p>The GBA and the GYLA are both actively involved in legal reforms. Both organizations have spearheaded lobbying efforts, participated in working groups, provided commentary on draft laws, and published position papers. Respondents reported being very active in reviewing draft laws and providing feedback on legislation; however, they question the extent to which their initiatives have been successful.</p>		

Analysis/Background:

The GBA acknowledges its role in law reform by stating that the organization will participate in the drafting of laws and review court procedures and practices. See GBA CHARTER arts. 6(1)(7), 6(1)(9). Since its inception, the GBA has been actively involved in the country's law reform process. Understandably, its primary focus has been on laws affecting its own legitimacy and authority. For instance, it is currently lobbying against the amendment to the LOA that allows an individual to apply for admission to the GBA after having passed the prosecutorial exam in lieu of the bar exam. See LOA art. 10(1)(b); see also Factor 9 above for a more in-depth discussion of the bar exam and the prosecutorial exam. The GBA has also expressed misgivings about the Law on Legal Aid, though it has made few efforts to lobby regarding the issue. Currently, courts apply to the GBA for the provision of legal assistance when no advocate is otherwise available to provide legal assistance. The GBA's position is that it would prefer to have a larger role in providing legal aid and to be officially responsible for providing legal aid services in Georgia.

The GYLA is also active in the country's law reform process, including lobbying to reform laws relevant to the legal profession. Its stated goals including lobbying for the harmonization of Georgian legislation with the international human rights standards, as well as participating in discussion of important socio-political issues by offering legal expertise, evaluation, monitoring, and expression of organizational positions. See GYLA CHARTER art. 3(1). The GYLA's activities have ranged from promoting human rights and pushing for an independent judiciary to fighting corruption and providing free legal aid. For example, the Law on Higher Education currently prohibits individuals who are not doctoral students or holders of a doctorate degree from serving as law professors, and the GYLA is lobbying for a change to this rule.³⁰ In addition, both the GBA and the GYLA participate in government legislative working groups, providing comments and position papers on legal matters to Parliament's Legal Affairs Committee.

²⁹ Juries would consist of up to 12 people, drawn randomly from voter lists and subject to a voir dire process by the judge and parties to the case. These jurors would hear criminal cases, deciding on questions of fact. The jury's acquittal of a defendant would be final, without an opportunity for appeal.

³⁰ There are three different categories of professors: assistant professors, associate professors, and professors. LAW ON HIGHER EDUCATION art. 33(2). Currently, professors and associate professors must have a doctorate degree, and assistant professors must have a doctorate degree or be a doctoral student. *Id.* arts. 35(1)-(3).



Almost every advocate interviewed by the assessment team recounted events in which he/she was actively involved in researching, drafting, commenting on, or proposing amendments to legislation. However, respondents also noted that despite their involvement, they believe they have little influence in the legislative process. Advocates consider the government’s discussion forums to be a mere formality, believing that the decisions debated in the forums have already been made by the government before the meetings. As one advocate explained, “The dog barks but the caravan passes.” Despite this perception, the GBA and the GYLA are clearly engaged in the country’s law reform process.

List of Acronyms

ABA/CEELI	American Bar Association/Central European and Eurasian Law Initiative
ABA ROLI	American Bar Association Rule of Law Initiative
CLE	Continuing Legal Education
CLG	Criminal Law Guidelines
COE	Council of Europe
ECHR	European Court of Human Rights
HCOJ	High Council of Justice
GBA	Georgian Bar Association
GEL	Georgian Lari
GLSA	Georgian Law Students Association
GYLA	Georgian Young Lawyers' Association
LAS	Legal Aid Service
LOA	Law on Advocates
LPRI	Legal Profession Reform Index
LTIC	Legal Training and Information Center
MOJ	Ministry of Justice
NGO	Non-Governmental Organization
USAID	United States Agency for International Development
USD	United States Dollar