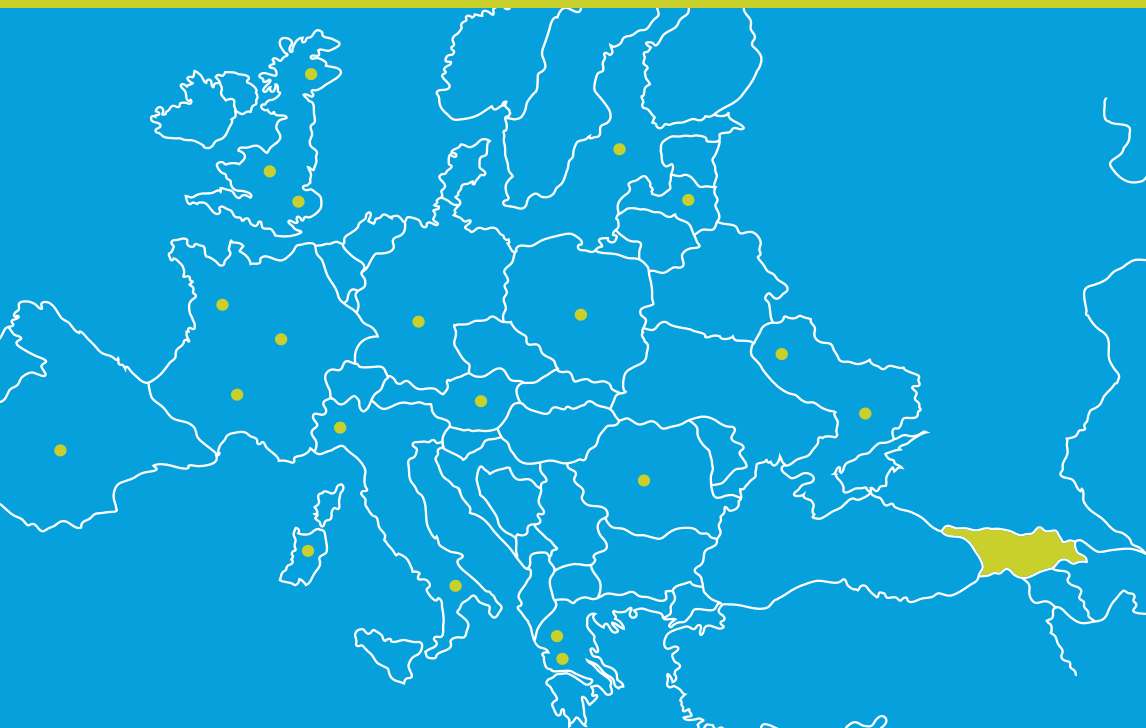


GEORGIA AND MIGRATION POLICY ANALYSIS

Tbilisi 2013



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**Tbilisi
2013**

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INTRODUCTION

This research was conducted within the framework of the Project **“Promoting well managed migration between EU and Georgia”** implemented by GYLA and with financial support of the EU.

GYLA partnered with the Caucasus Institute for Peace, Democracy and Development to implement the Project. The overall objective of the Project is to promote well-managed migration between Georgia and the EU. The Project focuses on 4 main objectives:

1. Foster the links between migration and development
2. Contribute to the development of labour migration policy and legislation
3. Fight irregular migration and support the fight against trafficking in human beings
4. Protection of migrants’/returnees’ rights.

Objectives of the Project are:

Objective 1. Foster the links between migration and development - Transforming the “Brain Drain” into a “Brain Gain”

This entails establishing links and working with the Georgian Diasporas in about 10 EU member countries, where relatively big Georgian Diasporas are residing. The main idea is to connect Georgian emigrants with their homeland and create conditions in which they can contribute to its development.

The project will establish conditions for transforming the “Brain Drain” into a “Brain Gain” via using emigrants’ capacities to support development of professionals in different fields (such as tourism, service providing spheres, education etc).

Objective 2. – Contribute to development of migration policy (including labour migration) and legislation.

Nowadays Georgian legislation on migration issues cannot be considered complete. There are some gaps in the legislation and it does not define clear mechanisms for migration control. In addition, for developing migration policy in Georgia it is important to take into consideration relevant experience of other countries and lessons learned.

Objective 3. Fight irregular migration and support the fight against trafficking in human beings.

Often main reason of irregular migration is lack of information of potential migrant about the country of destination and employment opportunities there. Hence, it is important to reach out population in regions to deal with false impression and unrealistic expectations about opportunities abroad and make necessary information accessible to wider population. Fight against trafficking in human beings is based on the needs identified in National Action Plan on the fight against trafficking in human beings.

Objective 4. Promote migrants/returnees' rights.

In the course of readmission agreement implementation it is important to ensure dignified return of migrants and support their reintegration

Study of migration policy in Georgia, identification and evaluation of main success and failures in this field will enable the project implementing organization to develop efficient recommendations for executive and legislative branches of Georgian government on upgrading existing migration policy. The main objective of the state migration policy should be improvement of migration management, protection of migrants' rights, facilitate fight against irregular migration, including trafficking and dignified reintegration of returned migrants.

This research analyses the migration (including labour migration) policy of Georgia. The following issues are discussed herein:

- Main components of the migration policy of Georgia, during the last decade
- The the main success stories of migration policy
- The failures of migration policy
- Perspectives on migration policy development in Georgia.

Consistent inter-agency cooperation is vital for efficient implementation of migration policy. In Georgia, the main agencies in charge of migration are the Ministry of Justice, Ministry of Internal Affairs, and the Ministry of Foreign Affairs. Migration policy efficiency also great-

ly depends upon active involvement of the judiciary and human rights defender organizations (ombudsman and CSOs) Protection of human rights in the context of migration is extremely important due to the vulnerability of migrants, especially irregular ones. A well-organized migration policy requires international cooperation with destination and source countries through readmission and circular migration treaties.

Migration system management also requires the efficient exchange of information between competent authorities and international partners based on trust and personal data protection principles.

In 2003-2013, there was no migration policy document in Georgia that defined the state's vision and objectives for the management and regulation of migration. The Migration Policy Concept adopted by Ordinance #673 of the President dated 17 November, 1997 is still formally in force.¹ However, the document has never been implemented, nor has its action plan been elaborated. Thus the document, despite that fact that was quite comprehensive and set clear objectives of migration management, could not effect further development of migration in Georgia.

March of 2013 is the milestone for migration policy management in Georgia. With the recommendation of Government Commission on Migration Issues, established in 2010, the Government of Georgia approved the Migration Strategy (Strategy) of Georgia for 2013-2015. the action plan for Strategy implementation is being elaborated that will identify specific measures for enforcement of the Strategy specifying time-frames, financial resources and implementing agencies. The Strategy is not a perfect document, but its adoption is an important step forward for achieving efficient and well-organized migration management in Georgia.

The liberal economic model of the last decade shaped the development of migration policy in Georgia. It was extremely supportive to aliens wishing to do business in Georgia. It aimed to remove all barriers for entry into country and supported the idea of self-regulation of labour market. Control and analysis of migration process was not on

¹ Information is based on the official web-site of "SakarTvelos Sakanonmdeblo Matsne" - www.matsne.gov.ge (last seen on April 1-, 2013).

the agenda of the government. Accurate statistical data is not available concerning migration. Legislation was not adopted based on verifiable needs and requirements of migration management in Georgia.

Georgia's undertaking before the European Union also influenced the development of migration policy over the last decade. (including obligations enshrined in European Neighbourhood Policy Action Plan, readmission and visa liberalization agreements, etc). It is not an exaggeration to say that. EU benchmarks were a major force behind the development of migration policies rather than the Georgian government's desire to develop a unified, effective migration system.

Representatives of relevant authorities and/or organizations were interviewed for the research (see attachment 1). Their opinions/views are reflected herein.

The research includes four chapters:

1. International cooperation on migration – this chapter discusses Georgian-EU cooperation, as well as collaboration with other states and organizations concerning migration;
2. Migration Strategy of Georgia 2013-2015 – analysis of the Strategy, identifying its strengths and weaknesses;
3. Migration Regulation – this chapter discusses the main trends of migration policy over the last decade. It identifies the milestones of migration management and competencies of relevant authorities.
4. Conclusion – summarizes the research and offers perspectives on the future development of migration policy in Georgia.

1. INTERNATIONAL COOPERATION ON MIGRATION

1.1. Georgia-EU Cooperation

Georgia-EU cooperation is based on the Partnership and Cooperation Agreement, which has been in force since July 1, 1999. In 2006, the ENP AP was adopted. It defined the political priorities for Georgia-EU cooperation.

The Council's Conclusions on Eastern Partnership adopted on 25 October 2010 recognized the importance of enhancing mobility of citizens in a secure and well-managed environment. The launch of the Mobility Partnership initiative between Georgia and EU was the next step in migration cooperation between Georgia and the EU.

The Joint Declaration on Mobility Partnership between Georgia and the 16 EU Member States was signed on November 30, 2009.² On February 16, 2010, the EU initiative "Mobility Partnership" between Georgia and the EU officially launched. The initiative focused on the following areas:

- Migration management,
- Labour migration,
- Readmission,
- Reintegration,
- Diaspora communities,
- Document security,
- Integral migration database development and information exchange with the EU,
- Labour market and the recognition of professional qualifications.

² http://eu-integration.gov.ge/index.php?que=eng/georgia_and_the_eu/

Mobility Partnership is the political statement of the parties to promote the legal and controlled movement of migrants. Georgia reiterated its full commitment to preventing irregular migration; fight human trafficking, document security, and readmission of persons residing without authorization.

The “Mobility Partnership” promotes legal employment in EU countries through “circular migration”. This allows Georgian citizens to work legally, study, and get trained in the EU, then return to Georgia. The “Mobility Partnership” also provides for close cooperation with the Georgian diasporas in the EU.

Negotiations on the Agreement on Circular Migration and Residence of the Professional Workers has been launched within the framework of “Mobility Partnership”. Agreement has been reached on the text of the treaty³. The main component of the agreement is the opportunity for 500 Georgian citizens to seek legal employment in the EU in accordance with professional demand and quotas in the French labour market. The agreement also aims to grant 150 temporary residence permits to Georgian specialists and students to exchange knowledge and improve their qualification .

The simplified procedures under the “Mobility Partnership” do not circumvent local laws and regulations concerning employment. Georgian migrant workers are still under an obligation to comply with national residence and work permit requirements.

Visa facilitation and readmission agreements between Georgia and EU went into effect on March 1, 2011. Implementation of these agreements is a prerequisite for a visa liberalization agreement. EU nationals have enjoyed a visa-free regime in Georgia since 2006.

AGREEMENT between the European Union and Georgia on the facilitation of the issuance of visas. Parties to this agreement are: Austria, Germany, the Netherlands, Belgium, Greece, Poland, Bulgaria, Hungary, Portugal, Cyprus, Italy, Romania, Czech Republic, Latvia, Slovakia, Estonia, Lithuania, Slovenia, Finland, Luxemburg, Spain, France, Malta and Sweden.

This agreement decreased visa fee for certain categories of Georgian

³ *Ibid.*

citizens and abolished the fee for others (including minors younger than 12 years, students, sportsmen, etc.). Visa application processing period was limited to 10 days (might be decreased to 2 days or increased to 30 days). The list of accompanying documents was simplified for 13 categories (including pupils, students, etc). The Agreement also provides for multilateral, including 5-year visas.

AGREEMENT between the European Union and Georgia on the readmission of persons residing without authorisation. Under the agreement two categories of persons residing without authorisation shall be readmitted to Georgia: 1. Citizens of Georgia; and 2. Third-country nationals and statelessness persons.

Third-country nationals and statelessness persons shall be subjected to readmission to Georgia if such person: 1. hold, at the time of submission of the readmission application, a valid visa or residence permit issued by Georgia; or 2. illegally and directly entered the territory of a Member State after having stayed on, or transited through, the territory of Georgia.

There is no readmission obligation if:

1. the third-country national or stateless person has only been in airside transit via an international airport of Georgia; or
2. the Requesting Member State has issued to the third-country national or stateless person a visa or residence permit before or after entering its territory
3. the Requested State has expelled the third-country national or stateless person to his/her state of origin or to a third State.

Readmission request shall be based on the following documents issued by the requested state: valid visa or residence permit; entry/departure stamp or any other indication in the travel document. *Prima facie* evidence of the conditions of readmission is the following: description issued by the relevant authorities of the Requesting State, of place and circumstances under which the person concerned has been intercepted after entering the territory of that State; information related to the identity and/or stay of a person which has been provided by an international organisation (e.g. UNHCR); reports/confirmation of information by family members, travelling companions, etc.; state-

ment by the person concerned; information showing that the person concerned has used the services of a courier or travel agency; official statements made, in particular, by border authority staff and other witnesses who can testify the fact of the border crossing for the person concerned; official statement by the person concerned in judicial or administrative proceedings; documents, certificates and bills of any kind (e.g. hotel bills, appointment cards for doctors/dentists, entry cards for public/private institutions, car rental agreements, credit card receipts, etc.) which clearly show that the person concerned stayed on the territory of the Requested State; named tickets and/or passenger lists of air, train, coach or boat passages which show the presence and the itinerary of the person concerned on the territory of the Requested State.

The agreement specifies the readmission procedures, time-frames, transfer forms and transportation means.

Competent authorities for implementation of the Agreement have been identified (see the Ordinance # 225 of the President of Georgia dated April 26, 2011 on Implementation of Agreement on the readmission of persons residing without authorisation; see also Joint Order # 185-35-63-22 dated March 12, 2012 of the Minister of Internal Affairs, Minister of Justice, Minister of Foreign Affairs and Minister of IDPs from the Occupied Territories, Accommodation and Refugees of Georgia concerning Approval of Readmission Agreement Implementation Rule). MIA is the coordinating agency of readmission agreement implementation measures; a special unit has been established in MIA responsible for readmission.

Visa liberalisation dialogue between Georgia and EU was launched in 2012. However the conclusion of the agreement on visa liberalization shall be followed with the adoption of visa liberalisation action plan that is a very important precondition for the entry into force of the agreement. Unfortunately VLAP was not open for public when this research was developed; accordingly, we were unable to use it for this study.

It is expected that visa liberalisation action plan shall focus on the following issues:

- integrated border management, migration management and asylum;

- document security;
- Security;
- Human rights.

Implementation of the visa liberalisation action plan will include two stages: 1) legislative amendments – in order to create legal basis for implementation of undertakings; 2) implementation phase.

While discussing the EU-Georgian agreements one should not forget that they have effect both in Georgia and in EU thus not only protecting Georgian nationals working in EU, but vice versa, EU nationals in Georgia.

EU-Georgia cooperation positively contributed to the migration management development in Georgia. It is not an exaggeration to state that the first attempts to adopt national legislation on migration in line with international standards were triggered with the need to implement obligations before the EU. However the EU influence had some negative effects at the same time – the state migration policy was driven by the EU obligation and not by the understanding of real needs and interest of migration in Georgia.

1.2. International Cooperation

International cooperation mainly concerns the relationship between the EU and Georgia. Cooperation with other countries should not be side lined. The majority of immigrants to Georgia originate from Asian and African states. They travel to Georgia with different purpose, including using Georgia as a transit country to EU. Cooperation with these source countries should be a priority for Georgia. The government has to consolidate efforts to negotiate and conclude readmission agreements with these source countries.

Readmission agreements have been concluded with Switzerland and Ukraine. The Agreement on Avoiding Dual Citizens and Elimination of Existing Dual Citizenship Cases between Georgia and Ukraine is already in force.

The 1951 Convention on Status of Refugees and its 1967 Protocol, along with the Convention on Status of Stateless persons and Europe-

an Social Charter (revised) are binding on Georgia.⁴

Cooperation with international organizations is important to ensure proper migration management. Cooperation with IOM, ILO, ICMPD, UNHCR, DRC continues to be a driving force for improving migration management, including adhering to international treaties, development of legislation, and the protection of migrants and asylum seekers.

⁴ See Annex 2 for the list of international documents on migration binding on Georgia.

2. MIGRATION STRATEGY OF GEORGIA 2013-2015

The Migration Strategy was adopted because of the efforts of the government and the Migration Government Commission. It was migration policy document since 1997. Its approval was a milestone for migration management and meeting Georgia's international obligations.

The visa liberalisation dialogue with EU identified adoption of a migration strategy as the pre-condition for entry into force of the agreement.

Section 2.1. of the Strategy establishes the purposes of the document:

“The purpose of the Migration Strategy is to improve the management of migration processes, which implies providing of national security, fighting irregular migration and human trafficking, ensuring the defence of migrants' rights and their social protection and state development through positive impact of migration. Goal of the following Strategy is considering national interests and international best practices is to develop a state policy in the migration sphere. The above mentioned will contribute to fighting irregular migration and human trafficking, protecting human rights and fundamental freedoms, managing migration processes according to the interests of the society and deepening international collaboration in the migration sphere.

Activities covered in this document will help to direct migration processes management for the development of the State, to protect migrants' rights and ensure their social protection. The activities envisioned in the Strategy will be implemented through full consideration of migrants' rights and fundamental freedoms.”

Section 2.2. of the Strategy specifies the principles to be followed:

- *Priority Role of the State in managing migration processes;*
- *The Rule of law;*
- *Protection of human rights and fundamental freedoms with particular attention to non-refoulement obligation deriving from international refugee and human rights law*
- *Zero tolerance for trafficking in human beings and smuggling of migrants across the state border;*

- *Deepen international and regional cooperation, including cooperation with the European Union and favourably consider accession to international instruments that may supplement standards governing the state migration system;*
- *Transparency;*
- *Abolition of all discrimination according to race, nationality, language, religion, gender, ethnical, political, social or any other signs;*
- *Due fulfilment of the international agreements;*
- *Cooperation with international regional and non-governmental organizations;*
- *Fighting against racism and xenophobia;*
- *Support the fulfilment of political and economic priorities of Georgia.*

Section 3.3 of the Strategy highlights EU-Georgian cooperation on migration. Section 3.3. is named “international Cooperation,” but it only discusses collaboration with the EU. The reasons for this are straightforward: the Migration Strategy was sponsored by EU. However, ***the Strategy should deal with all aspects of international cooperation, including the need to deepen cooperation with Asian and African States and to intensify treaty negotiations with these countries.***

The Main directives of the Migration Strategy are:

- Legal Migration
- Irregular Migration
- Improvement of the asylum system, integration process of refugees’ and individuals with humanitarian status’ according to the international standards
- Supporting dignified return and reintegration of Georgian citizens

The Strategy was adopted in March of 2013. It will be subjected to amendments by the implementing agencies due to legislative amendments prepared by the competent authorities. For example, section 4.1.2. states that liberal visa policy has a positive impact on the State’s

social-economic development. If the foregoing statement is true, it is unclear why the existing visa system is being replaced by more a controlled and diversified system. ***It is recommended that Strategy text is formulated in a way not to necessitate permanent amendments therein.*** Implementation measures will be specified in the Strategy Action Plan as provided by Section 5 thereof “The Mechanisms of Implementation”.

It is recommended to maintain sustainability of the text of the Strategy that is feasible through more general and declaratory statements. Specific implantation procedures should be included in the action plan, and not the declarative legislation.

The Migration Strategy does not deal with internal migration. The Commission should begin to work to include internal migrants because of the number of internally displaced people and eco-migrants in Georgia.

It is recommended that Migration Government Commission requests Ministry of Finance and MRA to develop a proposal on defining status of eco-migrants and their social guarantees.

The main gap of the Strategy is that its focus is short time: 2013-2015 years. Efficient management of migration requires long-term government vision.

The strategy’s lack of ambition represents another deficiency. It reflects existing legislative regulations, rather than introducing a state view and vision on the development of migration management.

It is recommended that a long-term migration policy document is adopted, which focuses not only on the obligations before the EU but also clearly identifies the state purposes and priorities of migration management.

3. MIGRATION REGULATION

3.1. General Overview

The main characteristics of Georgia's migration policy of the last decade are as follows:

- Liberal visa policy based on liberal economy – every alien visiting Georgia brings money to the country;
- Lack of unified approach/view – chaotic migration management development;
- Influence of EU on migration management – no state vision on migration management development; only driving force was state undertakings before the EU;
- Chaotic legislative reforms – usually legislative initiative was the proposal of different projects financed by donor organizations (basically EU);
- Lack of coordination between competent authorities – establishment of State Migration Commission improved the coordination even though the official functions of the Commission did not include coordination;
- Lack/nonexistence of the infrastructure and resources, *inter alia*, accommodation centres, places for administrative detentions, necessary to implement the legislation;
- Increase of functions and role of Civil Registry Agency (now Public Service Development Agency);
- Georgia became transit country for migrants heading to EU.

The analysis of Georgian migration policy of the last decade should be done in light of two main factors: state security and economic interests of the country. Results may differ based on which of the aforementioned two factors is given priority. This paper tries to consolidate both perspectives and identify all possible deficiencies of the migration policy.

The following deficiencies of the migration policy should be highlighted:

- Extremely liberal visa regime:
 - Issue visa on border – prior clearance is impossible;
 - Prolongation of visa in Georgia – inconsistent practice, as

- in some cases a person could prolong visa, while in others – he could obtain residence permit;
 - A person may change status in Georgia (for example, a tourist may become a migrant worker);
 - Categories of visas do not match the real requirements of migration in Georgia, including EU standards;
- Inconsistent practice and non-comprehensive rules concerning the issuing of residence permits:
 - There are no rules regulating permanent residence permit termination;
- Non-existence of migration inspection system – unless a person crosses a border or commits a violation of the law he normally will not be subject to any migration control;
- Inefficient system of expulsion – there are very few cases of expulsion due mainly to a lack of finances;
- Asylum seekers have no access to healthcare;
- There are no regulations on labour migration, including emigration and immigration:
 - No work permit required for aliens;
 - There are no quotas on migrant workers.

3.2. Legal Framework

The legal framework on migration consists of national legislation and international treaties. Legislation on emigration and immigration falls within the exclusive competence of higher state bodies of Georgia.⁵

The general characteristic of national legislation on migration is liberal in nature. Immigration and labour migration are loosely regulated.

3.2.1. Visa Regime

The Migration Strategy supports liberal visa regime: “[t]he Government’s liberal visa policy has a positive impact on the State’s social-economic development”.

⁵ Constitution of Georgia, art. 3.2.a.

Nationals of approximately 100 states enjoy either visa-free entry in Georgia, or may obtain a visa upon arrival, at the border. Visa policy was entirely dependent upon the existence of economic or political interest of Georgia towards a country.

The Law of Georgia on Legal Status of Aliens and Stateless Persons (Aliens' Law) provides four types of visas: diplomatic, service, ordinary and student. Diplomatic and service visas are issued to diplomats, or persons visiting Georgia for official purposes. In almost all other cases ordinary visas are issued. A person does not have to be admitted into Georgia even if they possess a legal permit to enter. The law provides that a person might be refused entry during the border checking (see articles 12 and 13 of the Aliens' Law).

A main deficiency of the legislation is the ability of an alien to change their visa status, while in the country. For example, a tourist holding an ordinary visa may become a migrant worker and obtain a residence permit based on a work contract through an undemanding procedures.

A number of different agencies issue visas in Georgia: MFA, MIA and MoJ. This is another deficiency of Georgian migration legislation. ***It is recommended that visas be issued by only one agency in cooperation with all line-ministries.***

The Migration Strategy recognizes a number of the positive effects of a liberal visa regime. It also highlights the challenges a liberal visa regime creates for socio-economic development and outlines the need for adequate reaction.⁶ The following steps are planned in order to avoid possible challenges:

- Creating a unified migration data system;⁷
- Revising the legislation and possible changes;⁸
- Improving service and infrastructure for immigrants.⁹

⁶ See "Migration Strategy of Georgia" (approved by the Government Resolution #59 dated 15 March, 2013) para. 4.1.2.

⁷ *Ibid*, para. 4.1.2.1.

⁸ *Ibid*, para. 4.1.2.2.

⁹ *Ibid*, para. 4.1.2.3.

Officials indicated in the meetings that relevant amendments to the visa regime were being drafted.

The liberal visa regime did not trigger the expected economic effect. Opponents of the liberal visa regime consider the liberal visa regime and increased labour migration to have caused a negative economic effect. The unemployment rate is very high in Georgia. Low-wage workers may lead to deteriorating conditions of the labour class in Georgia. Opponents of the liberal visa regime argue that the liberal visa regime did not attract “reliable” investors with long-term projects.

However, supporters of the liberal visa regime claim that investment, in the context of migration, is not only a person who runs a business in Georgia, but also every person who crosses the border and enters the country. They argue that income derived from immigration is quite high.

Open borders may create threats to the public’s health. Open borders increase the likelihood of the spread of new diseases. In addition, open borders potentially threaten state security and constitute an obstacle for putting into force the EU-Georgia visa liberalisation agreement.

It is obvious that there is an eminent need for change in the visa regime in Georgia. Different models exist on how to change the visa system in Georgia:

1. The first model provides for stricter control on entry into the country. This includes a narrow circle of persons enjoying visa-free entrance into the country, prohibition of issuing visas at the border, and the introduction of more precise and detailed legal regulation of visa granting procedures.
2. The second model avoids the stricter control mechanisms for entry, as mentioned above. It focuses on the strict control for prolongation of stay in the country. The following measures will be necessary for such a scheme: decrease the length of legal stay in the country (90 days instead of 360), abolish visa prolongation, and introduce more sophisticated procedures for residence permit granting.

3.2.2. Residence Permit

Georgian legislation provides two types of residence permit: temporary and permanent. A residence card is issued based on the type of permit. A residence card is also issued to persons holding refugee or humanitarian status in Georgia. The duration of the documents are 3 years and 1 year, respectively.

A temporary residence permit is issued for up to six years. It is usually issued for a year with the possibility of extension.

The only legal way to stay more than 6 years in Georgia is to obtain a permanent residence permit. ***It is recommended not to limit the number of years of a temporary residence permit and allow issuing temporary residence permit beyond 6 years. This is in line with European practice.***

Permanent residence permit may be issued based, *inter alia*, on economic considerations – if a person who has a full title over an immovable property with the value of 100,000GEL, or who holds a bank deposit of the same amount in Georgian banking institution, or who invested 100,000GEL in Georgia according to the Law of Georgia on Promoting and Safeguards of Investment Activities, he/she is entitled to permanent residence permit. ***It is not reasonable to grant a person permanent residence permit without requirement of 6 years temporary residence permit based on 100,000GEL immovable property, deposit or investment.***

Legislation does not specify causes for termination of permanent residence permit. There is no regulation of the amount of time a person holding residence permit, permanent or temporary, can be absent from Georgia. ***It is recommended that absence for 12 months or more be a basis for withdrawing residence permit(both temporary and permanent).***¹⁰

Every alien holding a residence permit has an obligation register the location of his residence. Non-registration is an administrative misdemeanour under article 185 of Administrative Misdemeanours Code

¹⁰ See EU guidelines on residence permits .http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/123034_en.htm (The EU may withdraw permanent residence status after an absence of 12 months, or longer)..

of Georgia. *It is recommended to introduce a registration obligation for all aliens who stay in the country for more than 90 days.*

3.2.3. Stateless Persons

Georgia acceded to the Convention on the Status of Stateless Persons on December 9, 2011. National legislation was drafted and adopted upon ratification. Amendments to the Law of Georgia on Legal Status of Aliens dated May 23, 2012 introduced the new provisions regulating the status of stateless persons. The name of the law was changed to the Law of Georgia on Legal Status of Aliens and Stateless Persons.

A person is stateless if no state considers him/her as its national.¹¹ The PSDA in accordance with the Ordinance of the President #515 dated June 27, 2012 on Approval of Rules of Establishing Status of Stateless Person establishes the status of stateless person.

A person holding a status of stateless in Georgia shall enjoy rights and obligations equivalent to aliens.¹²

Stateless persons, who permanently reside in Georgia and wish to enter, stay or leave Georgia, are subject to the same rules and procedures as the nationals of residence country.¹³

A stateless person who holds a residence permit may stay in Georgia legally. A residence permit is issued for 3 years after a person is granted the status of stateless. A residence card is also issued for 3 years.¹⁴

In certain cases a stateless person may be granted a permanent residence permit if the person:

- Though permanently residing in Georgia by 27 March 1993 was not considered to be citizen of Georgia and has not stopped his/her registration since March 27, 1993;
- If the citizenship of Georgia was terminated through abandonment of citizenship.¹⁵

¹¹ Aliens' Law, art. 2.

¹² *Ibid*, art. 26³.

¹³ *Ibid*, art. 3.k

¹⁴ *Ibid*, art. 19.

¹⁵ *Ibid*, art. 26¹.5.a.

A person may legally stay in Georgia while his status is under consideration. This period should not exceed 9 months. A person may not be subjected to expulsion during this period.

3.2.4. Legal Status of Asylum Seekers

Law of Georgia on Refugee and Humanitarian Statuses adopted by the Parliament in December 2011 and effective since March 2012 regulates the legal status of persons seeking protection through refugee or humanitarian status. The 1998 Law on Refugees Status regulated their status prior to the new law's passing.

Adoption of a new law was a step forward to ensure greater compliance with international standards, including with Convention on Refugee Status and its 1967 Protocol. The Law introduced new terms, "humanitarian status" and "asylum seeker," established more precise procedures for granting and withdrawing refugee/humanitarian status, and added safeguards for dignified treatment of refugees and persons holding humanitarian status and to protect their rights.

The Law also provides for the granting asylum seeker status based on the *prima facie* principle: when there is a mass entry of persons who are not the nationals of Georgia, the MRA will decide on the refugee or humanitarian status based on the general conditions in the country of origin.¹⁶

The main accomplishment of the Law is the introduction of the non-expulsion,¹⁷ non-refoulement,¹⁸ principle and socio-economic guarantees for refugees, including right to education, family reunion, and the right to health.. A person may not be expelled while his status is under consideration. A person will receive a residence cards upon obtaining refugee status.

The MRA is a central agency responsible for refugees and persons with humanitarian status.¹⁹

¹⁶ See Law of Georgia on Refugees and Humanitarian Statuses, art. 5.

¹⁷ *Ibid*, art. 21

¹⁸ This principle is interpreted as inviolable right of asylum seekers to be protected against forced return to place where he/she might be subjected to prosecution.

¹⁹ Chapter VI of the Law of Georgia on Refugees and Humanitarian Statuses defines all competent authorities and their functions.

The Migration Strategy highlights the importance of protection of rights of refugees and persons with humanitarian status. Special attention is focused on institutional improvements. The government of Georgia commits itself to take all appropriate measure for the protection of rights of persons with refugee/humanitarian status and asylum seekers and to create dignified living conditions for them. The Strategy states that the legal basis regulating refugee/humanitarian status and asylum seekers will be reviewed to ensure full compliance with international standards. New by-laws will also be developed to establish more precise rules and procedures for the implementation of the Law on Refugees and Asylum Statuses.

The main focus of state policy on refugees, persons holding humanitarian status and asylum seekers should be their settlement and protection of their rights. ***The Ministry of Labour, Health and Social Care should increase its role in the protection of refugees, persons with humanitarian status and asylum seekers, especially in terms of protection their right to health.***

3.2.5. Labour Migration

Labour migration policy was extremely liberal during the last decade as a result of liberal economy of the government. The legal regulation of labour migration was quite loose. There is a clear lack of relevant legal provisions: no legal regulation is in place on employment of Georgian citizens abroad; there is no legislation limiting the employment of Aliens in Georgia except for public sector; and, there is no requirement for aliens to obtain a work permit in Georgia. The Georgian labour market is open and not protected from foreign the work force.

The legislation on labour migration lacks details, but this does not make it deficient. Labour migration legislation should be limited to promoting migration, providing necessary information to potential migrants, and protecting the rights of labour migrants. The aim of the legislation should be to protect the rights of migrant workers in line with international standards, and prevent and decrease irregular migration, including human trafficking. In addition the state should strive to conclude agreements on circular migration. These agreements are important for the employment of Georgian citizens abroad

and for promoting legal immigration in Georgia. ***Circular migration agreements are being negotiated with EU countries. It is important to initiate negotiations with African, Asian, and North American states.***

Labour migration legislation should be based on research and analysis of the labour market.

Georgian legislation does not regulate the employment of Georgians abroad. General emigration provisions shall be applicable to migrant workers. The Law of Georgia on Rules of Leave and Entry of Georgian Citizens into Georgia regulates emigration.

Paragraph 3 of article 30 of the Constitution of Georgia obligates the state to protect the labour rights of the citizens of Georgia abroad on the basis of international agreements governing labour relations. However, until recently the government neglected Georgian citizens working abroad. It was very important that the Migration Strategy prioritized protection of Georgian citizens employed abroad and the promotion of legal employment abroad. No measures have been undertaken to implement these priorities.

It is recommended that the Migration Strategy focuses on more specific measures for promoting the legal employment of Georgian citizens abroad.

There is no state policy on labour immigration. The Georgian labour market is completely open to aliens residing in Georgia without any work permits and supervision. Legal provisions on labour immigration are few and liberal. Legislation fails to define labour migration, migrant workers and does not guarantee their rights.

Due to the lack of control over labour migration there is no reliable statistical data on the number of aliens employed in Georgia. There has not been a study on the impact of foreign workers in Georgia and the share of the labour market they occupy.

Article 47.1 of the Constitution of Georgia applies to migrant workers: *“Foreign citizens and stateless persons residing in Georgia shall have the rights and obligations equal to the rights and obligations of citizens of Georgia with exceptions envisaged by the Constitution and law.”* Thus, current labour legislation applies to immigrant workers unless expressly stated otherwise by law.

Aliens enjoy the same labour rights in Georgia as Georgian citizens except if expressly stated differently by the Constitution or the law. Only Georgian citizens have the following rights:

- Be employed in public service;²⁰
- Become judge²¹ and prosecutor;²²
- Become notary.²³

EU nationals were granted active and passive electoral right in certain circumstances. These are exceptions and not an attempt to broaden political rights for migrants. It is not recommended to grant such political rights to nationals of foreign countries. Georgian citizens who hold a nationality of another country cannot hold certain public service positions.(see article 29.1¹ of the Constitution of Georgia).

It is recommended to conduct a study of the labour market and impact of migrant workers on it in order to determine whether alien's access to the labour market threatens the Georgian economy.

It is recommended to introduce work permit for aliens unless a qualified and objective study proves otherwise.

The introduction of work permits will require the development of further regulations. The government has to decide who will be responsible for obtaining work permit: the employer or employee. Government supervision will be easier and more efficient if the employer is burdened with this obligation. Legislation will have to identify the responsible agency for issuing and monitoring work permits. It is recommended that this function be entrusted to the Ministry of Labour, Health and Social Care. Another challenge will be to establish a monitoring system for illegal employment of aliens and introduce administrative responsibility upon employers for illegal employment of aliens.

²⁰ Article 15 and 16 of the Law of Georgia on Public Service. Article 104 of the Constitution allows persons born in Georgia, permanently residing in Georgia for the last five years and holding the nationality of any EU member state to participate in and vote for presidential and parliamentary elections before January 1, 2014.

²¹ Article 86 of the Constitution of Georgia.

²² Article 31 of the Law of Georgia on Prosecutor's Office

²³ Article 11 of the Law of Georgia on Notary.

3.2.6. Recognition of Education

The migration process is closely connected with recognition of education in Georgia and abroad. Georgia is a party to Convention on the Recognition of Studies, Diplomas and Degrees concerning Higher Education in the States belonging to the Europe Region 1979. This agreement binds more than 30 states, including Turkey, USA, Austria, Greece, Germany, Denmark, etc.²⁴

In 1999 Georgia became a party to CoE Convention on the Recognition of Qualifications concerning Higher Education in the European Region.²⁵ The convention binds 53 countries, including Australia, USA, Kazakhstan.²⁶

There is also an Agreement with Ukraine on Recognition and Equivalency of Education and Scientific Degrees Documents.²⁷

Documents issued by Georgian education institutions need to be fully validated before being submitted for recognition in other countries. The National Centre for Educational Quality Enhancement is responsible for the validation of education documents issued in Georgia notwithstanding whether the document is attesting high or professional education.²⁸

In the context of migration recognition of foreign education in Georgia is very important. A person may undertake high or professional education programs, while emigrating. It is vital to ensure recognition of qualification/education obtained abroad. The National Centre for Educational Quality Enhancement is responsible for recognition of foreign education in Georgia.

The Migration Strategy (see chapter 4.1.1) highlights the importance

²⁴ For further details see: http://portal.unesco.org/en/ev.php-URL_ID=13516&URL_DO=DO_TOPIC&URL_SECTION=201.html#STATE_PARTIES. Reservations made by Member-States is also available therein.

²⁵ Information on Member-States and reservations see: <http://www.conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=165&CM=8&DF=28/03/2013&CL=ENG>

²⁶ However Georgia is not a party to other CoE conventions on recognition of education.

²⁷ In force since 17.08.2002.

²⁸ Order # 98/n of the Minister of Education and Science dated October 1, 2010 on Approval of Rules and Fees of Validation of Educational Documents Issued in Georgia and Recognition of Foreign Education

of recognition of education for the purposes of reintegration of returned emigrant into society.

Recognition of foreign education is mandatory for aliens and Georgians. High, professional and general education might be recognized in Georgia. The National Centre for Educational Quality Enhancement is responsible agency.²⁹ Legislation does not provide specific rules for aliens concerning recognition of education. Procedures are transparent enough and full information is available on the website of National Centre for Educational Quality Enhancement.: <http://www.eqe.ge/>

3.2.7. Repatriation to Georgia

The CoE required the repatriation of persons forcefully sent into exile from Georgia in the 1940's and their descendants. This has been challenging.

The issue has arisen since 1999 in the Georgian-CoE negotiations. The negotiations revolve around establishing legal framework for repatriation of departed Meskhetians to historical home-land, their integration into the society, and granting nationality to them. Georgia had to implement this obligation within 12 years. In 2007 Law of Georgia on Repatriation of Persons Forcefully Sent into Exile from the Soviet Socialist Republic of Georgia by the Former USSR in the 1940s of the 20th Century (Repatriation Law) was adopted.

The Repatriation Law set July 1, 2009 as the deadline for submission of applications for repatriation. In 2009, amendments to the Law postponed the deadline until January 1, 2010.³⁰ A person may obtain Georgian citizenship through simplified procedures within two years of gaining repatriate status.³¹ If this period lapses, a person shall be entitled to obtain the nationality of Georgia through the normal procedures on citizenship.

²⁹ Order # 98/n of the Minister of Education and Science dated October 1, 2010 on Approval of Rules and Fees of Validation of Educational Documents Issued in Georgia and Recognition of Foreign Education

³⁰ Art. 11 of the Law of Georgia on Repatriation of Persons Forcefully Sent into Exile from the Soviet Socialist Republic of Georgia by the Former USSR in the 1940s of the 20th Century.

³¹ *Ibid*, art. 8.

The spouse and children of the repatriate are also entitled to this status.³²

Repatriation will only impact migration in cases in which the person holding repatriate status wishes to obtain nationality of Georgia through simplified procedures.³³

Repatriate status may be suspended or withdrawn by the MRA in outline in the law. If a person commits a crime, his/her repatriate status may be suspended until the investigative bodies make a decision on the case, or entry into force of court decision in favour of this person. The status of a repatriate shall be withdrawn:

- On the basis of application by a person;
- If a person obtains nationality of Georgia or any other country;
- If a person does not apply to the competent authority for obtaining citizenship within the prescribed time limit;
- If a person is rejected Georgian citizenship in accordance with the Resolution of the Government on Granting Citizenship through Simplified Procedures to Persons Holding a Status of a Repatriate;
- If a new circumstance is revealed which would have hindered the granting of repatriate status after the status has already been granted;
- If, after the granting status of a repatriate, it is revealed that a person wilfully submitted false or forged information for obtaining the status;
- After entry into force of court decision against the person;
- If the court declares the person lost or dead; and
- When a person dies.

If a person fails to submit an application to the competent authority

³² *Ibid*, art. 3.2.

³³ Art. 27 of the Law of Georgia on Citizenship; Resolution of the Government on Granting Citizenship through Simplified Procedures to Persons Holding a Status of a Repatriate.

concerning the status of a repatriate within specified time, he/she is still entitled to obtain the right to reside legally in Georgia based on the Aliens' Law, or obtain Georgian citizenship (naturalisation or dual citizenship).

This law was a step forward for safeguarding the legal protection of deported persons and their descendants in Georgia. It also implemented one of the CoE obligations. However, the Law has some deficiencies that preclude repatriates from enjoying and realizing the full extent of their rights. There is a probability that the implemented measures might not meet the obligations of the CoE.

The Repatriation Law does not create mechanisms for the settlement of repatriates in Georgia. The state has only one obligation towards repatriate: decide their status. The CoE requirement is very clear. The obligation is broader than granting repatriate status and provides for the implementation of active measures for the integration into Georgian society of a repatriate. The text of the obligation is read as follows: "adoption of a legal framework permitting the repatriation and integration of Meshketian Turks". The preamble of the Repatriation Law provides that the repatriation system is based on the voluntary and dignified return of Meshketian Turks. The state commits to provide repatriated Meshketians with socio-economic conditions necessary for their dignified living in Georgia. It is important that the state introduces long-term and short-term programs aimed at reintegrating the repatriates into the society.

3.2.8. Combating Human Trafficking- Efficient Tool for Fight against Irregular Migration

Fight against trafficking was on top of agenda for the government of Georgia long before the migration. Notwithstanding the close links between migration and trafficking, counter-trafficking strategy/action plan was developed disregarding migration. The main reason was the fact that the competent authorities had a political will to take measures against trafficking and achieved significant results (both on national level – adoption and implementation of legislation and on recognition on international level³⁴); however the same authorities

³⁴ US State Department's Report on Trafficking in Human Beings.

had no interest in migration and did not link fight against irregular migration with trafficking as had no understanding what was necessary to eliminate/prevent irregular migration.

However, the Migration Strategy stresses the close links between trafficking and migration. The crime of trafficking is often committed through irregular migration. Illegal border crossing and irregular migrants are extremely vulnerable to trafficking.

The Migration Strategy states: "*The purpose of the Migration Strategy is to improve the management of migration processes, which implies ... fighting ... human trafficking*".³⁵

Chapter 2.2 of the Strategy defines the basic principles of the strategy. There is "*Zero tolerance for trafficking in human beings and smuggling of migrants across the state border*".

The fight against human trafficking is also recognised as an efficient tool to eliminate and prevent irregular emigration:

*"The Government of Georgia will continue efforts towards further improving anti-trafficking measures and integrated border management. The, activities will be carried through the Inter-agency Cooperation Council on Combating Trafficking in Human Beings; respective mechanisms for the detection of irregular emigration will be elaborated and developed."*³⁶

The Aliens' Law states that the following fundamental principle, *inter alia*, shall regulate the entry, stay, transit and exit of aliens from Georgia: "*The state shall refuse entry into the territory of Georgia to any alien against whom the criminal prosecution is pending for an international crime such as terrorism, drug smuggling, **trafficking in human beings**, and to a deceased person with infectious diseases*".³⁷

It is important whether a victim of human trafficking is the citizen of Georgia or an alien for the purpose of this research. However, it does not mean that there each receive different rights based on their nationality: "*The aliens who are (statutory) victims of human trafficking perpetrated on the territory of Georgia shall have the same rights*

³⁵ Migration Strategy, chapter 2.1.

³⁶ *Ibid*, chapter 4.2.1.1.

³⁷ Aliens' Law, art. 3.h.

as envisaged for the (statutory) victims of human trafficking by this Law."³⁸

Irregular migrants are more vulnerable to becoming victims of human trafficking. Georgian legislation provides for the protection of such Georgian nationals, repatriation to Georgia, their rehabilitation, and proper investigation of crime and punishment of those responsible.

A victim of human trafficking who is an alien or stateless person shall be exempted from liability from failing to register under article 185 of Administrative Misdemeanours Code (Residence in Georgia with Violation of Registration Rules for the Citizens of Georgia and Aliens).³⁹ Victims of human trafficking shall not bear responsibility for illegal border crossing.⁴⁰

Georgian law prevents the expulsion of a foreigner during deliberation time, where there are reasonable grounds to believe that he/she may be a (statutory) victim of human trafficking.⁴¹ However, there is no express provision prohibiting expulsion of a victim of human trafficking during criminal proceedings when he/she agrees to cooperate with law-enforcement bodies. It is recommended to introduce a provision clearly excluding expulsion of a victim or alleged victim of a human trafficking.

The state shall take appropriate measures to safely return foreign (statutory) victims of human trafficking to their country of origin after the expiration of the deliberation term or upon completion of the relevant criminal proceedings. A person may be granted asylum on the territory of Georgia, if there are reasonable grounds to believe that his or her life, health or personal liberty will be under threat if returned to the country of origin.

³⁸ Law of Georgia on Combating Human Trafficking, art. 20.1.

³⁹ *Ibid*, art. 20.2.

⁴⁰ Criminal Code of Georgia, note of art 344.

⁴¹ Law of Georgia on Combating Human Trafficking, art. 20.3. and Aliens' Law, art. 53.3.d¹.

3.2.9. Expulsion

On the basis of decision of administrative or judiciary body an Alien may be expelled from Georgia if Legal grounds for his/her further stay in Georgia no longer exist, his/her stay contradicts with the protection of the interests of national security and public order, as well as the public's health.

Georgian legislation does not define the meaning of the term “expulsion”. Lawmakers also use “deportation”,⁴² “voluntary return”,⁴³ “controlled expulsion”⁴⁴ and “administrative expulsion”.⁴⁵ ***It is recommended that the existing legislation is reviewed and amended to ensure consistent use of terms to prevent inconsistent interpretation and practice.***

An alien may be deported to his/her country of nationality, residence, any other country from where he/she entered Georgia, or any country that consents to receive this person if:

- He/she has illegally entered Georgia;
- Legal grounds for his/her further stay in Georgia no longer exist;

⁴² Articles 26 and 27 of the Law of Georgia on Refugee and Humanitarian Statuses uses terms “expulsion” and “deportation” as synonyms. Aliens’ Law does not use the term “deportation”; however chapter 3.2. of the Migration Strategy states: “*The Law on the Legal Status of Aliens and Stateless Persons regulates legal grounds and mechanisms for aliens’ entry, residence, transit, and leaving Georgia, also the forms and procedure of deportation, as well as the field of competences of institutions involved.*” The terms “deportation” and “expulsion” are understood as synonyms even though the Strategy does not mention “expulsion”.

⁴³ Chapter 4.3.2.2 promotes the voluntary return of those foreigners whose asylum claim has been rejected, as well as other migrants who wish to return to their country of origin. The term “voluntary return” is basically used in relation to the return of Georgian citizens and related legal acts. See Ordinance # 142 of the President of Georgia (dated February 27, 2012) on Approval of Regulations concerning Return Documents.

⁴⁴ Article 24.1.d of the Regulations on Issuing Georgian Visa (approved by the Order of the Minister of Foreign Affairs § 104, dated August 5, 2005). These provisions are noteworthy because they provide a basis for refusal of entry not specified in the Aliens’ Law, namely: Visa shall not be granted if “*an applicant was expelled from Georgia during last year or **was subjected to controlled expulsion from the territory of Georgia.***” It may be concluded that the terms “expulsion” and “controlled expulsion” have different meanings with “expelled” being less punitive. It is not clear in what cases controlled expulsion shall be employed.

⁴⁵ Administrative Misdemeanours Code, art. 24.

- His/her stay contradicts the interests of national security and public order of Georgia;
- His/her deportation is necessary for the protection of health, rights and legitimate interests of citizens and other persons legally residing in Georgia;
- He/she systematically violates Georgian legislation;
- He/she has obtained legal grounds for entry and stay in Georgia by submitting fraudulent or invalid documents;
- He/she is sentenced to imprisonment for a term longer than 1 year for intentionally committing one or more crimes after the enforcement of sentence.⁴⁶

A person granted stateless person status could be expelled from Georgia, only if his stay on the territory of Georgia threatens state security and public order.⁴⁷

A person-seeking asylum or whose status - refugee, humanitarian, stateless person - is being considered by administrative/judiciary bodies in Georgia, is a victim of human trafficking, or there are reasonable grounds to believe that he/she may be a (statutory) victim of human trafficking shall not be expelled from Georgia.

Unless there is a threat to state security and public order the following categories of aliens shall not be expelled from Georgia:

- An alien who has a residence permit in Georgia and has been living in Georgia for the last 3 years without conducting an offence;
- An alien who was born in Georgia and has a residence permit in Georgia, and has been living in Georgia for the last year without conducting an offence;
- An alien who is a minor and has a residence permit in Georgia, and has been living in Georgia for the last year without conducting an offence;
- An alien being in Georgia and being under the custody or guardianship of a citizen of Georgia.

⁴⁶ Article 53.1. of Aliens' Law

⁴⁷ *Ibid*, art. 53.3.

A person may not be expelled to a country where:

- He/she is persecuted for political beliefs, or for an action/omission not considered a crime under Georgian law;
- He/she is persecuted for protecting human rights and peace, for progressive social, political, scientific and other artistic activities;
- His/her life or health is endangered.

If a person cannot be expelled from Georgia, he/she may be granted Humanitarian Status.⁴⁸

The rules of expulsion for stateless persons are the same unless his/her status is under consideration. A person waiting for the decision on status shall not be subject to expulsion, even if he entered Georgia illegally and/or there are no longer legal grounds for his/her stay in Georgia.⁴⁹

The PSDA is responsible for discussing the issue of expulsion.⁵⁰ the MoJ or MIA prepares opinions on expulsion,⁵¹ and the decision is made by the Minister of Justice⁵² or a Court.⁵³

If a decision on expulsion is in force, a person is entitled to leave country voluntarily within 3 days. The LEPL National Bureau of Enforcement shall enforce expulsion of a person who does not exercise his right to leave the country voluntarily.

The law safeguards the right to appeal decisions on expulsion.

Though the legal provisions recognise the expulsion it was extremely rarely employed in practice. The main reasons for non-application were non-existence of detention facilities (places for pre-trial detention or prisons cannot be used), non-existence of relevant treaty frameworks, lack of human resources (especially in the National Bu-

⁴⁸ Law of Georgia on Refugee and Humanitarian Statuses, art. 4.1.b.

⁴⁹ Aliens' Law, 53.2.

⁵⁰ Law of Georgia on Public Service Development Agency, art. 4.2.m.

⁵¹ Aliens' Law, art. 54.

⁵² Charter of the Ministry of Justice (approved by the Ordinance #541 of the President of Georgia, dated November 7, 2008) art. 5.2.k.

⁵³ Aliens' Law, art. 54.1.

reau of Enforcement), etc. However insufficient financing should not be forgotten.

It is recommended to review and amend legislation on expulsion based on the aforementioned considerations with a view to change the responsible agency. Enforcement of expulsions should be made by the MIA. Human, material and financial recourses for efficient implementation of expulsions should be allocated by government.

Human Rights should be given special attention in the expulsion process.

There is no unified approach to the declaration of *persona non grata*/unacceptable. Declaration *persona non grata*/unacceptable is a political decision and is applied against diplomatic agents and consular officers. It has also been applied to military commanders.

It is recommended to provide more details on the procedural aspects of declaration persona non grata/unacceptable. This recommendation refers to elaboration of procedural regulation rather than reasons for making decision on *persona non grata*/unacceptable.

3.2.10. Collection of Statistical Data on Migration

Migration management depends upon collecting and processing information on migration flows.

Information on the following categories of persons is important for migration management:

- Citizens of Georgia, including persons holding dual citizenship: residing in Georgia permanently, temporarily emigrated, returned, voluntarily or forced, emigrants and those permanently residing abroad, diasporas and emigrants;
- Aliens: visiting Georgia, asylum seeker, requesting status of refugee or stateless person, stateless person, who was granted the status in Georgia, and persons who hold residence permits, temporary or permanent, as well as former citizens of Georgia.

Article 66 of Aliens' Law provides: "*Unified migration databank shall be created with the purpose of operative exchange and common usage*

of the information on issuance and extension, termination, abolition of a permit for staying in Georgia, on registration and deportation of aliens, as well as on other relevant data envisaged by the Georgian legislation”

There is no unified migration databank. Different agencies have databases within their scope of work. The government agencies responsible for collecting migration information are: MoJ, registration of citizens and aliens, issuing residence permits;⁵⁴ MFA, consular registration; MRA, registration of refugees and asylum seekers, IDPs and repatriates; State Ministry on the Diaspora Issues, Diaspora information; MIA, full information on entry to and departure from Georgia; and the National Bureau of Statistics, collection and processing of statistical data.

The Migration Strategy (section 4.1.2.1) also envisions a unified data system for migration information.

Georgia has committed itself to create a unified migration data system in the context of the visa liberalisation dialogue with the EU.

Creation of unified migration data system will be efficient only if the relevant legislation is adopted regulating the following issues:

1. Identify the information that is collected in the system
2. Persons who have access to data system and levels of access to information;
3. Personal data protection within the migration data system in line with CoE Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data,⁵⁵ General Administrative Code and Law of Georgia on Personal Data Protection;
4. Identify agencies responsible on data processing;
5. Methodology of data collection and processing (methodology of s of EUROSTAT might be used).

⁵⁴ Art. 27 of Law of Georgia on Rules of Leave and Entry of Georgian Citizens into Georgia provides that emigration statistics is run by the MoJ.

⁵⁵ In force for Georgia since April 1, 2006.

3.2.11. Eco-migration

The legal status of eco-migrants is not defined in Georgian law. They will not receive any government support based on their displacement unless they hold a legal status providing social guarantees and assistance. There is no legislation regulating their protection, re-settlement, social assistance and compensation. Neither there is a database on eco-migrants.

There is no legally binding international instrument that defines eco-migrant and a state's obligations to protect persons suffering from natural disasters. International organizations use different terms for identifying persons displaced due to natural disasters. They are often referred as persons suffering from natural disasters. Georgian legislation uses the term "eco-migrants" to identify this category of individuals.

IOM uses the term environmental migrant and defines it as follows: *"Environmental migrants are persons or groups of persons, who, for compelling reasons of sudden or progressive changes in the environment that adversely affect their lives or living conditions, are obliged to leave their habitual homes, or chose to do so, either temporarily or permanently, and who move either within their country or abroad".*⁵⁶

In Georgia, there are no general regulations concerning social guarantees and state assistance for eco-migrants, their status and criteria for obtaining such a status, as well as their privileges, social guarantees and states obligations. It is recommended to identify state policy towards eco-migrants and base national legislation on it. It is reasonable to grant to eco-migrants the same protection and guarantees as internally displaced persons as eco-migration is one of the forms of internal displacement of individuals or groups. The measures should be immediate as the number of eco-migrants, or people living/residing in the regions with eminent threat of natural disasters, is quite high. It is also recommended that legislation precisely define the obligations of local and central authorities, including the MRA towards eco-migrants.

A 2010 IOM report provides states need to implement effective meas-

⁵⁶ Migration and Climate Change, IOM Migration Research Series, 2008, p. 15. Available: http://publications.iom.int/bookstore/free/MRS-31_EN.pdf

ures in the following ten areas:⁵⁷

1. Establishing a better evidence base
2. Disaster risk reduction
3. Developing adaptation strategies
4. Preparing evacuation plans
5. Filling gaps in the legal and normative framework
6. Implementing national laws and policies on internal displacement and national immigration laws and policies
7. Upgrade of national migration laws and policy;
8. Establishing proactive resettlement policies
9. Providing humanitarian assistance
10. Planning for return and resettlement

It is recommended that state policy on eco-migration should be developed based on the IOM standards in order to safeguard the rights of eco-migrants.

3.3. Competent Agencies

Migration management is not conducted by one centralised agency. Competencies are divided between different state agencies. The first attempt to coordinate migration management was the establishment of Migration State Commission in 2010. The goal of the Commission is develop a unified state policy on migration and improve migration management in Georgia.⁵⁸

Understanding of the functions of all competent agencies is important for this research:

⁵⁷ World Migration Report 2010 - The Future of Migration: Building Capacities for Change, IOM. Available at: http://publications.iom.int/bookstore/free/WMR_2010_ENGLISH.pdf

⁵⁸ See Charter of Migration Government Commission (adopted by Resolution #314 of the Government of Georgia, para. 1.

President of Georgia	Moj/PSDA	MRA	(MIA)/ Patrol Police Department and Border Police
<p><i>In accordance with the Constitution of Georgia and other legal acts, the President of Georgia decides on issues related to the Georgian citizenship and granting asylum. Besides, the President defines procedures on the issuance, extension and suspension of visas, and issues related to the residence permits of aliens.</i></p>	<p><i>Public Service Development Agency along with the Ministry of Justice are responsible for issuing visas and residence permits to the immigrants on the territory of Georgia, as well as providing travel documents to stateless persons and refugees. Apart of those categories the PSDA is authorized to issue travel documents to the citizens of Georgia, managing a united database and ensuring that relevant institutions and organizations have access to appropriate information only depending on level and need. The PSDA also prepares conclusions regarding issues related to Georgian citizenship.</i></p>	<p><i>The Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia is responsible for forming state policy on the issues of internally displaced persons, refugees, persons with humanitarian status, asylum seekers, repatriated persons, victims of natural disaster and returned Georgian migrants. The Ministry has competences in processing asylum applications, registering asylum seekers, granting refugee and humanitarian statuses, providing temporary accommodation for asylum seekers and supporting the integration process of persons with refugee or humanitarian statuses, coordinating the integration of refugees and returning Georgian migrants into the society.</i></p>	<p><i>Respective Agencies of the Ministry of Internal Affairs of Georgia are involved in migration management. Notably the Ministry is responsible to ensure control / facilitation of legal movement at the state border and combating of irregular migration. Among the competencies of the Patrol Police Department are undertaking control at the border crossing points, which covers inspecting travel documents of Georgian and foreign citizens' and stateless persons, issuing visas and ensuring protection of the legal regime. It also acts as a competent authority on the implementation of readmission agreements and related procedural and organizational issues. The Border Police has the responsibility to conduct migration related law enforcement activities on the ground as well as on maritime boundary. The Ministry has competences in preventing and eliminating trans-border organized crime, irregular migration and trafficking in human beings, seizure contraband, notably - drugs, weapons, explosive devices, preventing turnover of nuclear materials and radioactive substances, and application of other activities defined by the legislation</i></p>

MFA	SMEEAI	SMDI
<p>The Ministry of Foreign Affairs of Georgia is responsible for keeping consular registration of Georgians residing outside Georgia, issues certificates, visas for returning to Georgia and visas through consular representatives abroad. The Ministry is actively involved in the implementation of readmission and visa facilitation agreements through participating in joint committee meetings. Georgian diplomatic representatives and consulates abroad promote the information Georgian citizens residing abroad irrespective of state on programs for voluntary return and support victims of trafficking in human beings. Georgian diplomatic representatives and consulates abroad in the frames of delegated authority register civil acts, issuance of ID cards and, receive applications on citizenship related issues in order to forward them later to the PSDA.</p>	<p>The Office of the State Minister coordinates implementation of the European Neighborhood Policy Action Plan within Georgia-European Union Cooperation, including issues related to Freedom, Security and Justice; and managing multilateral cooperation and related migration issues within the European Union's "Eastern Partnership". It also coordinates the issues of Georgia's co-operation with the European Union member states in the framework of European Union "Mobility Partnership" Initiative.</p>	<p><i>The Office of the State Minister of Georgia for Diaspora Issues is responsible for deepening relations with Georgians residing abroad and supports them to maintain the national identity. In case of return, the Office creates favorable conditions to ensure integration of those persons into the society. Taking into consideration the above mentioned the Office of the State Minister is responsible for the following issues within its competence:</i></p> <ul style="list-style-type: none"> • <i>It acquires and maintains a united database with contact details of Georgians and Diaspora Organizations abroad;</i> • <i>It introduces and shares the unified educational program to Georgian educational centers abroad and ensures their compatibility with the Georgian Education System;</i> • <i>It ensures the preservation of Georgian cultural identity among its compatriots abroad;</i> • <i>It maintains contact with Georgian diasporas residing abroad by introducing a compatriot status based on the Georgian Law on Diaspora Organizations and Compatriots Living Abroad;</i> • <i>It provides interested persons with information about current economic and investment trends in the country.</i>

3.3.1. Government Commission on Migration Issues

Resolution #314 of the Government of Georgia dated October 13, 2010 established the Migration Government Commission. The main task of the Commission was to identify as: “*preparation of proposals and recommendations for defining state policy on internal and international migration and improvement of migration state management*”.⁵⁹ The work of Commission resulted in the adoption of Georgian Migration strategy by the Government of Georgia on March 15, 2013.⁶⁰

The Commission was not entitled to coordinate activities of competent state authorities on migration. It was the first specialized “forum” where all competent authorities together with representatives of civil society⁶¹ could discuss issues related to migration and its management. Involvement of civil society representatives in the work of the Commission was extremely important. It ensured transparency. The Strategy identified the functions of all competent authorities on migration and defined the placement of the Migration Government Commission in the institutional structure.

Members of the Commission are:

- Minister of Justice (chairman),
- State Minister on Diaspora Issues (co-chair),
- Deputy Minister of Internal Affairs,
- Deputy Minister of Foreign Affairs,
- Deputy Minister of Labour, Health and Social Protection,
- Deputy Minister of Education and Science,

⁵⁹ Resolution # 314 of the Government of Georgia (dated 13 October, 2010) on Approval of Charter on Establishment and Functions of Government Commission on Migration, art. 2.a.

⁶⁰ Resolution #59 of the Government of Georgia on Approval of Migration Strategy of Georgia (resolution became effective on the day of publication; publication date is March 21, 2013; source: www.justice.gov.ge).

⁶¹ Amendments to the on Establishment and Functions of Government Commission on Migration dated December 17, 2012, the following organizations were requested to participate in the work of the Commission: IOM, DRC, ILO, TIG, CIM, EU Delegation, UNHCR, ICMPD, GIZ.

- Deputy Minister of Economy and Sustainable Development,
- Deputy Minister of IDPs from the Occupied Territories, Accommodation and Refugees of Georgia
- Deputy Minister of State Ministry for European and Euro-Atlantic Integration,
- Deputy executive Director of LEPL National Service of Statistics of Georgia.

The Migration Strategy introduces some new functions of the Commission:

„The State Commission on Migration Issues is a consultative body, which has competences in the formulation of the National Strategy on Migration, the improvement of migration management and designing proposals within the framework of European Neighbourhood Policy. The Commission is entitled to prepare proposals for the Government regarding migration management and amendments to legislation as well as recommendations on international agreements. In applying its functions the Commission can request as from Georgian institutions as well as from international organizations, the other countries' structures and establish thematic working groups.“⁶²

⁶² Migration Strategy, Section 3.1.

4. CONCLUSION

Migration policy development should be based on the following considerations:

1. Foreign-policy factors: cooperation with Georgia's strategic partners, especially within the framework of NATO and EU.
2. Economic interest of Georgia:
 - 2.1. It is not recommended to introduce a visa regime for the nationals of the countries that are the main trading partners of Georgia;
 - 2.2. The liberal visa regime and its economic outcomes should be evaluated. The study should take into account the proportionality of fiscal benefits from migration and expenditures of state authorities for migration management.

The following measures should be implemented to improve migration management in Georgia:

- Legislative amendments, *inter alia*, regulating the basic legal aspects of migration in statutory acts to ensure legal stability;
- Revision of the visa policy, *inter alia*:
 - Prohibition of issuing visa on border, save in exceptional cases; however, alternative measures need to be introduced to avoid complicating arrival to Georgia because there are few Georgian consular posts worldwide. Introduction of electronic visas might be a reasonable alternative. The MFA does not support this proposal because of technical problems;
- Improvement of logistics:
 - Placement Centres;
 - Places of administrative detention;
 - Creation of a unified data-base
- Introduction of more social safeguards:
 - Improvement of healthcare for refugees;
 - Creation of social protection mechanisms for eco-migrants equivalent to protection of IDPs.
- Improvement of expulsion system:

- Competent authority should be the MIA instead of National Bureau for Enforcement;
- Creation of a specialized unit on expulsion in MIA;
- Introduction on definitions for expulsion, voluntary return and controlled expulsion (deportation) and relevant procedures therein;
- Conclusion of new readmission agreements;
- Allocation of financing for expulsions in state budget.
- Improve professional education through government programmes. The programs should be in line with labour market requirements on different professions/qualifications in Georgia and in countries where Georgian nationals may be employed legally based on circular migration agreements;
- Expanded reintegration programs for returned migrants. It is important to remove all bureaucratic barriers to ensure that returned migrants may benefit from social programs easily and without discrimination;
- Removal of Criminal responsibility for illegal border crossing. A maximum administrative fine for this violation should be identified in line with best EU practice;
- Human rights trainings for relevant authorities, focusing on the rights of migrant and asylum seekers because they are extremely vulnerable to human rights violations, including trafficking and different transnational crimes.

ANNEXES

Annex 1. Meeting Held for the Purposes of this Research

Organization	Interviewer
MOJ	David Jandieri
PSDA	Levan Samadashvili
	Giorgi Jashi
Reform and Development Agency under MIA	Irakli Beraia
	Irina Abramishvili
MESD	Irakli Matkava
SMDI	Zaal Sarajishvili
MFA	Giorgi Tabataze
SMEEAI	Marika Rakviashvili
Targeted Initiative Georgia	Bela Heina
	Gerhard Korts
DRC	Varlam Chkuaseli
	Gai Edmundsi
IMO	Mark Hulst
ICMPD	Zura Yorransvili

Annex 2. Migration Regulating Acts

UN Documents

- Universal Declaration on Human Rights
- International Covenant on Civil and Political Rights
- International Convention on the Elimination of all Forms of Discrimination Against Women
- Convention on the Rights of the Child
- Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
- Convention Relating to the Status of Refugees
- Protocol Relating to the Status of Refugees
- Convention Against Transnational Organized Crime
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the UN Convention against Transnational Organized Crime
- Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography
- Protocol Against Smuggling of Migrants by Land, Sea and Air, Supplementing the UN Convention Against Transnational Organized Crime
- Convention Concerning Private Employment Agencies
- Convention on International Civil Aviation (ICAO standards on machine readable travel documents)
- Convention on the Recognition of Studies, Diplomas and Degrees Concerning Higher Education in the States Belonging to the Europe Region 21 December 1979
- Convention on Status of Stateless Persons

Council of Europe Documents

- Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols;
- European Convention on Extradition
- Convention on the Transfer of Sentenced Persons
- Revised Social Charter
- Convention on the Recognition of Qualifications Concerning Higher Education in the European Region

National Legislation of Georgia (basic acts)

- Constitution of Georgia
- Law on Citizenship of Georgia
- Law on Legal Status of Aliens and Stateless Persons
- Law of Georgia on Rules concerning Registration, ID (Residence) Card and Issuing the Passport of Georgia of Citizens of Georgia and Aliens Residing in Georgia
- Law of Georgia on Leave from and Entry into Georgia by Citizens of Georgia
- Law of Georgia on “Refugees and Humanitarian Statuses”
- Law of Georgia on Personal Data Protection

Abbreviations

CIM - Centre for International Migration

CoE - Council of Europe

CSO – civil society organization

DRC - Danish Refugee Council

ENP AP _European Neighbour Policy Action Plan

EU – European Union

GIZ - Deutsche Gesellschaft für Internationale Zusammenarbeit

GYLA - Georgian Young Lawyers Association

ICMPD - International Centre for Migration Policy Development

IDP - Internally Displaced Person

ILO - international Labour Organisation

IOM _International organization of Migration

IOM- International Organization for Migration

LEPL - Legal Entity of Public Law

MESD - Ministry of Economy and Sustainable Development

MIA -Ministry of Foreign Affairs

MOJ- Ministry of Justice

MRA - The Ministry of IDPs from the Occupied Territories, Accommodation and Refugees of Georgia

NATO - North Atlantic Treaty Organization

PSDA - Public Service Development Agency

SMDI -State Ministry on the Diaspora Issues

SMEEAI - State Ministry for European and Euro-Atlantic Integration

TIG - Targeted Initiative for Georgia

UNHCR - United Nations High Commissionaire for Refugees

VLAP - visa liberalisation Action plan