



National Baseline Assessment **ON BUSINESS AND HUMAN RIGHTS**

GEORGIA / 2017



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INTRODUCTION

In 2011, the UN Human Rights Council (UNHRC) unanimously endorsed the UN Guiding Principles on Business and Human Rights (UNGPs) in its resolution 17/4 of 16 June 2011. The UNGPs are a framework that assigns responsibility to states and businesses to prevent and address business-related human rights abuses. The UNGPs contain 31 principles which operationalise the ‘protect, respect and remedy’ framework, and are grounded in recognition of:

- (a) The states’ existing obligations to respect, protect and fulfil human rights and fundamental freedoms which includes protecting against human rights abuses by third parties, including businesses;
- (b) The role of business to comply with all applicable laws and to respect human rights, which includes the concept of ‘do no harm’;
- (c) The need for rights and obligations to be matched to appropriate and effective judicial and non-judicial remedies for victims when breached.

The UNGPs have been widely accepted as the central instrument on business and human rights by international organisations including the European Union, the OECD, and the World Bank. Business too has adopted the UNGPs and a number are now working to implement it in practice.

There is increased pressure from stakeholders, including investors, for business to respect human rights and provide remedy for abuses when they occur. The entry point for business to implement the UNGPs is through human rights due diligence. Human rights due diligence should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. This allows business to address risks, including human rights risks, but also economic and reputational risks business faces when human rights abuses occur.

In June 2014, the UNHRC called on all of its Member States to develop National Action Plans (NAPs) to promote the implementation of the UNGPs within their respective national contexts. In a Recommendation published in March 2016, the Council of Europe likewise called on Member States to develop NAPs on business and human rights. The UN Working Group on Business and Human Rights was established by the UNHRC in 2011 and strongly encourages all States to develop, enact and update a national action plan on business and human rights as part of the State responsibility to disseminate and implement the Guiding Principles on Business and Human Rights. To help, the Working Group has produced guidance on the development of a national action plan.¹

As of November 2017, 19 countries have adopted NAPs on business and human rights, of which 14 are European countries.²

Before a NAP is developed, best practice shows that it is important to carry out a National Baseline Assessment (NBA). An NBA on business and human rights provides an assessment of the current level of implementation of the UNGPs. It provides an analysis of the legal and policy gaps in UNGP implementation and identifies the most salient human rights issues in the domestic business and human rights context. It helps to inform the formulation and prioritisation of actions in a NAP. Conducting a NBA is also an opportunity to build capacity on business and human rights topics among stakeholders involved in the research process, and to contribute to transparency and accountability in relation to the specific actions adopted in the NAP.

In its Human Rights Action Plan (2016-2017), the Government of Georgia committed to developing a “comprehensive Action plan on business and Human Rights for 2018-2020” including the conduct of a national basis survey and the preparation of an action plan. The government has also committed to raise awareness of corporate social responsibility, business and human rights and ensure participation of stakeholders in the development of corporate social responsibility. The responsibility for the development of this plan lies with the Human Rights Secretariat, under the Prime minister’s office.

¹ http://www.ohchr.org/Documents/Issues/Business/UNWG_NAPGuidance.pdf

² European countries with published NAPs on business and human rights include: the United Kingdom, Denmark, Netherlands, France, Italy, Germany, Sweden, Finland, Lithuania, Poland, Belgium, Spain, Czech Republic, and Ireland

NATIONAL BASELINE ASSESSMENT PROCESS

To conduct the following National Baseline Assessment, in the beginning of 2017 by the initiative of Human Rights Secretariat, Administration of the Government of Georgia an informal coordination group was established. The members of the group together with the representatives of the Secretariat consisted of the representatives from the Public Defender's Office of Georgia (PDO) as well as members of nongovernmental organization Civil Development Agency (CIDA).

In February 2017 responsible persons, involved in conducting evaluation, were presented from every relevant institution: the Parliament, the Ministry of Foreign Affairs, the Ministry of Environment and Natural Resources Protection, the Ministry of Economy and Sustainable Development, the Ministry of Regional Development and Infrastructure, Ministry of Finance, the Office of the State Minister for Reconciliation and Civic Equality, the Ministry of Labor, Health and Social Affairs, the National Investment Agency and the Office of the Business Ombudsman.

The HR secretariat together with PDO and CIDA organized training on business and human rights for the representatives of the institutions. The experts from the Danish Institute for Human Rights (DIHR) were invited to conduct the training. The training was conducted in the frame of project ACCESS by East-West Management Institute (EWMI) and supported by the United States Agency for International Development (USAID) and DIHR.

In addition, members of the coordination group conducted a work meeting with the experts from DIHR, the primary goal of which was to come into an agreement about methodology and general overview of conducting the National Baseline Assessment, as well as working out an internal action plan for conducting the assessment.

After the coordination group concluded the work on the draft Baseline Assessment, public consultations with different interested groups were planned. Overall, three separate meetings were held in Tbilisi with the representatives of civil service, nongovernmental and international organizations and business sector. In addition, one meeting was organized in the region of Adjara with the representatives of civil service. Every participant received a draft of the Baseline Assessment and was given a chance to present remarks and commentary.

After receiving and reflecting commentaries from public consultations, the coordination group, together with the support of partner organizations, conducted a presentation on 4th December 2017 for all stakeholders.

In the course of the research the following methodology was used:

- Using publicly available sources to identify laws and policies relevant to human rights and business;
- Gap analysis;
- Survey media and NGO reports to identify business practices;
- Interviews with key stakeholders;

During the research the Danish Institute for Human Rights provided ongoing technical support.

OBJECTIVES OF THE NATIONAL BASELINE ASSESSMENT

The NBA objectives were agreed by the PDO, CIDA, and the Human Rights Secretariat of Georgia which worked together to produce this document. The primary objectives of the NBA are to:

- Identify and document business-related human rights risks and impacts across Georgia
- Identify and analyse gaps in legislation, policy, institutional mandates, and practice of public and business sectors, that are material to the identified risks
 - Provide a platform for identifying measures that could be taken by government, business sectors, and other actors, towards preventing, mitigating and remedying the identified risks and gaps
 - Provide human rights education and capacity development of rights-holders and relevant stakeholders in relation to business and human rights.

METHODOLOGY

The National Baseline assessment was undertaken utilising the Toolkit on NAPs on business & human rights and the NBA template, produced by the Danish Institute for Human Rights (DIHR) and the International Corporate Accountability Roundtable (ICAR). The structure of the NBA Template consists of a set of tables that cover all of the UNGPs. High-level structural, process, and outcome indicators are suggested to capture the wide-ranging nature of the UNGPs. The NBA Template also adopts a “structure, process, and outcome” methodological, as developed by the Office of the High Commissioner for Human Rights (OHCHR) to “assess the steps being taken by states in addressing their obligations – from commitments and acceptance of international human rights standards (structural) to efforts being made to meet the obligations that flow from the standards (process) and on to the results of those efforts (outcome).”³

SUMMARY

The analysis of environmental law and its practice demonstrated that the regulations in this field touch upon the subject of business respect towards human rights more than in other fields. Specifically, the law envisages principles, which establish rather wide duties of private entities, such as the duty of the polluter to restitution of the damages, the duty to avoid or limit the risk of adverse impact, the priority principle of using less risky, though more expensive, action and so on. Additionally, the system of prior environmental impact assessment exists for projects with large magnitude. However, certain shortcomings remain in practice, such as superficial impact assessments, lack of incentives for businesses (tax or other benefits are close to non-existing). Additionally, large portion of regulations are not directed specifically to business entities and are of general nature. It is noteworthy, that there are plans and initiatives, which should be considered as a step forward, such as the establishment of recycling process, new legislation on environmental impact assessment, which increases transparency and civil engagement. The state has also declared its willingness to implement “green business” and “green economy” projects.

In 2013 significant amendments and changes were made to the Labour Code of Georgia, which resulted in a closer approximation of international labour standards and improvement of the rights of the employees. As a result of these amendments, discrimination in the pre-contractual relations has been prohibited; oral and short term contracts have been significantly limited; specific conditions of labour agreement have been specified that cannot be unilaterally changed by an employer; It was determined that any condition of an individual labour contract contradicting the Labour Code or collective agreement, is void except for the cases where the individual labour agreement improves the condition of an employee; the grounds for termination of labour relations, as well as the obligation of an employee to warn in advance his/her employer of termination of the labour relations have been specified; Mediation Institute for collective labour disputes has been introduced; The Freedom of Assembly (Chapter IX1) and the Tripartite Commission for Social Partnership (Chapter XIII) have been added to the Code.

Despite this, the study showed that the labor legislation still requires renewal. In order to get closer to international standards the discrimination of persons with HIV aids and refusal to reasonable accommodation shall be added to the grounds for discrimination. For better protection of the right to strike it is important to specify when the strike can be stopped or postponed in the interest of “third party”; the list of services the employees of which are deprived a right to strike shall be corrected; those with restricted right to strike shall be offered with alternative methods of dispute resolution; it is desirable that the provisions on mediation are more specific in order to avoid any risks for the right to strike. Besides, the Labor Code shall interpret those “objective circumstances” used for justification of less than one year working contract. The fact that the Labor Code does not include the provisions on equal pay for the work of equal value for men and women and does not regulate maternity leave in the private sector which is very important for the protection of women’s rights can be assessed as a significant flaw. The Labor Code is also silent on the protection of migrant workers employed in Georgia. Problematic is also protection of persons with

³ Human Rights Indicators - Main Features of OHCHR Conceptual and Methodological Framework, OFF. OF THE U.N. HIGH COMM. FOR HUM. RTS., <http://www.ohchr.org/EN/Issues/Indicators/Pages/framework.aspx>.

disabilities, the state has to introduce the effective policy in order to guarantee their full integration in the society. For fighting poverty, it is important to set minimum wage according to sectors and regions of the country. One more challenge is related to safe work. The safety bill requires certain corrections in order to have more emphasis on prevention. Child labor is another issue that requires adequate response from the state in order to achieve full realization of right to education and development in children.

In order to guarantee better protection of labor rights it is of utmost importance to reform Tripartite Commission (responsible for the social policies) and labor inspection (responsible for supervision of labor rights protection) and make them more effective, in full compliance with the requirements of the ILO.

Property law should be separately mentioned, which among others includes the issues of land utilization and construction. Although the law recognizes traditional ownership, there are almost no regulations regarding the duties of business entities. Additionally, the construction regulations include exceptions enabling to disregard the relevant law objectives, including the security standards (for instance, fulfilment of fire safety regulations in order to receive construction permit is obligatory only in Tbilisi at this stage). The so-called Draft Code on Construction, which will enhance certain construction standards, is noteworthy; however, the process of its adoption is halted.

The consumer protection law should also be mentioned separately. It mainly regulates product safety and does not include the standards of service quality. Significant steps have been undertaken with regard to adoption of technical regulations in the field of product safety in Georgia; however, some of those requirements include broad exceptions (for instance, the fire safety regulations do not cover small hotels and private buildings, prior control of food safety is not conducted in restaurants, accessible environment for persons with disabilities is not entirely fulfilled in practice, etc.). The discussion of Consumer Protection Code, which would regulate several issues, is halted at this stage.

Personal data protection law, which was exemplary with regards to regulating the protection of human rights by business, was also analyzed during the baseline study. However, in practice, it was noted that business does not have sufficient means to protect their users, for instance, from illegal surveillance.

The study has demonstrated that fight against corruption in public sector is one of the most successful processes and the best regulated field in Georgia, however, the private sector is scarcely regulated. There are also no whistle-blower protection mechanisms for the private sector actors. It is noteworthy that the state has recognized fight against corruption in the private sector as a part of its anti-corruption strategy and action plan.

Georgia has signed and ratified the basic international instruments for human rights, including the mechanisms for individual appeals and inquiries/investigations defined by the treaty bodies. However, Georgia has not yet signed and ratified several important conventions. In particular, the Convention for the Protection of All Persons from Enforced Disappearance and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. In addition, Georgia has not joined the Protocols on the International Covenant on Economic, Social and Cultural Rights and the Convention on Persons with Disabilities. Many instruments of International Labour Organization remain beyond ratification. Georgian government has made a special reservation in respect of the European Social Charter.

Business and human rights is not included as a separate discipline in the curriculum of judges and prosecutors. There is not a special court for Business and Human Rights. Legal mechanism for dealing with offences and violations committed under the Georgian Jurisdiction is settled by relevant national legislation.

The Criminal Code of Georgia establishes criminal liability for the following violations of human rights: violation of human equality, racial discrimination, restriction of rights of persons with disabilities, trafficking in human beings. This list is not, however, complete and does not include criminal liability of the legal person for other serious violations.

Criminal investigations have been open for legal entities in three cases, however none of them were related to human rights violations.

Civil legal responsibility depends on the existence of (tort) damages. Consequently, in case of a civil dispute, the

compensation for damages includes restitution. Nevertheless, in case of impossibility of restitution, damages are compensated. A remedy under the Civil Law Code does not include human rights-based approaches.

The list of offenses envisaged by the Code of Administrative Offences is not exhaustive. The amount of fines prescribed by the Code Administrative offences is not proportionate towards the gravity of offences and therefore, it cannot be considered as an effective mechanism for preventing such type of offences in the future.

Georgian legislation does not include ordering preventive and restorative measures for legal entities.

The legislation in Georgia is not familiar with the due diligence for the companies in order for them to identify, prevent, reduce and be liable for human rights violations connected to their operations.

Judicial and non-judicial grievance mechanisms in Georgia do not use human rights-based approaches in providing remedies. There is no effective and independent labour inspection in the country.

PILLAR I THE STATE DUTY TO PROTECT HUMAN RIGHTS

GUIDING PRINCIPLE 1

States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.

COMMENTARY TO GUIDING PRINCIPLE 1

States' international human rights law obligations require that they respect, protect and fulfil the human rights of individuals within their territory and/or jurisdiction. This includes the duty to protect against human rights abuse by third parties, including business enterprises.

The State duty to protect is a standard of conduct. Therefore, States are not per se responsible for human rights abuse by private actors. However, States may breach their international human rights law obligations where such abuse can be attributed to them, or where they fail to take appropriate steps to prevent, investigate, punish and redress private actors' abuse. While States generally have discretion in deciding upon these steps, they should consider the full range of permissible preventative and remedial measures, including policies, legislation, regulations and adjudication. States also have the duty to protect and promote the rule of law, including by taking measures to ensure equality before the law, fairness in its application, and by providing for adequate accountability, legal certainty, and procedural and legal transparency.

1.1. INTERNATIONAL AND REGIONAL LEGAL INSTRUMENTS

Has the government signed and ratified relevant international and regional legal instruments?

Has the government signed and ratified relevant international human rights legal instruments, such as ICERD, ICCPR, ICESCR, CEDAW, CAT, CRC, ICMW, CPED, CRPD, the core ILO conventions, and any corresponding protocols?

INTERNATIONAL LEGAL INSTRUMENTS FOR HUMAN RIGHTS

Georgia has signed and ratified the following core international legal instruments for human rights:

1. The International Covenant on Civil and Political Rights (ratified in 1994);
2. Optional Protocol of the International Covenant on Civil and Political Rights (ratified in 1994);

3. Second Optional Protocol directed to the cancellation of the death penalty on the International Covenant on Civil and Political Rights (ratified in 1999);
4. The International Covenant on Economic, Social and Cultural Rights (ratified in 1994);
5. The United Nations Convention against Corruption (ratified in 2008);
6. International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment (ratified in 1994);
7. Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (ratified in 2005);
8. International Convention on the Elimination of All Forms of Discrimination (ratified in 1999);
9. Convention on the Rights of Persons with Disabilities (ratified in 2013);
10. The Convention on the Rights of the Child (ratified in 1994);
11. Additional Protocol to the Convention on the Rights of the Child on Child Trafficking, Child Prostitution and Child Pornography (ratified in 2002);
12. Additional Protocol to the Convention on the Rights of the Child on Children's Participation in Armed Conflicts (ratified in 2002);
13. The Convention on the Prohibition and Immediate Elimination of Children's Extraordinary Forms (ratified in 2002);
14. Convention on the Elimination of All Forms of Discrimination against Women (ratified in 1994);
15. Additional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (ratified in 2002);
16. The United Nations Convention against Transnational Organized Crime (ratified in 2006);
17. Protocol to the UN Convention on the Fight against Transnational Organized Crime - On Prevention, Suppression and Punishment of People, especially Women and Children Trafficking (ratified in 2006);
18. Protocol of the UN Convention on the Fight Against Transnational Organized Crime - the Smuggling of Migrants by Land, Sea and Air (ratified in 2006);
19. Convention on the Prevention and Punishment of Genocide Crime (ratified in 1993);
20. Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Issues (ratified in 2000);
21. Convention on Human Rights and Bio-Medicine (ratified in 2000);
22. The Kyoto Protocol to the UN Framework Convention on Climate Change (ratified in 1999);
23. The Convention on the Protection of Individuals with regard to Automatic Processing of Personal Data (ratified in 2005);

CONVENTIONS OF THE INTERNATIONAL LABOUR ORGANIZATION RATIFIED BY GEORGIA:

FUNDAMENTAL CONVENTIONS

1. The Convention on Forced Labour (ratified in 1993);
2. The Convention concerning Freedom of Association and Protection of the Right to Organize (ratified in 1999);
3. The Right to Organize and Collective Bargaining Convention (ratified in 1993);
4. The Equal Remuneration Convention (ratified in 1993);
5. Convention concerning the Abolition of Forced Labour (ratified in 1996);
6. Convention on Discrimination (employment and activity) (ratified in 1993);
7. The Minimum Age Convention (ratified in 1996);
8. Convention on the Worst Forms of Child Labour (ratified in 1999)

GOVERNANCE CONVENTION

1. The Employment Policy Convention (ratified in 1993);

TECHNICAL CONVENTIONS

1. Paid Vacations Convention (ratified in 1993)
2. The Convention on the Employment Service (ratified in 2002);
3. Social Policy Convention (Basic Aims and Standards) (ratified in 1997);
4. Human Resources Development Convention (ratified in 1993);
5. The Convention on Labour Relations (Public Service) (ratified in 2003);
6. Seafarers' Welfare Convention (ratified in 2004);
7. Convention on Private Employment Agencies (ratified in 2002);
8. Seafarers' Identity Documents Convention (ratified in 2015);⁴

Detailed information on other international instruments for human rights ratified by Georgia is available at the address indicated in the footnote.⁵

FLAWS

Despite the fact that Georgia has signed and ratified the basic international instruments for human rights, including the mechanisms for individual appeals and inquiries/investigations defined by the treaty bodies, Georgia has not yet signed and ratified several important conventions. In particular, the Convention for the Protection of All Persons from Enforced Disappearance and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. In addition, Georgia has not joined the Protocols on the International Covenant on Economic, Social and Cultural Rights and the Convention on Persons with Disabilities.⁶

Despite the fact that Georgia has ratified 17 ILO Conventions, including all Fundamental Conventions (1 governance convention and 8 technical conventions⁷), many instruments of International Labour Organization remain beyond ratification. Georgia is not associated with such important international instruments as ILO N81 and N129 Conventions on Labour Inspection, which oblige the State to establish an effective control mechanism, as well as the N155 Convention on Occupational Safety and Health, and the N176 Convention on Safety and Health in Mines. The above conventions directly refer to the labour conditions and standards, effective mechanisms and models for health and safety, which Georgia does not recognize as obligatory.

Has the government signed and ratified relevant regional human rights legal instruments, such as the African (Banjul) Charter on Human and Peoples' Rights; the American Convention on Human Rights; the European Convention for the Protection of Human Rights and Fundamental Freedoms; and any corresponding protocols?

REGIONAL LEGAL INSTRUMENTS FOR HUMAN RIGHTS

Georgia has joined several important regional instruments on human rights. In this regard it is worth noting:

- The Convention on the Protection of Human Rights and Fundamental Freedoms (ratified in 1999);
- Additional Protocol to the Convention on the Protection of Human Rights and Fundamental Freedoms (ratified in 2002);
- Additional Protocol №6 to the Convention on the Protection of Human Rights and Fundamental Freedoms - Cancellation of Death Penalty (ratified in 2000);
- Additional Protocol №7 to the Convention on the Protection of Human Rights and Fundamental Freedoms (ratified in 2000);
- Additional Protocol №8 to the Convention on the Protection of Human Rights and Fundamental Freedoms (ratified in 1999);
- Additional Protocol №14 to the Convention on the Protection of Human Rights and Fundamental Freedoms (ratified in 2000);

⁴ International Labour Organization, conventions ratified by Georgia are available in English at the following address: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102639 [Last viewed: 08.06.2017].

⁵ Parliament of Georgia, conventions ratified by the Parliament of Georgia are available in Georgian language at the following address: <http://www.parliament.ge/ge/kanonmdebloba/international-acts/parlamentis-mier-ratificirebuli-saertashoriso-konvencie-bi-543> [Last viewed: 10.06.2017].

⁶ Office of the United Nations High Commissioner for Human Rights, Information about ratification is available in English at the address: <http://indicators.ohchr.org/> [last viewed: 10.06.2017].

⁷ International Labour Organization, ratification information: Available in English at the following address: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102639 [Last viewed: 03.07.2017].

ified in 2009);

- The European Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (ratified in 2000);
- Additional Protocol №1 to the European Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (ratified in 2000);
- Additional Protocol №2 to the European Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (ratified in 2000);
- Framework Convention on the Protection of National Minorities (ratified in 2005);
- The European Social Charter (ratified in 2005);
- Criminal Law Convention on Corruption (ratified in 2008);
- Civil Law Convention on Corruption (ratified in 2003);
- Council of Europe Convention on Action against Trafficking in Human Beings (ratified in 2007);
- The Council of Europe Convention on the Protection of Children from Sexual Exploitation and Sexual Abuse (ratified in 2014);
- Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (ratified in 2017);

Detailed information on other regional legal instruments for human rights ratified by Georgia is available at the address indicated in the footnote.⁸

FLAWS

With respect to the Convention on the Protection of Human Rights and Fundamental Freedoms and the European Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Georgia has made reservations. Specifically, proceeding from the situation in Abkhazia and Tskhinvali region, the Georgian authorities do not take responsibility for the observance of the Convention and its Additional Protocols on the territory concerned. Furthermore, the Georgian authorities do not take responsibility for the violations of the Conventions and Additional Protocols which have been committed by the self-proclaimed forces of Abkhazia and Tskhinvali region until the territorial integrity of Georgia is restored.

Georgia reserves the right not to enforce Article 30(2) of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. This article implies a state's obligation to award adequate state compensation to those who have sustained serious bodily injury or impairment of health, to the extent that the damage is not covered by other sources such as the perpetrator, insurance or state-funded health and social provisions. This does not preclude Parties from claiming regress for compensation awarded from the perpetrator, as long as due regard is paid to the victim's safety.⁹

It must be noted that the Georgian government has made a special reservation in respect of the European Social Charter. Specifically, Georgia takes responsibility only for the articles directly referred to in the respective reservation.¹⁰ With this reservation, Georgia has not joined such important articles of the Social Charter as: Article 3 of the European Social Charter (the right to use safe and healthy working conditions), Article 9 (the right to vocational guidance), Article 21 (the right to information and consultation), Article 22 (the right to take part in the determination and improvement of the working conditions and working environment).

INITIATIVE

Within the consultations held with the Ministry of Labour, Health and Social Affairs it became known that the State

⁸ The Council of Europe, a list of treaties for a particular state, is available in English at the following address: <http://www.coe.int/en/web/conventions/search-on-states/> [Last viewed: 02.07.2017].

⁹ The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, Article 30 is available in English at the following address: <http://www.coe.int/en/web/conventions/search-on-states/-/conventions/treaty/210> [Last viewed: 10.07.2017].

¹⁰ The full version is available at the following address <http://www.coe.int/en/web/conventions/> [Last viewed: 10.07.2017].

works on the procedure of ratification of Paragraphs 1, 2, 4 and 9 of Article 3 of the European Social Charter.

Are there any other relevant human rights legal instruments that the government has signed and ratified?

- The Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part (signed in 2014, entered into force on 1 July 2016);
- Georgia had ratified the Final Act of Helsinki Conference on Security and Cooperation in Europe in 1991;¹¹
- Georgia had ratified the Summit Document for Security and Cooperation in Vienna in 1991;¹²
- The Charter of the Group of States against Corruption (GRECO) (ratified in 1999);

1.2. INTERNATIONAL AND REGIONAL SOFT LAW INSTRUMENTS

Has the government signed relevant international and regional soft law instruments?

Has the government signed relevant international human rights soft law instruments, such as the UDHR, other UN declarations and/or resolutions, and the ILO Tripartite Declaration?

International instruments of “soft law” for human rights ratified or recognized by Georgia:

1. Declaration of Human Rights (ratified in 1991);
2. Resolution N50/155 adopted by the UN General Assembly on the Convention on the Rights of the Child (ratified in 2000);
3. Within the Association Agreement between Georgia and the European Union (Trade and Sustainable Development, Article 227), it is declared that the European Union and Georgia recognize ILO 1998 Declaration on the Main Principles and Rights of Labour to 1992 Regulation on Environment and Development for the 21st Century, 2002 Johannesburg Plan of Sustainable Development, 2006 United Nations Economic and Social Council Ministerial Declaration on Generating Full and Productive Employment and Decent Work for All, 2008 ILO Declaration on Social Justice for a Fair Globalization.
4. OSCE Declaration on Increasing Greening (ratified in 2009).
5. Report submitted by the State within the UN Treaty Bodies, its review procedures and recommendations; In this regard, it is noteworthy the conclusions given to the Government of Georgia by the United Nations Children’s Rights Committee as a result of consideration of the 4th Periodic Report of the Government of Georgia on the Performance of the UN Convention on the Rights of the Child; It should be noted that the document, along with other issues related to children’s rights, includes the discussion of such issues as economic exploitation, including child labour. The Committee recommends the Government of Georgia to take all necessary measures for prohibiting all forms of child labour, including in the informal sector. At the same time, the Committee calls on the Government of Georgia to reinstate the Labour Inspectorate and strengthen monitoring of child labour in accordance with the legislation;¹³
6. Recommendations issued within the Universal Periodic Review;¹⁴
7. UN Global Compact;
8. ISO 26000 Guidance Standard on Social Responsibility;

The Supreme Court of Georgia in its decisions on labour disputes actively uses the comments, decisions and international labour recommendations of the Committee of Experts of the Supervision Body of the International Labour

¹¹ Final Act of Helsinki Conference on Security and Cooperation in Europe (The Helsinki Accords), Helsinki, 1975, is available in English at the following address: <http://www.osce.org/helsinki-final-act?download=true> [Last viewed: 10.07.2017].

¹² Vienna Meeting Document for Security and Cooperation in Europe (Vienna Protocol) Vienna 1989, is available in English at the following address: <http://www.osce.org/mc/40881?download=true> [Last viewed: 10.07.2017].

¹³ United Nations Children’s Rights Committee (CRC), Conclusion on the 4th Periodic Report of Georgia, 9 March 2017, CRC/C/GEO/CO/4, is available in English at the following address: <http://www.refworld.org/docid/58e7716b4.html> [Last viewed: 10.07.2017].

¹⁴ The Universal Periodic Review Interim Assessment of Implementation of Recommendations Issued to Georgia 16, 25, is available in English at the following address: <https://www.upr-info.org/followup/assessments/session23/georgia/MIA-Georgia.pdf> [Last viewed: 10.07.2017].

Organization, which have the recommendation, but explain the text of the Convention and the scope of regulation.¹⁵

Has the government signed relevant regional human rights soft law instruments, such as the American Declaration of the Rights and Duties of Man and the ASEAN Human Rights Declaration?

Monitoring mechanisms of the Council of Europe are important tools in the field of supervision of human rights in Georgia, which provide reports, opinions and recommendations within their mandate.¹⁶

These mechanisms include:

- Recommendation of the Commissioner for Human Rights on the implementation of the right to housing¹⁷
- Recommendation on systematic work for implementing human rights at the national level, by Thomas Hammarberg, Council of Europe Commissioner for Human Rights¹⁸
- European Commission against Racism and Intolerance (ECRI), ANNUAL REPORTS ON ECRI'S ACTIVITIES¹⁹
- The European Social Rights Committee, Digest of the case law of The european committee of social rights²⁰
- Action against Trafficking in Human Beings (GRETA), General Reports on GRETA's activities; Country Reports-Georgia, GRETA studies: Emerging Good Practice by State Authorities, the Business Community and Civil Society in the Area of Reducing Demand for Human Trafficking for the Purpose of Labour Exploitation, Study on demand reduction measures to combat trafficking in human beings for the purpose of labour exploitation through the engagement of the private sector, Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs, Trafficking in human beings: Internet recruitment.²¹
- Group of States against Corruption (GRECO), Sixteenth General Activity Report (2015) of the Group of States against Corruption, Incriminations (thematic review of GRECO's Third Evaluation Round), Political Funding (thematic review of GRECO's Third Evaluation Round), Lessons learnt from the three evaluation rounds (2000-2010).²²

Committee on Combating Money Laundering and Terrorism Financing (MONEYVAL), Annual reports, FATF Guidance on AML/CFT measures and financial inclusion, with a supplement on customer due diligence, Mutual Evaluation of Georgia – 2012, Mutual Evaluation of Georgia – 2007.²³

Are there any other relevant human rights soft law instruments that the government has signed?

Although Georgia is not a member State of the Organization for Economic Co-operation and Development (OECD), it recognizes a number of instruments developed by the organization and is involved in various OECD activities. Georgia, inter alia, participates in the OECD Eurasian Competitiveness Program which helps the region's countries to expand their economic and employment potential by increasing competition in the region, attracting investments

¹⁵ See the Decisions of the Supreme Court of Georgia on Civil Cases, Collection of Labour Disputes, 2016.

¹⁶ The Council of Europe, Reports about Georgia are available at the following address: <http://www.coe.int/ka/web/tbilisi/reports-on-georgia1> [Last viewed: 10.07.2017].

¹⁷ The Council of Europe, The Commissioner - CommDH(2009)5 / 30 June 2009, Recommendation of the Commissioner for Human Rights on the implementation of the right to housing, available at the following address: <https://rm.coe.int/16806da713> [last visited: 15.11.2017].

¹⁸ The Council of Europe, Recommendation on systematic work for implementing human rights at the national level, by Thomas Hammarberg, Council of Europe Commissioner for Human Rights, available at the following address: <https://rm.coe.int/16806da952> [last visited 15.11.2017].

¹⁹ The Council of Europe, European Commission against Racism and Intolerance (ECRI), ANNUAL REPORTS ON ECRI'S ACTIVITIES, Available at: https://www.coe.int/t/dghl/monitoring/ecri/activities/Annual_Reports/Annual%20report%202016.pdf [last visited: 15.11.2017].

²⁰ The Council of Europe, The European Social Rights Committee, Digest of the case law of The european committee of social rights, Available at: <https://rm.coe.int/168049159f> [last visited: 15.11.2017].

²¹ The Council of Europe, Action against Trafficking in Human Beings (GRETA), Available at: <https://www.coe.int/en/web/anti-human-trafficking> [15.11.2017].

²² The Council of Europe, Group of States against Corruption (GRECO), Available at: <https://www.coe.int/en/web/greco> [last visited: 15.11.2017].

²³ The Council of Europe, Committee on Combating Money Laundering and Terrorism Financing (MONEYVAL), Available at: <http://www.fatf-gafi.org/> [last visited: 15.11.2017].

and developing medium and small businesses.²⁴ Georgia also participates in the OECD Eastern Europe and Central Asia Anti-Corruption Union, which is a regional forum for sharing good practice. Georgia is a member of the Environmental Action Program Task Force (EAP Task Force), which aims to assist in the development of Soviet Heavy Heritage in Environmental Issues. In addition, by a joint initiative of the OECD and EU, Georgia is implementing the Programme of Support for Improvement in Governance and Management (SIGMA) which helps in strengthening public administration systems and administration of Georgia. Georgia participates in the OECD Committee on Fiscal Issues - Basic Erosion and Profit Sharing Project.

Georgia also participates in a regional forum aimed at encouraging anti-corruption activities, sharing information and creating best practices. Expert review and monitoring the implementation of recommendations is a significant part of this platform. The fourth round of monitoring, which was held in 2016, showed significant progress in the reduction of the level of corruption in Georgia.

Georgia has not participated in international documents relating to business and human rights such as Guidelines for Business and Human Rights approved by the UN Human Rights Council, Guidelines for Multinational Enterprises of the Organization for Economic Cooperation and Development (OECD). In spite of it, Georgia within the Association Agreement (Article 252) concluded with the European Union is committed to supporting corporate social responsibility, including the application of the principles of Guidelines for Multinational Enterprises of the Organization for Economic Cooperation and Development (OECD).

1.3. UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

Is the State actively implementing the UNGPs?

Has the State given a formal statement of support for the UNGPs?

It is noteworthy that Georgia has not been involved in international documents such as business and human rights guidelines, such as the Guidelines for Business and Human Rights, the Organization for Economic Cooperation and Development (OECD) approved by the UN Human Rights Council for Multinational Enterprises. Nevertheless, within the Association Agreement (Article 252) with the European Union (Article 252) is committed to supporting corporate social responsibility, including the principles of OECD Multinational Coalition Guidelines for Organization for Economic Cooperation and Development.

The inclusion of the issues on business and human rights in the Government Action Plan for Human Rights (2016-2017) must be considered as the State's support for UN Guiding Principles (UNGPs).²⁵ This Plan includes activities such as raising awareness about guiding principles, conducting a national baseline assessment on business and developing a comprehensive Action Plan for Business and Human Rights for 2018-2020, in accordance with UN guiding principles.

It is noteworthy that the Human Rights Secretariat of the Government of Georgia often takes part in different forums dedicated to Corporate Social Responsibility and Responsible Business Issues. It is worth mentioning the high-level round table format meeting organized by the Organization for Economic Cooperation and Development (OECD) on responsible business conduct (RBC) for policy determinants and the OECD Forum on responsible business conduct. At the above mentioned Forums the Human Rights Secretariat of the Government of Georgia has informed participants about the activities in business and human rights initiated by Georgia and asked for support from OECD and UN in this process.

²⁴ Organization for Economic Co-operation and Development (OECD), Report on Responsible Business in Georgia, 2016.

²⁵ Ordinance №338 of the Government of Georgia on Approval of the Government Action Plan of Georgia on the Protection of Human Rights (2016-2017), 21 July 2016 Tbilisi, available at the following address: <https://matsne.gov.ge/ka/document/view/3350412> [Last viewed: 05.07.2017].

NATIONAL BASELINE ASSESSMENT ON BUSINESS AND HUMAN RIGHTS

The Coordination Group was created at the initiative of the Human Rights Secretariat of the Administration of the Government of Georgia, which aims to conduct a national baseline assessment on business and human rights. The Coordination Group is represented by the representatives of the Public Defender's Office and NGO Civil Development Agency (CIDA) together with the representatives of the Secretariat.²⁶

Has the State put in place relevant structures to ensure implementation of the UNGPs, for example, through the establishment or designation of a body tasked with implementation measures or through the allocation of internal resources?

Georgia has not created relevant special structures to implement UN Guiding principles (UNGPs).

Has the State put in place measures to capacitate government actors and local citizens with knowledge and information on the UNGPs, for example, through workshops, conferences, or other events?

During the year of 2016, the State has adopted the following measures to raise awareness about UNGP:

a) The Human Rights Secretariat, together with the Public Defender's Office and NGO CIDA, has conducted training on business and human rights for some authorized persons from state agencies. Experts from the Danish Human Rights Institute were invited to conduct the training. The training was supported by the United States Agency for International Development (USAID) and the Danish Human Rights Institute within the framework of ACCESS Project by the East-West Management Institute (EWMI).

b) A conference on the Development of Corporate Social Responsibility in Georgia was held on 22-23 April 2016 which was organized by the Administration of the Government of Georgia and Civil Development Agency.

There were held presentations within the framework of the conference. The conference was attended by the representative of the United Nations Headquarters, as well as the representatives of the European Local Networks, Government of Georgia, Civil Society and Business Sector.

c) The Conference "Corporate Social Responsibility Agenda in Georgia" was held at the hotel "Tbilisi Rooms" on 8 July 2016, with the partnership of the Human Resources Secretariat of the Administration of the Government of Georgia, Civil Development Agency (CIDA), Corporate Social Responsibility Club and the Network of Georgia of the United Nations Global Covenant. The event was organized within the Corporate Responsibility Week organized by the Corporate Social Responsibility Club.

At the meeting the representatives of NGOs and international organizations, as well as the Government of Georgia and business itself talked about current situation in Georgia regarding the corporate responsibility, as well as about the challenges and future plans. The speakers discussed the importance of developing corporate liability in Georgia both from the perspective of public strengthening and business development. In parallel to the speeches of speakers an interesting discussion was held.²⁷

d) The International Conference on "Business and Human Rights: Challenges and Perspectives in Georgia" was jointly organized by the Public Defender of Georgia, Human Rights Institute of Denmark and International Labour Organization in Tbilisi from 31 October to 1 November 2016. The conference was attended by members of the Parliament and Government of Georgia, invited international experts, heads of international organizations and major business companies operating in Georgia, as well as the representatives of civil society, trade unions and national institutions of human rights.²⁸

FLAWS:

It is noteworthy that the Ministry of Education and Science of Georgia has not issued any recommendation for higher education institutions on introducing the issues of business and human rights as an optional or compulsory

²⁶ Interim Report for the Performance of Human Rights Action Plan of the Government of Georgia (2016-2017), 2017.

²⁷ Interim Report for the Performance of Human Rights Action Plan of the Government of Georgia (2016-2017), 2017.

²⁸ Interim Report for the Performance of Human Rights Action Plan of the Government of Georgia (2016-2017), 2017.

course on their faculties. No official training program related to business and human rights education has been developed in the country, which will be available to public servants and employees of state-owned enterprises.

Has the State disseminated information about the UNGPs through public media sources, internal guidance documents, or other materials?

Georgia has not developed any kind of internal manual document or material in relation to the United Nations Guiding Principles (UNGPs). It is noteworthy that the Human Rights Secretariat of the Government of Georgia often raises the awareness of the population towards human rights issues. The Human Rights Secretariat of the Government of Georgia has participated several times in the TV program where the corporate social responsibility and responsible business principles were discussed.²⁹

It is noteworthy that currently the Government of Georgia has not developed an internal manual document.

Has the State taken any other measures to implement the UNGPs within the State?

On 29 July 2016, the Human Rights Secretariat of the Administration of the Government of Georgia organized a meeting on the employment of persons with disabilities within the framework of corporate social responsibility. Representatives of the following departments and organizations participated in the meeting: Ministry of Labour, Health and Social Affairs, Social Service Agency, Ministry of Education and Science of Georgia, Civil Development Agency (CIDA) and American Chamber of Commerce in Georgia. The purpose of the meeting was to agree on a specific action plan that would facilitate employment of disabled persons by the business sector. Mentioned initiative is executed by the collaboration between the Government, civil society and business sector.³⁰

1.4. OTHER RELEVANT STANDARDS AND INITIATIVES

Is the State supporting or participating in other standards and initiatives relevant to business and human rights?

Has the government supported other standards on business and human rights, such as the IFC Performance Standards, the OECD Guidelines for Multinational Enterprises, and the UN Global Compact?

The Georgian legislation makes no reference to the issue of relationships between business and human rights for implementing any other standard or initiative, although some political documents, action plans and strategies contain certain reservations.

It is worth mentioning that the 2014 Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part and Georgia, of the other part,³¹ envisages the liability to introduce certain standards related to business and human rights, underlining the government's willingness to support this direction. Several provisions of the Association Agreement, including the provisions about promotion of trade and investment, as well as employment, social policy and equal opportunities, point to a state obligation to promote corporate social responsibility (Articles 231, 239, 348, 349), one component of which is the promotion of respect for human rights by people. In this context, Georgia should share the best experience and standards (Articles 231, 239, 352), especially the Guidelines of the Organization for Economic Cooperation and Development (OECD) for international enterprises (Articles 231, 352). Trade and investment promotion provisions set concrete commitments in the field of environmental protection, which must be implemented within the respective time-

²⁹ Watch the video on the following link: https://www.facebook.com/OlgaBabluaniShow/videos/1881661992115671/?hc_ref=ARS1v-NeoxMS5xsok9CQL-wUDIE_1--1LdkXEcUzbjLYmJ2d-ulundZ3hW4PxaGLKkNg

³⁰ Interim Report on Implementation of Governmental Action Plan on Human Rights Protection (for the years 2016-2017). 2017.

³¹ The full text of the Association Agreement is available here: <http://www.mfa.gov.ge/ევროპული-და-ევრო-ატლანტიკური-ინტეგრაცია/Association-Agreement.aspx> [Last visited on 24 March 2017].

frames, including the introduction of specific environmental regulations for the private sector, which ultimately aims to improve the ecological condition of the country.

Based on the Association Agreement, the State undertakes to strengthen the role of trade in achieving sustainable development, including economic, social and environmental directions (Article 231; see also Articles 227-230).

It is noteworthy that Article 348 of the Association Agreement, which touches corporate social responsibility in the context of labour rights, is reflected in the National Action Plan for the Implementation of the Association Agreement 2015, although the State writes nothing in the columns of activities and implementation regarding the interests of corporate social responsibility.

One of the priority directions of Small and Medium Entrepreneurship Development Strategy 2016-2020 of the Government of Georgia is to promote Business Responsible Conduct in order to enhance knowledge in this sector in cooperation with OECD. Besides, promoting the introduction of responsible business conduct and popularization of the OECD's guidebook,³² as noted above, is one of the requirements of the Association Agreement (AA, Article 352).³³

As it was already mentioned, the Association Agreement calls on the Government of Georgia to promote responsible business in accordance with the universally recognized international standards in addition to the OECD guidelines. The European Commission considers the following standards for corporate social responsibility guidelines:

- Guidelines of the Organization for Economic Cooperation and Development (OECD) for Multinational Enterprises
- 10 Principles of the UN Global Agreement
- UN Guiding Principles on Business and Human Rights
- ILO Tri-partite Declaration of Principles on Multinational Enterprises and Social Policy
- ISO 26000 Social Responsibility Guidelines - International Organization for Standardization (ISO 26000 Guidance Standard on Social Responsibility)

Consequently, aspiration to the standards listed in the Association Agreement is a commitment taken by the Government of Georgia.

Has the government participated in initiatives, multi-stakeholder or otherwise, on business and human rights, such as the Global Network Initiative (GNI), the International Code of Conduct for Private Security Service Providers Association (ICoCA), and the Voluntary Principles on Security and Human Rights (VPs)?

The Global Network Initiative is a non-governmental organization aimed at protecting freedom of expression and confidentiality in the Internet according to international standards. The members of the organization are the unions of private companies, civil society organizations, investors and scientists.³⁴ The Government of Georgia does not take part in the work of this organization. However, it should also be noted that on the same issues there is the Coalition for Online Freedom, which unites 30 governments in order to improve Internet freedom. Georgia is a member of the coalition and takes part in its work. The fifth annual conference of the Coalition was held in Ulan-Bator, Mongolia. The topic of the conference was "Developing Internet Policy - Best Practices on Internet Freedom". One of the work panels of the conference was "Rule of Law and Internet: Practical Steps for protecting Human Rights on the Internet", where one of speakers was the representative of the Human Rights Secretariat of the Government of Georgia.

As for the International Code of Conduct Association for Private Security Service Providers³⁵ and the Voluntary Prin-

³² OECD guidelines are a recommendation document, based on which States apply to multinational enterprises to comply with international standards and manage the business with responsibility. The text of the guidelines is available here in English: <http://www.oecd.org/daf/inv/mne/48004323.pdf> [Last accessed on 24 June 2017].

³³ Ordinance No. 100 of the Government of the Government of 26 February 2016 on Small and Medium Entrepreneurship Development Strategy 2016-2020 of Georgia and Approval of the Action Plan for the Small and Medium Entrepreneurship Development Strategy 2016-2020 of Georgia. Available here: <https://matsne.gov.ge/ka/document/view/3206386> [Last accessed on 24 June 2017].

³⁴ <https://www.globalnetworkinitiative.org/>

³⁵ https://icoca.ch/en/the_icoc

ciples on Security and Human Rights,³⁶ the Government of Georgia does not participate in these initiatives. In addition, the Government of Georgia does not have consolidated information on how Georgian companies participate in these organizations, and there is also no relevant agency responsible for collecting such information.

1.5. NATIONAL LAWS AND REGULATIONS

Does the general law of the State provide protection against business-related human rights abuses?

Does the constitution contain wording aimed at human rights protection?

The Chapter II of the Constitution of Georgia, which was adopted in 1995, covers in full the human rights norms and hereby provides for the individual commitments of the state to ensure them. Based on the Constitution, the State is committed to protect human rights from other individuals, including business, but this does not mean the obligation of business entities to take any active action to protect human rights.

In addition, pursuant to Article 7 of the Constitution of Georgia “The State shall recognise and protect universally recognised human rights and freedoms as eternal and supreme human values. While exercising authority, the people and the State shall be bound by these rights and freedoms as directly acting law”. And in accordance with Article 6(2) of the Constitution, “The legislation of Georgia shall correspond to universally recognised principles and rules of international law. An international treaty or agreement of Georgia unless it contradicts the Constitution of Georgia, the Constitutional Agreement, shall take precedence over domestic normative acts”.

The European Convention on Human Rights (ECHR), as well as the International Covenant on Civil and Political Rights (ICCPR),³⁷ International Covenant on Economic, Social and Cultural Rights (ICESCR)³⁸ and other international agreements, signed by Georgia, prevails over the country’s internal legislation.

As noted, pursuant to the international treaty - the Association Agreement Georgia has undertaken to encourage corporate social responsibility. This process must be based on internationally recognized standards, including those which are signed by Georgia (ICCPR, ICESCR, etc.). In addition, the Association Agreement has a prevailing legal force on the domestic legislation according to the Constitution of Georgia and the Georgian authorities must effectively fulfil its obligations. It should be emphasized that the Association Agreement is emphasized on OECD guidelines.

INITIATIVE:

The Parliament of Georgia at its two sessions adopted the draft law on amendments to the Constitution of Georgia (not published as of 28 September 2017), which makes fundamental changes.³⁹

First of all, it must be noted that the above described text of Article 7 is left unchanged and will be introduced as the second paragraph of Article 4 (“Legal State”) of the new edition is introduced, and the above described second paragraph of Article 6 will be included in the fifth paragraph of Article 7.

The articles of “Social State” (Article 5) and “Economic Freedom” (Article 6) are introduced in the Constitution. The first one says that Georgia is a social state and takes care for promoting principles of social justice, social equality and social solidarity principles within the society. Also, the State takes care for ensuring healthcare and social protection, subsistence minimum and decent housing for citizens, as well as protecting family welfare and promoting employment of citizens, and developing education, science, culture, sports and protecting cultural heritage.

³⁶ <http://www.voluntaryprinciples.org/>

³⁷ Official Georgian version is available here: <https://matsne.gov.ge/ka/document/view/1398335> [Last accessed on 24 June 2017].

³⁸ Official Georgian version is available here: <https://matsne.gov.ge/ka/document/view/1483577> [Last accessed on 24 June 2017].

³⁹ The draft constitutional law is available here: <http://info.parliament.ge/file/1/BillReviewContent/152668?> [Last accessed on 16 July 2017]

Economic freedom is recognized and secured; the State takes care for free and open economy, free entrepreneurship and competition.

As for human rights issues business responsibility has not yet been included to respect for human rights. While formulating separate rights, such issues as special protection of vulnerable groups (“The state shall create special conditions for exercising rights and interests of persons with disabilities” - Article 11.4), the mechanisms to safeguard the right to health (“The State shall exercise control over all healthcare institutions, as well as over the production and circulation of medicines” - Article 28.2) are taken into account. However, substantial changes for business in the field of human rights protection have not been made.

Has the government put in place labor laws and regulations to ensure the protection and promotion of workers' rights?

LABOUR CODE

In 2013 significant amendments and changes were made to the Labour Code of Georgia, which resulted in a closer approximation of international labour standards and improvement of the rights of the employees. As a result of these amendments, discrimination in the pre-contractual relations has been prohibited; oral and short term contracts have been significantly limited; specific conditions of labour agreement have been specified that cannot be unilaterally changed by an employer. It was determined that any condition of an individual labour contract contradicting the Labour Code or collective agreement, is void except for the cases where the individual labour agreement improves the condition of an employee; the grounds for termination of labour relations, as well as the obligation of an employee to warn in advance his/her employer of termination of the labour relations have been specified; Mediation Institute for collective labour disputes has been introduced; The Freedom of Assembly (Chapter IX¹) and the Tripartite Commission for Social Partnership (Chapter XIII) have been added to the Code.

Article 2(3) of the Labour Code prohibits discrimination in labour and pre-contractual relations and determines the grounds for discrimination: due to race, skin colour, language, ethnicity and social status, nationality, origin, material status or position, place of residence, age, sex, sexual orientation, handicap, religious, public, political or other affiliation, including affiliation to trade unions, marital status, political or other opinion.

The Labour Code also establishes a definition of discrimination: Discrimination shall be direct or indirect harassment of a person aimed at or resulting in creating an intimidating, hostile, humiliating, degrading, or abusive environment for that person, or creating the circumstances for a person directly or indirectly causing their condition to deteriorate as compared to other persons in similar circumstances (Article 2(4)).

In case the employment relationship has been terminated due to the membership of an employees' association or creating such association or on the basis of any other discrimination, then the burden of proof for the claim shall lie on employers if employees allege the circumstances providing a reasonable cause to believe that he/she was a victim of discrimination (Article 40²).

The Labour Code protects freedom of association. Employees and employers have the right to form an association or join the existing one without any preliminary permission. The unions have the right to develop their own charters, establish management bodies, elect representatives and administer their activities. The law directly prohibits discrimination due to membership or activities in any association (Articles 40¹, 40²).

According to NGOs, freedom of association cannot be effectively implemented very often; in some organizations there are no professional associations at all. And where similar unions exist, employers often create so-called “yellow trade unions” and try to gain over employees.⁴⁰ This issue was included in the report of the US Department of

⁴⁰ Study and Monitoring Centre, An Assessment of the Labour Inspection Mechanism and A Study of Labour Rights Conditions in Georgia, Labour Relations and Conditions in Heavy and Light Industry, Transport and Service Sectors; The study of the mandate and activities of the labour inspection mechanism; Tbilisi, 2017, pp. 84–98.

State, which states that although the law protects the rights of employees to create or join unions, the shortcomings remain: the Labour Code prohibits discrimination due to the membership of the association, but does not oblige the employer to reinstate employees dismissed due to discrimination. There are no effective penalties or remedies for arbitrarily dismissed employees, and legal disputes regarding labour rights are subject to lengthy delays. The State Department emphasizes the need for effective labour inspection in order to better protect labour rights.⁴¹

The right to strike is guaranteed by the Labour Code and is defined as an employee's voluntary refusal to fulfil, wholly or partially, the obligations under a labour agreement. The legislation directly clarifies that a strike shall not be a ground for the termination of labour agreement (Article 49).

If human life and health, safety of the natural environment, or a third person's property, or the work of a vital importance is in danger, the court may postpone the start of a strike for a maximum of 30 days, or suspend a started strike for the same period. During martial law, the right to strike may also be limited by a decree of the President of Georgia, requiring the countersignature of the prime-Minister of Georgia. The right to strike cannot be exercised during the working process by the employees whose work activity is connected with safety of human life and health, or if the activity cannot be suspended due to the type of a technological process. In such cases the court shall make a decision to declare a strike illegal (Articles 49-52).

Stopping or postponing a strike is problematic for the association of trade unions where a third person's property is in danger, because any strike affects not only the interests of employers but also the interests of their business partners, which can be regarded as a third party in labour disputes. On these grounds the employer is entitled to suspend or postpone any strike through application to the court.⁴²

It is noteworthy that during a strike an employer is not obliged to pay employee compensation (Article 49(9)).

A list of activities related to human life and health safety which is associated with the seizure of the right to strike for certain categories of employees was approved by Order № 01-43/m of the Minister of Labour, Health and Social Affairs of 6 December 2013. This list is quite wide and includes: a) work in emergency medical service; b) work in inpatient institutions and/or urgent care offices of outpatient institutions; c) work in the field of electricity generation, distribution, transmission and dispatching; d) work in water supply and sewerage; e) work in the field of telephone communications; f) work in the field of safe aviation, railway, marine and land movement; g) work in national defence, legality and law enforcement services, including: g.a) work in the Ministry of Defence of Georgia and its institutions; g.b) work in the Ministry of the Internal Affairs of Georgia and its institutions; g.c) work in the Ministry of Corrections, Probation and Legal Assistance of Georgia and its institutions; h) work in judicial organs; i) work in municipal cleaning offices; j) work in fire safety and rescue services; k) work in the sphere of natural gas transportation and distribution; l) work in the sphere of oil and gas extraction, preparation, oil processing and gas processing. According to the Order, people employed in all these institutions have been prohibited to participate in a strike.

In addition, employees of the prosecutor's Office are also prohibited from participating in a strike under Article 31(11) of the Law on the Prosecutor's Office of 21 October 2008.

According to the Trade Unions, this list is quite wide and includes services where the prohibition of strike is not advisable by the International Labour Organization (e.g. Cleaning Services, Natural Gas Transportation and Distribution Service, Oil and Gas Extraction Service).⁴³

The Labour Code obliges participants in labour relations to make a labour agreement in written form if the labour relationship lasts for more than three months (Article 6.1¹). In spite of this fact, according to non-governmental organizations there are cases where a labour contract is not concluded at all or employees do not know about it.⁴⁴

⁴¹ U.S. Department of State, Georgia 2016 Human Rights Report, p. 45-46.

⁴² Association of trade unions, Compliance of Labour Legislation with International Labour Standards, 2017, p. 6.

⁴³ Trade Unions, Compliance of Labour Legislation with International Labour Standards, 2017, p. 3.

⁴⁴ Study and Monitoring Centre, An Assessment of the Labour Inspection Mechanism and A Study of Labour Rights Conditions in Georgia, Labour Relations and Conditions in Heavy and Light Industry, Transport and Service Sectors; The study of the mandate and activities of the labour inspection mechanism; Tbilisi, 2017, pp. 28-29.

According to the Labour Code, a labour agreement between an employer and employee for a term of less than one year shall only be concluded based only under “objective circumstances” (Article 6(1²) (e)). According to the same Code, labour relations may be terminated in the existence of “objective circumstances” (Article 37(1)(n)). It is noteworthy that after the expiry of the contract, an employer shall have no obligation to justify his/her refusal to prolong the contract. The term “objective circumstance” is subject to a broader interpretation. In such cases, an employee finds it difficult to talk about labour rights because he/she is afraid of losing a job. Employment in the informal economy also occurs frequently where a labour agreement is not concluded at all and the labour conditions are very difficult. Such cases are frequent in relation of street vendors and unregulated markets.⁴⁵

According to the Labour Code, the duration of working time must not exceed 40 hours a week; and the duration of working time in enterprises with specific operating conditions requiring more than eight hours of uninterrupted production/work process must not exceed 48 hours a week (Article 14(1)). According to trade unions, this regulation is discriminatory, because puts employees working in the enterprise with a specific working regime in an unequal position.⁴⁶ The rule for counting overtime compensation is also problematic, since legislation does not define Saturday and Sunday as holidays. It is absolutely possible that an employee will work seven days a week but does not exceed 40 or 48 hours and therefore does not receive additional pay.⁴⁷ The European Committee on Social Rights of the Council of Europe which also criticized overtime compensation has established that Georgia is not in compliance with the requirements of Article 2.2 of the Charter, because the legislation of Georgia does not state that the work done on weekends must be reimbursed.⁴⁸

As regards the release procedure, the Labour Code gives exhaustive explanation of all the grounds for termination of labour agreements (Article 37.1). According to Article 38.1, an employer shall be obliged to notify an employee about the termination of a labour agreement in writing at least 30 calendar days in advance and pay him/her compensation in the amount of at least one month’s salary. However, it is noteworthy that this rule does not apply to all the grounds mentioned in Article 37, but only to subparagraphs (a), (f), (i) and (n) of Article 37(1): a) economic circumstances, technological, or organizational changes requiring downsizing; f) incompatibility of an employee’s qualifications or professional skills with the position held/work to be performed by the employee; i) long-term disability, unless otherwise provided for by a labour agreement, if a disability period exceeds 40 consecutive calendar days or total disability period exceeds 60 calendar days within six months, and, at the same time, the employee has already used his/her leave of absence under Article 21 of this Law; n) other objective circumstance justifying termination of a labour agreement.

The Labour Code defines the mediation rules. A collective dispute between an employer and a group of employees may be resolved by a direct negotiation or appointment of a mediator if one of the parties sends a written request to the Minister of Labour, Health and Social Affairs of Georgia by one of the Parties. In case of high public interest, the Minister has the right to appoint a mediator even if the parties have not requested it. It is noteworthy that the Minister is authorized to terminate the conciliation procedures unilaterally without considering the opinion of the social partners participating in the dispute. In the opinion of the Trade Unions, considering that 21-day conciliation procedures are mandatory for the right to strike (Article 48¹(3) and Article 49(3)) if the stated procedure is terminated by the Minister prior to 21 days, this may impede the realization of the right to strike.⁴⁹

CHILDREN

Legal capacity of natural persons to enter into a labour agreement shall originate at the age of 16. There are excep-

⁴⁵ U.S. Department of State, Georgia 2016 Human Rights Report, p. 50.

⁴⁶ Association of trade unions, Compliance of Labour Legislation with International Labour Standards, 2017, pp. 4-5.

⁴⁷ Study and Monitoring Centre, An Assessment of the Labour Inspection Mechanism and A Study of Labour Rights Conditions in Georgia, Labour Relations and Conditions in Heavy and Light Industry, Transport and Service Sectors; The study of the mandate and activities of the labour inspection mechanism; Tbilisi, 2017, p. 47.

⁴⁸ Activity Report 2016, European Committee of Social Rights, p.128. available at:<http://www.coe.int/en/web/turin-european-social-charter/activity-reports>

⁴⁹ Association of trade unions, Compliance of Labour Legislation with International Labour Standards, 2017, p. 6.

tions where legal capacity of minors under 16 to enter into a labour agreement shall originate by consent of their legal representative or a custody/guardianship authority unless the labour relations contradicts minors' interests, prejudice their moral, physical and mental development, and limit their right and opportunity to acquire compulsory primary and basic education (Article 4).

The Labour Code imposes restrictions on child labour during night hours. In particular, it is prohibited to employ a minor (from 22:00 to 6:00) for a night job (Article 18). The duration working hours for minors differ from the working time of adults. The duration of working time for minors from 16 to 18 years of age must be maximum 36 hours a week. The duration of working time for minors from 14 to 16 years of age must be maximum 24 hours a week (Article 14). The Labour Code does not set the upper limit of overtime work for children and adults.

WOMEN

The legislation protects pregnant women and nursing mothers from hard work. An employer shall be obliged to prevent a pregnant woman from performing work endangering her or her fetus well-being (Article 35.7 of the Labour Code). Pregnant and nursing women are also protected from night work (Article 18) and overtime work (Labour Code, Article 17(2)).

In 2017 the Government of Georgia ratified Convention of the Council of Europe on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), which envisages a number of legislative amendments, including the Law on Civil Service and the Labour Code. In particular, while placing a victim of the violence against women and/or family violence in an asylum or in a crisis centre, an employee cannot perform official duties (no more than 30 calendar days a year), then his/her official duties are suspended. The obligation of the notification in such case rests with a service provider. In the event of suspension of such kind of official duties, the employee shall not be entitled to salary or compensation.

The Order of the Minister of Health on Approval of the Rules for Reimbursement of Maternity, Childbirth and Child Care, as well as the Leave for Adoption of a Newborn Child, which gives an opportunity of paying for the paternity leave in the case of the death of the mother,⁵⁰ contradicts the law.⁵¹ The State must take effective measures to allow also fathers to enjoy a paternity leave.⁵²

Since 2006 the Inter-Agency Coordinating Council for Combating Trafficking in Human Beings shall develop and approve the National Action Plan for Combating Trafficking once in every two years. The plan aims to develop policy on human trafficking, human trafficking (trafficking) crime prevention, protection of victims of human trafficking, effective prosecution for human trafficking, as well as professional development, internal cooperation and coordination with the personnel working on trafficking issues.⁵³

PERSONS WITH DISABILITIES

The Labour Code prohibits employment of persons with disabilities to work overtime (Article 17(2)) and a night job (Article 18) without the consent of the disabled person.

The Law of Georgia on Social Protection of Persons with Disabilities determines the rights of persons with disabilities, in particular persons with disabilities in order to exercise their creative and production capabilities, have the right to work in enterprises, institutions and organizations operating under normal labour conditions, regardless of the form of ownership and business. Pursuant to the legislation, a disabled person may not be dismissed or transferred to another position without the consent of the disabled person (Article 21). Labour conditions determined by

⁵⁰ Order No. 231 /M of the Minister of Labour, Health and Social Affairs of Georgia, Article 10, p. 6.

⁵¹ Article 27 of the Labour Code of Georgia; Article 411, the Law on Public Service.

⁵² Public Defender of Georgia, Women's Rights and Gender Equality, p. 14.

⁵³ 2017-2018 Action Plan for Combating Trafficking in Human Beings is approved by the Interagency Coordinating Council for Implementation of Activities against Human Trafficking, 15 December 2016, available at: <http://www.justice.gov.ge/Ministry/Index/334>

collective and individual employment agreements shall not worsen the situation or limit the rights of persons with disabilities in comparison to other employees (Article 22(2)). Higher state, local self-governance and administrative bodies shall assist persons with disabilities working at home or individually in obtaining non-residential facilities for their activities, in purchasing raw materials and in selling finished products (Article 22.(3)). However, it must be noted that this law says nothing about enforcement mechanisms.

According to NGOs, the legislation does not provide effective promotional incentive mechanisms for employers who shall employ disabled persons. The State Program for Development of Employment Promotion and State Program for Professional Training and Retraining and Development of Job Seekers were launched in 2016. These programs minimally envisage the component of employment promotion for disabled persons and are not based on the research data requirements; in particular, State Program for Development of Employment Promotion envisages employment of no more than 40 beneficiaries and funding their salaries at 50% with the State participation. In addition, the term of the program is determined by a limit of 4-months.⁵⁴

MIGRANT WORKERS

The issue of migrant workers working in Georgia is not regulated either by the Labour Code or by other normative acts. There are no state statistics about them. According to the US Department of State, most of them are employed in large-scale foreign companies and live in the workplace or have arrived in the country without previously secured employment and only later start searching for work.⁵⁵

MINIMUM SALARY

Based on the Decree N351 of the President of Georgia of 4 June 1999, minimum amount of minimum wage is 20 GEL. According to the fifth paragraph of the Decree, taking into account the level of socio-economic development of the country, the Ministry of Social Protection, Labour and Employment of Georgia must submit a proposal to increase the minimum wage in agreement with the Ministry of Finance and the Ministry of Economy.

On 24 January 2005, the President of Georgia issued a Decree No.43, which imposed 135 GEL as a minimum amount of remuneration for employees employed in the executive branch of the government.

According to the legislation of Georgia, the minimum subsistence level is the value of consumer goods per capita, which satisfies the minimum physiological and social needs of the human population according to the level of social and economic development of the country (Article of the (Law of Georgia on the Rule of Minimum Subsistence Calculation, Article 2).

In Georgia the minimum subsistence level for a working age male as of September 2016 is 157,3 GEL and average household minimum is 263.5 GEL. The minimum wage in the private sector is only 12.7% of the minimum subsistence level for a working age male and 7,59% of the household living minimum.

Social Partnership Tripartite Commission

In 2013 the Social Partnership Tripartite Commission (hereinafter - the Tripartite Commission) was established, the main function of which is: a) supporting development of social partnership in the country, as well as promoting social dialogue between employees, employers and the Government of Georgia at all levels; b) developing proposals and recommendations on various issues in labour and accompanying relationships (Labour Code, Article 523).

The Tripartite Commission is a consultative body that is accountable to the Prime Minister of Georgia, Chairperson of the Tripartite Commission. Parties to the Tripartite Commission are the Government of Georgia, employers' as-

⁵⁴ Comprehensive Shadow Report of NGOs and Non-Governmental Organizations on the Implementation of the UN Convention on the Rights of Persons with Disabilities, Tbilisi, 2017, pp. 59-60.

⁵⁵ U.S. Department of State, Georgia 2016 Human Rights Report, p. 50.

sociations operating in various sectors throughout the country and the employees' unions. Each party has six members in the Tripartite Commission, representing various organizations. The chairperson of the Tripartite Commission shall make a decision on incorporating these organizations into the Tripartite Commission.

On 15 March 2016 the amendment was made to the Ordinance No. 258 of the Government of Georgia on Approval of the Regulation of the Tripartite Commission of the Social Partnership by Ordinance No.122 of the Government of Georgia. The amendment determined the powers of the Minister of Labour, Health and Social Affairs of Georgia to convene sessions of the Tripartite Commission in absence of the Prime Minister of Georgia, tasks or other exceptional cases.

Social partnership is defined as a dialogue and relationship system between social partners in the field of labour relations - an employer (employers' union), an employee (employees' union) and the representatives of state institutions.

FLAWS

The report of the US State Department emphasizes that the Labour Code does not prohibit discrimination against people who have been infected with AIDS or other contagious diseases. It is also said that there is no effective implementation of the norms of prohibiting discrimination in practice because there is no labour inspection that can fine an offender.⁵⁶

As regards the practice, the report of the US Department of State speaks on the facts of discrimination on the grounds of age, sexual orientation and union membership. There are frequent facts of reorganization in the company based on which employees at the retirement age are dismissed. Announced vacancies often contain age requirements.⁵⁷

It is noteworthy that the legislation does not set up compensation mechanisms for restriction of this right, simplified rules for settlement of labour disputes, quick and effective arbitration or other means that prevents effective implementation of the right to association and collective bargaining.

The Labour Code establishes the right of parties to a dispute to refer the dispute to the labour arbitration (Article 48.8¹), although there is no such arbitration in Georgia; the legislation does not define the rules for its establishment and functioning.

The Labour Code does not set a reasonable number of daily working hours and weekly holidays. This issue was included in the Report of the European Commission for Social Rights for 2016, which states that Georgia does not meet the requirement of Article 2.5 of the Charter, since the legislation of Georgia does not define weekly holidays.⁵⁸

The Labour Code does not recognize the right to equal pay by women and men for equal value work. This issue was included in the Report of the European Commission for Social Rights for 2016, which states that Georgia does not meet the requirements of Article 20 of the Social Charter on equal pay.⁵⁹

It must be noted that the Labour Code does not speak about the internship mechanism. Neither the Labour Code nor any other normative act define the right of a young employee and apprentice to receive fair wages or other remuneration. This is also a form of labour relations and it must be regulated by the labour legislation.

⁵⁶ U.S. Department of State, Georgia 2016 Human Rights Report, p. 48.

⁵⁷ U.S. Department of State, Georgia 2016 Human Rights Report, p. 48.

⁵⁸ Activity Report 2016, European Committee of Social Rights, p.129. available at:<http://www.coe.int/en/web/turin-european-social-charter/activity-reports>

⁵⁹ Activity Report 2016, European Committee of Social Rights, p.128. available at:<http://www.coe.int/en/web/turin-european-social-charter/activity-reports>

Labour legislation does not recognize a reasonable adaptation as one of the forms of discrimination. It is noteworthy that the UN Convention on the Rights of Persons with Disabilities defines reasonable adaptation as a necessary condition for the realization of other rights (Article 2-5, CRPD). The 2017-2023 Strategy of the Council of Europe for Persons with Disabilities makes it clear that the refusal to reasonable adaptation is discrimination.

Has the government put in place environmental laws and regulations to ensure the protection and promotion of the rights of its citizens to health, a healthy environment, and livelihoods including, for example, clean water, clean air, and cultivatable land?

APPLICABLE LEGISLATION

CONSTITUTION

According to Article 37 of the Constitution of Georgia,

“3. Everyone has the right to live in a healthy environment and enjoy the natural and cultural surroundings. Everyone shall be obliged to take care of the natural and cultural environment.

4. With the view of ensuring safe environment, in accordance with ecological and economic interests of society, with due regard to the interests of the current and future generations the state shall guarantee the protection of environment and the rational use of nature.

5. A person shall have the right to receive complete, objective and timely information as to a state of his/her working and living environment.”

INTERNATIONAL AGREEMENTS

Georgia is ratified and therefore its legislation includes the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Issues, which has been entered in force since 2001 for Georgia.⁶⁰ Based on the Convention, physical and legal persons (including business entities), carrying out public authority are obliged to make public the information related to environmental issues. Based on the same Convention, the Ministry of Environment and Natural Resources Protection of Georgia is obliged to periodically prepare a national report on the condition of the environment. An analysis of the legislation regarding the fulfilment of these obligations is given below, in the relevant part of the III Principle about implementation in practice.

Convention on Biological Diversity, adopted at the so called “Earth Summit” in Rio de Janeiro is applicable from 1996. On 8 May 2014 the Government of Georgia approved 2014-2020 National Biodiversity Strategy and Action Plan, which mostly includes the implementation of activities only for raising awareness to the private sector, and provides for the development of binding regulations for business by the Government to protect the biodiversity (sustainable forest management, management of protected areas, improvement of veterinary and phytosanitary control, etc.).⁶¹

It is noteworthy that the Association Agreement provides for the specific obligations to elaborate legal instruments, for example, the obligation to implement the Directive on Industrial Emissions, which implies the release of concrete obligations for enterprises which will significantly reduce production emissions. As for Article 230 of the Association Agreement DCFTA, it must be noted that Georgia has an obligation to implement the international environmental agreements at domestic level, to which Georgia is a member. In terms of international (sustainable) trade, we must mention the Convention on International Trade of Endangered Species and Wild Fauna and Flora, for implementation of which a draft law of Georgia on Biodiversity is under development.

⁶⁰ So called Aarhus Convention. The official Georgian text is available here: <https://matsne.gov.ge/ka/document/view/1210443> [Last accessed on 24 March 2017].

⁶¹ Strategy and Action Plan are available here: <https://matsne.gov.ge/ka/document/view/2342057> [Last accessed on 24 March 2017]

LAWS AND SUBORDINATE ACTS

Legislation of Georgia includes several important normative acts in the field of environmental protection. In general, environmental legislation in Georgia consists of up to 40 laws that may be divided into following main directions:

1. Environmental Protection, Ecological Safety;
2. Natural Resources Management - Protection and Use;
3. Protected Areas, Protection of Resorts;
4. Spatial Arrangement (in relation to ecological issues).

ENVIRONMENTAL PROTECTION, ECOLOGICAL SAFETY

The main legislative act in the field of environmental protection and ecological safety is the Law of Georgia on Environmental Protection⁶² of 1996 which regulates legal relations between the state authorities and natural and legal persons in the field of environmental protection and use. Article 5 of the Law defines the principles of environmental protection, and the state bodies, as well as physical and legal entities (and accordingly, business entities), are obliged to use these principles. When planning and carrying out activities, any subject (any natural or legal entity) is obliged to take adequate measures to prevent or minimize the risk of harm to the environment and human health. In addition, the priority principle (replacement with less risky, though more expensive action), the user pays principle, the waste minimization principle and other principles are applicable emphasizing the different obligations of environmental protection for any entrepreneur. The principle of restitution is particularly noteworthy, according to which “the environment degraded as a result of activities shall be brought as close as possible to its original state (restitutio in integrum)”, as well as the “the polluter pays principle”, which implies the obligation of an operator or other natural or legal person to compensate damage caused to the environment. The above principles are explained in the Law.

According to Article 15 of the Law, a system of environmental protection planning⁶³ shall be set up in order to ensure environmental protection and sustainable development, which includes an environmental management plan voluntarily compiled by objects of activity, which is a part of the environmental management system, and the latter is an integral part of the management system and business strategy of an object of activity, covering all aspects of environmental issues directly or indirectly related to the functioning of the object (an environmental management plan, environmental policy, including the registry of environmental norms for organization and personnel).

Based on the principles of “the user pays” and “the polluter pays”, the taxes for hazardous environmental impacts, use of natural resources and other taxes are established in Georgia. According to Article 16(3) of the Law, the payment of taxes shall not release the subject of activity from liability for the compensation of damage caused to the environment. It is noteworthy that Article 17 of the Law on Environmental Protection establishes compulsory ecological insurance of ecological objects of activity which are especially dangerous. Fees received through such ecological insurance shall be used for the elimination of the consequences of ecological accidents and disasters and for their prevention.

The Law on Environmental Protection also establishes the possibility of economic stimulation (through advertising, tax benefits or preferential state credits), promoting effective environmental projects.

⁶² Law of Georgia on Environmental Protection: <https://matsne.gov.ge/ka/document/view/33340> [Last accessed on 24 march 2017].

⁶³ An environmental planning system is the “National Environmental Action Program of Georgia” (NEAP). NEAP aims to establish a complex approach to solving existing environmental problems, determining short-term and long-term goals and planning the necessary actions to achieve them. The document reflects the coordinated action plan of the Ministry of Environment and Natural Resources Protection of Georgia, other partner and involved ministries, government agencies and local self-governments. The last document - The Second National Program for Environmental Action (NEAP2), covers the period of 2012-2016, the document is published on the Ministry’s website: <http://moe.gov.ge/res/images/file-manager/strategiuli-dokumentebi/strategiebi-gegmebi/garemos-dacvis-moqmedebata-meore-erovnuli-programa-2012-2016.pdf>. At the same time, the Third National Program for Environmental Protection of Georgia (NEAP3) for 2017-2021 is under development. Source of information: N4856 Letter of the Ministry of Environment and Natural Resources Protection of Georgia to the authors of the study, dated 2 June 2017.

It is noteworthy that the Law on Environmental Protection is familiar with the possibility of conducting an environmental audit which may be carried out by an object of activity (business) or the Ministry. The audit is the analysis of the compliance by an operator with the requirements of environmental legislation and with environmental standards (including the standards established by the operator) and the analysis of the efficiency of the environmental management system, which includes the whole industrial and technological cycle and which is carried out in order to identify ways and means for the environmental assessment of activities and for the minimisation of losses of used natural resources and of adverse impacts on the environment and waste. The other procedures for carrying out the mentioned audit has not been established in the legislation, though the Law is familiar with environmental audit for environmental permissions, which is conducted almost with the same purpose (during the implementation of the activities, a complex analysis of the indicators of technical, environmental and social performance of these activities is conducted which covers the entire production and technological cycle and aims to establish ways of minimizing hazardous environmental impacts of the activities and ensure compliance of these activities with applicable environmental standards). The detailed procedures of the latter are established by the Order #201 of the Minister of Environment and Natural Resources Protection of 11 June 2015.

The Law determines environmental obligations while transferring state-owned property to private ownership that compensation of the damage resulting from the economic activity carried out before the privatization of the enterprise in violation of the environmental legislation of Georgia, shall be imposed on each new owner of the privatized agricultural object unless otherwise provided for by the Law.

The Law on Environmental Protection establishes individual norms of environmental protection which are mandatory for the subjects of activity and by means of which business subjects are limited in the process of environmental impacts.

According to Article 39 of the Law, in the course of carrying out activities, the environmental safety and public health protection requirements shall be complied with, and measures for environmental protection, for the rational use of natural resources and environmental restoration, as well as the financial means necessary for the implementation of these measures, shall be taken into consideration.

The Law on Environmental Impact Permit envisages Environmental Impact Assessment.⁶⁴ The EIA shall examine, identify and describe direct and indirect impact of an activity on human health and safety, vegetation and animal world, soil, air, water, climate, etc. as a prerequisite for issuing a permit for the activities envisaged by the same Law. One of the prerequisites for issuing a permit is a positive conclusion of ecological expertise, the procedures of which are regulated by a separate law.⁶⁵

The Law of Georgia on Waste Management is applicable from 15 January 2015, which is based on the requirements of directives and regulations provided for by Association Agreement between Georgia and the European Union, as well as the best international practice.

The Code defines a number of obligations (defining an environmental manager, preparation and agreement of waste management plan, waste management and reporting etc.) for persons engaged in waste management. The Code also provides for the extended obligations for manufacturers, which shall enter into force be in 2019. In particular, a manufacturer of products, which later become specific waste (packaging waste, tires, used oils, batteries, accumulators, electrical equipment, etc.), and the product marketers must be responsible for the creation and marketing of a product that is designed for multiple use, technically is durable and the generated waste is convenient for recovery and is safe for placement in the environment. Besides, the manufacturer and product marketer are obliged to ensure separated waste collection, transportation, restoration (including recycling) of its product, as well as secure placement in the environment.

Based on the Code, the National Waste Management Strategy (2016-2030) has been approved, which determines

⁶⁴ The Law of Georgia on Environmental Impact Permit: <https://matsne.gov.ge/ka/document/view/20206> [Last accessed on 24 March 2017].

⁶⁵ The Law of Georgia on Ecological Expertise: <https://matsne.gov.ge/ka/document/view/20212> [Last accessed on 24 march 2017].

the waste management policies and strategic directions of the country for the period of 15 years and serves the effective implementation of the obligations under the Association Agreement. In parallel with the Strategy, National Waste Management Plan (2016-2020) has been developed and adopted, which includes implementation of waste prevention measures by companies by 2020, as well as promotion of introducing a system of returning bottles and crates by alcoholic and non-alcoholic beverage producers.

In addition, on the basis of the Code and for the purpose of its implementation, a number of subordinate normative acts have been issued.⁶⁶

In terms of environment protection and ecology, the Law of Georgia on Ambient Air Protection is worth mentioning, which requires any natural or legal person, accordingly business subjects, to abide by established requirements and in case of receiving information on the expected or already happened man-made accidents or ecological disasters to inform in time the competent state bodies or make public notice.

Business subjects have certain obligations with respect to the circulation and use of pesticides and agrochemicals, in particular, while carrying out such activities they are obliged to inform state bodies at the end of the year, observe the rules of safe use, upon request provide the supervisory authorities with information, register in the Ministry of Agriculture of Georgia, as well as submit samples for registration procedure, etc.⁶⁷

MANAGEMENT OF NATURAL RESOURCES - PROTECTION AND USE

As for the legislation in the field of natural resource management, it includes laws on soil, forest, water, animal world, minerals, oil and gas. These acts define general obligations for any natural or juridical person to protect the appropriate resources and not to harm them. However, the individual rules set for private subjects (including business subjects) are worth marking. In particular:

a) The Law of Georgia on Soil Protection prescribes certain prohibitions,⁶⁸ such as restrictions for the use of soil for non-agricultural purposes, for removing fertile layer for self-interest or for the personal purpose, as well as any action which shall worsen soil properties and other restrictions. The Code of Administrative Offenses is aware of the relevant liability for violation of this Law.⁶⁹

b) The Law of Georgia on Water contains the obligations of water users (any natural or legal person) to maintain quality, use rationally resources, and protect the safety and possibilities of restriction of rights, especially during small water, danger of emergencies on the water facility, epidemics and epizootics, disasters, as well as during military operations and other extreme cases or in the cases provided for by the legislation of Georgia in order to protect public health, and interests of other water users; in order to protect the lives and health of the population, as well as fish and for other purposes.⁷⁰ The Order No.308 /M of the Minister of Labour, Health and Social Affairs of Georgia of 5 November 2002 establishes the rules for restricting the rights of water users in special cases where the specific liabilities for natural or legal persons are provided.

c) C) The Law of Georgia on Oil and Gas gives detailed regulations concerning the use of these resources.⁷¹ The law defines the need for a licence to use oil and gas, and a licence holder has extensive duties, including observance of the transportation tariff; to ensure public safety and environment protection while carrying out activities under the activity licence; for the unforeseen cases, to develop a plan, train personnel and install the necessary equipment to take timely and effective measures in case of accident; not to cause damage to Georgian historical and cultural heritage monuments when carrying out activities under the activity licence; it is responsible for financial loss (human bodily injury, disease, death, property damage, negative environmental impacts, etc.) caused by activity or inactivity related to the activities defined under the activity licence; while implementing, under equal conditions,

⁶⁶ See Ordinances N143, N144, N145, N146 of the Government of Georgia of 29 March 2016

⁶⁷ Law of Georgia on Pesticides and Agrochemicals, available here: <https://matsne.gov.ge/ka/document/view/18106> [Last accessed on 25 June 2017].

⁶⁸ The text of the Law is available here: <https://matsne.gov.ge/ka/document/view/93874> [Last accessed on 27 June 2017].

⁶⁹ See Articles 51-52 of the Code of Administrative Offenses.

⁷⁰ The text of the Law is available here: <https://matsne.gov.ge/ka/document/view/33448> [Last accessed on 27 June 2017].

⁷¹ The text of the Law is available here: <https://matsne.gov.ge/ka/document/view/18424> [Last accessed on 27 June 2017].

the activities defined by the activity licence, the citizens of Georgia shall be preferred, and the persons who do not have sufficient qualifications shall not be admitted to work. A licence holder is authorized to make available electricity, water, sewerage and other objects of public purpose, as well as roads, bridges, harbours and other, but on a non-discriminatory basis.

PROTECTED AREAS AND RESERVES

The Law on Protected Areas provides relatively general provisions for all subjects, including business subjects, which covers the obligations established for the protection of such territory and resources and defines the obligations both for prevention (fines) and compensation of loss.⁷²

SPATIAL ARRANGEMENT

As regards the spatial arrangement legislation, its part is discussed in response to the following question, however, for the review of existing regulation on the cultivated land, the Law of Georgia on Agricultural Land Ownership is worth mentioning, which specifies the special regime for this type of land plots.⁷³ A land is considered to be an agricultural land which is used for the production of nursery and livestock products. The Law defines the regulations aimed at maintaining the mentioned direction, and it is prohibited to use agricultural land for other purposes.

The government program “For Strong, Democratic, United Georgia” also deals with the topic of environmental protection and is part of the State’s political obligations.⁷⁴ According to the program:

“Environmental protection and rational use of natural resources is one of the priorities of government activity. The goal of the government is to implement the principles of “Green Economy” and promote the development of “Green Business”. [...]

It shall be promoted the introduction of the principles of sustainable development and “Green Economy” in the country. Mechanisms of access to environmental information and public involvement in decision-making shall be developed/perfected. Measures shall be taken to encourage environmental education and raising awareness.”

FLAWS

Analysis of legislation has revealed that various legislation on environmental protection more or less envisage the obligations for business, although they mostly have general character and some mechanisms do not work. For instance, an article of the Law relating to ecological insurance has not yet been worked out and there are no mechanisms for its implementation.⁷⁵ There are no procedures specified for environmental audit.

Also, there is no possibility for statutory economic stimulus established by the Law on Environmental Protection for implementing effective environmental projects, no tax or other benefits, except for the changes⁷⁶ in the Tax Code related to hybrid passenger cars which is not for business but for general stimulation of any person. There is also no regulation on the rule and periodicity of developing an Environmental Management Plan, even though the Law of Georgia on Environmental Protection defines the obligation, there is no such rule in legislation. Consequently, business entities shall have no obligation to make this plan part of the business strategy.

⁷² See the Law on Protected Areas, available here: <https://matsne.gov.ge/ka/document/view/32968> [Last accessed on 27 June 2017].

⁷³ The text of the Law is available here: <https://matsne.gov.ge/ka/document/view/32998> [Last accessed on 27 June 2017].

⁷⁴ The program is available here: http://gov.ge/files/53185_53185_636375_mtavrobis_programa_27.12_.15.pdf [Last accessed on 25 April 2017].

⁷⁵ Union for Sustainable Development - EcoVision / ECOVISION, “Evaluation of Climate Change and Related Public Health Protection Policy”. 2016. Available here: http://ecovision.ge/uploads/files/2016-08/1471336635_cc-and-ph-analysis-report-final-georgia.pdf [Last accessed on 24 march 2017].

⁷⁶ Source of information: N4856 Letter of the Ministry of Environment and Natural Resources Protection of Georgia to the authors of the study, dated 2 June 2017.

INITIATIVE:

1) The Ministry of Environment and Natural Resources Protection of Georgia shall carry out a number of measures to improve the ecological situation in the country and to contribute to ecological challenges in order to fulfil the environmental commitments, based on the Association Agreement.

According to the Ministry, the main goal of the Ministry is to bring Georgia's environmental legislation in compliance with international and European standards. Consequently, the Ministry (often together with international experts) is working on draft laws aimed at reducing the gaps in the legislation of Georgia.

The draft Law of Georgia on Environmental Responsibility can be chosen among these draft laws, which shall ensure the introduction of an effective environmental responsibility system that shall focus on prevention of damage to the environment or restore the damaged environment in its original condition. The law shall take into account certain obligations, including for business subjects, in terms of preventing significant damage to the environment and restoring the environment in its original condition.⁷⁷

2) It should be noted that the reforms in the field of usage of minerals in the field of mining, in particular, the Ministry in the field of mining activities cooperates with the United States Forestry Service (USFS). In particular, drafting of a technical regulation project for the mineral deposit processing plan is ongoing in coordination with the USFS in June-September of the current year (which includes recultivation as well), which is essential for effective enforcement of the new Code of Environmental Assessment. Also, this technical regulation shall establish the specific requirements for users of minerals, make it easier for them to work to be defined exactly what type of plan should submit a subject of activity, for implementing its planned activities in compliance with legislation and environmental standards.

The negotiations with the European Bank for Reconstruction and Development (EBRD) were successfully held which was related to an expert support for the development of strategic and legislative framework in accordance with the best international practice in the mining sector. As a result of the agreement, representatives of the European Bank for Reconstruction and Development presented the so-called Technical Task covering the development of the sub-soil sector policy, creation of a legislative framework and strengthening human resources in this direction.⁷⁸

3) Environmental Assessment Code was adopted on 1 June 2017, which aims at protecting environment, human life and/or health, cultural heritage and material values in the process of implementing such a strategic document or activity that may significantly affect environment, human life and/or health; ensuring the full and objective information, exercising the basic human right guaranteed by the Constitution of Georgia, as well as public participation in decision making on environmental issues; considering the environmental, social and economic interests of the state and the public in the decision making process of such a strategic document or activity that may significantly affect the environment. The relevant EU directives, the ESPOO Convention and its protocol, and the regulation of the Aarhus Convention shall be considered in the legislation of Georgia through this Law. A cumulative impact assessment method for hydropower plants has been developed to help the Ministry in decision-making process and promote environmental compliance in full.⁷⁹

According to the new Law, a list of activities that will significantly affect the environment and is not included in the current regulation (including mining industry) shall be expanded and developed in details. This list shall be in compliance with Annex I and II of the EIA Directive, as well as with the activities provided for in Annexes to the ESPOO and Aarhus Conventions. The draft law provides for the introduction of screening and scoping procedures, which involves decision-making on the need for environmental impact assessment, and involves the participation of interested people at an early stage of implementation. At the same time, the law is more flexible for the business sector, as it envisages the so-called scoping procedure, when the Ministry accurately defines what types of surveys/information must be submitted by a subject of activity in order to make a positive decision on the implementation of the activity. The main part of this Law shall enter into force from 1 January 2018.

Besides, it must be noted that all the activities authorized (Licence /Permit) by the Ministry and the departments

⁷⁷ Source: Ministry of Environment and Natural Resources Protection, information received on 3 August 2017.

⁷⁸ Source: Ministry of Environment and Natural Resources Protection, information received on 3 August 2017.

⁷⁹ Annual Report. <http://moe.gov.ge/res/images/file-manager/wliuri-angarishi/2015wlis-angarishi.pdf> [Last accessed on 24 March 2017].

within its system in the manner prescribed by legislation, potentially represent the activities of the adverse effects on the environment. Accordingly, the Ministry shall register all authorizations issued within all competences, including environmental impact permits, use of subsoil, as well as nuclear and radiation licences.⁸⁰

Has the government put in place land management laws and regulations to ensure the protection of the rights of its citizens, including the recognition of customary land rights and the incorporation of human rights considerations into environmental and social impact assessments and related licensing practices?

APPLICABLE LEGISLATION

With regard to property law and land management, it must be pointed out first of all that the Law on Recognition of Property Rights of the Parcels of Land Possessed (Used) by Natural Persons and Legal Entities of Private Law takes into account the protection of traditional ownership to some extent. The applicable Law serves to transferring to the ownership the land in the use of persons for a certain period of time. This benefit may have been a result of legitimate (due to legal basis) or arbitrary detention (a land plot occupied without granting any right, if a building is located on it or a large land area owned by a lien holder/legitimate owner is adjacent to it).⁸¹

Property is not recognized for physical or legal persons, if the land is intended for certain community use or for other purposes, for example, it is used for cattle driving, it is a protected area for recreational purposes and with certain environmental significance (land of water or forest fund etc.), it is a place of public use or rest, botanical garden or dendrological park, etc.⁸²

It is noteworthy that legal entities of private law could recognize property rights only until 1 January 2012, and now they must benefit from the general rule of privatization (for example, purchase a plot through auction).

With regard to land management, it is important that there is the Law on Spatial Planning and Municipal Construction, which aims at regulating the process of spatial arrangement and urban construction to ensure sustainable development of the country, as well as healthy and safe housing and creative environment for the population, including accommodation, development of settlements, infrastructure taking into account the requirements of cultural heritage and environmental protection.

The principle of the law is the creation of territorial preconditions for equal economic, infrastructural, social, ecological and cultural development of the country, creation of prerequisites to satisfy housing demand, priority of public transport development, maintenance and development of recreation areas, etc.⁸³

The Law provides for balancing private and public interests and considers the interests of natural and legal persons as private interests. It also establishes the possibility of restricting these interests in cases of infringing public interest or other rights.

The Ordinance N57 on Rules of Issuing Construction Permits and Permission Conditions of the Government of Georgia of 24 March 2009 is a relatively specific document that determines the conditions for obtaining a construction permit. However, the construction permit, regardless of whether it provides for environmental impact assessment or other evaluations, does not include the obligation to reflect the human rights issues in the course of evaluation or issuing permit.

⁸⁰ Source of information: N4856 Letter of the Ministry of Environment and Natural Resources Protection of Georgia to the authors of the survey, dated 2 June 2017.

⁸¹ Article 2 of the Law, is available here: <https://matsne.gov.ge/ka/document/view/19780> [Last accessed on 24 March 2017].

⁸² The full list is given in Article 3 of the Law.

⁸³ See Article 5 of the Law. The text of the Law is available here: <https://matsne.gov.ge/ka/document/view/29614> [Last accessed on 24 March 2017].

FLAWS

Analysis of legislation showed that property law and land management legislation includes quite a bit of regulation in terms of business and human rights in Georgia. For example, the Law on Spatial Planning and Municipal Construction does not define specific mechanisms for considering human rights and implies only general provisions on balancing the public interests with private interests.

Based on the EU Association Agreement, planning of international standards includes consideration of standards, such as voluntary standards of Food and Agriculture Organization of the United Nations, which involve an obligation to consider the human dignity, equality, involvement of parties and other issues during the use of the land subjects (as well as fish house and forests) by business subjects.⁸⁴

In addition, the Law on Recognition of Property Rights of the Parcels of Land Possessed (Used) by Natural Persons and Legal Entities of Private Law includes the possibility of recognizing only certain rights in terms of recognition of traditional ownership, in particular, the recognition of right to documented ownership (lawful possession) and arbitrarily occupied land plot, which is adjacent to the land under legal ownership or where the buildings are located. As a result of the stated, if a person traditionally owns a land plot located away from his/her property and cultivates it for agricultural purposes, and there is no building there, such land is not subject to registration of property rights and guarantees of appropriate protection, regardless long-term use and recognition in the relevant community. This is especially problematic in the settlements where land reforms had not been fully implemented in the 90s or traditional land use in the communities took place without any documentation (some villages of Adjara, Mestia, Tianeti, Akhmeta and Dusheti municipalities). These shortcomings have not been substantially rectified by the amendments made in the legislation for property recognition in 2016.⁸⁵

The gaps on the legislation of spatial planning is worth mentioning that envisage the possibility of diverting from various environmental and social obligations, in particular while analyzing the legislation, it turned out that there are mechanisms to change the purpose of the land plot on recreational or other land plot where construction is limited; also, there is also the possibility to increase the permissible height of the construction or land plot utilization ratio, which significantly reduces the size of the green cover. The legislation also envisages the possibility of prolonging construction permits, resulting in the prolongation of construction process and damages to the people living nearby, as well as people interested in the construction (for example, future owners, in case of constructing residential buildings). It must also be underlined that although spatial arrangement legislation envisages the obligation to create adaptive environment for people with disabilities, there is no effective enforcement mechanism, and the Code of Georgia on Offenses provides a special fine for non-consideration of adaptation only in the project.

The legislation of Georgia does not recognize a direct obligation in the issues of land management or spatial arrangements to assess, at any stage, human rights impacts, except for some cases of environmental impact assessment (see Environmental Protection Chapter). Also, there is no human rights impact assessment at the time of deprivation or restriction of property rights for public needs.

INITIATIVE:

Working on the Spatial Planning and Construction Code of Georgia is currently underway, which will replace the Law of Georgia on Spatial Planning and Municipal Construction. The project is worked out with the involvement of stakeholders and deals with a number of challenges that the current legislation fails to respond. These include the terms for use of land plots for construction, construction quality, and consideration of public needs in the course

⁸⁴ The principles are available here; <http://www.fao.org/docrep/016/i2801e/i2801e.pdf> [Last accessed on 9 July 2017].

⁸⁵ See the blog “The Land Registration Bill cannot provide full implementation of land reform”. 14 June 2016. International Transparency-Georgia. Available here: <http://www.transparency.ge/blog/mitsis-registratsiis-shesakheb-kononproekti-ver-uzrunvelqops-srul-pasovani-mitsis-repormis-gankhorcielebas?page=1>

Also “What are the threats to the traditional land-use coming from new governmental initiative?”. February, 2016. “Green Alternative”. Available here: http://greenalt.org/wp-content/uploads/2016/04/policy_brief_land_registration_law_Geo.pdf [Last accessed on 17 July 2017].

of construction. The new project will also aim at planning the international and European standards, including the certification of a construction profession and consideration of the public interests in different directions. However, a parliamentary discussion of the Code was planned in 2015, which has not happened up to present and it is not clear when the legislative process will be completed. It is necessary to carry out this process with the maximum involvement of stakeholders and to rapidly develop it for the purpose of effective elimination of existing shortcomings.

Has the government put in place health and safety laws and regulations to ensure the physical and mental health of workers and communities?

Article 30(4) of the Constitution of Georgia shall guarantee the rights and freedoms relating to human labour, employment as a legal result of labour relations. One of the rights related to labour is the right of an employed person to work in a safe and healthy environment.

Article 35 of the Labour Code of Georgia establishes the standard of labour conditions and puts an employer under obligation to ensure employees with a working environment that is maximally safe for the life and health of the employees, introduce a preventive ensuring labour safety and timely provide employees with relevant information about labour safety-related risks and measures for preventing the risks.

The Minister of Labour, Health and Social Affairs of Georgia by the Order N01-10/M of 21 April 2015 approved the Statute of the Labour Conditions Inspection Department of the same Ministry, which does not determine the basis for the use of sanctions in case of violation of labour safety rules. The Labour Conditions Inspecting Department shall have no authority to enter any institution on its own initiative to study labour safety (except for the cases of trafficking and suspicion about forced labour); Also, the Department may only recommend an employer if detected the violations and these recommendations do not have the mandatory power to be performed; The Department grants the right to access to the inspection results only to the employer. Information about labour safety is not open both to the public and employees.

The need for effective labour inspection is also mentioned in the report of the US Department of State. Apart from the already mentioned defects, the small number of inspectors is also problematic.⁸⁶ The NGO also focuses on the problem, which insists the number of inspectors is insufficient. In addition, the organization explains that the quality of the independence of the inspectors must be increased. Currently inspectors are not public servants but are free-lance employees, with a 3-month labour contract and their remuneration is determined in the amount of 1000 GEL. In the opinion of the organization, it is important that inspectors are civil servants, employed under such conditions that determine their stable work and independence from government changes and improper influence. In addition to the inspectors, the non-governmental organization focuses on the status of the inspection department, which is required to be equipped with adequate financial and human resources, and needs more independence in comparison with the Department which performs vertical activities of the Ministry and is under a complete and direct supervision of the Minister. Despite the fact that the Labour Inspectorate must belong to the Executive Government in accordance with the standards of International Labour Organization, it must meet a high degree of independence and efficiency that can be achieved better by a legal entity of public law, as considers the NGO.⁸⁷

By Ordinance N19 of 18 January 2016 the Government of Georgia approved the 2016 State Program for Labour Conditions Inspection, the objectives and goals of which is to assist employers in creating a safe and healthy working environment, developing/revising occupational safety and health protection standards and determining the need for institutional reform of labour safety.

Ordinance # 361 of the Government of Georgia of 27 May 2014 is a technical regulation on the safety of the construction, which applies to the works to be performed on a construction site under a construction permit and determines the safety requirements in the course of construction works.

⁸⁶ U.S. Department of State, Georgia 2016 Human Rights Report, p. 50.

⁸⁷ Human Rights Education and Monitoring Center (EMC), An Assessment of the Labour Inspection Mechanism and A Labour Rights Conditions of employed in Georgia, pp. 174-181.

Technical regulations about safety of construction shall apply to the works to be performed on a construction site under a construction permit and define the security requirements on the construction site: with regard to organizing, construction machinery, technical equipment and instrument exploitation, electrical and air-welding, loading-unloading, isolation, land, concrete and reinforced concrete, installation, demolition and other construction works.⁸⁸

Annex XXX to the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part, comprises 26 Directives on Labour Safety, which must be transposed to the legislation of Georgia gradually within the period from four to nine years.

The abovementioned commitment was reflected in the 2015-2018 Action Plan for the State Strategy for Formation of the Labour Market of Georgia and the State Strategy for Realization of the State Strategy of Georgia for Formation of the labour market (Ordinance N199 of the Government of Georgia of 2 August 2013, amended by the Ordinance N732 of the Government of Georgia dated 26 December 2014) which envisages the need to introduce international standards of labour safety in Georgia as part of the state policy of formation of the labour market of Georgia.

INITIATIVES

In June 2017 the Parliament of Georgia passed a draft law in the first reading which aims at protecting the health and safety of employees at work, namely: determination of the rights, duties and responsibilities of state bodies, employers, employees, representatives of the employees and other persons in the workplace to create a safe and healthy work environment; improvement of organization and management of labour safety at work places; reduction and prevention of accidents and professional diseases.

According to the explanatory note of the draft law, the draft law includes some requirements of the Directive of the Council of Europe 89/391 / EEC of 12 June 1989 on the Introduction of Measures to Promote Safety and Health Improvement in the Workplace, which must be transposed to the legislation of Georgia by 2019.⁸⁹

The draft law applies only to the works of severe, hazardous and dangerous conditions, the list of which shall be determined by the Government of Georgia within six months after enacting the law (Article 2).

The draft law imposes new obligations to employers. An employer shall be obliged to register relevant activities in the Registry of Economic Activities in the National Agency of Public Registry. The terms and conditions of the registration shall be determined by an order of the Minister of Justice of Georgia (Article 4.1, 4.3).

An employer shall be obliged to regularly perform inspection of the safety of technical equipment provided by the Georgian legislation (Article 5.5(e)). It shall be inadmissible to employ persons younger than 18 years of age, pregnant and nursing women to perform severe, hazardous and dangerous works (Article 5.6). An employer must provide an employee with insurance (Article 5.8) and must pay all the expenses related to labour safety and sanitation-hygienic activities on the workplace (Article 5.9).

This draft law also includes preventive measures. An employer shall be obliged to develop a policy of coherent prevention measures, which must take into account the peculiarities of the industrial environment and the labour process (Article 6.1(e)). Based on the analysis of this policy, a written document must be developed, which must take into account the measures to eliminate or reduce possible risks, the timeframes for their implementation, performers, as well as funds for its implementation (Article 6.1(f)).

An employer shall also be obliged to define in writing, on the basis of distribution of functions, the obligations and

⁸⁸ Ordinance # 361 on Approval of Technical Regulations on Construction Safety of the Government of Georgia of 27 May 2014, <http://khobi.ge/files/files/kanonebi%202014-nov/82.pdf>

⁸⁹ The main essence of the draft law, the Explanatory Note to the Draft Law of Georgia on Labour Safety.

responsibilities of relevant employers in the field of labour safety/other person(s) in the workplace (Article 6.2(a)); to identify and record the areas with high risk in the enterprise (Article 6.2(c)); not to allow an employed person (s) and / or other person (s), who is under the influence of alcohol, drugs or psychotropic substances and for this purpose determine, pursuant to the internal regulation, a group of employees and/or other persons who shall be entitled to supervise this process (Article 6.2(i)).

One of the main innovations in the draft law is the concept of a labour safety specialist. According to the draft law, an employee shall be obliged to appoint one or more of the employed persons as labour security specialists or create an office for that purpose (Article 7.1). The Labour Safety Specialist must have passed a relevant accredited program. The volume of the program, as well as the terms and conditions for its implementation shall be determined by the Minister of Labour, Health and Social Affairs of Georgia (Article 7.6).

An employer shall also be obliged to conduct consultations with the representatives of employee when deciding on the labour safety-related issues. Employees shall elect a representative of employees in labour safety issues for the purpose of conducting consultations, effective cooperation and communication on employment security issues between employers and employees. The rule of choice of a representative of employees in labour safety issues shall be defined by the Government of Georgia (Article 9).

The draft law defines the rights of employees, in particular the employee shall have the right to review all the labour safety-related issues for the performance of works with the employer; also, request to invite experts of this field for such discussion, on mutual agreement; in accordance with the legislation of Georgia, receive compensation for the damage caused on the workplace; on the basis of medical conclusions, request the employer to move to another permanent or temporary work place or relieve working conditions, as well as change to a day shift if the night shift is harmful for the health of the employee where the employer has appropriate vacancies and the employee meets the requirements for this vacancy (Article 10).

In turn, an employee shall be obliged to follow the instructions, legal norms and other regulations relating to labour safety and to comply with the procedures established by the employer; ensure the registration, investigation and reporting of accidents at work space (Article 11).

The draft law on Labour Safety imposes important functions to the Social Partnership Tripartite Commission, in particular, the Commission shall: a) develop proposals and recommendations on the state security policies and programs regarding labour safety; b) consider the draft of documents related to labour safety issues and develop relevant recommendations; c) exercise other powers defined by the Statute of the Social Partnership Tripartite Commission (Article 16.3).

The draft law does not specifically define a supervising body responsible for the observance of labour conditions, but determines that the aforementioned body shall: a) control the enforcement and application of labour safety legislation, as well as examine and register the accidents at work place according to the rules envisaged by the legislation; b) the functions, rights, obligations and structure of the supervisory body shall be determined by its statute, in compliance with the legislation of Georgia (Article 16.4).

The following administrative penalties shall be applied for violating of the obligations under this draft law: warning, fines, suspension of activity. In case of warning or fines, a protocol shall be set out and the case shall be considered by a competent service of the Ministry of Labour, Health and Social Affairs of Georgia. In case of suspension of the right to activity, a protocol shall be formalized by an authorized person of the Ministry of Labour, Health and Social Affairs of Georgia and a decision on suspension of the right to activity shall be approved by the court (Article 18.1, 18.2, 18.3).

The draft law describes in detail the process of suspension of work. In case of urgent necessity, a relevant service of the Ministry of Health shall be entitled to suspend the work process and send the decision to the court for approval within 24 hours if there is an obvious and substantial threat to the life and/or health of the employed or third person due to the vulnerability of labour safety. This decision shall remain in force until the removal of the respective violation. For the purposes of this Law, additional criteria for assessing the obvious and substantial threat (critical inconsistencies) may be determined by the Government of Georgia (Article 18.4, 18.5).

The draft law shall determine the amount of fines, if an employer does not register its activities in the public registry (500 GEL, 1000 GEL); prevents the execution of activities of the supervising body (warning, 200 GEL); violates labour safety norms (warning, 50 GEL, 2000 GEL, 5000 GEL) (Article 19, 20, 21).

FLAWS

This draft law was criticized by human rights defenders for several reasons. One of the main remarks concerns the rule of suspension at the time of critical inconsistencies. In the opinion of the Public Defender, during critical inconsistencies an authorized person shall have the authority to suspend the activity of an enterprise and there must be no need for approval of this decision by the court. According to the Public Defender, the amount of penalties for violations is very small and does not serve the purpose of preventing violations. In addition, the draft law must indicate that the payment of fines does not free a violator from the obligation to eradicate the violation.⁹⁰

Has the government put in place corporate and securities laws and regulations to support ethical corporate behavior and business respect for human rights, such as through financial reporting, incorporation/registration, and stock exchange listing requirements?

APPLICABLE LEGISLATION

Corporative Law, more specifically, the Law on Entrepreneurs⁹¹ does not define the issues relating to ethical business conduct or business respect for human rights, including at the stages of reporting, registration or other stages. However, in accordance with Article 3(6) of the Law, the partners of such legal entities whose liability is limited by the property of the enterprise shall be liable if they misuse the legal forms of limitation of liability (so called transparent liability principle).

As regard to discussing this issue in the court practice, the Supreme Court explained that this provision is broadly defined and includes not only misuse of the corporate form of limitation of liability (e.g., using a corporation as an “instrument” for achieving partner’s objectives;; “non-observance of corporate formalities”; existence of a corporation as of a partner’s “alter ego”), but also misuse of limited liability as of the element of responsibility that means using the partner’s privilege for the limitation of liability solely for having a detrimental effect on others’ interests and transferring of their own economic risks and losses to the other through misleading deliberately the creditor.⁹²

On the other hand, the Corporative Law is aware of the types of business entities whose responsibilities are not limited to the property of the enterprise and its owners are also responsible (e.g., a joint liability company). Such subjects are liable to the creditors by the property of the owners. Although the Corporative law is not familiar with the cases of sentencing for human rights violations, but in case of civil dispute against them including the restoration of individual rights (labour rights, compensation for health or property damages, etc.), a disputing party may be defined as a creditor by a court and a liability may be imposed on a private subject against a natural person (for the most part expressed in material form).

The Law of Georgia on Entrepreneurs provides corporate governance issues and in this regard defines the following obligation for the manager of an enterprise: the persons authorised to supervise shall conduct the company’s business in good faith. In particular, they shall take care as an ordinary person of sound mind in a similar capacity and under similar circumstances would, acting in the faith that their action is in the best interests of the company. If they fail to fulfil that obligation, they shall be jointly and severally liable for damages incurred by the company, with all their assets, directly and proximately.⁹³ This norm does not mean that human rights are taken into consideration in

⁹⁰ Public Defender of Georgia, Proposal on the Law of Georgia on Labour Safety and the Project of Subsequent Amendments, pp. 3-4.

⁹¹ The text of the Law is available here: <https://matsne.gov.ge/ka/document/view/28408> [Last accessed on 8 May 2017].

⁹² See Decisions of 6 May 2015 of the Civil Chamber of the Supreme Court of Georgia on the cases Nar-1307-1245-2014 and Nar-1158-1104-2014.

⁹³ Article 9.6 of the Law.

the process of the business subject management and requires maximum respect for the interests of the corporation on the part of its supervisor. Management “in good faith” is defined in the Law as the most favourable action for the public (corporation). However, this does not exclude to consider the respect of human rights as the most favourable for the corporation.

It must be noted hereby that the national legislation of Georgia includes the Law of Georgia on Control of Entrepreneurial Activity. In accordance with Article 2(1)(b) of the Law, control over entrepreneurial activity is an activity of the state bodies, local self-government bodies, and other administrative bodies regulated by the legislation of Georgia, which is intended to inspect financial and economic activity of an entrepreneur and to verify performance of the obligations imposed on it, as well as to determine if the activity of an entrepreneur complies with the legislation of Georgia and detect violations in the activity or impose an appropriate sanction. Except for the cases as provided for by law, in accordance with Article 3, a controlling body shall be authorized to control entrepreneurial activities only by an order of the judge. The procedure for reviewing and solving the matter of issuing an order on verification of entrepreneurial activities is determined by Chapter VII1 of the Administrative Procedure Code of Georgia. In addition, the judge shall issue an order only if the controlling body submits the relevant information with the substantiated and grounded doubts about the violation of legislation requirements by an entrepreneur.

According to Article 6 of the Law, a controlling body shall be obliged, before January 25th of each year, to submit an annual report to the President of Georgia, the Government of Georgia and the Parliament of Georgia on motions submitted to the courts to issue orders, the number of orders issued by courts, and the results of inspections conducted on the basis of the issued orders during the previous year. In addition, the Committees of Legal Issues, Legal and Administrative Reforms, Sector Economy and Economic Policy of the Parliament of Georgia shall be assigned, based on the transitional provisions, to prepare within three months after the enactment of this Law (after 2001) a draft law on the rule of separation and control of controlling bodies, together with the relevant bodies of the executive Government. However, according to the information collected during this survey, the practice of submitting an annual report cannot be detected and the above mentioned rule has not been elaborated as well. Thus, if regulation of issues related to ethical business conduct or respect for human rights by business is a constituent part of the Corporate Law as well, then its control shall be possible according to the Law of Georgia on Control Entrepreneurial Activity.

As regards the state policy documents in the business sector as mentioned above, one of the priorities of the Small and Medium Entrepreneurship Development 2016-2020 Strategy of the Government of Georgia is the promotion of Responsible Business Conduct (RBC) in order to raise awareness on this issue in the private sector.

The regulations for the persons determined by the Law of Georgia on Securities Market shall be mentioned separately.⁹⁴ An enterprise accountable under this law shall be deemed to be a legal entity founded in accordance with the Law on Entrepreneurs, which issues public securities (except for fully securitized securities). This Law defines the rules of the stock exchange and establishes the obligation of the Code of Ethics, as well as the determination of the Depository Rules for the protection of these norms. The Code of Ethics adopted by the General Meeting of the members-stockholders of JSC Georgian Stock Exchange serves mostly to ensure confidentiality of financial information, conflict of interest and information about clients.⁹⁵

FLAWS

The Corporate Law of Georgia does not acknowledge any business obligation for business subjects to respect human rights. The matter of honesty, which is one of the principles of corporate governance, does not include an obligation to consider human rights neither in legislation nor in recommendation, including in court practice and is largely understood as a commitment to carry out more profitable activities for business. The norms established for the enterprises operating on the stock exchange also provide a small amount of obligation for such companies and

⁹⁴ The full text of the Law is available here: <https://matsne.gov.ge/ka/document/view/18196> [Last accessed on 8 May 2017].

⁹⁵ Available here: http://www.gse.ge/downloads/rules_geo/Ethics.pdf [Last accessed on 8 May 2017].

mostly serve to protect the financial interests and confidentiality of clients.

It must be also noted that in the Law of Georgia on Insolvency Proceedings there is a sequence set for satisfying the claims of creditors during insolvency proceedings. This sequence does not specifically include issues such as debts arising from labour relations or social responsibilities or compensation for damage to life and health. Such issues may fall into the fourth order if they are secured in the procedural form or into the sixth order if they are not secured.⁹⁶

Has the government put in place tax laws and regulations to support ethical corporate behavior?

Tax relations in Georgia are governed by the Tax Code of Georgia, which is effective from 1 January 2011 and subordinate acts adopted on its basis. No amendments were made to the legislation of Georgia aiming at supporting corporate conduct. It must also be noted that the Tax Code contains the possibility of imposing tax benefits, which implies preference to individual taxpayers in comparison with other taxpayers, in particular the possibility to pay less tax or be exempt from tax.⁹⁷ Article 82(2) of the Tax Code of Georgia establishes the grounds for exemption from taxes in case of income received by a natural person based on social condition and status of individuals. In particular, income tax shall not be levied on taxable income up to GE 3 000 earned by the following natural persons during a calendar year: a) citizens of Georgia who participated in World War II and the battles for the territorial integrity of Georgia; b) a person awarded with an honorary title of “Kartvli Deda (Mother of Georgia)”; c) a single mother; d) a person who has adopted a child (for one year adoption); e) a person who has taken a child under foster care; f) the salary taxable income received from a budgetary organization in a high-mountain settlement during a calendar year by a person with many children (having three and more dependent children under age 18) who resides permanently in that settlement. Income tax on the taxable salary income of up to GEL 3 000 received from a budgetary organization in a high-mountain settlement during a calendar year by a person with one or two children (having one or two dependent children under age 18) who resides permanently in that region shall be reduced by 50%. In addition, taxable income of up to GEL 6 000 earned during a calendar year shall not be taxable for the following physical persons: a) persons with disabilities from childhood, as well as persons with severe and persistent disabilities; b) persons who suffered serious health consequences while participating in maintenance of international peace security and restoration operations or other peacekeeping activities in accordance with the Law of Georgia on Participation in the Peaceful Operations of the Georgian Armed Forces; c) income earned by a person holding a permanent resident status in a high mountain settlement, other than the salary income received from a budgetary organization or a medical institution established by any state or local self-government body. Accordingly, these tax benefits enable an employer, who represents the tax agent withholding at the source, to reflect the benefits in his/her employment policies, in particular encouraging the employers - persons with income tax benefits.

According to Article 9 of the Tax Code, economic activity does not include charitable activities. Accordingly, an organization with charitable activity status shall not be taxed. According to the applicable legislation, a charitable enterprise does not receive any tax benefit from these activities except for the cases where the charitable donation is granted to the organization with a charitable status. Accordingly, pursuant to Article 117 of the Tax Code, the amount donated by an enterprise/entrepreneurial entity to a charitable organization shall be deducted from gross income, as well as the market price of goods (except for immovable property)/service supplied free of charge and included into gross income, but not more than 10% of the amount remaining after deductions under this Code from gross income.

The applicable legislation of Georgia envisages the possibility of writing off inventory items, which will accordingly decrease the value of the balance sheet and at the same time the inventory items having written off shall not be included in income and shall not be taxed by VAT.⁹⁸ In case, if the service or goods will be donated to the organization with no charitable status, its taxation shall be done at market value.

⁹⁶ The text of the Law is available here: <https://matsne.gov.ge/ka/document/view/23572?publication=25> [Last accessed on 17 2017].

⁹⁷ Tax Code of Georgia, Article 60(2).

⁹⁸ Annex#24 to the Order #994 of the Minister of Finance of Georgia of 31 December 2010 on Approval of the Rules of Proceedings for selecting a person carrying out tax control and implementing tax control, conducting current control procedures, writing off inventory items, implementing measures to ensure payment of tax arrears, as well as offences.

In addition to the above benefits, applicable tax legislation provides exemption from VAT taxes in the following cases: a) medical service, measures provided for health care programs; b) measures taken to care for sick, disabled and elderly people; c) supply and/or import of baby food products and hygiene products for children; d) teaching services for children and adolescents in circles, sections, studios, as well as maintenance services for pre-school institutions and homes for homeless children; e) supply and/or import of scientific literature, as well as educational textbooks and children's literature approved by the Ministry of Education together with the relevant committee of the Parliament; f) education services provided by educational institutions.⁹⁹

It must be noted hereby that the policy of the Government of Georgia somehow encourages the development of business corporate responsibility. Specifically, in accordance with amendments to the Tax Code made by the end of 2016, due to environmental policies, the excise rate defined by the tax code for cars for 0 - 6 years is reduced by 60% in case of hybrid motor cars. In addition, the Tax Code shall envisage more severe tax burden for older vehicles and those causing harm to environment. On the basis of these norms, ultimately it is more profitable for business to purchase such vehicles that are less damaging to the environment.

FLAWS

For the conclusion, the tax legislation does not include supporting corporate liability standards, but it contains regulations on the basis of which tax benefits are established on the one hand, based on the social status of taxpayers, and on the other hand, the tax benefits that refer to charitable activities carried out only in the specific form. Consequently, for the future it is important to review the existing norms regarding the charity carried out by entrepreneurial entities. Besides, an unethical activity of the business, as well as the forms of support and encouragement of corporate conduct by entrepreneurial entities must be discussed.

Has the government put in place trade laws and regulations to support the protection and promotion of human rights within trade practices?

Georgia is a member of the World Trade Organization since 14 June 2000.¹⁰⁰ Accordingly, it deals with trade with any country without discrimination (MFN treatment). There is a clear consensus between all member states of the WTO is that internationally recognized fundamental standards shall be protected in trade agreements, in particular freedom of association, prohibiting forced labour, prohibition of child labour and prohibition of discrimination in the workplace (including gender discrimination). The first agreement on the main labour standards was adopted by the Singapore Ministerial Declaration, which was published on 13 December 1996.¹⁰¹ Recognition of these standards was repeated announced by the Ministerial Declaration on 14 November 2001.¹⁰² However, this is the minimum standard for which the Member States of the Trade Organization has reached an agreement and does not include all the standards set by the International Labour Organization. Georgia is also a GSP regime beneficiary of the generalized system of the following countries: USA, Japan, Canada, Switzerland and Norway.

In 2009 Georgia stopped membership of the Commonwealth of Independent States but remained a member of the CIS 1994 multilateral Agreement on Free Trade Zone Creation, based on which maintained a free trade regime with CIS member states. Georgia has also signed free trade bilateral agreements with the CIS member state. In addition, a Free Trade Agreement with Turkey, as well as a Trade and Investment Framework Agreement with the United States have been signed, while signing of the same agreements with European countries as of 2015 was also planned.¹⁰³

⁹⁹ Article 8 of the Order #242 of the Minister of Finance of Georgia of 16 October 1997 on the Instructions for the Rule of Calculation and Payment of VAT.

¹⁰⁰ https://www.wto.org/english/thewto_e/countries_e/georgia_e.htm

¹⁰¹ Declaration is available at the electronic address, see the fourth paragraph: https://www.wto.org/english/thewto_e/minist_e/min96_e/wtodec_e.htm#core_labour_standards

¹⁰² Declaration is available at the electronic address, see paragraph 8: https://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm#para8

¹⁰³ World Trade Organization Report on Georgia's Trade Policy, 2015; paragraph 12. https://www.wto.org/english/tratop_e/tpr_e/s328_e.pdf

The Ministry of Economy and Sustainable Development in Georgia determines the state policy in the field of trade, as well as administers its implementation and coordination.

The Law of Georgia on Free Trade and Competition is worth mentioning as a part of the national legislation. The aim of the law is to remove the barriers for free trade and competition in Georgia, regardless of their organizational-legal and property forms, for natural and legal persons. Article 8 of the Law prohibits the state assistance in any form that hinders the competition or creates the threat of its delays, except as provided for by the Law. Implementation of competition policies, creation and protection of conditions to promote competition development in Georgia and for this purpose inadmissibility of all types of anti-competitive agreements and actions, their detection and prevention is the function of the Legal Entity of Public Law - Competition Agency of Georgia established under the ordinance of the Government of Georgia. It is noteworthy that in 2016 the Agency started to monitor the markets of following goods/ services along with other functions: the market of cigarette with filter and without filter, passenger air traffic market, hazelnut market, auto insurance market and baby food market. Since its foundation, the Competition Agency is actively cooperating with the Organization for Economic Cooperation and Development (OECD). Within the framework of the cooperation, the representatives of the Agency have the opportunity to take part in a number of international conferences organized by European experts, which helps to increase awareness of the staff of the Competition Agency and increases efficiency of its activities. The important issue is to raise public awareness about competition issues as well. Accordingly, during 2016 the Competition Agency, both with its resources and financial support of donors, has organized events of public awareness growth for various target groups. It must also be noted that the 2014-2017 Action Plan of the Competition Agency was approved in 2014, which also includes promotion, protection and development of free trade and competition.

The Government of Georgia has approved Georgia's social-economic development strategy "Georgia 2020" in 2014 which describes the priorities and problems that need to be solved to achieve long-term, sustainable and inclusive economic growth. In addition, achieving regional development is of great importance for achieving inclusive economic development.¹⁰⁴ According to the strategy, the economic policy of the Government of Georgia is based on three main principles. The first principle is to ensure a fast and efficient economic growth oriented towards the development of a real sector of the economy, which leads to solving the economic problems in the country, creation of jobs and poverty reduction. The second principle is employment of economic policies for inclusive economic growth, which implies the involvement of the whole population in the process of economic development (including diasporas, migrants, ethnic minorities and other groups), well being of each individual of the society as a result of economic growth, social equality and improvement of living conditions of the population. The third basic principle is the rational use of natural resources in the process of economic development, ensuring ecological safety and sustainability and preventing risks of natural cataclysms. The Government of Georgia recognizes the principles of democratic development, respect for human rights and fundamental freedoms, principles of rule of law and effective governance, on which is based its policies.¹⁰⁵ The implementation of the Strategy is taken into account by the Administration of the Government of Georgia through preparing reports on the assessment of interim situation (2017) and the final results (2020).

The Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part was signed on 27 June 2014 in Brussels, with includes the Deep and Comprehensive Free Trade Area (DCFTA) Component. The Parliament of Georgia carried out the ratification of the document on 17 July 2014. The largest part of the Association Agreement, including the Deep and Comprehensive Free Trade Area (DCFTA) of the Association Agreement came into effect from 1 September 2014. The Agreement fully entered into force on 1 July 2016 after all Member States ratified it. In June 2014 Georgia and the EU agreed on the Association Agenda, which sets the priorities of the implementation of liabilities for 2014-2016 under the Georgia-EU Association Agreement and the Deep and Comprehensive Free Trade Area component (see attached document). The Government of Georgia is implementing the Association Agreement and Association

¹⁰⁴ Ordinance N400 of the Government of Georgia of 17 June 2014 on Approval of Socio-economic Development Strategy of Georgia "Georgia 2020" and some of its related activities. Available at the following email address: http://gov.ge/files/382_42949_233871_400-1.pdf

¹⁰⁵ *ibid.* p. 4

Agenda on the basis of Annual National Action Plan. The progress of implementation of the 2014 National Action Plan by Georgia was positively assessed at the first meeting of the Association Council which was held on 17 November 2014. The National Action Plan for 2015 for the Agenda Agreement and Association Agreement between Georgia and the European Union was approved by the Government of Georgia under Decree #59 of 26 January 2015 (see attached document).

The Association Agreement is based on the following basic principles: democratic principles, respect for human rights and fundamental freedoms, rule of law and good governance principles. Parties also undertake to combat corruption and various forms of transnational organized crime and terrorism, promote sustainable development, effective multilateralism and fight against the spread of weapons of mass destruction and its supply.¹⁰⁶ Section 4 of the Association Agreement regulates trade and issues related to trade dealing with trade of goods between the parties. In general, the Agreement provides for gradual approximation of the legislation of Georgia with up to 300 EU legal acts. There are the norms for human rights protection given in the different provisions of the Agreement, namely:

(i) In accordance with Article 50, Chapter IV of Section 4 aims to facilitate trade in commodities covered by sanitary and phytosanitary measures, including all measures listed in Annex IV to this Agreement, at the same time to protect human, animal or plant life or health by: (a) ensuring full transparency as regards measures applicable to trade, listed in Annex IV to this Agreement; (b) approximating the Georgian regulatory system to that of the Union; (c) recognising the animal and plant health status of the Parties and applying the principle of regionalisation; (d) establishing a mechanism for the recognition of equivalence of measures maintained by a Party, listed in Annex IV to this Agreement; (e) continuing to implement the SPS Agreement; (f) establishing mechanisms and procedures for trade facilitation; and (g) improving communication and cooperation between the Parties on measures listed in Annex IV to this Agreement.

(ii) Articles 301-306 of the Agreement concerns environmental issues, in particular, the Parties shall develop and strengthen their cooperation on environmental issues, thereby contributing to the long-term objective of sustainable development and greening the economy. It is expected that enhanced environment protection will bring benefits to citizens and businesses in Georgia and in the EU, including through improved public health, preserved natural resources, increased economic and environmental efficiency, as well as use of modern, cleaner technologies contributing to more sustainable production patterns. The cooperation is aimed at the quality of the environment preservation, protection, improvement and rehabilitation, human health, natural resources and use of international efforts to promote regional environmental and global problems to deal with, including in areas such as: (a) environmental governance and horizontal issues, including strategic planning, environmental impact assessment and strategic environmental assessment, education and training, monitoring and environmental information systems, inspection and enforcement, environmental liability, combating environmental crime, transboundary cooperation, public access to environmental information, decision-making processes and effective administrative and judicial review procedures; (b) air quality; (c) water quality and resource management, including flood risk management, water scarcity and droughts as well as marine environment; (d) waste management; (e) nature protection, including forestry and conservation of biological diversity; (f) industrial pollution and industrial hazards, and (g) chemicals management.

(iii) Articles 307-312 of the Agreement list climate-related actions under which the Parties shall develop and strengthen their cooperation to combat climate change. Cooperation shall be conducted considering the interests of the Parties on the basis of equality and mutual benefit and taking into account the interdependence existing between bilateral and multilateral commitments in this area. Cooperation shall aim at mitigating and adapting to climate change, as well as promoting measures at international level, including in the areas of: (a) mitigation of climate change; (b) adaptation to climate change; (c) carbon trading; (d) research, development, demonstration, deployment and diffusion of safe and sustainable low carbon and adaptation technologies, and (e) mainstreaming of climate considerations into sector policies.

¹⁰⁶ The Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, on the other part, Article 2. The Agreement is electronically available at the following address: http://www.eu-nato.gov.ge/sites/default/files/AA_BodyText%20%2810%29.pdf

(iv) Articles 345-347 of the Agreement provides for the provisions aimed at ensuring a high level consumer protection. In order to achieve these objectives the cooperation may comprise, when appropriate: (a) aiming at approximation of consumer legislation while avoiding barriers to trade; (b) promoting exchange of information on consumer protection systems, including consumer legislation and its enforcement, consumer product safety, information exchange systems, consumer education/awareness and empowerment, and consumer redress; (c) training activities for administration officials and other consumer interest representatives, and (d) fostering the activity of independent consumer associations and contacts between consumer representatives.

(v) Articles 348-354 of the Agreement apply to employment, social policy and equal opportunity. In particular, the Parties shall strengthen their dialogue and cooperation on promoting the Decent Work Agenda, employment policy, health and safety at work, social dialogue, social protection, social inclusion, gender equality and anti-discrimination, and corporate social responsibility and thereby contribute to the promotion of more and better jobs, poverty reduction, enhanced social cohesion, sustainable development and improved quality of life. In accordance with Article 352, Georgia has undertaken to promote to corporate social responsibility and accountability, and encourage responsible business practices.

(vi) Articles 355-357 of the Agreement regulate cooperation in the field of public health; in particular, the parties agree to develop their cooperation in the field of public health, with a view of to raising the level of public health safety and protection of human health as an essential component for sustainable development and economic growth.

(vii) In accordance with Article 360 of the Agreement, the Parties agree to cooperate in the field of youth to: (a) reinforce cooperation and exchanges in the field of youth policy and non-formal education for young people and youth workers; (b) support young people and youth workers' mobility as a means to promote intercultural dialogue and the acquisition of knowledge, skills and competences outside the formal educational systems, including through volunteering; (c) promote cooperation between youth organisations.

(viii) Cooperation in the audiovisual and media fields is included in Articles 364-367 of the Agreement. The Parties shall develop a regular dialogue in the field of audiovisual and media policies and cooperate to reinforce independence and professionalism of the media, as well as links with EU media in compliance with relevant European standards, including standards of the Council of Europe and the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions of 2005. And in accordance with Article 366, the Parties shall concentrate their cooperation on a number of fields: (a) dialogue on audio-visual and media policies; (b) dialogue in international fora (such as UNESCO and WTO), and (c) audio-visual and media cooperation including cooperation in the field of cinema.

The 2016 National Action Plan for Implementing the Association Agreement and Association Agenda was approved by the Government of Georgia under Decree No. 382 of 7 March 2016. The following activities were carried out by the Government of Georgia during 2016 in terms of obligations under the Association Agreement.¹⁰⁷

The Association Agreement between Georgia and the European Union were fully enforced since 1 July 2016. Accordingly, the articles related to the following areas of the Agreement have been fully enacted: Foreign and Security Policy, Personal Data Protection, Cooperation on Migration, Asylum and Border Management, Organized Crime and the Fight against Corruption, Money Laundering and Terrorism Financing, Public Finance Management and Financial Control, Transports, Environmental Protection, Corporate Law, Accounting, Audit and Corporate Governance, Education, Health Care and so on. Since 1 July 2016, the remaining two annexes of the Agreement are effective as well

¹⁰⁷ Report on the implementation of the 2016 National Action Plan for the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, on the other part, and Association Agenda between Georgia and the European Union, the text is electronically available at the following address: <http://www.eu-nato.gov.ge/sites/default/files/AA%20NAP-2016-%E1%83%9B%E1%83%9D%E1%83%99%E1%83%9A%E1%83%94%20%E1%83%90%E1%83%9C%E1%83%92%E1%83%90%E1%83%A0%E1%83%98%E1%83%A8%E1%83%98---%2B.pdf>

relating to the cooperation between education and youth, as well as in the audiovisual and media fields.

The 2017 National Action Plan for Implementation of the Deep and Comprehensive Free Trade Area Agreement between Georgia and the European Union was approved under Order #1-1/712 of the Minister of Economy and Sustainable Development of Georgia on 30 December 2016. DCFTA web-portal www.dcfta.gov.ge, created by the Ministry of Economy and Sustainable Development of Georgia in cooperation with Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) was launched on 19 June 2017, which covers all information related to DCFTA, including information about international support, the possibilities for business offered under the DCFTA, as well as information on coordination of the implementation of the Agreement and other innovations. The portal shall also provide information on the approximation of legislation within the DCFTA. A special function is also integrated into the portal that allows commenting on the draft law or subordinate normative act drafted within the DCFTA.

In the first half of 2017 LEPL “Produce Georgia” actively continued to raise awareness of beneficiary entrepreneurs and representatives of export-oriented companies on DCFTA issues. During this period, more than 40 beneficiaries had been consulted about the requirements/liabilities and planned activities envisaged by the DCFTA, as well as export opportunities in the European Union.

With the support of the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), the website www.een-georgia.ge and Facebook page “Enterprise Europe Network Georgia” is still under improvement to increase its efficiency. As of the first half of 2017 two partnership agreements have been signed between Georgian and European companies and in addition, business proposals of three Georgian companies have been placed in the Intranet of European Entrepreneurs, with the support of LEPL “Produce in Georgia”.

Based on the recommendations of the experts of EU-funded technical assistance project and the strategy of market surveillance of industrial products approved by the Government of Georgia, draft amendments for the Code of Product Safety and Free Movement has been prepared, which aim to establish a market surveillance system for industrial products in Georgia in accordance with the best European practices.

Within the II stage of the CIB program, reference laboratories were equipped with sample measurement tools. The initial training about working with equipment installed by the supplier was conducted for the following laboratories: radiation metrology, small volumes, power, pressure, acoustic measurements, temperature, electricity, humidity, radio-physical measurements, time and frequency, geometric measurements, optics, mass, large masses – weighing instruments and weigh scales.

In total 1095 European and International Standards were introduced in Georgia during the first half of 2017. These include: 26 International (ISO, IEC) Standards, 1068 European (EN) Standards and GES (Georgian Standard) - 1. At this stage more than 11 000 international and European standards have been accepted as the Georgian Standards.

On 23 May 2017 a bilateral recognition agreement was signed at the EA General Assembly which means that compliance assessment documents (certificates and laboratory test protocols) issued by the accredited organizations in Georgia are internationally recognized. For example, it is worth mentioning that now in Georgia it is possible for an entrepreneur to receive a certificate recognized in the EU for the following products: fruits, vegetables, canned fruits and canned vegetables and other food products, mineral and potable water, non-alcoholic beverages, alcoholic beverages, colour and precious metals, oil and oil products, chemical industry products, furniture, calibration of measuring means and others.

The legislative approximation in the sanitary and phytosanitary sphere includes 19 legal acts of the European Union in 2017, as a result of which in the first six months the harmonization have been implemented with the three legislative acts of the European Union, and the five draft resolutions have been prepared.

As a result of the reforms implemented by the Government of Georgia, by 2017 Georgia is included in the list of third countries, from where honey, wool, as well as fish and fish products of the Black Sea may be imported in the EU.

It was agreed at a meeting of the Subcommittee under the Association Agreement held in May 2017 that the cus-

toms legislation of Georgia would be closer to the Customs Code of the Union (Union Customs Code), according to which the existing draft of the Customs Code will be reviewed. Currently, the process of accession to the conventions on Common Transit Procedures (CTC) and Simplification of Formalities in Trade in Goods (SAD) is underway. The working group created for this purpose has developed an appropriate guide and is developing the changes in the legislation of Georgia along with the development of the relevant IT infrastructure. Also, the Institute of Authorized Economic Operators has been introduced in Georgia as a result of relevant legislative amendments which shall enter into force in September 2017. The legislation is in the process of perfection with the support of the USAID G4G project. The work is also continuing on the introduction of a preliminary information/passenger personal data exchange system for air passengers. The respective draft amendments to the Tax Code of Georgia with the necessary provisions for the implementation of the system have been prepared. At the current stage the project is discussed by the Parliament.

For the purpose of gradual approximation of the legislation of Georgia with the EU legislation regarding the enforcement of intellectual property protection at a customs house, an in-house work group was created in the Revenue Service within which the differences between the two legislations were established. The working group prepared a draft amendment to the Law of Georgia on Border Measures Related to Intellectual Property. At the given stage, the draft law is under internal review. The package of legislative amendments for intellectual property regulatory legislation developed in accordance with the liabilities taken under the Association Agreements has been sent to the Parliament of Georgia. Currently, the draft law is under discussion with the first reading. For the purpose of raising public awareness, LEPL National Intellectual Property Centre of Georgia- Sakpatenti continues to hold seminars and workshops. Sakpatenti is actively engaged in organizing trainings for judges and lawyers on issues related to intellectual property rights. The 3rd International Conference “Georgia against Counterfeiting and Piracy” was held on 20-21 July 2017 in Batumi, which aims at strengthening public and private sector dialogue with regard to the fight against counterfeiting.

The EU Directive (2000/31/EC) and the legislative basis of the European countries on e-commerce was studied and worked out, based on which and with the assistance of USAID “Governing for Growth” (G4G) project a draft law of Georgia on e-commerce was developed. The remarks received from the public institutions were processed and the draft law was improved, as well as the presentation and detailed discussion of the draft law for the private and public sectors was held in September. In addition, the English version of the draft law was prepared and sent to the EC and World Bank experts for comments.

The two-year project “Support of the Competition Agency of Georgia” within the European Technical Assistance was launched by the Competition Agency which aims to increase the efficiency of the legal, economic and technical capabilities of the Competition Agency, ensuring the proper implementation of competition policies, by the Agency in compliance with the EU best practices and DCFTA’s provisions.

Quality rules for gas commercial services have been approved, which aims to improve the commercial quality of the services provided by an enterprise in the energy, natural gas and water sector. As a result of the second simulation of the electric power market model conducted under the USAID “Governing for Growth” (G4G) project the challenges were identified for transition to the hourly based and liberal market. The Oil and Gas Corporation has developed a final document of the ten-year (2016-2025) Development Plan of the Natural Gas Transportation Infrastructure and its updated edition (2017-2026).

Has the government put in place law to support disclosure and reporting by corporations on human rights, labor rights, environmental impacts, corporate social responsibility, or other ethical issues?

APPLICABLE LEGISLATION

In the legislation of Georgia there is an obligation for persons responsible for the management of corporation to submit financial statements to the owners (in accordance with the Law on Shareholders or Stockholders), on the one hand and to the stock exchange or the National Bank according to the subject, based on the Law on Securities Market, on the other hand.

It is noteworthy hereby that state enterprises are legal entities of private law under the legislation of Georgia. Legal entities of private law are treated as public institutions only in case of financing from state or local budget, within such funding.¹⁰⁸ The enterprises based on the state share participation are accountable to the partner and the tax authority in accordance with the applicable legislation.

It must also be noted that the General Administrative Code of Georgia shall establish that it is inadmissible to conceal the information that is not a state, commercial secret and personal data (Article 42). Commercial secret shall be “information on a plan, formula, process, or means of a commercial value, or any other information used for manufacturing, preparing, processing of goods or rendering services, and/or is a novelty or a significant result of technical activity, as well as other information that may prejudice the competitiveness of a person if disclosed (Article 27².1). In addition, a commercial secret is not automatically considered to be closed and it must be classified on the basis of an application submitted by a subject (e.g. a business subject).

It is important to note the 2016-2017 Action Plan developed by the Government of Georgia within the framework of the Open Government Partnership (OGP), which provides Georgia’s commitments to overcome existing challenges.¹⁰⁹ One of the challenges of the State is to improve corporate liability and to meet the respective obligations; developing a guide for economic agents, developing and implementing the quality control program of commercial services, as well as submitting electronic accounts by companies and proving access to the accounts. A leading institution - Georgian National Energy and Water Supply Regulatory Commission is responsible for the implementation of these obligations and the actions to be carried out under these obligations are applicable to the companies operating in this area – for electricity and natural gas distribution licensees, water licensees, as well as gas providers and deals with the protection of individual rights of consumers.

FLAWS

Legislation does not define business reporting on human rights, labour rights, corporate social responsibility or other ethical issues. Reporting on environmental issues is not proactively established as well, however, due to the obligation of access to information a business entity is obliged to provide information about the environment status.

The Action Plan approved by the Government of Georgia within the Open Government Partnership applies only to one sector of business – reporting by electricity and natural gas distribution licensees, water supply licenses and natural gas suppliers.

As for the enterprises set up with state’s participation, no statutory obligation envisages reporting on human rights or ethical business conduct.

It must also be noted that the results of inspections carried out by the Department of Labour Conditions Inspection of the Ministry of Labour, Health and Social Affairs of Georgia approved by Order N01-10/M of 21 April 2015 of the Minister of same Ministry are not public neither for public nor the interested parties (see response to the indicator on Health and Safety in the same Principle 1.5 in addition to the inspection of labour conditions).

Has the government put in place laws and regulations to support the incorporation of human rights considerations into the procurement by the State of goods and services from the private sector?

The law on State Purchases,¹¹⁰ as well as the normative acts on different procurement procedures adopted by the Chair of the State Procurement Agency under this Law do not include an obligation to take human rights issues into account during procurement procedures before and after the selection of suppliers.

¹⁰⁸ General Administrative Code of Georgia. Chapter 3. The text of the Law is available here: <https://matsne.gov.ge/ka/document/view/16270> [Last accessed on 8 May 2017].

¹⁰⁹ Ordinance N539 of the Government of Georgia, dated 9 December 2016 on Approval of the Action Plan of the Open Government Partnership for Georgia 2016-2017.

¹¹⁰ Full text of the law available here: <https://matsne.gov.ge/ka/document/view/31252> Other normative documents related to this law are also available [Last accessed on 8 April 2017].

INITIATIVE

It must be noted that Chapter 8 of the Association Agreement absolutely deals with public procurements and envisages gradual approximation of public procurement legislation of Georgia to the EU legislation based on the principles of public procurement in the EU, as well as the terms and definitions given in the Directive 2004/17/EC of the European Parliament and the Council of 31 March 2004 on coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors. Georgia must implement the gradual approximation to the EU legislation up to 2024.

Has the government put in place laws and regulations aimed at promoting anti-bribery and combatting corruption within and across governments?

APPLICABLE LEGISLATION

The legislation of Georgia is quite extensive in terms of combating corruption. It must be noted that Georgia is a signatory to the UN Convention on Fight against Corruption (UNCAC), Criminal and Civil Law Conventions of the Council of Europe. These conventions shall determine the definition of corruption and state obligations in the fight against it.

The provisions of the Association Agreement must also be noted separately. The political part of the Agreement includes several important declarations and obligations in terms of corruption. First of all, it must be emphasized that the preamble of the Association Agreement expressly indicates the willingness of the Parties to cooperate in different areas for development of Georgia, including the fight against corruption, which is essential for effective implementation of the Agreement and the European Union expresses its readiness to support Georgia's relevant reform process.

The Parties also undertake to "commit themselves to the rule of law, good governance, the fight against corruption, the various forms of transnational organized crime and terrorism, as well as the promotion of sustainable development" (Article 2(4)).

The Association Agreement further clarifies the obligations of the Parties to cooperate in the fight against organized crime and corruption in Article 17 of the Agreement, and points out that cooperation must take place in a variety of crime prevention and the fight against illegal acts, including illegal economic and financial activities, such as counterfeiting, fiscal fraud and public procurement fraud; embezzlement in projects funded by international donors; active and passive corruption, both in the private and public sectors.

The Criminal Code of Georgia is also aware of various corruption crimes,¹¹¹ including official misconduct such as bribe-taking, bribe-giving, influence peddling, commercial bribery, etc. They imply quite strict provisions.

The article on bribe-giving must also be noted separately which acknowledges the transfer of any property or benefits in any form by a private entity, including business, as a crime in order to take or not to take certain actions during the exercise of official powers or to exercise official patronage. This article includes so-called "kickback" (facilitation payment), as well as the requirement for patronage of any business operation. This article describes the definition of bribes of the UN Convention on the Fight against Corruption.

In the case of business subjects, corruption crimes are included in the category of white collar crimes. In this respect the unlawful appropriation or embezzlement of another person's property or property rights is particularly noteworthy (Article 182), as well as commercial bribery (Article 221), forgery by an official (Article 341), illegal entrepreneurial activity (Article 192) and legalization of illicit income (Article 194).

In order to prevent corruption in the business sector, it is important that they present regular reports. However,

¹¹¹ The Code is available here: <https://matsne.gov.ge/ka/document/view/16426> [Last accessed on 12 May 2017].

corporation law is not aware of a public financial reporting (except for the companies stipulated by the Law on Securities Market) and only requires a chairman to submit a report to shareholders. On the other hand, public-stock companies submit a report to the stock exchange, while financial institutions – to the National Bank of Georgia.

The restriction that a civil servant may not receive profit from the organizations the supervision of which is part of his/her official duties and an official may not be tasked with official supervision of the organizations where his/her family members hold managerial positions (Article 62) is important in the Law of Georgia on Public Service. The restriction of entrepreneurial activity also serves to restrict the use of official position for business interests (Article 63). Article 65 of the law serves to restrict the so-called “Revolving door”, which states that “a dismissed civil servant may not start work for three years after his/her dismissal at the institution or at the enterprise which was under his/her systematic official supervision during the past three years. In addition, he/she may not receive profit from such institution or enterprise during that time”. The Law also limits conclusion of individual deals, such as conclusion of a deal with his/her business entity, party, family members, etc. (Article 66).

On 27 October 2015 the Parliament of Georgia adopted a new Law on Public Service and a related package of legislative amendments confirming a civil service reform. The abovementioned legislation has largely entered into force from 1 July 2017 and has substantially changed many issues. As a result of the reform, the circle of individuals accountable in public service has been extended and more effective mechanisms for monitoring have been created, which enables the link between business sector and civil service to be effectively restricted, including exclusion of cases of “Revolving door”.

In terms of combating corruption, the legislation on procurement is worth mentioning, which is designed to eliminate corruption risks as much as possible. An electronic tender and identification of a winner only based on a price shall serve to this purpose.

The regulatory norms of lobbying activities are quite important in dealing with corruption, as risks are quite high in this area. That is why regulations must be properly formulated. The Law of Georgia on Lobbying Activities is applicable since 1998 and regulates the rule for registration of lobbyists and relationships that arise in lobbying activities. According to the definition of terms, a lobbying activity includes impact on representative and executive bodies for implementing legislative amendments (Article 2). Any citizen of the country may register as a lobbyist, except for several cases (Article 6). The Law defines certain restrictions on lobbyists in order to exclude such influence of the private sector on the state that shall become a corrupt act.

The Law of Georgia on Lobbying Activities does not regulate how the reports submitted by lobbyists are checked and does not establish an appropriate body for monitoring.

The Government of Georgia has adopted the National Anti-Corruption Strategy and the relevant Action Plan.¹¹² The Strategy reviews in detail the achievements of Georgia in the fight against corruption, as well as the challenges facing the country and describes future plans. The above mentioned document declares the political obligations undertaken by the Government of Georgia.

The National Anti-Corruption Strategy is based on the assessments of various international and local organizations and in accordance with the United Nations Convention against Corruption defines three directions: prevention of corruption, criminalization of corruption and international cooperation. It is worth mentioning that 13 spheres (priority and vulnerable spheres) are involved in the prevention of corruption, one of which is the prevention of corruption in the private sector.

The strategy expressly states that “corruption prevents economic growth of the country, as well as business development and investment growth in the country, which damage the most vulnerable and poor part of the population.

¹¹² The Strategy and Action Plan was approved by the Government of Georgia on 20 April 2015 under the Ordinance №170 on Approval of the Action Plan for National Anti-Corruption Strategy and Implementation of the National Anti-Corruption Strategy of Georgia for 2015-2016.

Besides, bribe-taking and bribe-giving, appropriation of state resources, conflicts of interest, influence peddling, cases of favouritism and nepotism undermine public trust towards public institutions and causes discontent with public services. Consequently, prevention of corruption, eradicating corruption practices in state and public institutions is one of the priorities of the Government of Georgia. Accordingly, the strategy that promotes the fight against corruption based on past experiences is created.

In addition to the National Anti-Corruption Strategy, a governmental program “For Strong, Democratic, United Georgia” also deals with the fight against corruption and represents another source of political commitments of the state.¹¹³ The program emphasizes the necessity of eradicating corruption, in particular “Elite corruption” and states that it shall be one of the priorities of the Security Service. It is also worth mentioning that the civil service reform is one of the parts of this program and stresses that the strong and effective mechanism for fighting corruption within the framework of the reforms shall be planned. It’s obvious that the governmental program is a general document and no detailed steps are formulated in it. However, it is important for the Government to fight against corruption and it indicates the seriousness of the issue for the country.

The “Roadmap 2020 of the Public Administration of Georgia” is also noteworthy, which stresses out issues relevant to corruption.¹¹⁴ It was drafted for establishing interim policy of the Government for implementing the duties derived from the Association Agreement between Georgia and EU.

Strengthening relevant institutions is one of the fundamental issues of the Association Agenda, which is supported by the National Action Plan approved by the Government of Georgia.¹¹⁵ The plan envisages the duties prescribed by the Association Agreement of fighting against active and passive corruption, including in the private sector, for this implementing the recommendations of the International Organizations (incl. OECD and GRECO) is planned.

With this regards the Convention of the EU on Corruption Involving Public Figures dated May 26 1997 is noteworthy, which strengthens legal cooperation for combating corruption by EU officials or member state officials. The main duty of the Convention is to criminalize corruption. The member states should adopt necessary measures, which would penalize actions of persons with decision-making power or of control over business power, in case the action involves making corruption deals with those, administering the business.

FLAWS

As a result of analysis of legislation, it is worth mentioning that regulations in terms of combating corruption are quite extended, including in the business-sector. However, the possible actions in the private sector require additional regulation.

In this regard, the Convention on the Organization for Economic Cooperation and Development (OECD) against bribery of foreign public officials in international business transactions is worth mentioning, which establishes legally restrictive frameworks for the Member States of the Convention and criminalizes the actions of the public officials of a foreign country who are engaged in bribery through international business transactions and represent mechanisms that effectively fight against this type of corruption. Convention against Bribery by public Officials during International Business Transactions is the first and unique anti-corruption document oriented towards “a supplier’s side” of corruption transactions. The Convention and its recommendations also define the rules of effective measures, as well as the specific steps to be taken to eradicate bribery in the international business. Unfortunately, Georgia is not

¹¹³ The program is available here: http://gov.ge/files/53185_53185_636375_mtavrobis_programa_27.12_.15.pdf [Last accessed on 25 April 2017].

¹¹⁴ The Roadmap is approved by the Ordinance of the Government N427 dated August 19, 2015 “On approving the Strategic Documents of Public Administration – “Roadmap 2020 of the Public Administration of Georgia” and “Policy Plannin System Reform Strategy 2015-2017”.

¹¹⁵ See Association Agenda Action Plans for 2015 and 2016 available here: <http://www.eu-nato.gov.ge/sites/default/files/AA%20National%20Action%20Plan%202015%20-%20Final%20GEO.pdf>
<http://www.eu-nato.gov.ge/sites/default/files/AA%20%E1%83%92%E1%83%94%E1%83%92%E1%83%9B%E1%83%90%202016.pdf> [Last accessed on 8 May 2017].

a party to this Convention, which may be considered as a defect. Furthermore, based on the Association agenda, Georgia has recognised different standards of the OECD and ratification of this Convention shall be an effective way to fight against corruption in the international business sector.

Has the government put in place laws and regulations aimed at protecting the rights of human rights defenders and/or whistleblowers?

APPLICABLE LEGISLATION

The UN Convention against Corruption calls for states to define measures to protect any person who in good faith and reasonably informs competent authorities about the facts related to corruption crimes (Article 33). In addition, the State has the obligation to take appropriate measures to provide information to the relevant authorities by the population (Article 13.2). Similar liabilities are envisaged by the Criminal Law Convention on Corruption of the Council of Europe.¹¹⁶ The obligation to protect whistleblowers is also provided for in Article 3(8) of the Aarhus Convention.

On the basis of amendments made to the Law on Corruption on 27 March 2009, the chapter on the protection of the whistleblowers is added (Chapter 5¹ of the Law).

Explanation of “disclosure” includes only “the violation by a public servant (disclosed person) of the legislation of Georgia or the general rules of ethics and conduct”, while the above mentioned international documents require protection of anti-corruption whistleblowers. Furthermore, the Civil Law Convention on Corruption of the Council of Europe states that “appropriate protection must be ensured against any unjustified sanction for employees who have reasonable grounds to suspect corruption and who report in good faith their suspicion to responsible persons or authorities” (Article 9).

Protection of whistleblower anonymity is prescribed by the Law (if an applicant does not explicitly express his/her identity, he/she shall remain anonymous). Such an approach is in line with international practice. However, the procedure of disclosure is problematic. The Law on Conflict of Interests and Corruption in Public Service relates whistleblowing in internal structure, as well as providing information to other authorities (including the Public Defender) to disclosure. According to the Law on Conflict of Interest and Corruption in Public Service, disclosure shall also be informing by a whistleblower of the public and mass media if relevant authorities make a decision. In case of inactivity or inefficiency of these authorities, a whistleblower shall not be protected.

FLAWS

Although international treaties oblige the State to protect a whistleblower when the whistleblower addresses specific bodies, but the best practices and recommendations of international organizations indicate the need to protect any person disclosing information.

Has the government put in place laws and regulations to ensure the protection of access to information, freedom of expression, privacy, and other information- and communication-based rights, online as well as offline?

APPLICABLE LEGISLATION

Access to information is defined by Article 41 of the Constitution of Georgia, which establishes the right of every citizen of Georgia to become acquainted with the information about him/her stored in state institutions, as well as official documents existing there unless they contain state, professional or commercial secret. In accordance with Article 20 of the Constitution, personal life of every person, place of personal activity, personal records, correspon-

¹¹⁶ Article 22 of the Convention obliges the parties to take adequate measures for effective and appropriate protection of persons report the criminal offences or otherwise cooperate with investigating or prosecuting authorities. The English text of the Convention is available here: <http://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007f3f5> [Last accessed on 23 March 2016].

dence, communication by telephone and other technical means, as well as messages received through technical means shall be inviolable.

The specific provisions of freedom of information are provided for in Chapter 3 of the General Administrative Code of Georgia, which establishes the rule of requesting information, the terms for receiving information and other conditions.¹¹⁷ The Law also defines the rules of requesting and receiving information in electronic form. It is noteworthy that the obligation to issue public information applies to all persons who have funding from the state budget and the information must be public within the scope of this funding. Proactive publication of information and relevant procedures are also defined.

The General Administrative Code explains a commercial secret in detail and personal information is defined in the Law on Personal Data Protection, while a state secret is defined in the Law of Georgia on State Secrets. It is noteworthy that a commercial secret is not considered as such until its secrecy is required by respective subject. In addition, the following information is considered as a commercial secret: “information on a plan, formula, process, or means of a commercial value, or any other information used for manufacturing, preparing, processing of goods or rendering services, and/or is a novelty or a significant result of technical activity, as well as other information that may prejudice the competitiveness of a person if disclosed”.

The Law on Personal Data Protection establishes rules for the use, processing, publication, storage and destruction of personal data for the protection of privacy.¹¹⁸ The Law envisages the obligations also for private persons and they are also obliged to follow the statutory principles. For example, video-recording has its preconditions and rules (on-site video surveillance system may be installed only in exceptional cases, if it is necessary for the security of persons and property protection, as well as for secret information protection purposes and if these objectives cannot be achieved by other means; video surveillance shall be inadmissible in cloak rooms and hygiene rooms, etc., as well as collecting biometric data without consent or in case of special needs (if it is necessary to perform activities, provide human safety and property protection, as well as to prevent disclosure of classified information, if these goals may not be achieved by other means or require unjustifiably great efforts), etc.

It is worth mentioning Article 8 of the Law on Personal Data Protection, which deals with the processing of data for direct marketing purposes. According to this norm, the data obtained from publicly available sources for this purpose is admissible without permission and a data subject may at any time require stopping data processing for that purpose, which must be satisfied within 10 working days. A marketing entity shall have the obligation to notify a marketing recipient about the right to terminate the request the rules.

The Law sets out large-scale obligations for individuals, including business subjects that process personal data and use them for different purposes, and in this way establishes certain obligations of business in order to protect private life.

FLAWS

It must be noted that the Law on Operative-Investigative Activities, which, really implies the rules for the State conducting investigative actions, still has an effect on the interaction of business and human rights.¹¹⁹ Also, the Law on Electronic Communications explains electronic communications and its means, as well as the ways of obtaining them.¹²⁰ The first Law provides for the procedure of bugging by the state on the communication made through telephone, internet or other technical means. Article 15 of the Law establishes that a lawful request of an agency carrying out operative-investigative activities shall be binding upon any natural or legal person. The provisions of the legislation allows to conduct surveillance in violation of the right to privacy,¹²¹ while business subjects, rendering

¹¹⁷ The text of the Code is available here: <https://matsne.gov.ge/ka/document/view/16270>.

¹¹⁸ The Law is available here: <https://matsne.gov.ge/ka/document/view/1561437> [Last accessed on 28 June 2017].

¹¹⁹ The text of the Law is available here: <https://matsne.gov.ge/ka/document/view/18472> [Last accessed on 28 June 2017].

¹²⁰ The text of the Law is available here: <https://matsne.gov.ge/ka/document/view/29620> [Last accessed on 28 June 2017].

¹²¹ [http://www.transparency.ge/sites/default/files/post_attachments Assessment of the legislation of Georgia on Surveillance according to ECHR standards.pdf](http://www.transparency.ge/sites/default/files/post_attachments%20Assessment%20of%20the%20legislation%20of%20Georgia%20on%20Surveillance%20according%20to%20ECHR%20standards.pdf) [Last accessed on 28 June 2017].

communication services do not have statutory power to ensure the protection of human rights and are obliged to comply with the requirements of an investigative body - to give them access to the communication means. Electronic communication identifiable data, which are obtained in the course of investigation activities, are the user's identifiable data; data needed for detection and identification of the source of communication; data required for identification of a communication addressee; data needed to identify the date, time and duration of communication, etc. These data represent the so-called "Metadata". The Law on Electronic Communications defines the means of obtaining communications, which between other instruments include information interception by a competent body upon communicating or completing it through temporary or permanent placement/installation of appropriate equipment and/or software at communication networks and/or other communication connectors. An electronic communications company is obliged to transfer an electronic communications identification data to a body carrying out an investigative or operative-searching activity based on a court ruling. In addition, in order to carry out covert investigative activities directly, without the technical and legal participation of an electronic communication company, a duly authorised state body shall be entitled to have a technical capability to obtain information in real time from physical lines of communication and their connectors. Consequently, the company does not have an opportunity to protect the privacy of its consumers - from electronic communication bugging by investigative authorities and legal instruments do not provide effective means of preventing arbitrariness.¹²²

INITIATIVE:

In 2014 the Ministry of Justice of Georgia developed a draft law on Freedom of Information aimed at regulating issues of access to information and access to information, including obtaining-disseminating information through technical means, although the draft law has not yet been passed at the parliamentary hearings. It must be noted hereby that 1.1.79 Activity of the First Schedule of the 2017-2018 Action Plan of the Human Rights and Civil Integration Committee of the Parliament of Georgia envisages consideration of the draft law on Freedom of Information with the accompanying legislative amendments at the 2017 Autumn Session.

Has the government put in place any other relevant laws and regulations aimed at protecting and promoting human rights from business-related harms, including torture, genocide, and crimes against humanity? Do such laws and regulations extend extraterritorially, as permitted by the UNGPs and international human rights law?

- Legislation on the protection of consumer rights

APPLICABLE LEGISLATION

Important issues in terms of the consumer rights protection are introduced in the Law of Georgia - Product Safety and Free Movement Code.¹²³ The Code covers the main issues, such as the protection of human life, health, property and the environment, safe product placement on the market and free movement, ensuring competition and facilitation in the process of product movement and its placement in the market and the market for the provision and promotion of competition, ensuring conformity of facilities with increased technical risk with the exploitation rules, etc.

The general issues on protection of consumer rights are also discussed in the Law of Georgia on Advertising, which regulates legal relations generated during the production, placement and distribution of advertising. The purpose of this Law is to promote healthy competition in the field of advertising, to protect public interests, as well as protect the rights of advertisers and consumers, prevent and avoid improper advertising. A restrictive measure envisaged by the Law is suspension of improper advertising by the Georgian National Communications Commission or counter-advertising.

¹²² See Position of the third sector for these regulations <http://www.tabula.ge/ge/story/117804-ra-aris-da-ra-safrtxebs-sheicavs-ets-mosmenebis-shesaxeb-axali-kanoni> [Last accessed on 28 June 2017].

¹²³ The text of the Law is available here: <https://matsne.gov.ge/ka/document/view/1659419> [Last accessed on 4 March 2017].

In terms of consumer protection, the Civil Code of Georgia must be noted.¹²⁴ The Civil Code establishes that the obligations shall be performed duly, in good faith, at the time and place determined.¹²⁵ The given general rule implies qualified performance, and the Code also provides for the cases of violation of time, compensation for damages, and other cases in general form. According to Article 336 of the Code, a contract concluded in the street, at the doorstep or in like places between a consumer and a person conducting sales within his/her trade shall be valid only if the consumer has not rejected the contract in writing within a week, unless the contract is performed upon its conclusion. It is noteworthy that existing legislation does not apply to remotely concluded agreements, and in case of a contract concluded in the street, a customer has right to refuse the contract within a week if he/she has not yet received goods or services. Whereas the goods or services offered to consumers are defective, Articles 487-493 of the Code determines the obligations of the Parties and gives the user the opportunity to return the goods and require the return of the payment.

The Law of Georgia on Licenses and Permits has some importance in terms of the protection of individual rights.¹²⁶ This Law shall regulate an organized activity or action concerning indefinite circle of persons, characterized by increased danger for human life or health, covering especially important state or public interests or related to use of state resources.

In terms of the protection of consumer rights, it is noteworthy that the legislation of Georgia is also familiar with the standards, accreditation and conformity assessment.

- Technical Regulations determine/define key safety parameters of a product, as well as production process. Technical Regulations (in the area where they exist) are intended to be binding;
- A standard is used for the performance of safety requirements and/or goals defined in the Technical Regulations. The standard may be related to a particular procedure, detail or other component. The use of the standard is not binding that allows an entrepreneur or other person to choose and apply the standard at his/her own discretion.
- The purpose of Conformity Assessment is to determine compliance with product standards or technical regulations. Conformity assessment is carried out by an accredited conformity assessor (private companies);
- Accreditation is the confirmation of competence of an accredited conformity assessor in the field where this person performs conformity assessment.¹²⁷

The legislation for food safety is important for life and health care, which primarily requires the registration of a business operator as of the business operator who is engaged in production and/or processing of food.¹²⁸ The Law also imposes obligatory requirements for such subjects and provides for inspection procedure. In case of non-compliance of the HACCP system, based on the principles of traceability and hazard analysis, as well as critical control points with the requirements of the Food Safety Code during inspection, from 1 January 2015 an inspector implementing inspection shall be fined and in case of on non-critical discrepancies – shall be offered recommendations. LEPL National Food Agency shall carry out scheduled or non-scheduled inspections in case of substantial suspicion. This regulation ensures, for example, the protection of certain standards of safety by the food facilities.

Regarding the registration and recognition as a business operator, the basics and consequences of these two actions must be emphasized. As noted above, all business operators engaged in the production and processing of food shall be obliged to register as such (in the National Agency of Public Registry). Recognition shall be implemented by the Food Safety Agency and an operator who fails to pass a recognition procedure shall not carry out activities.¹²⁹

¹²⁴ The text of the Code is available here: <https://matsne.gov.ge/ka/document/view/32476> [Last accessed on 24 March 2017].

¹²⁵ See Article 361, Part II of the Civil Code of Georgia.

¹²⁶ The text of the Law is available here: <https://matsne.gov.ge/ka/document/view/26824> [Last accessed on 4 March 2017].

¹²⁷ "How to Start a Business", Guidebook. Ministry of Economy and Sustainable Development of Georgia, GIZ, German Ministry of Economic Cooperation and Development of Germany, 2013, pp. 25-26. The text is available here: http://www.economy.ge/uploads/gzamkvlevi/Business_Guide_2013.pdf [Last accessed on 5 May 2017].

¹²⁸ See Food/Animal Feed Safety, Veterinary and Plant Protection Code, Article 13. The text of the Code is available here: <https://matsne.gov.ge/ka/document/view/1659434> [Last accessed on 5 May 2017].

¹²⁹ The Rule of Recognition is approved by the Ordinance No.722 of the Government of Georgia, dated 26 December 2015.

The minimum sanitary rules are protected by the Law of Georgia on Public Health, as well as relevant subordinate acts (compulsory technical regulations established by the Ministry of Labour, Health and Social Affairs of Georgia for ensuring public health) and their non-performance shall lead to a fine under the Code of Administrative Offenses of Georgia.¹³⁰

Fire safety standards are defined by the Law of Georgia on Civil Security,¹³¹ on the one hand and the technical regulations, on the other hand, that are obligatory.¹³² These regulations cover general requirements of fire safety. It must also be noted that the Regulations were developed in 2015 and shall not apply to the buildings designed and constructed before entering the Regulations into force, but if their implementation causes the necessity of construction, reconstruction and dismantling, except where further exploitation of the facilities under the existing conditions poses an obvious and direct threat to human life, health or property.¹³³

At present, technical regulations have been developed in many directions, some of which are applicable, some contain the transitional rules on the existing actions and establish higher requirements for the actions implemented after its enactment, while others shall be launched in the future (for example, Ordinance N602 on Approval of the Technical Regulations for the Maximum Pesticide Residue Levels in Plant and Animal Origin Food/Animal Feed of the Government of Georgia, dated 29 December 2016 shall be enacted on 1 January 2020).

In accordance with the Law of Georgia on National Regulatory Bodies, one of the main functions of the National Regulatory Body is to provide consumers with public information, review and make decisions on their applications and complaints.¹³⁴ According to the Law, in order to provide extra guarantees for protecting consumers' interests, together with National Regulatory Bodies, the Public Defender's service for consumers' interests shall be created, which shall be independent from the administrative staff of national Regulatory Bodies. The rights of consumer defenders are to:

- a) protect consumers' interests;
- b) assess the impact of tariff and other regulatory changes on consumers;
- c) present himself/herself as a party on behalf of consumers;
- d) become familiarized with all documents and materials to which access are not limited by a National Regulatory Body;
- e) represent individual consumers in a dispute with a service company;
- f) together with the legislative and executive government, formulate projects for normative acts which may influence consumers' interests.

Accordingly, there are the institutions of the Energy Ombudsman (<http://pdci.ge/geo>) and the Public Defender of Consumers' Interests (<http://momkhmarebeli.gncc.ge/>) within the Georgian National Communications Commission who perform their activities in the respective sectors.

It is noteworthy that individual regulations of the National Bank of Georgia aim to regulate the obligations of business subjects operating in the financial sector for protecting of consumers' interests. For example, the Order N151/04 of the President of the National Bank of Georgia of 23 December 2016 on Approval of the Rule of Protection of Consumers' Interests during Provision of Services by Financial Institutions¹³⁵ is aimed at promoting financial sustainability and transparency of the financial sector, as well as raising public confidence in the financial sector,

¹³⁰ See Law of Georgia on Public Health. The text of the Law is available here: <https://www.matsne.gov.ge/ka/document/view/21784> [Last accessed on 5 May 2017] and the Code of Administrative Offenses of Georgia, Article 43. The text of the Code is available here: <https://matsne.gov.ge/ka/document/view/28216#!> [Last accessed on 5 May 2017].

¹³¹ The Law is available here: <https://matsne.gov.ge/ka/document/view/2363013> [Last accessed on 5 May 2017].

¹³² Ordinance N370 of the Government of Georgia of 23 July 2015. The text is available here: <https://matsne.gov.ge/ka/document/view/2922754> [Last accessed on 5 May 2017]. Ordinance N371 of the Government of Georgia of 23 July 2015. The text is available here: <https://matsne.gov.ge/ka/document/view/2922773> [Last accessed on 5 May 2017].

¹³³ Ordinance N370 of the Government of Georgia of 23 July 2015, Article 2.4.

¹³⁴ The text of the Law is available here: <https://matsne.gov.ge/ka/document/view/14062> [Last accessed on 5 May 2017].

¹³⁵ The text is available here: <https://matsne.gov.ge/ka/document/view/3500606> [Last accessed on 5 May 2017].

protecting to the maximum the consumers' interests and ensuring transparency of the information on the financial products available on the market, which, in turn, shall greatly facilitate both an active use of the new financial products and the reduction of various risks associated with them. Performance of the norms defined by this Rule is mandatory for all commercial banks and branches of foreign banks, microfinance organizations, non-bank deposit institutions - credit unions and qualified credit institutions operating in Georgia.

According to the Rule, a financial organization must provide a consumer with accurate and understandable information about the terms of financial products, which is available and necessary for decision-making in a timely manner and in full, including while offering any product by any means before a contract is concluded, which does not allow the consumer to make a decision which he/she would not have made if having true and full information. The Rule also requires not just delivering the above information to the consumer, but also the need to know and understand this information. Issues related to advertising of some products are regulated by the same Order, where a customer must be provided with maximum information (e.g., effective interest rate). It is also determined an obligation to provide information on risks to consumers, including information on possible loss of property while using credit products, and warning of risks while using products in foreign currency.

This Order of the President of the National Bank serves to provide information to customers and to fully understand information in the decision-making process, and business subjects shall be obliged to provide such information.

FLAWS

Analysis of the applicable legislation has identified a number of shortcomings which are worth mentioning. First of all, it must be noted that Product Safety and Free Circulation Code does not regulate service issues and mainly concerns the quality of products placed on the market. It does not include such issues as general principles for the protection of the rights of natural persons. The Law on Protection of User Rights of 20 march 1996 was invalidated by adopting this Law, which was not effective and did not have sufficient mechanisms for the protection of consumer rights, although it included a consumer's right to cancel the contract or change the product in case of purchasing a defective product.

As regards the Civil Code of Georgia, its provisions based on which a consumer can safeguard his/her rights in case of receiving defective goods or services, are of general nature, and the legislation does not recognise any concrete mechanisms of enforcement other than the court.

Food safety legislation, despite the existence of a variety of mechanisms for health care, does not provide preventive control before commencement of activity, so that a business operator shall comply with the requirements of the legislation from the beginning. It is also noteworthy that the procedure for recognition is not obligatory for all business operators (but is voluntary for those who are not obliged) and the Law prescribes exemptions (family production, primary production, production and/or processing of animal origin food with traditional methods, etc.). In this way quite a large number of business operators (cafes, restaurants, etc.) operating in the food sector do not go through the procedures set by law, which would make more secure the health and life of consumers, as well as safety of the employed.

It may be noted that the issues related to the selection of a Public Defender within a National Regulatory Body and financial independence are problematic. In particular, according to legislation, a Public Defender is elected by a Competition Commission created by the Sector Economy and Economic Policy Committee of the Parliament of Georgia, which really consists of the representatives of the Parliamentary majority, minority and independent MPs, as well as the representatives of state and non-governmental sectors, and the Public Defender of Georgia and the representatives of the relevant National regulatory Body, however, the majority of the full list is enough to make a decision. As for the funding, it is financed from the regulatory fee paid to the relevant National Regulatory Body and is reflected in the budget of the National Regulatory Body and has no guarantees of financial independence.

INITIATIVE:

There is no law on the protection of the rights of consumers in Georgia today, although the draft law on Protection of Consumer Rights has passed two hearings in the Parliament of Georgia.¹³⁶ It regulates such important issues as civil legal relations between consumers and traders, general principles for the protection of the rights of natural persons, who are in contractual relations with a trader to use its products for personal use, as well as regulates safety norms, ensures protection of economic interests, etc. By signing the Association Agreement Georgia has undertaken to bring its own legislation closer to European legislation. One of the key packages of such legislation concerns the protection of the rights of consumers. In particular, Georgia must bring its own legislation in line with the European Directive (2011/83) on the rights of consumers. The Committee on European Integration of the Parliament of Georgia has prepared a draft law on the protection of consumer rights, where the main and important provisions are adopted from the European Directive.

The draft law provides for the regulation of civil legal relations between consumers and traders and protection of the general principles of human rights. The draft law shall grant a consumer the right to refuse a contract within the seven days after the receipt of the goods in ownership, or the receipt of the service if it is the contract concluded in the premises (store, market), while this term is 14 days in the case of remote and street contracts.¹³⁷

The project envisages introduction of an Ombudsman Institute for Consumers. The Ombudsman's function is to protect the interests of consumers and help them to restore their rights. The Ombudsman shall ensure the study of violations of consumer rights throughout the country, as well as gathering statistical data and analyze the facts of violation of customer rights. Consumers' Ombudsman shall have representative authority to protect the rights of consumers in court. In addition, the Ombudsman shall have the opportunity to prepare legislative initiatives to submit to Parliament and take measures for raising awareness.

The draft law does not envisage the introduction of fines that are included in Article 24 of the "Consumer Rights Directive". The only mechanism that ensures the protection of the requirements of the law is the Ombudsman of Customers whose decision shall not be obligatory. Finally, a customer shall be able to restore the violated right to withdraw from a contract by appealing to the court.

1.6. INVESTIGATION, PUNISHMENT, AND REDRESS MEASURES

Do relevant State agencies responsible for law enforcement address business and human rights?

Is the State undertaking or supporting any specific activities to identify specific business sectors or activities that may have particularly negative impacts on human rights, such as the extractive, apparel, and other sectors?

ENVIRONMENTAL IMPACT RISK ASSESSMENT

The Ministry of Environment and Natural Resources Protection of Georgia drafted "Code of Environmental Assessment" in order to ensure legal rapprochement with the EU legislation and to incorporate international norms and standards into the national laws of Georgia. This Code provides for the fundamental modification and improvement of the current system of permissions, fully in line with the requirements of the Aarhus Convention, Espo Convention and Protocol thereto, EU Directives. The new Code expands and describes in detail the scope of activities (including mining industry), which considerably impact the environment and remain unregulated. The list of activities under the Code will be in line with the activities under Annexes I and II of the Environmental Impact Assessment Directive

¹³⁶ The draft law is available here: <http://info.parliament.ge/file/1/BillReviewContent/113040> [Last accessed on 5 May 2017].

¹³⁷ See Exceptions envisaged by the project and their comparison with the list given in the Directive in the document of the Ministry of Economy and Sustainable Development of Georgia: "Regulation Impact Assessment of the Draft Law on Protection of Consumer Rights", 9 December 2016. Available here: http://www.economy.ge/uploads/publications/economy_450476725899caab552165.56302821.pdf [Last accessed on 5 May 2017].

(EIA Directive), as well as under annexes of the Aarhus Convention and the Espo Convention. The draft Code introduces screening and scoping procedures, which, by means of individual consideration of specific activities, allow that decisions are made on the need of environmental impact assessment and ensures that stakeholders engage in the implementation of the respective activity at an early stage.

Furthermore, the Code introduced by the Ministry envisages a new tool of planning - Strategic Environmental Assessment, aiming to ensure that findings of strategic environmental assessments are considered in various strategies, plans and programmes, leading to the integration of environmental and health issues into the decision-making process, maximum reduction of risks and improvement of the planning process by identifying all possible alternative and mitigation measures, which, in the end, result in maintaining healthy environment. Besides, it is noteworthy, that all the activities for which authorizations (licenses/permits) are granted by the Ministry of Environment and Natural Resources Protection of Georgia and its agencies have the potential of causing particularly negative environmental impact. Hence, the Ministry keeps record of all authorizations granted within its scope, including environmental impact permits and licences for the use of mineral resources and for the implementation of nuclear and radiation activities.¹³⁸

PROACTIVE IDENTIFICATION OF VICTIMS OF TRAFFICKING IN HUMAN BEINGS

The Division of Fight against Trafficking and Illegal Migration under the Main Division of Fight against Organized Crime of the Central Criminal Police Department of the Ministry of Internal Affairs of Georgia is currently engaged in efforts for proactive identification of victims of trafficking in human beings. In the course of 2006, mobile teams of this Division inspected 102 high-risk establishments for trafficking and interviewed 440 people belonging to the high-risk group for trafficking in human beings. 67 establishments were inspected and 276 people – interviewed by the Task Force. Besides, with the goal of detecting crimes of trafficking in human beings, officers of the Division continue to provide 24/7 control over the Tbilisi International Airport and regularly interview deportees from the Republic of Turkey, as well as from various countries of Europe. Over 2336 deportees were interviewed over 2016.

Based on the findings obtained from the Labour Conditions Inspection Department in accordance with the Memorandum of Mutual Co-operation between the Central Criminal Police Department of the Ministry of Internal Affairs of Georgia and the Labour and Employment Policy Department of the Ministry of Labour, Health and Social Affairs of Georgia, 89 persons were interviewed by mobile teams.

With a view to ensuring the legal residence and employment of foreign citizens -victims of trafficking in Georgia, in 2016, LEPL Public Service Development Agency of the Ministry of Justice, based on a petition of the Ministry of Internal Affairs, and in compliance with the Law of Georgia on Legal Status of Aliens and Stateless Persons and the Law of Georgia on Fight against Trafficking in Human Beings, issued special residence permits to 2 foreign citizens recognized as victims of trafficking in human beings.

In the course of 2016, investigation was opened into 18 criminal cases of human trafficking, of which 12 investigations were launched as a result of proactive measures. Criminal charges for human trafficking were brought against 1 person, 2 persons were recognized as aggrieved parties and 4 persons were found guilty by the court.¹³⁹

OCCUPATIONAL SAFETY

On 5 June 2017, the Government of Georgia introduced draft Law on Occupational Safety. The first hearing had already been held over the bill by the closing of the spring session of the Parliament. In accordance with Article 2 and paragraph 1 of Article 22 of the draft Law, the Government of Georgia will develop a list of difficult, hazardous and dangerous jobs during 6 months from the entry into force of the Law.¹⁴⁰

¹³⁸ #4856 letter of June 2, 2017 of the Ministry of Environment and Natural Resources Protection of Georgia.

¹³⁹ Interim Reprt on Governmental Human Rights Action Plan (2016-2017), Information about the performance of the activity 6.1.3.1.

¹⁴⁰ The project of the law and related documentation are available at the following e-mail address: <http://info.parliament.ge/#law-drafting/13972>

Is the State undertaking or supporting any specific activities to identify specific impacts on particularly vulnerable groups, such as women, children, minorities, and indigenous peoples?

No information has been found with respect to the given indicator.

Have police authorities been provided with information and training on issues related to business and human rights? Are the police given statutory authority to address business-related human rights harms?

Training programmes for the staff of law-enforcement agencies deal with basic human rights issues, including those related to trafficking in human beings. However, the aforesaid programmes do not address business and human rights.¹⁴¹ Staff of the Ministry of Internal Affairs were trained on issues relating to fight against corruption.

The Law on Police does not indicate directly that it is the legitimate right of the Police to address violations of human rights related to business. However, the functions of the police include the protection of public order and safety, which implies the protection of human rights and freedoms as well; detection of crime and other violations and respective legal measures thereon, within the scope of the powers granted to it under the Code of Criminal Procedure of Georgia, the Code of Administrative Offences of Georgia and other normative acts.¹⁴²

Are relevant labor, health, and safety authorities aware of potential or actual adverse impacts by business on labor, health, and safety? Are such State actors given statutory authority to address business-related human rights harms?

For respective information, see Guiding Principle 1.6. Investigation, Punishment and Corrective Measures – Police, Environment, Judicial Mechanisms for Consideration of Claims.

Have relevant environmental authorities been provided with information and training on issues related to business and human rights? Are such State actors given statutory authority to address business-related human rights harms?

Agencies responsible for environmental protection have not been informed of the responsibilities of businesses with regard to human rights.

The Code of Administrative Offences of Georgia envisages administrative liability for violation of environmental laws by business enterprises (for violation of the rule of use of water, wood, soil, protected areas; contamination, damage, destruction or loss of natural resources, etc.) and identifies agencies responsible for imposing such liability (e.g. municipal bodies or respective agencies of the Ministry of Environment and Natural Resources Protection of Georgia).

In accordance with Chapter XXXVI of the Criminal Code of Georgia, acts against the environment constitute a criminal offense (Articles 287 - 3061 of the Criminal Code of Georgia; Liability of the legal person is regulated only by Article 2891 – Violation of Rules on Living Genetically Modified Organisms. According to the Prosecutor's Office of Georgia, no investigation is underway against any legal person for violations under the Article mentioned above.

Also see replies to indicators 1.5 and 3.1.

Have relevant tax authorities been provided with information and training on issues related to business and human rights and connections to local tax laws? Are such State actors given statutory authority to address business-related human rights harms?

¹⁴¹ Academy of the Ministry of Internal Affairs of Georgia, syllabus of educational programs, Available at: <http://policeacademy.gov.ge/ka/higher-education> [last seen: 04.07.2015].

¹⁴² Law of Georgia on Police, Article 17.

No training has been conducted for the staff of the tax authorities on business and human rights and their relation to domestic tax laws.

Are the judiciary, including civil, criminal, and commercial courts, as well as employment and other administrative tribunals, and those with prosecuting authority informed and trained on issues related to business and human rights? Is the judiciary given statutory authority to address business-related human rights harms, including through civil, criminal, or administrative penalties for business-related human rights harms?

There are different educational programs, trainings and workshops for the Judiciary¹⁴³ and prosecuting authorities which include Human Rights. However, Business and human rights is not included in their curriculum as a separate discipline.

There is not a special court for Business and Human rights. Legal mechanism for dealing with offences and violations committed under the Georgian Jurisdiction is settled by relevant national legislation. If the violation of human rights by the enterprise contains elements of a crime under the Criminal Code, a legal action can be undertaken by instituting criminal proceedings; any violation not constituting a criminal offence but giving rise to other type of liability will be addressed by civil, administrative or labour dispute settlement proceedings.

Georgian criminal laws envisage criminal liability of legal entities.¹⁴⁴

For more information regarding criminal liability of legal entities, see answers under the Guiding Principle 25.1 (Sanctions) and 3.1 (criminal law).

Besides criminal liability, the Georgian legislation provides for civil liability of the legal person as well. More specifically, the Georgian legislation envisages the liability in tort. According to the Civil Code of Georgia, damage is one of the main elements of civil liability and the burden of proving that damage was inflicted on the plaintiff rests with the plaintiff.

For more information regarding civil liability of legal entities, see answer under the Guiding Principle 25.1 (Sanctions).

Legal entities can also be liable under the code of Administrative Offences.

The Code of Administrative Offences of Georgia imposes administrative liability in a form of a fine for legal entities and determines the relevant authorities responsible for imposing this liability based on the content of the violation. According to Article 40 of the Code of administrative offences, in case of the property damage to a citizen, institution, organization or state, then, judge can order a compensation of property damage together with imposing an administrative liability.

For more information regarding the Administrative responsibilities of legal entities, see answer under the Guiding Principle 25.1 (Sanctions).

FLAWS

The Criminal Code of Georgia establishes criminal liability for the following violations of human rights: violation of human equality, racial discrimination, restriction of rights of persons with disabilities, trafficking in human beings. This list is not, however, complete and does not include criminal liability of the legal person for other serious violations, such as serious violation of workplace safety and health rules, serious violation of customer safety standards, serious and large-scale damage to the environment.

¹⁴³ High School of Justice, Educational programs and trainings for the judiciary, Available at: http://www.hsoj.ge/geo/study_programs/ [last seen:03.12.2017].

¹⁴⁴ The Criminal Code of Georgia articles: 107¹, 107², 107³.

According to the information provided by the Chief Prosecutor's Office of Georgia, criminal investigations has been open for legal entities in three cases, however, none of which were related to human rights violations.

For more information regarding the Criminal investigations, see answers under the Guiding Principle 25.1 (Sanctions) and 3.1 (criminal law).

Criminal liability shall not release the legal person from the obligation to indemnify the damage that he/she has caused as a result of the crime, or from other penalties prescribed against him/her under legislation. This means a compensation for physical or moral damage. Types of punishment for legal persons are: liquidation; deprivation of the right to carry out activities; fine; confiscation of property. However, a remedy under the Criminal Code does not include human rights-based approaches.

Civil legal responsibility depends on the existence of (tort) damages. Consequently, in case of a civil dispute, the compensation for damages includes restitution. Nevertheless, in case of impossibility of restitution, damages are compensated. A remedy under the Civil Law Code does not include human rights-based approaches.

As for the gaps in the Administrative law it should be noted that, the list of offenses envisaged by the Code of Administrative Offenses is not exhaustive. The amount of fines prescribed by the Code Administrative offences is not proportionate towards the gravity of offences and therefore, it can not be considered as an effective mechanism for preventing such type of offences in the future. Furthermore, A remedy under the Code of Administrative Offenses of Georgia does not include human rights-based approaches.

Georgian legislation does not include using such preventive and restorative measures for legal entities as an obligation to pay money in special funds for specified purposes (e.g. environmental, social or developmental funds); compulsory orders regarding funding the environmental projects; judicial supervision (or corporate "probation"); orders requiring compliance with specified standards (e.g. environmental management standards) etc. However, The draft Law of Georgia on Environmental Responsibility can be chosen among these draft laws, which shall ensure the introduction of an effective environmental responsibility system that shall focus on prevention of damage to the environment or restore the damaged environment in its original condition.

For more information the new draft Law of Georgia on Environmental Responsibility, see answers under the Guiding Principle 1 (Environment Law)

The legislation in Georgia is not familiar with the due diligence for the companies in order for them to identify, prevent, reduce and be liable for human rights violations connected to their operations.

Does the State support and/or participate in non-judicial grievance mechanisms aimed at securing redress for business-related human rights harms, including through entities such as National Human Rights Institutions, OECD National Contact Points, or ombudsmen?

Together with the legislative mechanisms, the state establishes and organizes the work of administrative mechanisms to implement legislative regulations, which in turn is a guarantee of the protection of rights and freedoms enshrined in the constitution.

The examination of administrative offenses is also the power of other state bodies and officials (public servants). The Code of Administrative Offenses defines a list of offenses that are subject to review by other state agencies.

The Environmental Supervision Department – a sub-unit of the Ministry of Environment and Natural Resources Protection of Georgia

The Environmental Supervision Department ensures implementation of state control measures in the scope of environmental protection and the use of natural resources in Georgia's entire territory including its territorial waters, continental shelf and the Exclusive Economic Zone.

The main tasks of the Department:

- Implementing state control measures in the scope of environmental protection and the use of natural resources;
- preventing, detecting and eliminating the cases of illegal use of natural resources;
- preventing, detecting and eliminating the cases of environmental contamination;
- Exercising control, within the scope of its competence, over the implementation of the international commitments undertaken by Georgia in the area of environmental protection;
 - Conducting monitoring over compliance with respective laws; creating a databank on the object of regulation; reviewing licences and permits submitted by the objects of regulation, as well as analyzing reports on the fulfilment of requirements set by decisions on the continuation of ongoing activities under the law of Georgia on Environmental Impact Permit;
 - State control planning and coordination in the scope of environmental protection and use of natural resources;
 - Preparing methodological guidelines in the scope of environmental protection and use of natural resources;
 - Providing wider public with information regarding the activities of the Department.¹⁴⁵

The Labour and Employment Policy Department of Ministry of Labour, Health and Social Affairs of Georgia (appointment of mediator in case of collective disputes)

Collective disputes (a dispute arising out of collective employment relations or a dispute between the employer and employees (at least 20 employees) will be resolved through the mediation institution, in compliance with of the Organic Law of Georgia – Labour Code of Georgia. In case of high public interest or at the written request of one of the parties to the dispute, the mediator will be appointed by the Minister of Labour, Health and Social Affairs of Georgia.

Technical and Construction Supervision Agency of the Ministry of Economy and Sustainable Development of Georgia

The Agency is focused on exercising state control and supervision over the facilities with increased technical risk, on issuing construction permits for construction of facilities of particular significance (including radiation and nuclear facilities throughout the territory of Georgia) and on ensuring control over the compliance with requirements of the permits.¹⁴⁶

THE TBILISI CITY HALL DEPARTMENT OF SUPERVISION

The Tbilisi City Hall Department of Supervision is a structural unit of the Tbilisi City Hall exercising supervision over construction processes in the territory of the Tbilisi Municipality, urban characteristics of the city, outdoor advertising, street vending, use of natural resources, noise control. Detection of violation of construction rules, cancellation or/and disassembly of the buildings being built in violation of the rules, imposition of fines also fall within the scope of competence of the Department of Supervision.¹⁴⁷

PUBLIC DEFENDER OF GEORGIA

The Public Defender of Georgia is a constitutional institution, which supervises the protection of human rights and freedoms within its jurisdiction on the territory of Georgia. It identifies the violations of human rights and contributes to the restoration of the violated rights and freedoms.

The Public Defender of Georgia has been granted “A” status, which means that the institution acts in full compliance with the UN Paris Principles.

The Public Defender studies the cases of human rights violations based on the applications received, as well as at its own initiative.

¹⁴⁵ Environmental Supervision Department, Available at: <http://www.des.gov.ge/AboutUs/Activities> [last seen: 21.09.2017]

¹⁴⁶ Technical and Construction Supervision Agency of the Ministry of Economy and Sustainable Development of Georgia, Available at: <http://tacs.gov.ge/> [last seen: 26.09.2017].

¹⁴⁷ Tbilisi Municipality City Hall, Department of Supervision, Available at: <http://www.tbilisi.gov.ge/page/47> [Last seen: 26.09.2017].

The Public Defender of Georgia performs the function of the National Preventive Mechanism under the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The Public Defender of Georgia exercises supervision on measures to eliminate discrimination and to ensure equality.

The Public Defender of Georgia represents the monitoring structure for the promotion, protection and implementation of the Convention on the Rights of Persons with Disabilities.

PERSONAL DATA PROTECTION INSPECTOR

The aim of the Office of the Personal Data Protection Inspector is to ensure protection of human rights and fundamental freedoms, in particular, right to privacy. The Inspector controls and supervises the implementation of the personal data protection legislation and legitimacy of personal data processing by both public and private organizations.¹⁴⁸

OTHER ADDITIONAL MECHANISMS

For information regarding other additional mechanisms, see the Guiding Principle 1 (Other Laws and Regulations);

For information regarding regulatory bodies, see the Guiding Principle 1 (Other Laws and Regulations);

SHORTCOMINGS

Exercising supervision over violation of human rights by private companies does not fall within the scope of the Public Defender's competence. The Public Defender is authorized to review claims of legal entities of private law under the anti-discrimination law. This law, however, contains important shortcomings, which impairs the mandate of the Public Defender. In particular, according to the anti-discrimination law, the Public Defender cannot require submission of relevant information from the legal entity of private law; besides, there is no mechanism for implementing the Public Defender's recommendations with respect to the legal entities of private law.

According to paragraph 2 of Article 3632 of the Code of Civil Procedure of Georgia, a claim may be filed with a court within three months after a person becomes aware or ought to have become aware of the circumstance that he/she assumes to be discriminating. Pursuant to the first paragraph of Article 9 of the Law of Georgia on Elimination of All Forms of Discrimination, "the Public Defender of Georgia shall suspend proceedings if the dispute over the alleged discrimination is pending in court. The Public Defender files a legislative proposal with the Parliament of Georgia to extend the aforesaid three-month period up to 1 year. Taking into consideration the fact that the affected party has a very limited period of time for bringing an action before the court and that the Public Defender does not grant compensation of damages, the plaintiff, in parallel to appealing to the Public Defender, appeals to the Court as well, which causes the Public Defender to suspend the proceedings. As a result, many disputes fall beyond the scope of competence of the Public Defender as, due to limited time-limits and human resources, the Public Defender is unable to take decisions on all cases within a period of 3 months."¹⁴⁹

Does the State support legal aid and assistance that aims to address barriers in accessing remedy for business-related human rights harms?

On 19 June 2007 the Parliament of Georgia adopted the Law of Georgia on Legal Aid, which ensured the right of protection guaranteed by the Constitution of Georgia and international treaties. Pursuant to the Law, everyone has

¹⁴⁸ Detailed information is available at: <https://personaldata.ge/ge/about-us/inspector> [Last seen: 02.07.2017].

¹⁴⁹ For more information about the deficiencies related to the anti-discrimination legislation, see the Public Defender's 2016 parliamentary report, available: <http://www.ombudsman.ge/uploads/other/3/3966.pdf> [Last seen: 21.09.2017].

the right to use legal advice and legal assistance at the expense of the state in accordance with the Law. The forms of legal assistance are drafting legal documents, providing representation in court on administrative and civil cases, as well as in administrative bodies, and in criminal proceedings at the expense of the state.¹⁵⁰

According to the Law of Georgia on Legal Aid, the scope of activities of the Legal Aid Unit includes:

- Free legal advice for any person;
- Drafting legal documents (application, motion, etc.) for insolvent persons;
- Public lawyer services in cases of compulsory protection in criminal proceedings; as well as in case of application by insolvent convicted and acquitted persons;
- Defender's services on involuntary psychiatric aid cases;
- Defender's services for an insolvent accused/convicted with respect to whom disciplinary proceedings are in progress in penitentiary establishments;
- Defender's services on cases of administrative offense, which envisage only administrative imprisonment or administrative imprisonment with other punishment if a person is insolvent and requests the appointment of a lawyer;
- Providing representation in court on certain cases of civil and administrative law (Family Law, Heritage Law, Social Protection Law) if a person is insolvent, and the case is difficult and important.
- Compulsory protection on cases of persons with psycho-social needs, where the court decides the question of recognising the person as a beneficiary of support;
- Court representation in cases of defending women and/or victims of domestic violence if the victim/alleged victim is insolvent;
- Protection of an asylum seeker, as well as a person under international protection, on the dispute related to the international protection requirement, regardless of the insolvency of the person;
- Defender's services on the cases of involuntary isolation of patients.¹⁵¹

According to Ordinance # 424 of the Government of Georgia of 30 June 2014, a procedure for insolvency confirmation of a person is defined as follows:

- A person shall be considered insolvent and shall be entitled to legal assistance at the expense of the state if he/she is a family member registered in the unified database of socially vulnerable families whose rating score is equal to or less than 70,000.
- A person shall be deemed insolvent and the right to use legal assistance at the expense of the state shall also be granted to a person if he/she is a family member registered in the unified database of socially vulnerable families whose rating score is equal to or less than 100,000 and belongs to one of the following categories:
 - a) a member of the large family with three or more children under 18 years of age;
 - b) a veteran of war and military forces;
 - c) a person having a disability status under 18 years of age;
 - d) an adult having a status of severe or significant disability;
 - e) a person with a severe, significant or moderate disability status if the disability is restricted from childhood;
 - f) an orphan child under 18 years of age;
 - g) an internally displaced person as a result of military aggression against Georgia by the Russian Federation.

The Legal Aid Council under the Decisions N10 of 2014 and N27 and N31 of 2015 determined a circle of unregistered persons in the "unified database of socially vulnerable families" who have the right to apply to a Director of the Legal Aid Unit for their legal assistance in exceptional circumstances. The persons of the following categories constitute the list:

- A person who satisfied the criteria of insolvency before his/her appeal, but while appealing his/her latest data was transferred to the archives;
- A person whose credible documents submitted give an opportunity to conclude that his/her family is in a hard social position that makes it impossible to find the necessary financial resources for hiring a lawyer;
- People suffering from severe or incurable diseases;

¹⁵⁰ Article 3 of the Law of Georgia on Legal Aid. The Law is available at the following electronic address: <https://matsne.gov.ge/ka/document/view/21604>

¹⁵¹ Annual Report for 2016 of the LEPL Legal Aid Unit, available at the following electronic address: <http://info.parliament.ge/file/1/BillReviewContent/143958>

- Single parents;
- A person recognized as a victim of political repression or his/her first line successor in case of his/her death.
- A retirement pensioner;
- A close relative of a lawyer/a lawyer's family member/a lawyer employed in the Legal Aid Unit;
- Family member left without a breadwinner
- Beneficiary of rehabilitation and resocialization program of former prisoners of the LEPL Crime Prevention National Centre;
- Beneficiary of the International Humanitarian Union "Catharsis" (House of Virtues);
- Juvenile, who may be a party to civil/administrative cases.

FLAWS

At this time, it is still a challenge to provide services to people with disabilities, since remote services are not implemented in the Unit, as well as the problem is a physical adaptation of the legal aid offices. According to the information provided by LEPL Legal Aid Service, reconstruction of the service web site has already been implemented and it is adapted for persons with poor vision and impaired vision. At the same time, the work on adaptation of the online-service system has been initiated. A meeting on this issue was held with an expert hired by the UNDP and this service shall soon be available. Also, the company employed by the UNDP has studied and investigated the legal aid offices and how it is possible to adapt the offices accordingly, and this process has been initiated and the service offices shall be gradually adapted.

Are there any other measures taken by the State to promote the investigation, punishment, and redress of business-related human rights harms?

All the measures taken by the state concerning the investigation of human rights violations, punishments and remedies are discussed above.

GUIDING PRINCIPLE 2

States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.

COMMENTARY TO GUIDING PRINCIPLE 2

At present States are not generally required under international human rights law to regulate the extraterritorial activities of businesses domiciled in their territory and/or jurisdiction. Nor are they generally prohibited from doing so, provided there is a recognized jurisdictional basis. Within these parameters some human rights treaty bodies recommend that home States take steps to prevent abuse abroad by business enterprises within their jurisdiction.

There are strong policy reasons for home States to set out clearly the expectation that businesses respect human rights abroad, especially where the State itself is involved in or supports those businesses. The reasons include ensuring predictability for business enterprises by providing coherent and consistent messages, and preserving the State's own reputation.

States have adopted a range of approaches in this regard. Some are domestic measures with extraterritorial implications. Examples include requirements on "parent" companies to report on the global operations of the entire enterprise; multilateral soft-law instruments such as the Guidelines for Multinational Enterprises of the Organisation for Economic Co-operation and Development; and performance standards required by institutions that support overseas investments. Other approaches amount to direct extraterritorial legislation and enforcement. This includes criminal regimes that allow for prosecutions based on the nationality of the perpetrator no matter where the offence occurs. Various factors may contribute to the perceived and actual reasonableness of States' actions, for example whether they are grounded in multilateral agreement.

2.1. HOME STATE MEASURES WITH EXTRATERRITORIAL IMPLICATIONS

Has the State adopted domestic measures which set out clearly the expectation that businesses domiciled in their territory and/or jurisdiction respect human rights abroad?

Has the State set out and fully disseminated to relevant government agencies (including embassies and consulates) clear policy statements on the expectation that all companies domiciled in its territory and/or jurisdiction respect human rights?

Georgia has no declared policy concerning the respect for human rights outside Georgia by the companies registered or domiciled in Georgia. Therefore, there is no respective information available at Georgia's representations abroad. However, under the Association Agreement, Georgia undertakes to be guided by the international practices in this area. In particular, Georgia agrees to promote corporate social responsibility (Articles 231, 239, 348, 349). In this regard, Georgia will refer to the relevant internationally recognised principles and guidelines (Articles 231, 239, 352), especially the OECD Guidelines for Multinational Enterprises (Articles 231, 352).

Has the State introduced criminal or civil liability regimes that allow for prosecutions or civil lawsuits against corporations based on where the corporation is domiciled, regardless of where the offense occurs?

Criminal liability is provided for by the Criminal Code of Georgia.¹⁵² The Code deals with the grounds for the liability of a legal persons in Section Six1. According to the Criminal Code of Georgia, a legal person shall be criminally liable for a crime provided for by this Code and committed on behalf of or through and/or in favour of the legal person, by the responsible person. However, a legal person shall only be criminally liable in cases provided for by respective articles of the Code.

As for the principle of extraterritoriality, the Criminal Code does not provide for the criminal liability of the legal persons domiciled in Georgia for crimes allegedly committed by them outside of Georgia via their offices or branches, or otherwise.

The Law of Georgia on Private International Law regulates grounds for the application of extraterritorial civil jurisdiction of Georgia.¹⁵³ According to Article 9 of this Law, Georgian courts shall have international jurisdiction if: the defendant is in Georgia; the defendant is represented by several persons one of whom has a place of residence or domicile in Georgia; the party to the contract has to fulfil its obligations in Georgia; a claim concerns damages inflicted by an unlawful or an equivalent act and the act was committed or damages were inflicted in Georgia; a dispute concerns a branch of an enterprise which is based in Georgia.

In accordance with this Law, disputes against the Companies which are domiciled in Georgia, or have their branches abroad, shall be considered by the courts of Georgia.

The Law of Georgia on Private International Law regulates the extraterritorial application of laws as well. This Law provides for the possibility of choosing the laws of any country by the parties to the contract. However, according to paragraph 3 of Article 35, the choice of the law shall be considered void if it disregards imperative rules of the law of that country, which is most closely connected with the contract.

Special mention should be made of Article 38 of this Law dealing with imperative rules of social protection. According to Article 38, "The choice of law shall be considered void if it disregards the imperative rules that are adopted to protect customers and employees from discrimination. This rule shall also apply to the contracts on delivery of movable property, as well as to financing, labour or service contracts if they are agreed upon or concluded in a country where the customers and employees have their place of residence and where such protective rules operate".

¹⁵² The text of the Code is available here: <https://matsne.gov.ge/ka/document/view/16426> [Last accessed on 25 May 2017].

¹⁵³ The text of the law is available here: <https://matsne.gov.ge/ka/document/view/93712> [Last accessed on 25 May 2017].

This Law also specifies the laws to be applied in case of non-contractual relations. Paragraph 1 of Article 42 deals with the payment of damages, in particular, it indicates that the obligation to compensate for damages shall be subject to: a) the law of the country which is more favourable for an affected person; b) the law of the country in which an act or a circumstance that gave rise to a claim for damages occurred; c) the law of the country where the interests protected by law was affected.

The Georgian legislation does not provide for the liability of the businesses domiciled in Georgia in case of violation of human rights by them. However, based on the Law of Georgia on Private International Law, respective norms of labour law, consumer rights law or other laws shall apply in case of disputes over the violation of human rights.

Has the State established a “duty of care” for parent companies in terms of the human rights impacts of their subsidiaries, regardless of where the subsidiaries operate?

The Georgian legislation does not provide for the obligations of parent companies. Such need has not yet arisen as there is practically no multinational companies domiciled in Georgia.

Has the State introduced requirements on companies to publicly report on their operations abroad, including on human rights and labor issues?

The Georgian legislation does not impose the obligation to submit human rights reports on the companies domiciled in Georgia but carrying out their activities abroad. Such need has not yet arisen because of the lack of the companies in Georgia that carry out their activities abroad.

The Ministry of Labour, Health and Social Affairs of Georgia developed the Law on Labour Migration, which was approved on 1 April 2015 and entered into force on 1 November 2015. The Law of Georgia on Labour Migration addresses the issues of labour emigration from Georgia through the regulation of intermediary companies and by providing information to potential emigrants.

Based on the Law of Georgia on Labour Migration, the Government of Georgia approved “Rule and form of submitting reports by a legal person, an individual entrepreneur, or a branch (representation, permanent office) of a foreign enterprise, or of a non-entrepreneurial (non-commercial) legal entity on information regarding foreign employers and on activities implemented in the area of labour migration (Government of Georgia Resolution N631 of 17 December 2015), according to which, the intermediary companies are obliged to submit to the Minister of Labour, Health and Social Affairs of Georgia information on their mediation activities during the calendar year. The Labour and Employment Policy Department must process the information provided by the companies and create a respective database on Georgian citizens (their age, education, skills, employment, etc), and in case of detecting violations, implement provisions on liability under the Law on Migration.¹⁵⁴

Does the State support and participate in relevant soft-law instruments, such as the OECD Guidelines and the Due Diligence Guidance for Responsible Supply Chains?

In accordance with the Association Agreement with the EU, Georgia agrees to promote corporate social responsibility. In this regard, Georgia will refer to the relevant internationally recognised principles and guidelines (Articles 231, 239, 352), especially the OECD Guidelines for Multinational Enterprises (Articles 231, 352). Therefore Georgia openly supports OECD Guidelines, including Due Diligence Guidance for Responsible Supply Chains.

Do State institutions that support overseas investment have and enforce performance standards that support the protection and promotion of human rights?

The government has not established or does not encourage production efficiency standards that protect and promote human rights with respect to investments made abroad.

¹⁵⁴ Source: information received from the Ministry of Labor, Health and Social Protection on 3 August, 2017.

2.2. IMPLEMENTATION OF RECOMMENDATIONS FROM INTERNATIONAL OR REGIONAL BODIES

Has the State received and followed-up on recommendations from international or regional bodies, such as the UN Human Rights Council and UN treaty bodies, regarding steps to prevent abuse abroad by business enterprises domiciled within the State's territory or jurisdiction?

Has the State noted and accepted recommendations from the UN Human Rights Council, such as through the Universal Periodic Review (UPR) process, that are relevant to preventing abuses abroad by companies domiciled within the State's territory or jurisdiction? How has the State followed up on these recommendations and has the State monitored its implementation of the recommendations?

Georgia has not received any recommendation from the United Nations Human Rights Council within the framework of the Universal Periodic Review regarding the prevention of crimes abroad by business enterprises domiciled in its territory and/or jurisdiction.

Has the State noted and accepted recommendations from UN treaty bodies that are relevant to preventing abuses abroad by companies domiciled within the State's territory or jurisdiction? How has the State followed up on these recommendations? Has the State monitored its implementation of the recommendations?

Georgia has not received any recommendation from the United Nations Human Rights Council regarding the prevention of crimes abroad by business enterprises domiciled in its territory and/or jurisdiction. However, within the framework of the Universal Periodic Review, Georgia has received recommendations from various states regarding business and human rights.¹⁵⁵

RECOMMENDATIONS OF THE UNITED NATIONS HUMAN RIGHTS COUNCIL

Georgia received 203 total recommendations from UN Member States during the 2nd Cycle of Universal Periodic Review (UPR). The country immediately agreed to and accepted 142 of these recommendations, requested time to contemplate 54 of them, and rejected 7 recommendations.

Germany recommended that Georgia make greater effort to promote social dialogue, and introduce an effective labor inspection with enforcement powers in order to protect the economic rights of workers.

Portugal recommended that Georgia accede to the Optional Protocols to the International Covenant on Economic, Social and Cultural Rights and to the Convention on the Rights of Persons with Disabilities.

Georgia also received recommendations of various countries to ratify the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

RECOMMENDATIONS OF THE UN TREATY BODY

Georgia has not received any recommendation of the UN Treaty Body regarding the prevention of crimes abroad by business enterprises domiciled in its territory and/or jurisdiction. However, Georgia received concluding observations incorporated in the fourth periodic report of the Committee on the Rights of the Child regarding business and human rights (Committee on the Rights of the Child, Concluding Observations (2017), Children's rights in business sector).

In the light of its general comment No. 16 (2013) on State obligations regarding the impact of the business sector

¹⁵⁵ UN Human Rights Council, second phase of the universal periodical review of Georgia, 2015, is available at <http://undocs.org/A/HRC/31/15> [last seen: 22.09.2017].

on children's rights and the concerns raised by the Special Rapporteur on the sale of children, child prostitution and child pornography, the Committee recommends that the State party:

- (a) Examine and adapt its legislative framework (civil, criminal and administrative) to ensure the legal accountability of business enterprises and their subsidiaries operating in or managed from the State party's territory, especially in the tourism industry;
- (b) Establish monitoring mechanisms for the investigation and redress of violations of children's rights, with a view to improving accountability and transparency;
- (c) Undertake awareness-raising campaigns for the tourism industry and the public at large on the prevention of child sex tourism, and widely disseminate the World Tourism Organization Global Code of Ethics for Tourism among travel agents and in the tourism industry;
- (d) Strengthen its international cooperation against child sex tourism through multilateral, regional and bilateral arrangements for its prevention and elimination.¹⁵⁶

ECONOMIC EXPLOITATION, INCLUDING CHILD LABOUR

The Committee recommends that the State party take all necessary measures to combat all forms of child labour, including in the informal sector, and urges the State party to restore the labour inspectorate, thus strengthening the monitoring of prohibitions of child labour based on the law.¹⁵⁷

SALE, TRAFFICKING AND ABDUCTION

In line with its previous concluding observations, the Committee recommends that the State party:

- (a) Integrate a comprehensive child-rights perspective into the next action plan on combating trafficking in persons to develop further prevention, protection and prosecution measures to combat the sexual and labour exploitation, sale, abduction of and trafficking in children;
- (b) Specifically target children in vulnerable and marginalized situations in the action plan, including children from ethnic minorities, children placed in institutions, children living in street situations;
- (c) Ensure that child victims of sexual exploitation, sale, abduction and trafficking are protected and that they are provided with adequate recovery and social reintegration services and programmes.

COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

CONCLUDING OBSERVATIONS OF THE COMBINED FOURTH AND FIFTH PERIODIC REPORTS OF GEORGIA

The Committee recommends that the State party:

- (a) Take measures to increase the participation of women in employment and effectively address the concentration of women in low-paid jobs;
- (b) Adopt measures to implement the principle of equal pay for work of equal value in order to narrow and close the gender wage gap, consistently reviewing the wages of men and women in all sectors;
- (c) Facilitate the reconciliation of professional and private life for women and men, including by expanding the number of childcare facilities and encouraging men to equally participate in family responsibilities, and ratify the Maternity Protection Convention, 2000 (No. 183), of the International Labour Organization;

¹⁵⁶ UN, Human Rights committee, Concluding observations of the Fourth Periodic Report of Georgia, para 14, 9 of March 2017, Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/GEO/CO/4&Lang=En [Last seen: 22.09.2017].

¹⁵⁷ UN, Human Rights committee, Concluding observations of the Fourth Periodic Report of Georgia, para 40, 9 of March 2017, Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/GEO/CO/4&Lang=En [Last seen: 22.09.2017].

(d) Strengthen measures to prevent and combat sexual harassment of women in the workplace by establishing labour inspectorates for effective labour law reporting and enforcement mechanisms.¹⁵⁸

Has the State noted and accepted recommendations by any other international or regional bodies regarding steps to prevent business-related human rights abuses abroad?

Georgia has not received any recommendation from other international and regional bodies regarding measures that aim to prevent the violation of human rights relating to business.

GUIDING PRINCIPLE 3

In meeting their duty to protect, States should:

- (a) Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps;**
- (b) Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights;**
- (c) Provide effective guidance to business enterprises on how to respect human rights throughout their operations**
- (d) Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.**

COMMENTARY TO GUIDING PRINCIPLE 3

States should not assume that businesses invariably prefer, or benefit from, State inaction, and they should consider a smart mix of measures—national and international, mandatory and voluntary—to foster business respect for human rights.

The failure to enforce existing laws that directly or indirectly regulate business respect for human rights is often a significant legal gap in State practice. Such laws might range from non-discrimination and labour laws to environmental, property, privacy and anti-bribery laws. Therefore, it is important for States to consider whether such laws are currently being enforced effectively, and if not, why this is the case and what measures may reasonably correct the situation.

It is equally important for States to review whether these laws provide the necessary coverage in light of evolving circumstances and whether, together with relevant policies, they provide an environment conducive to business respect for human rights. For example, greater clarity in some areas of law and policy, such as those governing access to land, including entitlements in relation to ownership or use of land, is often necessary to protect both rights-holders and business enterprises.

Laws and policies that govern the creation and ongoing operation of business enterprises, such as corporate and securities laws, directly shape business behaviour. Yet their implications for human rights remain poorly understood. For example, there is a lack of clarity in corporate and securities law regarding what companies and their officers are permitted, let alone required, to do regarding human rights. Laws and policies in this area should provide sufficient guidance to enable enterprises to respect human rights, with due regard to the role of existing governance structures such as corporate boards.

Guidance to business enterprises on respecting human rights should indicate expected outcomes and help share

¹⁵⁸ UN, Committee on the Elimination of Discrimination against Women, Joint concluding Observations of Georgia's Fourth and Fifth Reports, 24th of July 2014, Available at: <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/CEDAWIndex.aspx> [Last seen: 22.09.2017].

best practices. It should advise on appropriate methods, including human rights due diligence, and how to consider effectively issues of gender, vulnerability and/or marginalization, recognizing the specific challenges that may be faced by indigenous peoples, women, national or ethnic minorities, religious and linguistic minorities, children, persons with disabilities, and migrant workers and their families.

National human rights institutions that comply with the Paris Principles have an important role to play in helping States identify whether relevant laws are aligned with their human rights obligations and are being effectively enforced, and in providing guidance on human rights also to business enterprises and other non-State actors.

Communication by business enterprises on how they address their human rights impacts can range from informal engagement with affected stakeholders to formal public reporting. State encouragement of, or where appropriate requirements for, such communication are important in fostering respect for human rights by business enterprises. Incentives to communicate adequate information could include provisions to give weight to such self-reporting in the event of any judicial or administrative proceeding. A requirement to communicate can be particularly appropriate where the nature of business operations or operating contexts pose a significant risk to human rights. Policies or laws in this area can usefully clarify what and how businesses should communicate, helping to ensure both the accessibility and accuracy of communications.

Any stipulation of what would constitute adequate communication should take into account risks that it may pose to the safety and security of individuals and facilities; legitimate requirements of commercial confidentiality; and variations in companies' size and structures.

Financial reporting requirements should clarify that human rights impacts in some instances may be "material" or "significant" to the economic performance of the business enterprise.

3.1. DEVELOPMENT AND ENFORCEMENT OF RELEVANT LAWS AND REGULATIONS

What laws and regulations exist that directly or indirectly regulate business respect for human rights?

Has the State put in place corporate and securities laws and regulations to support ethical corporate behavior and business respect for human rights, such as those relating to financial reporting, articles of incorporation, registration, corporate board, director, and stock exchange listing requirements?

According to explanatory answer 1.5 of the first guiding principle, the law on ethical business conduct contains no such provisions. As for the ethical conduct in the Securities Market, the Law on Securities Market gives little consideration to human rights.

The Code of Ethics adopted by the general meeting of partners of the Georgian Stock Exchange addresses only few of the human rights. One of the main objectives of the Code of Ethics is to adhere to the principle of fair business activities.¹⁵⁹ The failure to comply with this principle is considered to be a violation and may result in disciplinary action.¹⁶⁰ The Code of Ethics envisages the obligation of making fair deals with the client (Article 8.1). Offering high-risk securities to the client; executing unnecessary transactions in disregard for the client's financial conditions; opening fictitious accounts; executing intra-account transactions without the client's consent; using false or misleading advertising materials; counterfeiting the client's seal or signature; intentionally failing to perform or neglecting the client's instructions shall be considered illegal. The illegal use of insider information and market manipulation (Ar-

¹⁵⁹ Code is available here: http://old.gse.ge/downloads/rules_geo/Ethics.pdf [Last accessed on May 25 2017].

¹⁶⁰ Disciplinary Offence Procedural Code of "Georgian Stock Exchange" is available here: http://old.gse.ge/downloads/rules_geo/Procedures.pdf [Last accessed on May 25 2017].

ticle 8.2), making statements that are offensive or damage the reputation of the members of the Georgian Stock Exchange or the Stock Exchange itself (Article 8.3) will also be considered as violations. The Code also requires that the client is provided with information on the conflict of interests (Article 17) and protection of confidential information (Article 26-27).

In the light ethical conduct standards established by the State, special mention should be made of the Code of Conduct for Broadcasters, which includes binding rules and principles, as well as guidelines that are methodical recommendations. The Code was adopted by the Georgian National Communications Commission. The purpose of the Code is to ensure that any broadcaster be equally responsible for observing standards of professional ethics and be accountable to the public that is necessary to protect ethics and human values, strengthen social consensus and promote tolerance in a democratic society.¹⁶¹

The Code also envisages complaint handling procedures and reporting rules. It deals with issues relating to impartiality and accuracy of information, professional freedom of journalists, interests of various social groups, respect for the right to privacy.

Various private companies and business associations have their own codes of ethics (Code of ethics of insurance companies¹⁶², Code of Ethics for Banks¹⁶³, Code of Ethics for micro-financial organizations¹⁶⁴, Code of Ethics for the Georgian Tourism Association¹⁶⁵) that are binding for members of the aforesaid companies and associations. Certain corporations also have their own codes of ethics. The State does not participate in the execution of the codes of ethics of either associations or corporations.

Has the State put in place labor laws and regulations to ensure business respect for workers' rights?

CHILDREN

Despite the adopted regulations, the situation in terms of protecting minors' labour rights and preventing their labour exploitation remains very difficult, according to the Public Defender.

Of particular concern are children living and working on the street. Notwithstanding the steps taken by the State, access to education and health services and reintegration of street children into society continue to be a challenge. There are no statistics on children living and working on the street.

The National Program of Social Rehabilitation and Child Care is in place whose sub-programme of Providing Shelter for Homeless Children is focused on finding contacts with the child's biological family and preliminary assessment of the social environment.¹⁶⁶ However, there are no such shelters in many regions of the country. The lack of social workers further hinders the effective implementation of this sub-programme.¹⁶⁷

The children reunited with their biological families often have to do work which is not age-appropriate. This prevents the effective implementation of the right to education and health.¹⁶⁸

¹⁶¹ The Order of the Georgian National Communication Commission N2 dated March 12, 2009 on approving "Code of Conduct of the Broadcasters" is available here: <https://matsne.gov.ge/ka/document/view/82792> [Last accessed on May 25 2017].

¹⁶² See the web-page of the Association of Georgian Insurance Companies: <http://www.insurance.org.ge/index.php?a=-main&pid=32&lang=geo> [Last accessed on May 25 2017].

¹⁶³ See the web-page of the Association of Banks of Georgia: <http://www.abg.org.ge/Admin1220790292.php?nid=1079&> [Last accessed on May 25 2017].

¹⁶⁴ See the web-lage of the Association of Georgian Micro-finance Institutions: <http://www.microfinance.ge/wp-content/uploads/Code-of-Ethics.pdf> [Last accessed on May 25 2017].

¹⁶⁵ See the web-page of Toruism Association of Georgia: http://www.tourism-association.ge/data/images/CODE_of_CONDUCT.pdf [Last accessed on May 25 2017].

¹⁶⁶ The Decree of the Government of Georgia #121 approving social rehabilitation and child care program 2017, 9 March, 2017.

¹⁶⁷ The Report of Public Defender of Georgia on the protection of childrens' rights, 2016, p. 41–44.

¹⁶⁸ The Report of Public Defender of Georgia on the protection of childrens' rights, 2016, p. 15.

Children living in seaside resorts and coastal areas often have to leave school and perform hard work.¹⁶⁹ Minors move outside of the country for seasonal jobs where they work beyond the schedule and overtime. This is mostly true of children from Ajara and Guria who are forced to do 9 hours of hard work per day on average, in the territory of Turkey. Labour migration involves cases of sexual violence.¹⁷⁰

According to the Criminal Code of Georgia, Article 143², Buying or selling or making other illicit transactions in relation to a minor as well as his or her recruitment, transfer, harboring or receipt for the purpose of exploitation – shall be punishable by terms of imprisonment from eight to twelve years, or deprivation of an official position or practice of commercial activities for one year. (Article 143²).

The Labour Conditions Inspection Department inspected over 400 facilities during the period from the second half of 2015 to the first half of 2017, according to the Ministry of Health. The Inspection Department reported that there was no case of employment of children under 16. Persons in the age group from 16 to 18 were employed in compliance with the Labour Code.

According to the Georgia 2016 Human Rights Report, many children under 16 worked and performed chores on small, family-owned farms. In most cases this work was not considered by authorities as abusive or categorized as child labor. In some ethnic minority areas, family farm obligations reportedly interfered with school attendance. Some families worked on distant pastures for six to nine months a year, so their children seldom attended school.¹⁷¹

WOMEN

Despite the 2015–16 National Action Plan (NAP) on Combating Trafficking, the ILO Committee notes that the Committee on the Elimination of Discrimination against Women (CEDAW), in its concluding observations expressed concern at the decreasing number of prosecutions and punishment of trafficking in recent years; lack of effective mechanisms to identify women and girls who are victims of trafficking for sexual exploitation; lack of support and rehabilitation programmes for victims of trafficking; as well as the impunity enjoyed by many traffickers owing to corruption and the requalification of the crime of trafficking to other provisions with lesser sanctions under the Criminal Code.¹⁷²

According to the Global Gender Gap Report, women have a more limited access to labour markets than men.¹⁷³ Based on the report, Georgia ranked 90th out of 144 countries earning a lower score than in 2015. According to the same report, Georgia ranks 34th in terms of male-female wage equity for similar work.

There is a considerable gap in the ratio of female earned income over male value. The average earned income for men was estimated at \$12 551 USD, almost double the average women's income estimated at \$ 6,072 USD.

According to the U.S. Department of State, discrimination against women in the workplace is a problem. Although there is continuing improvement in women's access to the labor market, women are largely confined to low-paying, low-skilled positions, regardless of their professional and academic qualifications, and salaries for women lagged behind those for men. Such facts of discrimination against women in the workplace often remain underreported.¹⁷⁴ Besides, according to the Association of Trade Unions, the education sector where the rate of female employment is above 90% provides the lowest-paying jobs with salaries that are three or four times lower than salaries in financial, civil and transport sectors.¹⁷⁵

¹⁶⁹ The Report of Public Defender of Georgia on the protection of children's rights, 2016, p. 15.

¹⁷⁰ The Union of Young Teachers, Researching the labor migration from Adjara and Guria regions to Turkey, 2015–2016.

¹⁷¹ U.S. Department of State, Georgia 2016 Human Rights Report, p. 47–48.

¹⁷² CEACR, Direct Request, adopted 2016, published 106th ILC Session (2017), Forced Labour Convention, 1930 (No. 29) – Georgia, available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3279461,102639,Georgia,2016

¹⁷³ Information is available on the following link: <https://www.weforum.org/reports/the-global-gender-gap-report-2016>

¹⁷⁴ U.S. Department of State, Georgia 2016 Human Rights Report, p. 48–49.

¹⁷⁵ The National Bureau of Statistics of Georgia, http://www.geostat.ge/?action=page&p_id=148&lang=geo.

Based on the Association of Trade Unions, the private and public sectors differently approach the issue of maternity leaves. Women in the private sector companies are paid only 1000 GEL from the state budget for their maternity leaves. Their employers are not required to pay the difference between the 183-day salary and the 1000 GEL maternity leave. Women have to return to their workplaces ahead of time, in order to receive salaries. This restricts their right to maternity leave. Besides, women have no guarantee that they will retain their jobs in the private sector, after the expiry of their maternity leaves. A different approach applies towards women in the public sector. They receive fully paid maternity leaves and additionally, they maintain their workplaces during 3 years from childbirth.¹⁷⁶

PEOPLE WITH DISABILITIES

There are no accurate statistical data on people with disabilities who are employed in the public sector or are self-employed. The rate of employment of people with disabilities is very low in the public sector. Out of 59, 103 persons employed only 112 are persons with disabilities.¹⁷⁷

In 2015, the Social Service Agency launched a project for the employment and skills development of people with disabilities. The project was focused on providing consultations to persons with disabilities on issues of employment. Very few persons with disabilities participated in this project, hence the number of those who got jobs was also very low: 12 persons with disabilities were employed through this project in 2014, 9 – in 2015 and 11 – in 2016.¹⁷⁸

According to the 2015 survey of the Tbilisi State University, 123,607 persons with disabilities are registered in Georgia making for 3,3 % of the entire population of Georgia. A large part of disabled people are concentrated in Racha-Lechkhumi and Kvemo Svaneti, and the lowest number (2.3%) of them are registered in Shida Kartli. A total of 28,195 disabled persons are registered in Tbilisi constituting 2.5% of its population. The survey was made of 750 enterprises where a total of 1,108 disabled persons are employed, of whom 163 persons identified their problems. The most frequently cited problems included: transport to workplace (32.50%) and movement within the workplace (14%).¹⁷⁹

The problem of employment of persons with disabilities is also addressed in the U.S. Department of State's 2016 Human Rights Report. According to the report, there were only 24 persons with disabilities employed in the many public agencies. The state has no policy to address the problem of providing employment opportunities for persons with disabilities.^{180 181}

TRIPARTITE COMMISSION

The tripartite commission often attracts criticism because it does not represent an effective mechanism carrying out an effective labour policy. Problems relating to occupational safety often become the reason for criticizing the tripartite commission.¹⁸² According to the Government of Georgia Resolution N258 of 7 October 2013 on Approval of the Regulations of the Tripartite Commission for Social Partnership, the Tripartite Commission should meet quarterly (Article 6.1). However, the Commission has met only three times since its establishment.¹⁸³

¹⁷⁶ Georgian Trade Union Confederation, Recommendations for the improvement labor legislation, prevention of the gender based discrimination in the employment sector, and protection of labor rights of women, Tbilisi, 2017, 83.4.

¹⁷⁷ Shadow report of the Organizations working on rights of persons with disabilities and NGO's on the implementation of the UN Convention on the Rights of Persons with Disabilities, 2017, 83. 60.

¹⁷⁸ Shadow report of the Organizations working on rights of persons with disabilities and NGO's on the implementation of the UN Convention on the Rights of Persons with Disabilities, 2017, 83. 60.

¹⁷⁹ Influence of micro and macro factors on the adaptation of the PWDs with the working environment and labor effectiveness. General picture on PWDs employed in different economic sectors and regions and their relation to the working conditions. Tbilisi State University publication, 2015, p. 18.

¹⁸⁰ U.S. Department of State, Georgia 2016 Human Rights Report, p. 49.

¹⁸¹ Education and Monitoring Centre, evaluation of the labor inspectorate and labor rights protection in Georgia. p. 62–63.

¹⁸² Press Release, Public Defender meets employees of the Tkhibuli mine on strike, <http://www.ombudsman.ge/ge/news/sax-alxo-damcveli-tyibulis-magaros-gaficul-tanamshromlebs-shexvda.page>

¹⁸³ International Trade Union Confederation, The ITUC, together with the ETUC and the ITF, has expressed its deep concern about the dispersion of a peaceful protest action of workers of Georgian Railways and trade unions and community activists by the police on 24 August 2017. Available at: <https://www.ituc-csi.org/georgia-lack-of-respect-for-social?lang=en>.

International associations of trade unions also point to the ineffectiveness of social dialogue. The International Trade Union Confederation, together with the European Trade Union Confederation and the International Transport Workers' Federation express their deep concern about the dispersion of a peaceful protest action of workers of Georgian Railways and trade unions and community activists by the police on 24 August 2017. Workers started protest actions against Georgian Railways after having being informed about the change of the place of their employment, transferring them about 150 kilometres without any provision for daily transport arrangement or allowance.

Has the State put in place environmental laws and regulations to ensure business respect for the rights of its citizens to health, a healthy environment, and livelihoods including, for example, clean water, clean air, and cultivatable land?

Based on the Aarhus Convention, the Ministry of Environment and Natural Resources Protection of Georgia prepares National Reports on the State of the Environment, whereas other state agencies, within the scope of their competence, provide the Ministry with environmental information. The Ministry used to publish the report once per three years. The latest one covered the period from 2010 to 2013. According to the 2015 Performance Report of the Ministry, next National Report on the State of the Environment was due to be published in 2016.¹⁸⁴ As a result of the legislative amendments, however, the Minister of Environment and Natural Resources Protection of Georgia is currently due to adopt National Reports on the State of the Environment once per four years. According to the Minister, National Report on the State of the Environment for 2014-2017 will be adopted in 2018.¹⁸⁵ LEPL Environmental Information and Education Centre" (EIEC) provides access, through its website, to newsletters containing information on environmental contamination by month. The website currently covers the information for the period from 2010 to June 2017.¹⁸⁶

Despite the wide spectrum of obligations provided for by the Law on Environmental Protection and the Law on Environmental Impact Permits, large companies often neglect or unduly perform the obligations imposed on them.

For example, the Report on Environmental Impacts of Hydropower Stations contains many shortcomings.¹⁸⁷ The point is that a large number of projects are financed by the European Bank for Reconstruction and Development (EBRD) or/and the Asian Development Bank or other international financial institutions that stipulates that the requirements of these institutions are also complied with. The analysis of the reports of various companies makes it clear that these documents only formally incorporate sections of the Report on Environmental Impacts of Hydropower Stations, do not provide the assessment of the project's indirect impact on the local population, do not or inadequately assess the project's cumulative social, ecological, economic and energetic impact on the development of infrastructure or on the region as a whole, do not or inadequately define respective mitigation measures, etc.

It should also be noted that mandatory environmental insurance provided for by the law, under which the insurance payments must go towards the prevention-elimination of consequences of disasters and accidents, does not yet apply as there are no law-provided implementation mechanisms.¹⁸⁸

¹⁸⁴ Annual Report 2015 of the Ministry. Available here: <http://moe.gov.ge/res/images/file-manager/wliuri-angarishi/2015wlis-angarishi.pdf> [Last accessed on May 25, 2017].

¹⁸⁵ Source: letter of the Ministry of Environmental and Natural Resources Protection of Georgia N4856 dated June 2, 2017 to the authors of the study.

¹⁸⁶ Source: The Ministry of Environmental and Natural Resources Protection of Georgia. Information received on August 3, 2017.

¹⁸⁷ For detailed information see: "Regarding the Environmental Impact Assessment Report on Construction and Exploitation Project of Nenskra HPP". The Network of Monitoring on Central and Eastern European Banks and Association Green Alternative. September 25, 2016. Available here: http://greenalt.org/wp-content/uploads/2015/09/GA_shenishvnebi_Nenskra1.pdf [Last accessed on May 25, 2017].

"Regarding the Environmental Impact Assessment Report on Amendments to the Construction and Exploitation Project of Kirnati HPP on River Chorokhi". Green Alternative. June 15, 2014. Available here: http://greenalt.org/wp-content/uploads/2013/06/shenishvnebi_kirnati_hesze.pdf [Last accessed on May 25, 2017].

"Regarding the Preliminary draft of the Environmental Impact Assessment Report on Construction and Exploitation Project of Khudoni HPP (702 MegsWatts)". Green Alternative. September 6, 2013. Available here: http://greenalt.org/wp-content/uploads/2013/09/Comments_on_Khudoni_HPP_6-September_2013.pdf [Last accessed on May 25, 2017].

¹⁸⁸ Union for Sustainable Development - EcoVision / ECOVISION, "Evaluation of Climate Change and Related Public Health Protection Policy". 2016. Available here: http://ecovision.ge/uploads/files/2016-08/1471336635_cc-and-ph-analysis-report-final-georgia.pdf [Last accessed on 24 march 2017].

Has the State put in place land management laws and regulations to ensure business respect for the rights of its citizens, including the recognition of customary land rights and the incorporation of human rights considerations into environmental and social impact assessments and related licensing practices?

When dealing with the Land Management Law, it is important to indicate the impact of large-scale investment projects on the local communities. The reports on environmental impacts of such projects give only a superficial or poor coverage or survey of the aforesaid issue.¹⁸⁹ A number of public organizations negatively assess such projects (oil and gas lines, hydropower stations, constructions of ports, terminals, airports and other facilities) as they disregard property rights of the local population, especially right of “traditional owners” to land plots.¹⁹⁰

Has the State put in place health and safety laws and regulations to ensure business respect for the physical and mental health of workers and communities?

Occupational safety remains a serious problem to which attest the alarming statistics in the country. According to the Ministry of Internal Affairs, 58 people died and 85 were injured as a result of industrial incidents. Criminal proceedings were instituted in 121 cases (paragraphs 1 and 2 of Article 240 of the Criminal Code of Georgia, paragraphs 1 and 2 of Article 240¹, paragraphs 1, 2 and 3 of Article 170, paragraph 1 of Article 275, Article 124, paragraph 1 of Article 116 and Article 118) of which criminal investigation was suspended in 21 cases.¹⁹¹

18 people died and 34 were injured as a result of industrial incidents in the first half of 2017.¹⁹²

Workers of the Chiatura mining-enriching plant and the Zestafoni ferro plant unified under the Georgian Manganese Holding Limited complained of hard working conditions in 2016. According to them, work environment is health and life-threatening as it involves the use of outmoded and malfunctioning equipment, which often goes out order. As a result, mechanical operations are performed manually that calls for additional manpower. Safe and healthy work environment was one of the main claims of hundreds of Tkibuli miners of Saknakshiri Ltd (GIG group) and workers of China Railway 23rd Bureau constructing a new Khashuri-Moliti railway line and a Zvare-Kvishkheta section of the tunnel.^{193 194}

According to the Labour Code of Georgia, “An employer shall take all the reasonable measures for timely localization and liquidation of a professional accident, as well as for providing first aid and evacuation” (Article 35 (5)). According to the same Code, “An employer shall implement the prevention system for ensuring labour safety; and inform an employee in proper time and appropriate manner of the risks and preventive measures related to labour safety, as well as of the rules of using hazardous equipment. If necessary, an employer shall provide an employee with personal protective facilities; and with the technological progress replace the hazardous equipment with safe or less hazardous appliances; also take all the other reasonable measures for protecting the safety and health of an employee”. (Article 35 (4)). However, according to the non-governmental organization, providing protective clothing and equipment still remains a problem; there are no emergency medical services within enterprises; no investiga-

¹⁸⁹ Ibid and Supra 181.

¹⁹⁰ See for instance: “Property in Mestia, Acknowledged Chosen Traditional Ownership”, Transparency International - Georgia. January 16, 2012. Available here: <http://www.transparency.ge/en/blog/property-mestia-acknowledged-chosen-traditional-ownership> „Unprotected Right to Property in Georgia”. Transparency International – Georgia, Georgian Young Lawyers Association, Regional Media Association of Georgia and Association Green Alternative”. April 2012. Available here:

www.transparency.ge/sites/default/files/post_attachments/დაუცველსაკუთრებისუფლება-აპრილი2012_Geo_0.pdf

“Forced Resettlement Caused by Development Projects”. Green Alternative. 2014. Available here:

http://greenalt.org/wp-content/uploads/2014/07/ganviTarebis_proeqtebiT_gamowveuli_iZulebiTi_-gansaxleba.pdf

“Reasonable Land Governance for Sustainable Development” Green Alternative. 2015. Available here:

http://greenalt.org/wp-content/uploads/2015/07/micis_gonivriuli_mmartveloba.pdf

¹⁹¹ Parliamentary report of Public Defender of Georgia, 2016, p. 514.

¹⁹² Press Release, Public Defender starts a campaign on labor safety, <http://www.ombudsman.ge/ge/news/saxalxo-damcveli-shromis-usartxoebastian-dakavshirebit-sainformacio-kampanias-iwyebs.page>

¹⁹³ Parliamentary report of Public Defender of Georgia, 2016, p. 514.

¹⁹⁴ The same issue is raised in the EMC report on Evaluation of labor inspectorate and labor rights protection in Georgia, labor relations and conditions in the heavy, and light industry, and in transport service sphere, 2017, p. 19–20.

tion is made into industrial traumas or deaths.¹⁹⁵

According to the Ministry of Labour, Health and Social Affairs of Georgia, up to 96 employers agreed to join the National Labour Conditions Inspection Programme. A total of 98 employer-organizations were inspected; one case of alleged labour exploitation was reported to the Ministry of Internal Affairs. The inspection revealed the following problems: absence of fire alarm system (155); malfunctioning of electronic safety system (80); absence of personal protection equipment (63); malfunctioning of collective protection system (14); absence of persons responsible for safety (17); unprotected microclimate (70); high level of industrial noise (18); high level of dust (11); ergonomic problems, etc.¹⁹⁶

During the period from the second half of 2015 to the first half of 2017, the National Labour Conditions Inspection Department inspected over 400 organizations. Malfunctioning of fire alarm and electronic safety system; absence of personal protection equipment; uncontrolled microclimate; high levels of dust and noise; non-compliance with sanitary-hygienic norms; absence of persons responsible for safety; non-registration of traumas; non-assessment of risks make up the majority of violations.¹⁹⁷

Has the State put in place consumer laws and regulations to ensure business respect for human rights and to promote consumer interest in the human rights impacts of purchased products and services?

See the review of respective laws in Principle 1

Has the State put in place anti-discrimination laws and regulations to support ethical corporate behavior and business respect for human rights?

On 2 May 2014, the Parliament of Georgia the Law of Georgia on Elimination of All Forms of Discrimination (hereinafter – the Anti-Discrimination Law). According to the Law, the Public Defender of Georgia shall monitor issues regarding elimination of discrimination and ensuring equality. To fulfil the functions assigned to the Public Defender under the Anti-Discrimination Law, a structural unit - Department of Equality – was established at the Public Defender's Office. To ensure the full implementation of the Public Defender's enhanced functions, the budget of the Public Defender's Office in 2015 increased by 68%, and in 2016 – by 12,5%.

The Anti-Discrimination Law bans discrimination both in private and public sectors. The Law makes an important reservation stipulating that “Temporary special measures intended to accelerate de facto equality, especially in gender, pregnancy, and maternity issues, also, with respect to persons with limited capabilities, shall not be considered discrimination”. The important innovation of the Law is that it bans multiple discrimination defining it as discrimination based on the combination of two or more characteristics.

The Public Defender admits and reviews the complaint of the physical or legal person or the group of persons considering themselves to be victims of discrimination. In this case, the complainant does not bear the burden of proving the act of discrimination. The complainant only needs to cite facts and submit relevant materials, on the basis of which discrimination can be presumed. After that, the alleged discriminating person will have to prove that the act of discrimination was not in fact committed. If there is enough evidence to presume discrimination, the Public Defender in an effort to remedy the harm caused to the victim, can issue a recommendation to a competent authority or a physical person.

According to the Anti-Discrimination Law, “Any person considering himself/herself to be a victim of discrimination, may bring a court action against the person/institution which he/she considers to have committed the discrimination and may claim for moral and/or material damages”. Similarly, amendments to the Code of Civil Procedure release the complainant from the burden of proving that the act of discrimination was committed. Rather, according

¹⁹⁵ EMC, EMC report on Evaluation of labor inspectorate and labor rights protection in Georgia, labor relations and conditions in the heavy, and light industry, and in transport service sphere 2017, p. 24–28.

¹⁹⁶ Parliamentary Report of Public Defender of Georgia, 2016, p. 516.

¹⁹⁷ Comments of the Ministry of Labor, Health and Social Protection on the National Baseline Assessment.

to these amendments, the burden of proof rests with the alleged discriminator who has to prove that the act of discrimination did not, in fact, have the place.

Article 142 of the Criminal Code of Georgia qualified Violation of Equality as a criminal offense: “Violation of human equality on the grounds of language, sex, age, nationality, origin, birthplace, place of residence, material or rank status, religion or belief, social belonging, profession, marital status, health status, sexual orientation, gender identity and expression, political or other views or of any other signs that have substantially breached human rights - shall be punished by a fine or corrective labour for up to a year and/or with imprisonment for up to two years”. Article 1422 of the Criminal Code of Georgia provides for a separate punishment for restriction of rights of persons with disabilities. According to this Article, “Denying persons with disabilities the opportunity to exercise the rights granted by law and/or treaties to which Georgia is a party, due to their disabilities, which substantially breaches their rights - shall be punished by a fine or restriction of liberty for up to three years and/or with imprisonment for the same term”.

On 23 October 2015, the Human Rights and Civil Integration Committee of the Parliament of Georgia proposed to the Parliament amendments to the Law of Georgia on Elimination of All Forms of Discrimination. The amendments aim to ensure the effective implementation of the anti-discrimination law, and in particular, to overcome the following challenges:

(i) The law does not provide for an enforcement mechanism, which would require from natural persons or legal persons of private law the provision of materials, documents, explanations or other information related to the case. This creates an important problem in terms of considering all circumstances related to the case, identifying the fact of discrimination and taking a due action thereon. Accordingly, it would be reasonable to create an effective instrument for the Public Defender allowing him to impose an indirect obligation on natural persons or public institutions to provide respective information. This instrument would serve as a kind of stimulus for such persons and institutions encouraging them to state their position regarding the facts of discrimination and assume the burden of proving the contrary.

(ii) Pursuant to paragraph 1(b) of Article 9 of the Law of Georgia on Elimination of All Forms of Discrimination, the Public Defender of Georgia shall suspend proceedings if administrative proceedings are already underway on the same case of discrimination;

Administrative proceedings are part of the scope of competence of the executive authorities exercising a broad discretion to make decisions. Given the nature of the work of the executive authorities, they can “easily” come into conflict with human rights. If an act of discrimination has already been committed by an administrative body, another administrative body superior to it cannot take an action and effectively reinstate the violated right (identification of the act of discrimination, payment of compensation). Therefore, it cannot be considered as an alternative to the Public Defender for consideration of the case; besides, administrative proceedings are often a long-drawn-out process, and this may delay an action on the act of discrimination. Hence, it is necessary to withdraw subparagraph “b” from the Article 9.

Based on the foregoing, Article 8 of the Law of Georgia on Elimination of All Forms of Discrimination is modified to include a provision, according to which, if physical persons or public institutions do not provide required information while the case-related evidence gives reasonable grounds to suspect that the act of discrimination was committed and the circumstances indicated in the complaint legally substantiate the claim, the complaint will be satisfied. In other case the complaint will be rejected. The Law also stipulates that subparagraph “b” is withdrawn from the Article 9.

It is therefore important that the legislative amendments envisaging the creation of a respective mechanism for the implementation of powers granted to the Public Defender under the Law of Georgia on Elimination of All Forms of Discrimination are considered by the Parliament of Georgia within a reasonable period of time. It should also be noted that, according to Activity 1.1.39 of Annex I to the Action Plan for 2017-2018

of the Human Rights and Civil Integration Committee of the Parliament of Georgia, draft amendments to the Law of Georgia on Elimination of All Forms of Discrimination and to other related legislative acts are due to be considered during the autumn session of 2017.

Has the State put in place tax laws and regulations to support ethical corporate behavior and business respect for

human rights?

See Indicator 1.5

Has the State put in place trade laws and regulations to support business respect for human rights within trade practices?

See Indicator 1.5

Has the State put in place information security and privacy laws and regulations to support ethical corporate behavior and business respect for human rights?

The situation remains problematic in the area of inviolability of the right to privacy. According to the non-governmental sector, a large part of the population believes that their communications (including via telephone and Internet) are tapped by the government agencies.¹⁹⁸ In the given situation the telecommunication businesses have no legal levers to protect the private life of their customers.

Has the State put in place laws and regulations to support disclosure and reporting by corporations on human rights, labor rights, environmental impacts, corporate social responsibility, or other ethical issues?

Neither mandatory nor recommendatory regulations impose on companies the obligation of transparency or reporting on the human rights situation. Individual reports, however, include interesting points regarding human rights.

According to the Law of Georgia on Licences and Permits, the license holder shall submit an annual report on the observance of licence conditions from 1 April to 1 May. The report shall be submitted to the licence issuer in writing. If the submitted report does not clearly or does not at all indicate the fact of the observance of the licence conditions, the licence issuer shall be authorized to require from the licence holder the submission of information within reasonable time-limits certifying that the licence conditions have been complied with.

Operators whose licensed environmental activities have a significant impact on the human rights may publish reports on the environmental impact of their activities and products. Besides, based on the Aarhus Convention and other environmental laws, every company is required to provide information on environmental impact.

Information on the impact of environmental activities of the companies is very sparse. Also sparse is the information published by the Ministry of Environment and Natural Resources Protection of Georgia, as well as by large-scale industries.¹⁹⁹ Their reports, according to the non-governmental organizations, are either incomplete, or too generalized, or full of technical terms that are inaccessible to broad public. Hence, such reports do not meet standards for transparency and accountability.

LEPL Environmental Information and Education Centre (EIEC) provides through its website (maps.eiec.gov.ge) a map of environmental impact permits. This information covers environmental impact reports and ecological findings for the period from 1990 to 2013, including conditions for the issue of permits, expected impacts on the environment and other information required for obtaining such permits. The permits issued from 2013 to date are attached, along with the aforesaid documents, with indications of the locations where the permits were issued.²⁰⁰

The Centre's webpage also features static maps of emissions from stationary air pollution sources, indicating the level of pollutants in various municipalities in 2014 and in 2015.

¹⁹⁸ See results of one research: <https://www.esshengexeba.ge/?menuid=9&lang=1&id=1120> [Last accessed on July 17 2017].

¹⁹⁹ See "Accessibility of Information Regarding the State of Environment" Green Alternative. 2017. Available here: http://greenalt.org/wp-content/uploads/2017/01/SOE_pollutants_2017.pdf

²⁰⁰ Source: The Ministry of Environmental and Natural Resources Protection of Georgia. Information received on August 3, 2017.

Despite the fact that business enterprises are not required by law to provide reports on the human rights impacts of their activities, some of such enterprises have anyway adopted standards of corporate social responsibility and also provide reports. For example, over 30 companies are members of the UN Global Compact and even report to the organization on their compliance with the ten principles of human rights, labour, environmental protection and anti-corruption.²⁰¹ These reports are accessible through the website of the organization.

Has the State put in place laws and regulations to support the incorporation of human rights considerations into the procurement by the State of goods and services from the private sector?

Through public procurement laws contain no provisions on the protection of human rights, there are several public procurement contracts, specifically those envisaging the procurement of construction, assemblage, repair and similar works that contain norms on the local population employment conditions.

Such contracts are majorly signed during the period from 2011 to 2013 and indicate the number or percent of the local population to be employed by municipalities.²⁰²

Has the State put in place laws and regulations aimed at promoting anti-bribery and combatting corruption within and across governments?

Special mention should be taken of the revolving door principle of Georgia's politics and business. High-ranking officials: Ministers, Prime Ministers often move from private sector to politics and vice versa.²⁰³

Monitoring over estate declarations used to come under strong criticism of local organizations as such declarations often contained inaccurate information, which was hardly ever checked by any institution. While the information within the public is insufficient for full monitoring.²⁰⁴ Incorporation of inaccurate information into estate declarations continues to be is a punishable act. However, the lack of, or undue action from the investigative bodies points out clearly that it is important not only to establish a respective monitoring body but also to take respective measures and sanctions for the prevention of violations in the future. Through the monitoring over the estate declarations, the effect of "revolving door" phenomenon and the influence of the business over the public sector may be brought to minimum. At the given state, respective authorities fail to act effectively on the information they receive.²⁰⁵

²⁰¹ Reports are available here: https://www.unglobalcompact.org/what-is-gc/participants/search?utf8=%E2%9C%93&search%5Bkeywords%5D=&search%5Bcountries%5D%5B%5D=65&search%5Bper_page%5D=50&search%5Bsort_field%5D=&search%5Bsort_direction%5D=asc

²⁰² See several public procurement contracts, the article regarding the duties of the parties: <https://tenders.procurement.gov.ge/public/lib/contract.php?go=56508>, <https://tenders.procurement.gov.ge/public/lib/contract.php?go=15596>, <https://tenders.procurement.gov.ge/public/lib/contract.php?go=37742>

²⁰³ See "The revolving doors of Georgia's politics and business". Democracy and Freedom Watch. December 2013. Available here: <http://dfwatch.net/the-revolving-doors-of-georgias-politics-and-business-22748-24848> [Last accessed on March 25 2017]. "Businessmen in Politics and Politicians in Business, Problem of Revolving Door in Georgia". Transparency International Georgia. December 2013. Available here: <http://www.transparency.ge/en/post/report/new-report-explores-movement-officials-between-government-business> [Last accessed on March 25 2017].

²⁰⁴ See "Prevention of Corruption in Public Service – Short Assessment of National Anti-Corruption Strategy and Action Plan". IDFI. March 2016. Available here: <https://idfi.ge/ge/preventing-corruption-in-civil-service-brief-overview-of-the-national-anti-corruption-strategy> [Last accessed on March 25 2017].

"Authorities Are Not Reacting to Public Officials' Concealing of Information in Asset Declarations" Transparency International Georgia. February 17, 2014: <http://www.transparency.ge/en/blog/authorities-are-not-reacting-public-officials-concealing-information-asset-declarations>

"Member of Communications Regulator Has Not Declared Company Ownership" Transparency International Georgia. March 09, 2016. Available here: <http://www.transparency.ge/en/blog/member-communications-regulator-has-not-declared-company-ownership>

"The Anti-Corruption Agency of the MIA Does Not Respond Effectively to Alleged Violations in Asset Declarations of Public Officials". Transparency International Georgia. March 09, 2016. Available here: <http://www.transparency.ge/node/5315> [Links were last accessed on March 25 2017].

²⁰⁵ See "An Assessment of Civil Service Reform in Georgia: Human Resource Management Policies and Asset Declarations" Transparency International Georgia. December, 2015. Available here: <http://www.transparency.ge/en/node/5700> [Last accessed on March 25 2017].

According to the statistics of the investigative bodies, with respect to corruption, investigation is opened largely into cases of official misconduct on the counts of abuse of official powers (Article 332 of the Criminal Code of Georgia)) and bribe-taking (Article 338); with respect to white collar offenses that are more relevant to the business sector, investigation is launched mainly into unlawful appropriation or embezzlement of another person's property or property rights (Article 182), in some cases - into commercial bribery (Article 221), forgery by an official (Article 341), illegal entrepreneurial activities (Article 192) and legalisation of illegal income (Article 194).²⁰⁶ Investigation is not launched at all into certain violations (for example, violation of declaration submission rules).

Has the State put in place laws and regulations aimed at supporting business respect for the rights of human rights defenders and/or whistleblowers?

There are no laws or regulations on the protection of human rights defenders and/or whistleblowers within enterprises. Therefore, there is no related practice

Has the State put in place criminal laws and regulations to ensure that corporate crimes that are related to human rights are investigated, prosecuted, and properly sanctioned?

The Criminal Code of Georgia provides for criminal liability of legal persons, in particular, Article 107¹ states that: A legal person shall be criminally liable for a crime provided for by this Code and committed on behalf of or through and/or in favour of the legal person, by the responsible person. A legal person shall be criminally liable also when the crime has been committed on behalf of or through and/or in favour of the legal person, regardless of whether or not the identity of the natural person who committed the crime has been established. Besides, releasing the responsible person from criminal liability shall not serve as grounds for releasing the legal person from criminal liability. Criminal liability of a legal person shall not exclude criminal liability of the natural person with respect to the same crime. Criminal liability shall not release the legal person from the obligation to indemnify the damage that he/she has caused as a result of the crime, or from other penalties prescribed against him/her under legislation.

Types of punishment for legal persons are: liquidation; deprivation of the right to carry out activities; fine; confiscation of property.

Legal persons shall be held liable for the following criminal offenses, in particular: Violation of human equality (Article 142); Racial discrimination (Article 142¹); Restriction of rights of persons with disabilities (Article 142²); Human trafficking (Article 143¹); Child trafficking (Article 143²); Disclosure of private life or of personal data (Article 157); Disclosure of personal secret (Article 157¹); Violation of the secrecy of private communication (Article 158); Violation of secrecy of personal correspondence, phone conversations or other kinds of communication (Article 159); Vote buying (Article 164¹); Engagement of minors into anti-social activities (Article 171); Purchase or sale of property obtained knowingly by illegal means (Article 186); Encroachment upon the rights of a holder of copyright or allied rights and upon the rights of database manufacturers (Article 189); Illegal entrepreneurial activities (Article 192); Illegal educational activities (Article 192¹); Illegal pedagogical activities (Article 192²); Legalisation of illegal income (money laundering) (Article 194); Use, purchase, possession or sale of property acquired through the legalisation of illegal income (Article 194¹); Violation of the procedure for participating in public procurements (Article 195¹); Import and/or export of live genetically modified organisms (Article 207²); as well as crime against the interests of service in entrepreneurial or other organisations; Crime against public security and public order; Crime against public health and public morals; Crime against environmental protection; Crime against constitutional structure and security principles of Georgia; Drug-related crime; Cybercrime; Violation of the legal regime of the occupied territories; Terrorism; Official misconduct; Crime against administrative order; Crime against the activities of judicial bodies; Crime against the procedural rule for obtaining evidence; Crime against mankind.

It should also be noted that the legal person is not held criminally liable for the breach of safety regulations at work

²⁰⁶ იბ. "Georgian Anti-Corruption Legislation: Implementation in Practice". Transparency International Georgia. December, 2015. Available here: <http://www.transparency.ge/post/report/sakartvelos-antikoruptionsiuli-kanonmdblobis-praktikashi-gankhortsieleba-problemad-rcheba> [Last accessed on May 8 2017].

and for crimes against enforcement of judicial acts.

Based on the information provided by the Chief Prosecutor's Office of Georgia, criminal investigation against the legal person has been opened in three cases so far, in particular, into drug-related crimes, money laundering and illegal entrepreneurial activities. In the first case – non-guilty verdict was passed; in the second case - criminal proceedings were suspended at court; and the third case is submitted to the court for consideration on merits.

According to the Interim Progress Report on Implementation of the Action Plan (2016-2017) of the Government of Georgia on the Protection of Human Rights, the Chief Prosecutor's Office of Georgia developed a manual on investigation and criminal prosecution of corruption crimes committed by legal entities, which was submitted to the EU working group for examination. (See information on the implementation of Activity 3.1.1.6).

Has the State put in place civil laws and regulations to ensure investigation, punishment, and redress of business-related human rights harms?

Regulations in Georgian Civil Law are dealt with in Guiding Principle 1.6., Indicator: Judicial Mechanisms for Consideration of Claims. Statistics on cases considered by the court are not available as information is not processed separately for disputes involving physical persons, including disputes where one of the parties is the legal entity of private law.

Has the State put in place any other laws and regulations to ensure business respect for human rights?

3.2. RELEVANT POLICIES

Have policies that seek to foster business respect for human rights been adopted and publicly communicated by the State?

Has the State introduced and/or implemented policies to help facilitate business respect for human rights through the adoption of National Action Plans (NAPs) on business and human rights, corporate social responsibility, development, anti-discrimination, government transparency, women's rights, or human rights in general?

Has the State introduced and/or implemented sector-specific policies to help facilitate business respect for human rights within particularly high-risk industries, such as the extractive, apparel, and other sectors?

Have other policies been adopted by the State that aim to foster business respect for human rights?

New Chapter on business and human rights was added to the governmental action plan on human rights, approved by the decree of the Government of Georgia N338, dated 21 July 2016, which provides the following activities for the implementation of during 2016-2017: to conduct national basic research in business and human rights; to prepare draft action plan for the next three years; to translate international standards in the field of corporate social liability into Georgian language; to organize an International Conference on Corporate Liability; to make presentation on corporate social liability for interested persons; to conduct information campaigns and trainings for business representatives on women's empowerment principles; to organize roundtable/consultation with interested stakeholders on business and human rights and gender equality.

Furthermore, relevant activities to promote corporate social responsibility is stipulated by the "Strategy for the Development of Small and Medium Sized Entrepreneurship for 2016-2020" approved by the ordinance the Government of Georgia N100, dated 26 February 2016 and the governmental action plan for 2016-2017 of the Strategy. In particular, 4th direction of the strategy, regarding facilitation of expert and internationalization of small and medium sized enterprises, states about Responsible Business Conduct (RBC) principles, which implies responsible approach to the environment, introduction of the principles of corporate social responsibility, and significantly recognizes the private sector's awareness rising on RBC and popularization of the introduction of these principles. In accordance with the above mentioned, the action plan provides for the following activities: 4.5.1 identification of the relevant

local organizations in order to promote RBC in industrial sector; 4.5.2 awareness rising of local organizations on RBC; 4.5.3 development of RBC facilitation mechanism; 4.5.4 cooperation with identified local organizations for popularization of RBC. The main implementing agency of this strategy and action plan is the Ministry of Economy and Sustainable Development of Georgia and legal entities of public law under its management. It is noteworthy that the Ministry of Economy and Sustainable Development of Georgia organized an event “Promoting Responsible Business Conduct in Georgia” at Tbilisi Marriott Hotel in Tbilisi on May 27, 2016 in close co-operation with the Organization for Economic Cooperation and Development (OECD). Aim of the planned event was to raise awareness on the Organization for Economic Cooperation and Development (OECD) guidelines related to the principles of Responsible Business Conduct (RBC) for both governmental and non-governmental sectors.

The current policy documents in the field of development of corporate social responsibility include only those activities aimed at raising awareness. Despite the importance of this issue, it is necessary to provide for other specific activities related to the identification of faults and the improvement on legislative level as well as increased effectiveness of the right mechanisms in parallel to raising awareness in the action plans.

3.3. CORPORATE REPORTING AND PUBLIC COMMUNICATIONS

What type of reporting and public communications by business enterprises on how they address their human rights impacts is required by law?

Is corporate financial reporting required the State? Is the law clarifying that, in some cases, human rights impacts are “material” to the economic performance of the reporting company?

The financial statements of the corporations generally are not requested by the State. On the one hand it may be within the company (see indicator 1.5 of the first principle), on the other hand, financial reports are submitted to the stock exchanges or the National Bank of Georgia by business entities acting on the securities market. However, these reports do not include such issues that are relevant to human rights. This is not required by the legislation either.

Is corporate non-financial reporting required and enforced by the State? Is the law clarifying that, in some cases, human rights impacts are “material” to the performance and operations of the reporting company?

Under the Law on “Licenses and Permits” non-financial reporting is required for the implementation of licensing issues (see Indicator 3.1). Environmental legislation also requires certain reports, namely, enterprises regularly submit for example emissions and pollution reports to the Ministry of Environment and Natural Resources Protection that are directly related to human rights - live in a healthy environment.²⁰⁷

Companies also report on their own initiative on individual issues, including the impact on human rights, however this is performed due to their goodwill or membership of any association or club and is not required or encouraged by the State (see also indicator 3.1).

Are there legal requirements for companies to have public consultations before, during, and after the commencement of a major project that may impact local communities? Is there a requirement for the free, prior, and informed consent (FPIC) of impacted communities? Is there a mandatory public release of environmental and social impact assessments by companies?

Legislation requires from business subjects to hold preliminary consultations with local population when their activities are covered by the activities provided under the law on “Environmental Protection” and/or the law on “Environmental Impact Permits”. Herewith, reports on environmental impacts and in certain cases on resettlement or

²⁰⁷ Source: The Ministry of Environment and Natural Resources Protection. Information is received in 3 August 2017.

other social impact shall be prepared on the bases of consultations (see Indicator 1.5 and 3.1).

It is worth to mention that in accordance with Article 6 of the current law on “Environmental Impact Permits”, before addressing administrative body issuing permit, the implementer is obliged in to hold a public hearing in administrative territorial unit where the implementation of activity is planned.

Information about public hearing is published in both central printing office and local regular printing office. The interested community for submitting their observations and opinions has 45 days deadline from the date of appointing public hearing. During this period, the documentation related to the project is public and it is available on the Ministry’s website. In addition, 4th chapter of the Environmental Assessment Code (which will enter into force from 1 January 2018), regulates public participation in decision-making process in a new way and also ensures the protection of publicity in accordance with the principles of the Aarhus Convention, in particular, obligation of the Ministry of Economy to hold, declare and organize public discussion. Also, the Code provides for involvement of interested groups at an early stage of decision-making, including in the scoping stage.²⁰⁸

Are there any other legal requirements on companies in terms of public communications?

Legislation on public consultations does not provide other requirements.

3.4. GUIDANCE AND INCENTIVES

Does the State provide guidance and incentives for companies in terms of business respect for human rights?

Has the State developed guidance for businesses on respecting human rights that is appropriate to different industry sectors (for example, high-risk sectors such as extractives), particular human rights issues (for example, working conditions, discrimination), and different types of corporations (for example, MNEs, SMEs)?

Has the State provided indicators of expected human rights outcomes, information regarding relevant national laws and regulations, and examples of best practice and due diligence methods?

Has the State provided incentives for business respect for human rights, such as favorable treatment following non-mandatory self-reporting by companies of human rights policies and practices?

The state does not provide guidance, recommendations or assistance to companies on human rights issues, except on environmental issues that are quite scarce.

No incentive giving mechanisms are presented on the legislative or policy level. The stimulation envisaged by the Law on “Environmental Protection” is not effectively implemented, since no legal document provides for economic stimulation for relevant subjects (see Indicator 1.5).

The department of tourism and resorts, the subdivision of the government of Autonomous Republic of Adjara, may be considered as an incentive, which is implementing the project “Recommended by the Department of Tourism and Resorts” (see Indicator 4.2), promotes the relevant business entities in case of taking into account the quality of service, safety standards and individual rights (these subjects themselves use a quality mark awarded by the department in terms of PR).

²⁰⁸ Source: The Ministry of Environment and Natural Resources Protection. Information is received in 3 August 2017.

3.5. NATIONAL HUMAN RIGHTS INSTITUTIONS (NHRIS)

Has the State formally recognized and supported the role of NHRIs in promoting implementation of the UNGPs?

Has the State established a National Human Rights Institution (NHRI)? If so, how was the NHRI established, and what kind of recognition and support does the State provide for the NHRI?

For detailed information on the National Institute of Human Rights see the first principle (non-judicial mechanisms for reviewing complaints - Public Defender);

The Public Defender of Georgia on its own initiative organizes and supports various activities in terms of business and human rights.

The State has not officially increased the role of the Public Defender in promoting the implementation of UN Guiding Principles (UNGPs).

Does the NHRI's mandate include business and human rights? Does the State finance NHRI activities within the field of business and human rights? Does the State support the NHRI in providing guidance on human rights to business enterprises? Does the State support the NHRI in monitoring the national business and human rights situation and to provide access to justice for victims of corporate-related human rights abuses? Has the role of the NHRI in promoting implementation of the UNGPs been formally recognized, and, if so, does the State support the NHRI in that role?

The Public Defender of Georgia supervises: State agencies, Local self-government agencies, Public institutions and Public officials. It should be noted that exercising supervision over violation of human rights by private companies does not fall within the scope of the Public Defender's competence. The exception is an anti-discrimination legislation under which the Public Defender is authorized to review claims against legal entities of private law. Nevertheless, the Public Defender of Georgia supervises the protection of human rights and freedoms within its jurisdiction on the territory of Georgia. It identifies the violations of human rights and contributes to the restoration of the violated rights and freedoms. Public defender issues reports, recommendations and proposals which are relevant to private entities (Labour rights, land rights, environment law etc). Furthermore, it can influence the state policies towards regulating the conduct of private entities.

GUIDING PRINCIPLE 4

States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence.

COMMENTARY TO GUIDING PRINCIPLE 4

States individually are the primary duty-bearers under international human rights law, and collectively they are the trustees of the international human rights regime. Where a business enterprise is controlled by the State or where its acts can be attributed otherwise to the State, an abuse of human rights by the business enterprise may entail a violation of the State's own international law obligations. Moreover, the closer a business enterprise is to the State, or the more it relies on statutory authority or taxpayer support, the stronger the State's policy rationale becomes for ensuring that the enterprise respects human rights.

Where States own or control business enterprises, they have greatest means within their powers to ensure that relevant policies, legislation and regulations regarding respect for human rights are implemented. Senior management typically reports to State agencies, and associated government departments have greater scope for scrutiny

and oversight, including ensuring that effective human rights due diligence is implemented. (These enterprises are also subject to the corporate responsibility to respect human rights, addressed in Chapter II.)

A range of agencies linked formally or informally to the State may provide support and services to business activities. These include export credit agencies, official investment insurance or guarantee agencies, development agencies and development finance institutions. Where these agencies do not explicitly consider the actual and potential adverse impacts on human rights of beneficiary enterprises, they put themselves at risk—in reputational, financial, political and potentially legal terms—for supporting any such harm, and they may add to the human rights challenges faced by the recipient State.

4.1. BUSINESSES OWNED OR CONTROLLED BY THE STATE

Does the State exercise special measures to support the human rights performance of State-owned or -controlled business enterprises?

What types of human rights due diligence measures by State-owned or -controlled business enterprises are required by the State? How do associated government departments ensure that effective human rights due diligence is being carried out? What type of scrutiny and oversight do such government departments have over these enterprises (for example, inclusion of human rights performance information in management reports to relevant State agencies)?

Today, 124 enterprise shares are owned by the state²⁰⁹, from which 100 are with 51% or more share participation of the state (in 74 cases is 100% shareholder).²¹⁰

According to the legislation, the State does not require enterprises under its ownership or control to have internal mechanisms for proper protection of human rights. National Agency of State Property represents the authority responsible for the management of these enterprises. The aim of the National Agency of State Property is to satisfy and improve the services of private sector representatives and citizens, which have the interest to acquire state property. According to the Agency's website, it strives for continuous improvement and development of its services and its values are:

- Protection of the principle of equality and fairness;
- Tolerance to every citizen and interested person;
- Support for the development of business environment.

The functions of the National Agency of State Property do not include promotion, demand or otherwise promotion or protection of human rights by enterprises owned or controlled by the state.

The enterprises submit the reports to the agency, although these reports are mostly financial and no information on the protection of human rights is submitted to the agency while collecting the data.²¹¹

It should be noted separately that enterprises of medical profile are also under the management of LEPL - National Agency of State Property, main activities of which are provision of medical services to the population and participation in various health care programs. The Ministry of Labor, Health and Social Affairs of Georgia controls health care activities of the enterprises of medical profile. Consequently, the quality control of medical care, ensuring the study

²⁰⁹ This data does not include enterprises of municipalities or Autonomous Republics. Source: National Agency of State Property. Information is received 27 July 2017.

²¹⁰ Complete list, by indicating legal form, sphere of activity and amount of share is available on the we-page of National Agency of State Property: http://nasp.gov.ge/pages/?საწარმოების=&page_id=22 [Last accessed 15 July 2017].

²¹¹ For example, see data collection form consumer guideline. Available here: <https://drive.google.com/file/d/0B3vgM3IE-Woh4SHM1S0ZRZDh0RE0/view>. Report of the Agency for 2016. Available here: <https://drive.google.com/file/d/0B3vgM3IEWoh4QVB-TOTIWVnc1d1U/view> [Last accessed 15 July 2017].

of citizens' complaints (complaints), medical-social expertise control etc. are carried out.²¹²

The issue of enterprises under municipal ownership shall be separated. For example, the municipalities throughout Georgia exercise its authority in the field of transportation services and management of municipal wastes through the "Tbilisi Transport Company" LTD and "Tbiliservice Group" LTD. Status of employees of the "Tbilisi Transport Company" LTD is regulated by the internal labour regulation approved by the order N01-173 of the General Director of the "Tbilisi Transport Company" LTD, dated 16 July 2013, also number of instructions are adopted and acting, in particular, instruction "on Fire Safety Measures" approved by the order N01-230 of the General Director of the "Tbilisi Transport Company" LTD, dated 27 October 2011, which strictly provides for the protection of anti-fire conditions in the transport. Also, instruction on "Pre-voyage Medical Examination of engineers of the Electric train? and Engines" approved by the minutes of meeting N3 of the "Tbilisi Transport Company" LTD technical council of 27.09.2013 and order N01-284 of the General Director of 06.12.2013, which in order to ensure safe movement and to prevent possible emergency situations provides for medical examination of engineers and assistants of engineers after receiving the rout sheet. Number of instructions are developed and will be approved by the director of "Tbiliservice Group" in the field of labour safety, in particular, instruction for waste-disposal vehicle drivers, instructions on the protection of safe working conditions requirements in the repair workshop, general rule on the protection of labour conditions, labour protection instruction for personal working as a bulldozer drivers, labour protection instruction for truck drivers, labor protection instruction for personal employed as driver's worker, Labour safety norms for personnel employed in drainage farm, labor protection instruction for the personnel working as the excavator driver, where the rights and responsibilities of the employer and employee are strictly defined.²¹³ However those documents are subject to internal regulation and are not regulated by municipality's or other normative act.

INITIATIVE:

The draft Code of Ethics is developed by the LEPL - National Agency of State Property, which regulates protection of values such as: equality between people, respect for the values, dignity and diversity of personality. In addition, the purpose of the Code is to establish the principles of activities, code of conduct and ethic standards of relationship of employees of the enterprise, established by the equity participation of the state.²¹⁴

What types of supply chain management measures by State-owned or -controlled business enterprises are required by the State? How do associated government departments ensure that effective supply chain management is being carried out? What type of scrutiny and oversight do such government departments have over these enterprises (for example, inclusion of supply chain information in management reports to relevant State agencies)?

The legislation does not require management of the supply chains in the State owned/controlled enterprise by taking into consideration human rights. Neither the National Agency of Property provides any work in this direction.

Has the State set out any other special measures to support the human rights performance of State-owned or -controlled business enterprises?

There is no direct encouragement of human rights protection mechanisms in enterprises under state ownership or control. They are not required to provide for this issue neither at the level of strategy nor in the statutes, except the health care institutions that are subject to separate regulation. Besides, it is worth mentioning the draft Code of Ethics will change this approach once it is adopted.²¹⁵

Legislation provides certain requirements of accountability and transparency, for example, submission of property declaration by the head of the enterprise with 100% participation of a State, if previous year's turnover of this enterprise exceeds 100,000 GEL according to the annual declaration of profits.²¹⁶

²¹² Source: National Agency of State Property. Information is received on 27 July 2017.

²¹³ Source: Tbilisi Citi Hall. Information is received on 3 August 2017.

²¹⁴ Source: National Agency of State Property. Information is received on 27 July 2017.

²¹⁵ Source: National Agency of State Property. Information is received on 27 July 2017.

²¹⁶ See. Article 14 of the Law of Georgia "law on Conflict of Interest and Corruption in Public Service" and Ordinance of the Government of Georgia N139 dated on 12 February 2014.

It should be noted that, according to the General Administrative Code of Georgia, in case of financing from the budget, the information about such funding is public if it does not contain commercial, personal or state secrets.

In practice, the research of statistics and websites of several state enterprises revealed that they almost never provide information about the impacts of human rights. Their mission and vision almost never include any provision on human rights and rarely indicate the rights of employees and consumers.²¹⁷ For example, “Georgian Post” LTD contains a reservation on the interests of consumers in its own vision and states in the mission “to protect and ensure the right of every citizen to receive postal services without delay following to the universal postal service principle.” However, specific records can not be found to protect this right.²¹⁸

4.2. BUSINESSES RECEIVING SUBSTANTIAL SUPPORT AND SERVICES FROM STATE AGENCIES

Does the State exercise special measures to support the human rights performance of businesses receiving substantial support and service from State agencies (for example, export credit agencies, public banks, public pension funds, official investment insurance or guarantee agencies, development agencies, or development finance institutions)?

Has the State required that businesses receiving substantial support and services from State agencies take into account human rights considerations?

The state does not have common and specific approach to request the companies that receive substantial assistance or services from the state to take into account human rights. However, the Ministry of Economy and Sustainable Development of Georgia has expressed readiness to stipulate respect of human rights in the project “Produce in Georgia”.²¹⁹

What types of human rights due diligence measures by State-supported businesses are required by the State? How do associated government departments ensure that effective human rights due diligence is being carried out? What type of scrutiny and oversight do such government departments have over these businesses?

Since human rights are not provided for in the state programs, there is no encouragement of adequate protection.

Has the State set out any other special measures to support the human rights performance of State-owned or -controlled business enterprises?

The state-sponsored business projects do not include any other measures specifically to ensure respect for human rights.

It should be noted that individual programs may include the encouragement of respect for certain rights. For example, the Department of Tourism and Resorts, the sub departmental establishment of government of Autonomous Republic of Adjara is implementing the project “Recommended by the Department of Tourism and Resorts”²²⁰. The mentioned project aims at evaluating guides, accommodation and catering facilities in the field of tourism in the territory of Adjara and in case if the criteria are met the delivering relevant certificate (so called quality mark), in order to promote consumer rights, safety and minimum quality standards. Within the frames of the project, evaluation criteria is there to provide adequate environment for people with disabilities, to observe requirements of individual technical regulations (fire safety, food safety), to have labor contracts with the employees in accordance with the law. , etc.²²¹ This project is not mandatory for touristic entities, however several dozens are involved in it.

²¹⁷ Also see “Transparency and Accountability of State Owned Companies”, Georgian Young Lawyers Association. 2015. Available here: https://gyla.ge/files/news/sawarmoebi_geo.pdf [Last accessed on 15 July 2017].

²¹⁸ <https://www.gpost.ge/?site-lang=ka&site-path=company/mission/> [Last accessed on 15 July 2017].

²¹⁹ Information on the project is available here: <http://qartuli.ge/geo/> [Last accessed on 26 May 2017].

²²⁰ Information on the project is available here: <http://recommend.ge/> [Last accessed on 26 May 2017].

²²¹ Information on the project is available here: <http://recommend.ge/ge/criteria> [Last accessed on 26 May 2017].

GUIDING PRINCIPLE 5

States should exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights.

COMMENTARY TO GUIDING PRINCIPLE 5

States do not relinquish their international human rights law obligations when they privatize the delivery of services that may impact upon the enjoyment of human rights. Failure by States to ensure that business enterprises performing such services operate in a manner consistent with the State's human rights obligations may entail both reputational and legal consequences for the State itself. As a necessary step, the relevant service contracts or enabling legislation should clarify the State's expectations that these enterprises respect human rights. States should ensure that they can effectively oversee the enterprises' activities, including through the provision of adequate independent monitoring and accountability mechanisms.

5.1. PUBLIC SERVICE DELIVERY

Does the State ensure that human rights are protected in situations where private enterprises provide for government services that may impact upon the enjoyment of human rights?

Has the State adopted legislative or contractual protections for human rights in delivery of privatized services by the central or local government, for example, for the provision of services related to health, education, care-delivery, housing, or the penal system? Do such protections include a State-performed human rights impact assessment of the potential consequences of a planned privatization of provision of public services, prior to the provision of such services? Do public procurement contracts clarify the State's expectation that businesses respect human rights in delivering services and comply with human rights standards?

What measures does the State take to promote awareness of and respect for human rights by businesses that the State commercially contracts with?

What kind of screening processes does the State have in place to promote business respect for human rights? Does the State engage in selective processes that give preferential treatment to companies that demonstrate respect for human rights? Does the State exclude from the bidding process those companies that have demonstrated poor respect for human rights (such as poor and hazardous working conditions, as well as excessive use of force or maltreatment of individuals receiving care)?

Do relevant State agencies effectively oversee the activities of the enterprises that provide services on behalf of the State? Does the State provide for adequate independent monitoring and accountability mechanisms of the activities of the private providers? Does the State provide for specific oversight of high-risk services, such as those related to health and security?

Is the State a party to the Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies During Armed Conflict? If so, how does it incorporate commitments into national laws? Is the State party to the International Code of Conduct for Private Security Providers, and if so, how does it incorporate commitments into national laws and procurement processes? Is the State party to the Voluntary Principles on Security and Human Rights? If so, how does it incorporate commitments into national laws, including around the provision of public security? Has the State put any other measures in place to ensure that public service delivery by private enterprises does not have any negative human rights impacts?

In carrying out State (public) services the State almost has not requested from business any special obligation to protect human rights. There are only standards for consumer protection and service quality in certain areas.

From the public services, energy and health care sectors are notable as they are subject to special regulations.

The Georgian National Energy and Water Supply Regulatory Commission represents the national regulatory authority on electricity, gas and water supply and carries out separate activities to protect consumer rights, however any other rights are not provided for other than that. Environmental issues shall be also mentioned in the energy field - energy efficiency, reduction of harmful environmental impacts, etc. However, Georgian legislation contains only general provisions in this area.

As for the health care sector, this sector is more regulated to ensure human life and health care. Current Law on “Patients’ Rights”²²², which aims to protect citizens’ rights in the field of health care, as well as to ensure its honor and dignity. The law prohibits the discrimination of the patients, establishes the right to receive and change the health care services, and establishes that the patient or his legal representative has the right to apply the court and request:

- a) compensation for any financial and/or non-financial damage caused by:
 - a.a) violation of patient’s rights;
 - a.b) Wrongful medical action;
 - a.c) other/any shortcomings in the functioning of a medical institution;
 - a.d) wrongful supervision and regulation carried out by the state;
- b) suspend or cancel the license of medical personnel;
- c) change of State medical and sanitary standards.

The law of Georgia “on Health Care” also regulates the rights of citizens in the field of health care, introduces prohibition of any forms of discrimination, the right to receive personal information, the obligation to protect private life, and the right to freely choose methods of medical treatment and facilities²²³.

Municipal services are also noteworthy regarding the public services - cleaning, planting, lighting, etc. Legislation does not provide obligations human rights protection or any requirements for appropriate protection in this field.

Delivery of public services are sometimes carried out through state procurement, however, neither in this case, as in general, State procurement legislation or relevant agreements do not include special obligation of respect for human rights are envisaged and only the obligations of general service are established.

GUIDING PRINCIPLE 6

States should promote respect for human rights by business enterprises with which they conduct commercial transactions.

COMMENTARY TO GUIDING PRINCIPLE 6

States conduct a variety of commercial transactions with business enterprises, not least through their procurement activities. This provides States—individually and collectively—with unique opportunities to promote awareness of and respect for human rights by those enterprises, including through the terms of contracts, with due regard to States’ relevant obligations under national and international law.

²²² The Law is available here: <https://matsne.gov.ge/ka/document/view/16978> [Last accessed on 26 May 2017].

²²³ The law is available here: <https://matsne.gov.ge/ka/document/view/29980> [Last accessed on 26 May 2017].

6.1. PUBLIC PROCUREMENT

Which types of requirements or incentives to respect human rights can be found in legislative measures or in terms of public procurement?

Have State agencies decided whether their contractors must comply with specific human rights or protect against defined human rights harms as a contract obligation? If so, have State agencies made an effort to expand the scope of protection and clarify specific human rights definitions to resolve vagueness?

Do State agencies notify potential contractors when there is a significant risk of a human rights violation that undermines fair competition? Does such notice trigger specific disclosure and compliance obligations?

In addition to evaluating price and capacity, do State agencies evaluate whether potential contractors are responsible, based on integrity and business ethics and on compliance with domestic law that protects the safety and health of workers and communities? Do State agencies engage in selective or targeted public procurement, such as preferential award to discriminated groups (for example, ethnic minorities) or to companies working to achieve specific human right objectives (for example, gender equality)? Do State agencies require contractors to certify that they know their subcontractors, including specific locations of production or supply, and that they have management systems to ensure compliance? Do State agencies exclude companies with commercial contracts in high-risk countries or a bad human rights record from public procurement?

Do State agencies have criteria and sub-criteria for what constitutes the most economically advantageous tender, including human rights criteria? Have State agencies taken steps to clarify how human rights standards and policies might be used to form part of the award criteria for a particular contract? Do State agencies require contractors to disclose information on their supply chain, including specific subcontractors and the addresses of factories or sites of supply? Do State agencies confirm a contractor's assurances and required development of compliance plans during the award stage?

Is the State taking steps to ensure that human rights requirements, material to the procured good or service, are a part of contractual performance clauses? Have State agencies inserted compliance obligations into contract terms? When a State agency identifies a risk of harm or human rights violations, does it authorize contract officers to insert into the contract an obligation to comply with the domestic law of the country of production or supply?

Do State agencies have information systems to audit and monitor contractors to ensure that the contractor meets its performance or compliance obligations and does not adversely impact human rights? Do such systems respond to work complaints? Are such systems independent from, yet accountable to, the State?

Do State agencies dedicate staff to enforcement of the contract terms and provide them with detailed policies? Have State agencies put in place procedures to correct adverse human rights impacts identified, such as financial or other remedies if a contractor violates human rights? Do the procedures favor changing the behavior of the contractor to improve their human rights performance rather than simply terminate the relationship? Do State agencies provide for due diligence as both a defense and as a remedy for breach of compliance standards?

Have State agencies put any other measures in place to ensure that public procurement complies with human rights protection?

In the case of state procurement, human rights protection issues are envisaged neither on policy nor on the practice level. Several State Procurement Agreements (mainly such were seen from the years 2011-2013) have included obligation to provide employment for the local population for the supplier,²²⁴ however this was not a substantially

²²⁴ See several procurement agreements, Article on rights and obligations of the parties:
<https://tenders.procurement.gov.ge/public/lib/contract.php?go=56508>,
<https://tenders.procurement.gov.ge/public/lib/contract.php?go=15596>,
<https://tenders.procurement.gov.ge/public/lib/contract.php?go=37742>

systemic approach and did not continue for further period.

None of the recommendations or guidelines of the State Procurement Agency include provisions on obligations or any recommendations to envisage human rights protection issues upon planning of purchase, implementing, selecting supplier, revealing a winning bidder, signing a contract, delivering goods or services, or monitoring the performance or during any other stage. In practice, actually no state procurement envisages at any abovementioned stage the issues of human rights protection or respect.

6.2. OTHER COMMERCIAL ACTIVITIES

Has the State taken measures to promote awareness of and respect for human rights by other enterprises with which the State conducts commercial activities?

Does the State take measures to promote respect for human rights among other businesses with which it engages in commercial relationships, such as through business partnerships for economic development and innovation (for example, growth funds, or strategic support for innovation in certain sectors, such as green energy or medical technology)?

In other commercial activities of the State (for example, in frames of cooperation between private and public sectors) issues concerning human rights protection are not envisaged. However, in certain cases service quality standards are provided for in agreement in general form, typical for a standard private-legal agreement.

GUIDING PRINCIPLE 7

Because the risk of gross human rights abuses is heightened in conflict-affected areas, States should help ensure that business enterprises operating in those contexts are not involved with such abuses, including by:

- (a) Engaging at the earliest stage possible with business enterprises to help them identify, prevent and mitigate the human rights-related risks of their activities and business relationships;**
- (b) Providing adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence;**
- (c) Denying access to public support and services for a business enterprise that is involved with gross human rights abuses and refuses to cooperate in addressing the situation;**
- (d) Ensuring that their current practices, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses.**

COMMENTARY TO GUIDING PRINCIPLE 7

Some of the worst human rights abuses involving business occur amid conflict over the control of territory, resources or a Government itself—where the human rights regime cannot be expected to function as intended. Responsible businesses increasingly seek guidance from States about how to avoid contributing to human rights harm in these difficult contexts. Innovative and practical approaches are needed. In particular, it is important to pay attention to the risk of sexual and gender-based violence, which is especially prevalent during times of conflict.

It is important for all States to address issues early before situations on the ground deteriorate. In conflict-affected areas, the “host” State may be unable to protect human rights adequately due to a lack of effective control. Where transnational corporations are involved, their “home” States therefore have roles to play in assisting both those corporations and host States to ensure that businesses are not involved with human rights abuse, while neighbouring States can provide important additional support.

To achieve greater policy coherence and assist business enterprises adequately in such situations, home States

should foster closer cooperation among their development assistance agencies, foreign and trade ministries, and export finance institutions in their capitals and within their embassies, as well as between these agencies and host Government actors; develop early-warning indicators to alert Government agencies and business enterprises to problems; and attach appropriate consequences to any failure by enterprises to cooperate in these contexts, including by denying or withdrawing existing public support or services, or where that is not possible, denying their future provision.

States should warn business enterprises of the heightened risk of being involved with gross abuses of human rights in conflict-affected areas. They should review whether their policies, legislation, regulations and enforcement measures effectively address this heightened risk, including through provisions for human rights due diligence by business. Where they identify gaps, States should take appropriate steps to address them. This may include exploring civil, administrative or criminal liability for enterprises domiciled or operating in their territory and/or jurisdiction that commit or contribute to gross human rights abuses. Moreover, States should consider multilateral approaches to prevent and address such acts, as well as support effective collective initiatives.

All these measures are in addition to States' obligations under international humanitarian law in situations of armed conflict, and under international criminal law.

7.1. GUIDANCE

Does the home State play a role in assisting both corporations and host States to ensure that businesses are not involved with human rights abuse in conflict-affected areas?

Does the State seek to ensure that it is informed of the role of corporations headquartered within its jurisdiction in conflict-affected areas? Does the home State engage with the host State in ensuring that businesses are respecting human rights?

Does the State provide guidance for companies operating in conflict-affected areas on what specific human rights issues that the companies should be aware of and pay specific attention to in their due diligence process (such as gender and sexual violence, discrimination, and contributing to conflict through finance)?

Georgia has two occupied territories of Abkhazia and South Ossetia, the state has imposed absolutely different legal frameworks since 2008 and falls under the Law of Georgia on Occupied Territories.

Article 6 of the Law of Georgia on Occupied Territories establishes restriction of any type of economic activity, according to which the following activities shall be prohibited in the occupied territories: any economic (entrepreneurial or non-entrepreneurial) activity, international air and maritime traffic, railway and international overland traffic, as well as the use of public resources and the arrangement of money transfers. However, carrying out economic activities prohibited on the occupied territories is allowed only in particular cases with a special consent to be given under procedures determined by a legal act of the Government of Georgia and such should serve to the State interests of Georgia, purposes of peaceful resolution of conflict, de-occupation, restoration of confidence between the populations affected by conflict, or humanitarian purposes;

Herewith, it should be noted that the Ministry of Foreign Affairs, through its diplomatic missions, constantly informs foreign state and private companies on the law of Georgia on the occupied territories and calls on them to refrain, both from movement on the occupied territories as well as the business activities, because Georgia can not exercise jurisdiction, consequently, can not ensure security and human rights protection on these territories.

7.2. INTERNATIONAL FRAMEWORKS AND INITIATIVES

Has the State officially supported or implemented international frameworks and initiatives on the private sector role

in conflict-affected areas?

Does the State participate in and/or promote relevant initiatives (for example, the Voluntary Principles or the International Code of Conduct for Private Security Service Providers)?

For detailed information see 1.4 principle.

7.3. SUPPORTIVE MEASURES

Does the State investigate company activities in conflict-affected areas, act upon these investigations, and provide redress?

Does the State have a procedure for investigating company activities in conflict-affected areas (for example, through the appointment of a mission that may report to the Parliament or asking the local embassy to investigate in the host State and report to relevant authorities in the home State)?

The Government of Georgia has been continuously exercising the policy aimed at ensuring the protection of human rights for entire population of Georgia. Nevertheless, there have been significant challenges, both in Abkhazia and Tskhinvali/South Ossetia regions that are still under Russian military occupation.

These territories are integral parts of Georgia and are under the jurisdiction of Georgia, full exercise of which, including the activities of the investigative bodies in these territorial units, is restricted because of occupation. Due to the occupation Chapter XXXVII was added to the Criminal Code of Georgia, on 19 December 2008, which lays down responsibility for violation of the legal regime of occupied territories, including for carrying out economic activities prohibited on occupied territories (Article 3222).

Thus, the applicable legislation does not know any other investigative measures.

Does the State have a procedure for follow-up on issues identified through the investigative process (for example, through the denial or withdrawal of existing public support or services to business enterprises that are involved in human rights abuse or other crimes)? Has the State developed mechanisms of extraterritorial criminal liability? Is it possible for the State to impose sanctions on persons and entities for example, by seizing equipment or freezing assets?

The Criminal Code of Georgia applies also to the crimes committed outside the territory of Georgia. In particular, in accordance with Article 5 of the Code, citizen of Georgia and a person having a status of stateless persons in Georgia, who have committed abroad such an act that is stipulated under the Criminal Code of Georgia and that is considered to be a crime under the legislation of the state where it was committed, shall be liable under Criminal Code of Georgia. But in case if an act is not considered to be a crime under the legislation of the state where it was committed, shall be criminally liable under the Criminal Code of Georgia, provided that the act constitutes a serious or particularly serious crime directed against the interests of Georgia or/and if criminal liability for this crime is prescribed by the treaties to which Georgia is a party, as well as, if the commercial bribery, bribe-taking, bribe-giving and influence peddling was committed.

As regards to the crime committed abroad by the Citizen of foreign state or stateless person, liability under the Criminal Code of Georgia shall be imposed, provided that the act constitutes a serious or particularly serious crime directed against the interests of Georgia or/and if criminal liability for this crime is prescribed by the treaties to which Georgia is a party. As well as in case if the citizen of foreign state or stateless person exercises public legal authority for Georgia and committed commercial bribery, bribe-taking, bribe-giving and influence peddling, the Criminal Code of Georgia shall be applied.

7.4. GROSS HUMAN RIGHTS ABUSES

Has the State put in place measures for addressing the risk of business involvement in gross human rights abuses?

Has the State put in place procedures to warn business enterprises of the heightened risk of being involved with gross abuses of human rights in conflict-affected areas?

Has the State put in place efforts with the aim of fostering closer cooperation among its development assistance agencies, foreign and trade ministries, and export finance institutions in its capitals and within its embassies, as well as between these agencies and host State actors?

Has the State introduced civil or criminal liability for enterprises domiciled or operating in their territory and/or jurisdiction that commit or contribute to gross human rights abuses, including abuses outside of its territorial jurisdiction, as permitted by the UNGPs and international human rights law?

The above mentioned topic is discussed in the first principle.

Has the State engaged in multilateral approaches to prevent and address acts of gross human rights abuses? Does the State accept the jurisdiction of the International Criminal Court (ICC)?

7.9. ROLE OF EXPORT CREDIT AGENCIES AND INSURANCE AGENCIES

Does the State ensure that Export Credit Agencies and Insurance Agencies do not contribute or financially benefit from negative human rights impacts and abuse?

Has the State put in place special measures to ensure that export credit agencies and insurance companies are not contributing to, or financially benefitting from, negative human rights impacts and abuse? Are there rules and incentives for such institutions to take human rights impacts into consideration in their financing and investment procedures?

Information could not be found on this topic.

GUIDING PRINCIPLE 8

States should ensure that governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State's human rights obligations when fulfilling their respective mandates, including by providing them with relevant information, training and support.

COMMENTARY TO GUIDING PRINCIPLE 8

There is no inevitable tension between States' human rights obligations and the laws and policies they put in place that shape business practices. However, at times, States have to make difficult balancing decisions to reconcile different societal needs. To achieve the appropriate balance, States need to take a broad approach to managing the business and human rights agenda, aimed at ensuring both vertical and horizontal domestic policy coherence.

Vertical policy coherence entails States having the necessary policies, laws and processes to implement their international human rights law obligations. Horizontal policy coherence means supporting and equipping departments and agencies, at both the national and subnational levels, that shape business practices—including those responsible for corporate law and securities regulation, investment, export credit and insurance, trade and labour—to be informed of and act in a manner compatible with the Governments' human rights obligations.

8.1. POLICY COHERENCE

Have efforts been made within the State to support knowledge and understanding for human rights and business and the State duty?

Has the State developed a firm written commitment to business and human rights, and has this commitment been communicated to governmental departments? Further, does this commitment help to clarify the role of different departments (for example, labor, business, development, foreign affairs, finance, or justice)?

Has the State developed a clear division of responsibilities to help coordinate human rights and business issues between and across different government agencies and departments?

Has the State developed guidance material and training to help clarify the roles of different departments in promoting and protecting human rights with regard to the role of business? Does this guidance include specific information on protection of human rights and how this relates to international and regional obligations and commitments (for example, UN, OECD, and regional obligations and commitments)? Does this guidance include specific information on the protection of human rights in trade, with an emphasis on the role of regional bodies and international organizations (for example, the WTO, IFIs (WB, IFC, etc.), and regional IFIs (EBRD, EIB, etc.))? Further, does the guidance provide information on the roles and responsibilities across ministries or agencies (for example, enterprise, labor, development, foreign affairs, agriculture, environment and climate change, financial sector, health, information society policy, and national financial institutions and funds)?

Obligation on the encouragement of corporate social liability is taken under the Government's policy documents and association agreement with the EU. As provided in details in 3rd principle, information on business and human rights represent the part of the Action Plan of the Government of Georgia on the Protection of Human Rights (2016-2017).

The Action Plan is developed, coordinated and monitored by the Interagency Council on Human Rights established by the Government decree N551 of 13 December 2016, the members of which are Ministers, and the chair is the Prime Minister. Members of the parliamentary and judicial authorities, as well as non-governmental and international organizations working on human rights in Georgia, take part in the Council with the right to vote. Consequently, any activity set out in the Action Plan is developed with the participation of all interested persons. Human Rights Secretariat of the Administration of the Government of Georgia, which currently consists of three employees (Head of the Service and two advisors) performs functions of the Secretariat of the Council. Considering the powers imposed on the Secretariat would be reasonable to increase its human resources. Herewith, the Secretariat plans to create a formal working group for effective enforcement and coordination of activities envisaged in the Action Plan on Business and Human Rights issues, which unconditionally will be positively reflected on the development of business and human rights in Georgia.

In 2016, with the support of Human Rights Secretariat and partner organizations the following activities were conducted:

Administration of the Government of Georgia and Civil Development Agency organized the conference on "the Development of Corporate Social Responsibility in Georgia" on 22-23 April 2016. The participants of the conference were the Head office of the UN Global Compact and the US Chamber of commerce in Georgia. Within the frames of the conference presentations and discussions were held on different thematic issues regarding Corporate Social Responsibility.

The conference on "Corporate Social Responsibility Agenda in Georgia" was held on 8 July 2016 in the Hotel "Tbilisi Rooms" in partnership with the Human Rights Secretariat of the Administration of the Government, Civil Development Agency (CiDA), Corporate Social Responsibility Club and the Global Compact Network. The activity was conducted within the frames of CSR week, organized by the CSR club.

On 29 July 2016, Human Rights Secretariat of the Administration of Government of Georgia organized a working meeting in the framework of corporate social responsibility about the employment of persons with disabilities. Representatives of the following agencies and organizations participated in the meeting: The Ministry of Labor, Health

and Social Affairs, Social Service Agency, the Ministry of Education and Science of Georgia, Civil Development Agency (CiDA) and American Chamber of Commerce in Georgia. The purpose of the meeting was to agree on a specific action plan that would facilitate/encourage employment of persons with disabilities by the business sector. This initiative is implemented in cooperation with the Government, Civil Sector and Business Sector.

GUIDING PRINCIPLE 9

States should maintain adequate domestic policy space to meet their human rights obligations when pursuing business-related policy objectives with other States or business enterprises, for instance through investment treaties or contracts.

COMMENTARY TO GUIDING PRINCIPLE 9

Economic agreements concluded by States, either with other States or with business enterprises—such as bilateral investment treaties, free- trade agreements or contracts for investment projects—create economic opportunities for States. But they can also affect the domestic policy space of Governments. For example, the terms of international investment agreements may constrain States from fully implementing new human rights legislation, or put them at risk of binding international arbitration if they do so. Therefore, States should ensure that they retain adequate policy and regulatory ability to protect human rights under the terms of such agreements, while providing the necessary investor protection.

9.1. BILATERAL AND MULTILATERAL INVESTMENT AGREEMENTS AND ARBITRATION OF DISPUTES

Has the State put in place policies, guidance, monitoring, and reporting for relevant ministries or agencies with regard to the conclusion of bilateral and multilateral investment agreements and with regard to the arbitration of disputes?

Has the State worked at promoting the inclusion of specific human rights provisions in International Investment Agreements (IIEs) and Bilateral Investment Treaties (BITs)?

Has the State worked at promoting the inclusion of social issues, such as the environment, labor rights, or social rights, in International Investment Agreements and Bilateral Investment Treaties?

Has the State put in place measures to ensure that stabilization clauses do not limit the host government's ability to meet its human rights obligations?

List all relevant policies, legislation, and regulations already in place, as well as any in progress and their status of adoption or implementation.

Bilateral investment contracts are concluded between two States, in order to create relevant investment environment in the country. Georgia has concluded 33 investment contracts with different countries worldwide.

In the above mentioned investment contracts only rights and obligations of investors are guaranteed and there is a standard provision, which bounds signatory parties of the contract to encourage such investments that are in compliance with domestic laws and regulations. These agreements do not include human rights provisions, however there are several exceptions:

Bilateral investment contract between Georgia and Finland stipulates that the aim of the investment is the support of effective application of economic resources and improvement of living standards for local population. Herewith,

it states that economic and inter-business cooperation between two countries shall be conducted in accordance with International Labor Rights standards and shall be without prejudice to health care, security and environmental standards.

Investment contract concluded between Georgia and Lithuania facilitates activities of investors directed towards the protection of public order, which is also important to ensure animals' rights and plants' life and health.

In the event of violating provisions of investment contract, in most cases the dispute is settled through International Arbitration, where application can be submitted both by physical as well as legal entity.

There are cases, like the investment contract concluded between Georgia and Lithuania, where the parties determine two different mechanisms for dispute settlement: through local competent court or international arbitration.

Contract concluded with the United States of America determines that the main aim of the contract shall be protection of investment, however it describes different goals as well: economic development, creation of high living standards, protection of international labor standards, provision of health, security and environmental standards.

Several bilateral contracts signed by Georgia include an umbrella clause, following to which signatory parties take obligation to observe any obligation taken by the state within the frame of the contract concluded with investor. Such clause provides an opportunity for the investor to use bilateral investment contracts for the performance of the terms of investment contract concluded by this latter with the State. In cases of medium and large investment projects, the State shall make preliminary assessment of the impact of investment projects on human rights and envisage the human rights issues in the contracts to a maximum extent. At the same time the State shall avoid to provide for such stability Articles in the contracts, which prevent the State from fulfilling current obligations in terms of International Human Rights policies.

It is noteworthy that, most of the bilateral agreements signed by Georgia include most-favoured- nation (MFN) treatment, which implies that the investor representing the host country, which has concluded bilateral agreement with Georgia, in terms of most-favored-nation (MFN) treatment has the opportunity to use the most favoured treatments from other bilateral contracts concluded by Georgia with different countries. For example, in case the contract concluded between the host country of the investor company and Georgia does not include an umbrella clause, but most-favoured- nation (MFN) treatment is provided under the contract, the investor company may apply the principle of umbrella clause laid down in bilateral contract concluded between the other country and Georgia and apply this principle to the investment contracts concluded with the State.

Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.

Except in rare circumstances, when the State does not provide integration of human rights or other social issues in investment contracts. Articles of stability exist in several investment contracts and provide opportunity for investors to ignore standards set by the contract and apply more favorable terms for them, which creates risk of violation of human rights, labor rights and environment standards by the investor.

9.2. GOVERNMENT AGREEMENTS

Has the State put in place policies and guidance for relevant ministries and agencies with regard to the conclusion of government agreements?

Does the State take measures to ensure that human rights considerations are made in agreements between the State and corporations? Are such agreements aligned with the UN's principles for responsible contracts?²²⁵

²²⁵ Report of the Special Representative of the Secretary-General on the Issue of Human rights and Transnational Corporations and

How does the home State ensure that companies headquartered within its jurisdiction respect the principles of responsible contracting when those companies enter into agreements with host States?

Information could not be found on this.

GUIDING PRINCIPLE 10

States, when acting as members of multilateral institutions that deal with business-related issues, should:

- (a) Seek to ensure that those institutions neither restrain the ability of their member States to meet their duty to protect nor hinder business enterprises from respecting human rights;**
- (b) Encourage those institutions, within their respective mandates and capacities, to promote business respect for human rights and, where requested, to help States meet their duty to protect against human rights abuse by business enterprises, including through technical assistance, capacity-building and awareness-raising;**
- (c) Draw on these Guiding Principles to promote shared understanding and advance international cooperation in the management of business and human rights challenges.**

COMMENTARY TO GUIDING PRINCIPLE 10

Greater policy coherence is also needed at the international level, including where States participate in multilateral institutions that deal with business-related issues, such as international trade and financial institutions. States retain their international human rights law obligations when they participate in such institutions.

Capacity-building and awareness-raising through such institutions can play a vital role in helping all States to fulfil their duty to protect, including by enabling the sharing of information about challenges and best practices, thus promoting more consistent approaches.

Collective action through multilateral institutions can help States level the playing field with regard to business respect for human rights, but it should do so by raising the performance of laggards. Cooperation between States, multilateral institutions and other stakeholders can also play an important role.

Other Business Enterprises, John Ruggie, United Nations (2011), Principles for Responsible Contracts: Integrating the Management of Human Rights Risks into State-Investor Contract Negotiations: Guidance for Negotiators, (A/HRC/17/31/Add.3). The UN's principles for responsible contracts are:

- Project negotiations preparation and planning: The parties should be adequately prepared and have the capacity to address the human rights implications of projects during negotiations.
- Management of potential adverse human rights impacts: Responsibilities for the prevention and mitigation of human rights risks associated with the project and its activities should be clarified and agreed before the contract is finalized.
- Project operating standards: The laws, regulations and standards governing the execution of the project should facilitate the prevention, mitigation and remediation of any negative human rights impacts throughout the life cycle of the project.
- Stabilization clauses: Contractual stabilization clauses, if used, should be carefully drafted so that any protections for investors against future changes in law do not interfere with the State's bona fide efforts to implement laws, regulations or policies in a non-discriminatory manner in order to meet its human rights obligations.
- "Additional goods or service provision": Where the contract envisages that investors will provide additional services beyond the scope of the project, this should be carried out in a manner compatible with the State's human rights obligations and the investor's human rights responsibilities.
- Physical security for the project: Physical security for the project's facilities, installations or personnel should be provided in a manner consistent with human rights principles and standards.
- Community engagement: The project should have an effective community engagement plan through its life cycle, starting at the earliest stages.
- Project monitoring and compliance: The State should be able to monitor the project's compliance with relevant standards to protect human rights while providing necessary assurances for business investors against arbitrary interference in the project.
- Grievance mechanisms for non-contractual harms to third parties: Individuals and communities that are impacted by project activities, but not party to the contract, should have access to an effective non-judicial grievance mechanism
- Transparency/Disclosure of contract terms: The contract's terms should be disclosed, and the scope and duration of exceptions to such disclosure should be based on compelling justifications.

These Guiding Principles provide a common reference point in this regard, and could serve as a useful basis for building a cumulative positive effect that takes into account the respective roles and responsibilities of all relevant stakeholders.

10.1. MEMBERSHIP IN MULTILATERAL INSTITUTIONS

How does the State seek to ensure that the institutions it is a member of neither restrain its duty to protect nor hinder the business responsibility to respect?

Has the State established procedures and measures to ensure support for business and human rights frameworks, including the UNGPs, in positions taken internationally and regionally (for example, on human rights screening and documenting of negotiating positions, as well as training of trade and development officials on business and human rights frameworks)?

Does the State promote its duty to protect and the corporate responsibility to respect in multilateral institutions, including international trade and financial institutions, the UN system, regional institutions, and with business organization and workers' associations? Has the State taken measures to promote awareness of the UNGPs and the broader business and human rights agenda?

10th principle draws the attention to the need of implementing consistent policy on international level.

Action Plan of the Government of Georgia on the Protection of Human Rights for 2016-2017 includes the chapter on Business and Human Rights, which shows the will of the State to make business and human rights agenda as the part of the national policy.

It should be also noted that following to Article 231 of the Association Agreement concluded between the European Union and Georgia, the Parties agree to promote corporate social responsibility and refer to the relevant internationally recognized principles and guidelines. However, the European Commission considers UN Guiding Principles for Business and Human Rights together with the other documents as such standards.²²⁶ Thus obligation taken in this field under the Association Agreement can be considered as the position directed to the promotion of business and human rights.

Georgia is the member of different International and regional organizations or cooperates with such organizations on regular basis. The activities of some of them are directly connected to human rights, and the activities of others may be connected to the issues related to the business activities. Georgia participates in different initiatives and regarding to the support of business and human rights issues on international level, following shall be mentioned:

- Within the framework of the Organization of United Nations (further referred as the "UN"), in 2011 Georgia was so called "cosponsor" – signatory of the working version of resolution initiated by Norway, the purpose of which was the renewal of mandate of business and human rights working group created in the UN in 2011. Human rights council has adopted this resolution in 27 June 2011.²²⁷

In June 2017 the UN Human Rights Council has renewed the mandate of business and human rights working group. Council has received the decision without voting, i.e. with consensus, which means that Georgia as a member²²⁸ has voted in favor of this resolution.²²⁹

²²⁶ On the obligation taken under the Association Agreement in the mentioned field, see 1-st principle

²²⁷ Resolution 26/22 can be found at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/083/82/pdf/G1408382.pdf?OpenElement>

²²⁸ Human Rights Council consists of 47 members, which is elected from General Assembly for three year term, Georgia is elected as a member of the Council from 2015

²²⁹ Resolution 35/7 is available at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/35/L.11

Abovementioned resolution once again draws attention on the importance of guiding principles of UN on Human Rights and calls upon States to take measures for the effective implementation of principles.

- Georgia is a member State of the Council of Europe since 1999. This organization recognizes and supports obligation of the business to respect Human Rights. In 2016 Committee of Ministers of the Council of Europe adopted recommendation on business and human rights, where it calls upon the member states to implement the UN human rights guiding principles.²³⁰

- Georgia actively cooperated with the Organization for Economic Cooperation and Development (OSCD). Guiding principles of the Organisation for International enterprises draws a special attention to human right. To that end, content of the guideline is in line with the UN guiding principles on business and human rights. (Georgia has taken the obligation under the Association Agreement to promote mentioned guiding principles). Should be mentioned that Georgia participates in Istanbul Anti-Corruption Action Plan of Anti-Corruption Network for Eastern Europe and Central Asia of the Organisation for Economic Cooperation and Development. Georgia has also joined declaration on “Green Growth” of the Organisation.²³¹

- Georgia is a member of one of the institution of the World Bank Group, International Financial Corporation (IFC) (further “corporation”) and joined provisions of the founding agreement of the corporation, which is binding for the country. Corporation has developed a frame of sustainability, which has been renewed in 2012. Mentioned standards also include business and human rights issues, it directly points to the obligation of the business to respect human rights. The standards cover all investments, which means that investments issued by the Corporation shall meet the quality standards – on the issues related to assessment and management of environmental and social risks and impacts, terms of labor, resource effectiveness and prevention of pollution, health and security of the community, purchasing the land, biodiversity, indigenous population and cultural heritage.

- Georgia cooperates with the European Bank for Reconstruction and Development (EBRD) since 1992. The bank has developed environmental and social policy, respect for human rights by the business is the integral part of the policy.²³²

- Georgia supports sustainable development goals (SDGs) and the 2030 agenda.²³³ Goals complement each other and balance all three directions of sustainable development - economic growth, social inclusion and environmental protection. The business has a special role in accomplishing these goals. While speaking about business sector, the agenda directly points on the protection of the UN guiding principles on business and human rights and international labor standards by the business. So, the support of 2030 agenda can be deemed as one of the measures taken towards the encouragement of business and human rights.

Georgia is a member of different institutions, the activity of which may concern the business related issues. Membership of various regional or international organisations, does not prevent the State to fulfill obligation on the protection of human rights and does not prevent the respect of human rights by business. These institutions at different degree take certain measures to support obligations of enterprises to respect human rights. However, there is no information showing that, Georgia is the initiator of such measures or has provided special regulations or measures in order to ensure and/or encourage respect of human rights by business on international level.

Georgia can show more efforts in participation in foreign relations and international institutions in order to ensure the support of business and human rights.

For example, it is desirable that the universal periodic review report submitted within the frame of the UN Human Rights Council focus on business and human rights issues as well, to demonstrate the activity and current challenges in this field.

²³⁰ Council of Europe Recommendation CM /REC(2016) 3 on business and human rights is available here: file:///Users/mmm/Downloads/131616GBR_HR%20and%20business.pdf

²³¹ Declaration can be found here: <http://www.oecd.org/env/44077822.pdf>

²³² Environmental and Social Policy of The European Bank for Reconstruction and Development is available here: <http://www.ebrd.com/downloads/research/policies/esp-final.pdf>

²³³ In 25 September 2015 193 Member States of the United Nations agreed on the sustainable development agenda document titles as “Transforming our World: the 2030 Agenda for Sustainable Development”. This agenda covers 17 goals and 169 objectives.

It is also desirable to define measures and procedures, under which the will of the state to support the business and human rights agenda will be extended to all its relevant policies and will be reflected in the activities of that State agencies, which can promote the mentioned issue on international level, within the frame of various organisations, upon conducting regular activities or negotiations.

PILLAR III ACCESS TO REMEDY

GUIDING PRINCIPLE 25

As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.

COMMENTARY TO GUIDING PRINCIPLE 25

Unless States take appropriate steps to investigate, punish and redress business-related human rights abuses when they do occur, the State duty to protect can be rendered weak or even meaningless.

Access to effective remedy has both procedural and substantive aspects. The remedies provided by the grievance mechanisms discussed in this section may take a range of substantive forms the aim of which, generally speaking, will be to counteract or make good any human rights harms that have occurred. Remedy may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. Procedures for the provision of remedy should be impartial, protected from corruption and free from political or other attempts to influence the outcome.

For the purpose of these Guiding Principles, a grievance is understood to be a perceived injustice evoking an individual's or a group's sense of entitlement, which may be based on law, contract, explicit or implicit promises, customary practice, or general notions of fairness of aggrieved communities. The term grievance mechanism is used to indicate any routinized, State-based or non-State-based, judicial or non-judicial process through which grievances concerning business-related human rights abuse can be raised and remedy can be sought.

State-based grievance mechanisms may be administered by a branch or agency of the State, or by an independent body on a statutory or constitutional basis. They may be judicial or non-judicial. In some mechanisms, those affected are directly involved in seeking remedy; in others, an intermediary seeks remedy on their behalf. Examples include the courts (for both criminal and civil actions), labour tribunals, national human rights institutions, National Contact Points under the Guidelines for Multinational Enterprises of the Organisation for Economic Co-operation and Development, many ombudsperson offices, and Government-run complaints offices.

Ensuring access to remedy for business-related human rights abuses requires also that States facilitate public awareness and understanding of these mechanisms, how they can be accessed, and any support (financial or expert) for doing so.

State-based judicial and non-judicial grievance mechanisms should form the foundation of a wider system of remedy. Within such a system, operational-level grievance mechanisms can provide early stage recourse and resolution. State-based and operational-level mechanisms, in turn, can be supplemented or enhanced by the remedial functions of collaborative initiatives as well as those of international and regional human rights mechanisms. Further guidance with regard to these mechanisms is provided in Guiding Principles 26 to 31.

25.1. REDRESS FOR BUSINESS-RELATED HUMAN RIGHTS ABUSES

Has the State put in place measures to ensure redress for business-related human rights abuses?

Has the State put in place mechanisms that introduce civil liability, criminal sanctions, and administrative sanctions, such as fines or limited access to government funding, for human rights abuses?

Any person is entitled to civil proceedings for the violation of particular right, if such violation caused damage to a person. Title three of the Civil Code of Georgia provides for Delictual Obligations. Following to Article 992 of the Code, “A person who causes harm to another person by unlawful, intentional or negligent action shall be bound to compensate the latter for his harm”. The Code provides for the general rules regarding the compensation of damage (e.g. on the legal capacity of a person causing a harm and damage caused by defective product, etc.).

It is noteworthy that Civil Procedures Code of Georgia provides for the special procedural provisions on the compensation of harm caused by tortious acts (a claim for compensation of damages sustained as a result of a crime or an administrative infraction) and merits of the claim on discrimination.²³⁴

As regards to administrative sanctions, in accordance with Administrative Offences Code of Georgia, culpable action or inaction (whether intentional or negligent) that violate the rules established to protect the State or public order, property, rights and freedoms of citizens, the established rule of governance, and for which the legislation prescribes an administrative liability shall be deemed as administrative offence (infraction). Particular offences are indeed focused on sanctions in case of violation of human rights. (Chapter 5 of the Code refers to Administrative Offences in the areas of Labor, Health and Social Protection; Chapter 6 - Administrative Offences Encroaching upon Property; Chapter 7 of the Code refers to Administrative Offences in the Area of Environmental Protection, Natural Resource Management, Protection of Historical and Cultural Monuments and Education; Chapter 8 covers Administrative Offences in the Fields of Industry, Electric and Heat Power Consumption and Water Supply; Chapter 9 - Administrative Offences in Agriculture; Violation of Veterinary and Sanitary Regulations and Chapter 11 - Administrative Offences relating to the Housing Rights of Citizens, and in Housing and Utilities and the Public Amenities Sector).

The Criminal Code of Georgia provides separate chapter on the crime against human rights and freedoms, also separate chapter is devoted to the crime against environmental protection and exploitation of natural resources.²³⁵ According to these chapters such action as discrimination, torture, restriction of freedom, restriction of personal life, etc. are considered as crime. Part of crimes, taking into consideration the content, include criminal liability of legal persons as well.

In addition to the criminal liability of legal persons, please refer to answer of the question indicator 1.6 “Judicial Mechanisms for Reviewing Complaints Claims”.

Has the State put in place mechanisms that introduce compensation, such as fines or restoration of livelihoods, for human rights abuses?

In case of civil dispute, compensation of damage takes place by restoring the original state of affairs. In particular, pursuant to Article 408, paragraph one of the Civil Code of Georgia a person who is obligated to compensate for damages must restore the state of affairs that would have existed if the circumstance giving rise to the duty to compensate had not occurred. The Code also provides for the cases, when the compensation of damage takes place in different way (including by payment).

Administrative and criminal sanctions for the violation of human rights are depended on the types of offence and crime. It is established as financial sanctions, as well as imprisonment sanctions. However, restoration of original state of affairs only takes place in case of civil dispute.

²³⁴ See chapter XXXIV3 Summary Proceedings for Claims for Damages Caused by Some Tortious Acts and Section Seven3 Legal Proceedings for the Matters Relating to Discrimination, can be found here: <https://matsne.gov.ge/ka/document/view/29962>

²³⁵ See Chapter XXIII and Section 10 of the code. Available here: <https://matsne.gov.ge/ka/document/view/16426>

Has the State put in place mechanisms that introduce processes for the prevention of harm, such as injunctions or guarantees of non-repetition, for human rights abuses?

There are no special regulations provided under the law for avoiding human rights violations by the business entity/sector, however for this purpose, the law includes the means of procedural security. Chapter XXIII of the Civil Procedures Code of Georgia covers the measures for securing the claim, including attaching the property, restricting the defendant from taking certain actions, restricting other persons from transferring property to the defendant or performing any obligations towards the defendant, etc.

One of the measures of security under the Civil Procedure Law of Georgia also is the opportunity of appointment of interim trustee, which may be applied to change the management of enterprise, including for the implementation of necessary actions for the prevention of human rights violation.

Has the State put in place mechanisms to promote apologies for human rights abuses?

Georgian law does not encompass special mechanisms for the oblige to apology for violation of human rights. The Civil Code of Georgia envisages denial of certain information. In particular, if information defaming the honor, dignity, business reputation or private life of a person has been disseminated in the mass media, then it must be retracted in the same media. If such information is contained in a document issued by an organization, then this document must be corrected and the concerned parties must be informed about it.²³⁶

Has the State put in place judicial and non-judicial, criminal and civil mechanisms where grievances can be raised and addressed? Has the State identified and removed barriers (financial, legal, practical, and evidentiary) to accessing those mechanisms? Are such mechanisms available to address extraterritorial harms, as permitted by the UNGPs and international human rights law?

Despite the fact that, there are no special state mechanisms for the protection of the human rights in case of violation by the business entity, the above mentioned civil proceeding is also applicable in such cases. As regards to the barriers for initiating a civil dispute, complexity of legal procedure and financial precondition shall be discussed. For civil disputes there are quite lengthy periods of limitation (The period of limitation on contractual claims is three years, and the period with respect to contractual claims regarding immovable things – six years, general period of limitation - ten years).²³⁷ Besides, for the initiation of civil actions it is necessary to complete relevant form established by the Council of Justice of Georgia (which includes remarks, in order to help in completing the claim), in addition, there are various services for legal aid established by the State, for people with social vulnerability status legal aid is free of charge.

On the other hand, the legislation establishes a State tax, which differs on the bases of claim. Worth mentioning that particular disputes and particular individuals have benefits in the State tax (socially vulnerable persons, physical persons – on the claim on the request for the payment of salary and on other requests for the remuneration of labor, which derive from legal labor relations; on the claims of claimants for the compensation of damages sustained as a result of injury or other badly harm, as well as death of a breadwinner, persons with disabilities and their organisations).²³⁸ It is noteworthy that the law of Georgia on the State tax provides for the possibility of tax reduction, tax rescheduling and tax exemption as well.

While discussing the State remedies, mediation worth mentioning. Georgian legislation provides for the institution of judicial mediation, which is covered under Chapter XXI¹ of Civil Procedures Code of Georgia. Judicial mediation can be applied on any dispute.

Has the State supported non-State based mechanisms?

²³⁶ See Article 18 of the Code. Available at: <https://matsne.gov.ge/ka/document/view/29962>

²³⁷ See Chapter two of the Civil Code of Georgia

²³⁸ See “The Law of Georgia on State tax”. Available at: <https://matsne.gov.ge/ka/document/view/93718#>

The arbitration system operates in Georgia and under the agreement of parties civil proceeding is possible through this mechanism.²³⁹ The law determines the rules of establishment and operation of the arbitration, arbitration procedures, arbitration award, as well as the rules for recognition and enforcement of arbitration awards rendered abroad.

Arbitration law does not include a clause on the restriction of arbitration on labor or other disputes, however the Law on Arbitration envisages that arbitration award shall not be enforced if the dispute can not be a subject of arbitration.

Has the State put in place other measures to ensure redress for business related human rights abuses?

Other measures established by the State particularly for the cases of human rights violations by business, do not exist. However, institute of public defender of consumers interests stipulated by the law on “National Regulatory Bodies” can be classified as such mechanism. There are institutes of Public Defender of Consumers Interests (<http://momkhmarebeli.gncc.ge/>) acting with the energy ombudsman (<http://pdc.ge/geo>) and national communications commission, which are acting in the relevant sector and within their authority to ensure protection of consumers’ rights. On these issues, legislation is reviewed in paragraph 1.5 of the first principle under the issues of “other legislation”.

25.2. ROLES AND RESPONSIBILITY WITHIN STATES

Has the State defined clear roles and responsibilities within the State on access to effective remedy?

Has the State defined competent authorities to investigate allegations of business-related human rights abuse? If so, are these authorities equipped with the knowledge necessary in order to attribute the abuses to the relevant redress mechanism?

The State does not have separate authorized body for investigating facts of human rights violation by business. Any person is entitled to apply to investigative authorities if there are signs of criminal offence, provided that liability of a legal person is envisaged.

Also the department of the labor inspection of the Ministry of Labor, Health and Social Protection shall be mentioned separately, which is monitoring the labor conditions and security on the basis of applications. In addition, please see the answer to the question in the same principle 1.5 on indicator “health and security”.

25.3. PUBLIC INFORMATION-SHARING AND ACCESSIBILITY

Has the State developed measures through which to inform about grievance mechanisms available, grievances received, and relevant processes?

Has the State made efforts to promote public awareness and understanding of remediation mechanisms, including how they can be accessed and their accessibility? Does the State inform about the outcome of grievances and actions for follow-up when systemic issues are identified?

The state does not have special/separate rules for sharing or accessing information on protection mechanisms in case of violation of human rights by businesses.

²³⁹ See the Law of Georgia “On Arbitration”. Available at : <https://matsne.gov.ge/ka/document/view/89284>

Does the State ensure that the mechanisms are available to all affected stakeholders (including, for example, women, peoples with disabilities, children, and indigenous peoples)? This includes providing services such as legal aid and legal counseling, as well as support to, for example, the NHRI, CSOs, or trade unions that work to ensure greater accessibility within grievance mechanisms.

Any information that is deemed public, under the General Administrative Code of Georgia, (an official document (including a drawing, model, plan, layout, photograph, electronic information, video- and audio-recording) i.e. at a public institution, (administrative body, legal entity of public law funded by state or local budget within such funding) information stored as well as any information received, processed, created or sent by a public institution or public servant in connection with official activities, also any information proactively published by any public institution) shall on the bases of request be subjected to delivery to the applicant, and in particular cases of proactive publication.

Although there is no special rule for informing the public about the protection of rights in case of human rights violations by the business, it is possible to evaluate general rules. It is noteworthy that the decisions of Georgian courts under the principle of publicity are available based on request if the case is not closed (resolution part still becomes public) and the case law of the Supreme Court is completely available²⁴⁰. However, the identities of the parties (except the administrative body) are shaded in the decision received by the search engine or in other way. Therefore the names of business subjects or other persons participating in particular dispute are unknown upon reading court decisions.

GUIDING PRINCIPLE 26

States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.

COMMENTARY TO GUIDING PRINCIPLE 26

Effective judicial mechanisms are at the core of ensuring access to remedy. Their ability to address business-related human rights abuses depends on their impartiality, integrity and ability to accord due process.

States should ensure that they do not erect barriers to prevent legitimate cases from being brought before the courts in situations where judicial recourse is an essential part of accessing remedy or alternative sources of effective remedy are unavailable. They should also ensure that the provision of justice is not prevented by corruption of the judicial process, that courts are independent of economic or political pressures from other State agents and from business actors, and that the legitimate and peaceful activities of human rights defenders are not obstructed.

Legal barriers that can prevent legitimate cases involving business-related human rights abuse from being addressed can arise where, for example:

- The way in which legal responsibility is attributed among members of a corporate group under domestic criminal and civil laws facilitates the avoidance of appropriate accountability;
- Where claimants face a denial of justice in a host State and cannot access home State courts regardless of the merits of the claim;
- Where certain groups, such as indigenous peoples and migrants, are excluded from the same level of legal protection of their human rights that applies to the wider population.

Practical and procedural barriers to accessing judicial remedy can arise where, for example:

- The costs of bringing claims go beyond being an appropriate deterrent to unmeritorious cases and/or cannot be reduced to reasonable levels through Government support, “market-based” mechanisms (such as litigation insur-

²⁴⁰ prg.supremecourt.ge

ance and legal fee structures), or other means;

- Claimants experience difficulty in securing legal representation, due to a lack of resources or of other incentives for lawyers to advise claimants in this area;
- There are inadequate options for aggregating claims or enabling representative proceedings (such as class actions and other collective action procedures), and this prevents effective remedy for individual claimants;
- State prosecutors lack adequate resources, expertise and support to meet the State's own obligations to investigate individual and business involvement in human rights-related crimes.

Many of these barriers are the result of, or compounded by, the frequent imbalances between the parties to business-related human rights claims, such as in their financial resources, access to information and expertise. Moreover, whether through active discrimination or as the unintended consequences of the way judicial mechanisms are designed and operate, individuals from groups or populations at heightened risk of vulnerability or marginalization often face additional cultural, social, physical and financial impediments to accessing, using and benefiting from these mechanisms. Particular attention should be given to the rights and specific needs of such groups or populations at each stage of the remedial process: access, procedures and outcome.

26.1. JUDICIAL MECHANISMS

Has the State put in place a judicial mechanism with the competency to adjudicate business-related human rights abuses within the national jurisdiction of the State? If so, are these mechanisms in line with the criteria of impartiality, integrity, and ability to accord due process?

Do the national and regional courts have the competency to adjudicate business and human rights abuses, including for abuses that take place outside of their territorial jurisdiction, as permitted by the UNGPs and international human rights law? If so, do they do so in a way that is impartial and with integrity and ability to accord due process?

Georgian judicial system consists of three instances: the first instance is established by regional and city courts; the second instance include Courts of Appeal of Tbilisi and Kutaisi, where decisions of the first instance are appealed; the third and final instance is the Supreme Court of Georgia, where decisions of the Court of Appeal are Appealed. Under the Constitution of Georgia establishment of extraordinary or special courts is excluded. In the Courts of general jurisdiction cases are considered by jury in cases and under procedures provided by the law.

In Georgia Constitutional Control is exercised by the Constitutional Court, which together with other important tasks, makes decisions on the constitutionality of constitutional agreement, law, normative acts of president, government, supreme bodies of the governments of Autonomous republics of Abkhazia and Adjara; On the basis of the claims of individuals considers constitutionality of normative acts with respect to the Fundamental Human Rights and Freedoms recognized by the second chapter of the Constitution. Decision of the Constitutional Court is final. Normative act or its part, recognized as unconstitutional becomes ineffective from the moment of publication of the relevant decision of the Constitutional Court.

It shall be mentioned that there is no Labour Court in the country. Labour disputes are considered by the Courts of General Jurisdiction. There is no special judicial mechanism established in Georgia, the competence of which would be resolution of disputes directly connected to the business and human rights. However, Georgian courts consider disputes on business and human rights within the scope of the legal norms and regulations established under the law.

It is worth mentioning that Georgian courts do not use human rights-based approaches while resolution of cases related to legal entities. One of the reasons of this is, the gaps existing in the legislation. See the information about the gaps existing in the legislation: Guideline principle 1 court mechanisms of consideration of claims (gaps).

Within the frame of the Universal Periodic Review (UPR), Georgia has received recommendations from various states concerning independence of judiciary and strengthening authorities of judges.

Certain part of the recommendations was focused on strengthening the judiciary independence, transparency and the right to defense.

Ireland has recommended Georgia to fully renew the system of appointment and training of judges.

The Czech Republic has recommended Georgia to raise awareness of the judicial system's representatives on anti-discrimination laws.

Georgia has not received yet recommendation from Norway, relating to implementation of recommendation issued by the Venice Commission on appointment of judges and probation. Other recommendations on these issues include the elimination of existing gaps regarding the High Council of Justice, strengthening transparency and accountability, as well as strengthening the principles of fair trial, including the introduction of more transparent procedures of distribution of the case.

The United States and Canada have issued a recommendation on ensuring independence and impartiality of the justice system and law enforcement bodies and their depolitisation²⁴¹.

The decision of the European Court of Human Rights indicates on not using of human rights-based approaches by the courts in the disputes relating to the companies. In particular, the European Court of Human Rights in the case *Jugheli and others versus Georgia* imposed responsibility to Georgia for the health problems caused by contamination of Tbilisi thermal power plant. In particular, the decision of the European Court pointed out that despite the fact that the City Hall and the Ministry of Labour, Health and Social Affairs have confirmed before the domestic courts that the residents of health problems can be caused by environmental pollution by thermal power plants, the national courts did not consider that the health of the applicants was damaged by the pollution of the environment.

"Despite the applicants' request, the national courts did not impose on a factory to take particular measures to reduce the damage. Such measures could have been responsibility of the thermal power plant to install special filters on the furnaces or bound to carry out damaging actions far from the housing."

The European Court of Human Rights established that Georgia violated applicants' rights to respect for private and family life due to the pollution of their environment (Article 8 of the European Convention).

The European Court observed that Article 8 of the Convention prohibits not only the arbitrary restriction of the right by the State, but also provides a positive obligation to ensure the inviolability of personal and family life.

The European Court considered that the respondent State had failed to maintain balance between the functioning of the thermal power plant, the public need and the right to respect for private and family life of the applicants. The court in its decision indicates on the gaps of legislative framework in the field of environmental protection and mechanism for the restoration of the violated rights of the victims in Georgia.

The European Court also pointed out that the State did not demonstrate the due diligence, which was confirmed by the fact that a research on environmental impact and response action plan related to power plant was not conducted by the state.²⁴²

Do national labor tribunals have the competency to adjudicate business and human rights abuses? If so, do they do so in a way that is impartial and with integrity and ability to accord due process?

There is no labor tribunal in Georgia.

²⁴¹ The United Nations Human Rights Council, second phase of universal periodical review of Georgia, 2015, is available at: <http://undocs.org/A/HRC/31/15> [last accessed on 22.09.2017].

²⁴² The European Court of Human Rights, *CASE OF JUGHELI AND OTHERS v. GEORGIA* (Application no. 38342/05), 13 July 2017, Available in English at: [http://hudoc.echr.coe.int/eng#{\"itemid\":\[\"001-175153\"\]}](http://hudoc.echr.coe.int/eng#{\) [Last accessed on 15.07.2015].

Do other judicial mechanisms have the competency to adjudicate on business related human rights abuses? If so, do they do so in a way that is impartial and with integrity and ability to accord due process?

There are no other judicial mechanisms in Georgia at national level to resolve business and human rights disputes.

26.2. BARRIERS FOR ACCESS TO JUDICIAL REMEDY

Has the State taken measures to ensure that there are no barriers to access to judicial remedy for addressing business-related human rights abuses?

Has the State taken measures to ensure that there are no legal barriers to prevent legitimate cases from being brought before the courts? This includes: (1) ensuring that it is possible to hold corporations accountable under domestic criminal and civil laws, meaning that liability exists under the law; (2) ensuring that all members of society can raise complaints, including indigenous peoples, migrants, women, and children, and are afforded the same legal protection as for the wider population; (3) ensuring that extraterritorial harms can be addressed within the courts, as permitted by the UNGPs and international human rights law; and (4) ensuring that issues such as conflicts of law, statutes of limitations, parent company liability, and standards of liability do not result in barriers to victims of business-related human rights harms in accessing the courts?

It is noteworthy that despite the fact that the responsibility of existing companies in Georgia is possible in accordance with local criminal, civil and administrative legislation, there are legal barriers which may become direct/indirect impeding factors for submitting cases to the courts.

First of all, it should be mentioned that the level of legal liability of companies depends on company's legal form. In particular, the most popular legal form of the companies registered in Georgia, is Limited Liability Company, liability of which before their creditors is limited only to its capital. Such regulation provides an opportunity for International Corporation to limit its liability only to the capital of Limited Liability Company established in Georgia.

Information on existing barriers on legislative level can be found at: guiding principle 1 judicial mechanisms for Court Proceeding (part of gaps);

Noteworthy that remedies for legal protection existing in Georgia are equally accessible to all persons staying in Georgia without any discrimination.

Consideration of extraterritorial violation within Georgia's courts are covered under the Law of Georgia on "International Private Law", which in case of extraterritorial legal disputes provides for the preconditions for the application of Georgian law. On the mentioned subject detailed information can be found at: Guiding Principles 2.1 (Criminal or Civil Liability Regimes).

Has the State taken measures to ensure that there are no practical or procedural barriers to prevent legitimate cases from being brought before the courts? This includes: (1) ensuring financial support, (2) providing legal representation or guidance, (3) providing opportunities for class-actions and multi-party litigation; (4) allowing for recovery of attorneys' fees; (5) preventing retaliatory actions against claimants; (6) reforming access to evidence; and (7) providing training for prosecutors and judges. Information regarding regulations on free legal aid of the State can be found in the following chapter: Guiding Principle 1 (Legal Aid and Support);

It should be noted that various non-governmental organizations operating in Georgia provide free legal aid to different categories of the population. Nevertheless, the situation in the Georgian regions in this regard is problematic, where there is a lack of such organizations.

State prosecutors and judges do not have adequate resources, expert knowledge and support for the fulfillment of state's obligations, which stipulates investigation of participation of separate individuals and enterprises in offences relating to human rights.

Has the State taken measures to ensure that there are no social barriers to prevent legitimate cases from being brought before the courts? This includes: (1) addressing imbalances between the parties, (2) targeted awareness-raising among vulnerable groups (for example, women, indigenous people, and children), (3) availability of child-sensitive procedures to children and their representatives, (4) legal aid and other type of assistance, (5) efforts to combat corruption, and (6) protection of human rights defenders.

The population is not provided with the information on business and human rights related issues and on the opportunities of filing a complaint.

26.3. REMEDY FOR ABUSES TAKING PLACE IN HOST-STATES

Has the State taken measures to address the issue of access of victims to judicial remedy for abuses by domiciliary companies in host States?

Has the State put in place measures to promote access to remedy of claimants (including vulnerable groups such as indigenous peoples, women, and children) that have been denied justice in a host State, enabling them to access home State courts?

See the information in the chapter: Guiding Principles 2.1 (Criminal or Civil Liability Regimes).

Does the State allow a court considering a forum non conveniens motion to consider factors against dismissal in addition to factors in favor of dismissal?

It shall be mentioned that the law of Georgia does not provide for the term Forum non Convenience. Under the Civil Procedure Code of Georgia one of the grounds for the dismissal of an action is when the claim is not under the jurisdiction of the Court,²⁴³ -this is such case, when the claim request shall be considered by other authorized body and not by the Court. Also, the Court is entitled to dismiss an action if the case is not under the jurisdiction of this Court.²⁴⁴ The Judge shall deliver a substantiated judgment on dismissal of claim. If the reason for dismissal is the lack of jurisdiction of the court, the judge is obliged to specify in his/her judgment the court to which the plaintiff has to apply. The judgment shall also set out the methods for avoiding circumstances that impede the institution of action.²⁴⁵

GUIDING PRINCIPLE 27

States should provide effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive State-based system for the remedy of business-related human rights abuse.

COMMENTARY TO GUIDING PRINCIPLE 27

Administrative, legislative and other non-judicial mechanisms play an essential role in complementing and supplementing judicial mechanisms. Even where judicial systems are effective and well-resourced, they cannot carry the burden of addressing all alleged abuses; judicial remedy is not always required; nor is it always the favored approach for all claimants.

²⁴³ Civil Procedures Code of Georgia, Article 186, Paragraph 1, Sub-paragraph “a”

²⁴⁴ Civil Procedures Code of Georgia, Article 186, Paragraph 1, Sub-paragraph “e”

²⁴⁵ Civil Procedures Code of Georgia, Article 187, First Paragraph

Gaps in the provision of remedy for business-related human rights abuses could be filled, where appropriate, by expanding the mandates of existing non-judicial mechanisms and/or by adding new mechanisms. These may be mediation-based, adjudicative or follow other culturally appropriate and rights-compatible processes—or involve some combination of these—depending on the issues concerned, any public interest involved, and the potential needs of the parties. To ensure their effectiveness, they should meet the criteria set out in Principle 31.

National human rights institutions have a particularly important role to play in this regard.

As with judicial mechanisms, States should consider ways to address any imbalances between the parties to business-related human rights claims and any additional barriers to access faced by individuals from groups or populations at heightened risk of vulnerability or marginalization.

27.1. TYPES OF NON-JUDICIAL MECHANISMS

Has the State provided effective and appropriate non-judicial grievance mechanisms?

Does the State provide access of claimants to mediation-based non-judicial mechanisms such as National Contact Points under the OECD Guidelines? Can these mechanisms be used for remedying business-related human rights abuses? Do these mechanisms meet the effectiveness criteria set out in UNGP 31?

Georgian law or the State policy does not provide for such non judicial mediation as National Coordination Bureaus on the bases of OECD guiding principles.

It shall be mentioned that in case of collective labour disputes (dispute arisen during collective labour relation or dispute between employer and group of employees (at least 20 employees), on the basis of Organic Law of Georgia “Labour Code” for the purpose to resolve the dispute, the institute of mediation is operating. In particular, due to the high public interest or under written request of one of the participant of dispute, the Ministry of Labour, Health and Social Affairs of Georgia appoints dispute mediator.²⁴⁶

Taking into account the effectiveness of UNGP criteria – 31:

1. This institute of mediation is of high legitimacy, as the ordinance of the Government of Georgia, which sets out the mediation procedures provides for preconditions of impartiality of mediator creating high confidence in him/her.
2. Mediation is financially affordable for the parties, because it is free of charge and is undergoing at the expenses of the Ministry, Mediator may be sent for mission to the relevant territorial unit at the State exoences. However, the law does not provide for the issues of language barrier or vulnerability.
3. The course of mediation procedures are almost not layed down, which can not ensure its determination (prediction).²⁴⁷
4. Mediation and procedures of dispute agreement are based to a maximum extent on the equality of the parties, which ensures impartiality.
5. Mediation is transparent following to the content of dispute (by protecting commercial or personal secret). In particular, if there are personal data involved in the dispute, it shall be processed in accordance with relevant legislation. Commercial secret if such is deemed on the bases of application, shall be protected and shaded upon issuing the information.
6. Mediation or agreed procedures of labour disputes does not provide for specific compatibility or consideration

²⁴⁶ See Ordinance of the Government of Georgia N301 of 25 November 2013, on “the approval of the rules for for Reviewing and Settlement of Collective Dispute Agreement Procedures”.

²⁴⁷ Currently activities are ongoing for making amendments into Ordinance of the Government of Georgia N301 of 25 November 2013 (the rules for for Reviewing and Settlement of Collective Dispute Agreement Procedure) in order to introduce kind of “roles for play”. Source of information: The Ministry of Labour, Health and Social Affairs of Georgia

of labour rights.

7. Upon completion of mediation, as well as in case of request of the Minister, mediator shall be obliged to submit a report on collective dispute to the organizational service, which shall also include report on the performed work by the mediator. In this way the State has an opportunity to receive the information and analyze it in order to strengthen this mechanism.

Does the State provide access of the claimant to adjudicative mechanisms such as government-run complaints offices? Can these mechanisms be used for remedying business-related human rights abuses? Do these mechanisms meet the effectiveness criteria set out in UNGP 31?

There are several institutions operating in Georgia, where there are no direct considerations of human rights violation facts by business, however such kind of facts can directly become a subject of dispute.

Such is, for example Personal Data Protection Inspector (under the law of Georgia on Personal Data Protection), which in case of relevant application considers facts of violations of rights envisaged by the law, as an alternative remedy of court (Article 26 of the Law).

Taking criteria of Effectiveness of UNGP 31 into account:

1. The inspector has a high legitimacy, as far as his/her strong mandate is established by law, has guarantees of independence and impartiality, and also stipulates the establishing of precondition for creating high confidence in him/her.
2. Institution of an Inspector is financially accessible for the parties, because it is free of charge and is implemented at state expenses, however legislation does not provide for language barrier or vulnerability issues. Herewith, it has detailed web page and application mechanisms are also easy and defined on the web page.
3. The procedures for dispute resolution are drawn up in the Decree No. 180 of the Government of Georgia dated July 19, 2013 "On Approval of the Act on Personal Data Protection Inspector's Activity and Rules of Exercising Its Authority". Paragraph 10 of this resolution. Competences and limits of activities of the Inspector are strictly regulated.
4. According to Article 27 § 3 (d) of the Law of Georgia on Personal Data Protection, objectivity and impartiality is one of the principle of the inspector's activities.
5. Consideration of the case by the Inspector is transparent following to the content of dispute (by protecting commercial or personal secret). In particular, if there are personal data involved in the dispute, it shall be processed in accordance with the relevant legislation.
6. The mechanism is directed towards the protection of human rights within the scopes of its competence is fully informed on the right to a personal life.
7. The Inspector once in each year, shall submit an annual report to the Government of Georgia and the Parliament of Georgia on the situation with respect to the personal data protection in the country and the activities performed by the Inspector. The annual report of the Inspector shall be public and must include general assessment of the situation in the area of data protection, conclusions and recommendations, as well as the information on significant violations detected during a given year and measures undertaken (Article 38). However, to what extent the State takes the recommendations of the Inspector into account is heard to say.

Service of the Public Defender of Consumers Interests stipulated by the Law of Georgia on "National Regulatory Bodies" can be deemed as a remedy for the consideration of a case, which reviews consumers' claims.

Taking into account Effective Criteria of UNGP 31:

1. The Public Defender' Institute enjoys with legitimacy, as the law provides for its strong mandate, has particular guarantee of independence and impartiality, however the rule of his/her election and financial independence from the commission is problematic (in addition see answer on the question 1.5 in the indicator "other laws and regulations").
2. Institution of the Public Defender is financially available for the parties, because it is free of charge and is implemented at state expenses, however legislation does not provide for language barrier or vulnerability issues. Herewith, consumers have the opportunity to receive information on the activities of defender through the web page, also in the field of energy and water supply information on the public defender is available in the receipt delivered to the consumer, including by indicating the hotline.
3. Procedures of considering a dispute by the Public Defender almost are not laid down which can not fully ensure

its determination (prediction).

4. Impartiality standards in the course of considering the case by the Public Defender, are not provided for in procedures, however the institution itself enjoys with such guarantees. Parties have equal rights to apply to the Public Defender.

5. Transparency of the case review by the Public defender is not normative and no relevant remedies are demonstrated. Statistics on the claim are published.

6. The Public Defender shall be oriented to the protection of consumers' rights and under his/her competence is fully informed on relevant rights.

7. To what extent the State performs system analyses of the information provided by the Public defender and its implementation into the practice in the future is not clear.

Does the State provide access to other types of non-judicial mechanisms? Can these mechanisms be used for remedying business-related human rights abuses? Do these mechanisms meet the effectiveness criteria set out in UNGP 31?

27.2. ROLE OF THE NHRI

Has the State provided specific competency to the national human rights institution (NHRI) to perform the role as a non-judicial mechanism for addressing grievances?

Has the State given the NHRI the mandate that allows it to receive and handle complaints relating to corporate human rights abuses?

THE PUBLIC DEFENDER OF GEORGIA

Taking into consideration Efficiency Criteria of UNGP 31:

1. The public Defender is of high legitimacy as it represents constitutional institution whose powers are defined by the organic law. The Public Defender of Georgia is independent in its activities. He does not belong to any branch of the government. The guarantees of independence and impartiality of the Public Defender is established by the Organic Law of Georgia on the Public Defender;

2. The Public Defender's Institute is financially available to the parties, as the application and complaint submitted to the Public Defender of Georgia is not subjected to the state tax. Service of the Public Defender provided to the interested person is free of charge. According to the current practice submission of the application to the institute of the Public Defender is permitted in different languages. Web page of the Public Defender is available in Georgian, English and Abkhazian languages. The Public Defender of Georgia has offices in 10 cities of Georgia (Tbilisi, Batumi, Kutaisi, Gori, Telavi, Zugdidi, Ozurgeti, Marneuli, Akhalkalaki and Mestia);

3. Terms and procedures of admissibility of registration of correspondence, including applications and claims in the Public Defender's office are laid down in the Unified Rule on the Procedure of Public Defender's Office²⁴⁸, which ensures its determination (prediction).

4. In the course of considering application/claim by the Public Defender the standard of impartiality is not laid down in procedure, however in the process of reviewing the application/claim, the parties have equal opportunity to provide Public Defender with all available information;

5. The process of case study by the Public Defender is transparent. Interested parties may request information on what stage their submitted application is;

6. The Public Defender of Georgia oversees the protection of human rights and freedoms on the territory of Georgia and within its jurisdiction. It reveals the facts of violation of human rights and freedoms and facilitates the restoration of violated rights and freedoms. Therefore, the mechanism is oriented to human rights protection.

²⁴⁸ The Public Defender of Georgia, Unified Rule on Procedure of Public Defenders Office, available on the following address: <http://www.ombudsman.ge/uploads/other/3/3983.pdf>

7. The Public Defender of Georgia submits the report to the Parliament of Georgia once a year on the state of protection of human rights and freedoms in the country. The Public Defender's report is public and contains description of the situation in the country in terms of human rights and freedoms, assessments of the Public Defender, conclusions and recommendations. The Parliament of Georgia annually adopts a resolution on the report of the Public Defender on state of human rights and freedoms of Georgia, which provides recommendations from the Public Defender's Report by Parliament and the Parliament exercises parliamentary control over their implementation.

Has the State given the NHRI the mandate that allows the NHRI to be in a supportive role to claimants, such as through mediation, conciliation, expert support, or legal aid?

In order to ensure protection of human rights and freedoms, the Public Defender of Georgia:

- submits proposals, comments and recommendations and proposals on the legislation and draft laws of Georgia to the Parliament of Georgia or other relevant body;
- performs the function of the Amicus Curiae at the Common Courts and the Constitutional Court of Georgia;
- addresses the Constitutional Court with a constitutional claim;
- addresses in written form to the President of Georgia and the Prime Minister of Georgia if he/she considers that the means of responding in the disposal of the Public Defender are insufficient;
- in special cases addresses the Parliament of Georgia with the request of setting up a temporary investigative commission and discussing the issue at the Parliament²⁴⁹.

Has the State given the NHRI the mandate to promote awareness on remedy to and redress for corporate human rights abuses?

The Public Defender of Georgia on its initiative and within various activities informs the citizens about the means of legal protection related to general human rights. It should be noted that the Public Defender does not have a special mandate issued by the state to inform the population about the legal protection and compensation mechanisms on corporate human rights violations.

Has the State given the NHRI the mandate to provide training of relevant stakeholders on their access to remedy for corporate human rights abuses?

The Public Defender of Georgia is implementing its initiatives and various measures to increase awareness of citizens in general on the legal protection of human rights. It should be noted that the Public Defender does not have a special mandate to ensure the training for interested persons on remedies available in case of corporate violations.

Has the State given the NHRI the mandate to provide counselling on which remedy to access?

The Public Defender of Georgia based on his/her mandate has the right to advise citizens on access to remedies of legal protection.

27.3. BARRIERS FOR ACCESS TO NON-JUDICIAL REMEDY

Has the State taken measures to ensure that there are no barriers to access to non-judicial remedy for addressing business-related human rights abuses?

Has the State taken measures to ensure that there are no practical or procedural barriers to prevent legitimate cases from being heard by non-judicial mechanisms? Measures to prevent procedural barriers include:

1. Financial support;

²⁴⁹ The Public Defender of Georgia, information is available at: <http://www.ombudsman.ge/ge/public-defender/mandati> [last accessed on 05.07.2015].

2. Providing guidance;
3. Ensuring that the information on the mechanism is provided in a language that is understandable to potential claimants;
4. Ensuring accessibility despite geographical issues or difficulties (for example, long distances).

See information in the Chapter: guiding principles 2.7.2 (the role of NHRI)

Has the State taken measures to ensure that there are no other barriers to prevent legitimate cases from being heard by non-judicial mechanisms? Measures to prevent other barriers include:

1. Addressing imbalances between the parties;
2. Targeted awareness-raising among vulnerable groups (such as women, indigenous peoples, or children);
3. Expert advice or type of assistance;
4. Efforts to combat corruption;
5. Protection of human rights defenders.

See information in the Chapter: guiding principles 2.7.2 (the role of NHRI)

GUIDING PRINCIPLE 28

States should consider ways to facilitate access to effective non-State-based grievance mechanisms dealing with business-related human rights harms.

COMMENTARY TO GUIDING PRINCIPLE 28

One category of non-State-based grievance mechanisms encompasses those administered by a business enterprise alone or with stakeholders, by an industry association or a multi-stakeholder group. They are non-judicial, but may use adjudicative, dialogue-based or other culturally appropriate and rights-compatible processes. These mechanisms may offer particular benefits such as speed of access and remediation, reduced costs and/or transnational reach.

Another category comprises regional and international human rights bodies. These have dealt most often with alleged violations by States of their obligations to respect human rights. However, some have also dealt with the failure of a State to meet its duty to protect against human rights abuse by business enterprises.

States can play a helpful role in raising awareness of, or otherwise facilitating access to, such options, alongside the mechanisms provided by States themselves.

28.1. FACILITATING ACCESS TO MECHANISMS

Has the State supported access to effective non-State-based grievance mechanisms dealing with business-related human rights harms?

Has the State supported access to business-based grievance mechanisms (such as whistleblower mechanisms or project-level grievance mechanisms) through efforts such as dissemination of information and support for access (for example, through guidance documents and tools)?

Mechanisms for the consideration of claims on company level, is one of the types of non-State remedies. Introduction of appeal mechanisms in the enterprise is the common practice in the world. Number of enterprises create or improve already introduced mechanisms of consideration of appeal mechanisms, which provide an opportunity to the public, towards the rights of which the company has a negative influence, to submit a claim on the operation and activities of the company. Such remedy can have a double impact, on the one hand they ensure restitution

of violated right and on the other hand enhances dialogue between the company and community and prevents escalation of conflicts. As a rule, it is desirable to have a different mechanisms of the appeal for the employees of the enterprise and for the public affected by the activities of the company. Such mechanisms may be introduced on operational level (for all ongoing activities of an enterprise) or related to particular project of an enterprise.

The State shall facilitate the creation of the mechanisms for reviewing complaints at the enterprise level and simplify access to them through legal or other initiatives.

Currently in Georgia there are no law, regulation, policy and/or initiative demonstrated, which requires or supports the establishment of mechanisms for reviewing complaints on the company level. However, there are such mechanisms established in different companies.

Has the State supported access to multi-stakeholder grievance mechanisms through efforts such as dissemination of information and support for access?

There are different multilateral initiatives in the world, which review the claims. They are created on industrial or multi-industrial level and are based on voluntary membership of enterprises. Such initiatives are e.g.: Fair Labour Association, the organization unites civil society organisations, universities and textile industry companies, for the purpose of protecting international labour standards, including in the contracting enterprises. Any person, organization or group may file a confidential complaint about violations of rights of employees in the enterprises that join the organization's principles.

Voluntary Principles Security and Human Rights - unites governments, mining industry companies and non-governmental organizations. Principles mainly refer to right to life, freedom of expression, right to freedom and security, right to freedom of assembly and collective negotiation by the enterprises. Members of the organization can submit a complaint about violation of the principles by another member.

The International Council of Toy Industries incorporates the National Association of Toy Industry.

The activities of the Council are based on the Code of Business Activity, which establishes the so-called CARE (care, awareness, responsibility, ethics). The employers can use the hotline and submit a complaint about the violation of the process by the enterprise.

The Global Network Initiative incorporates information and communication sector companies, NGOs, investors and educational institutions. The principles of the initiative relate to the freedom of expression and the inviolability of private life.

The Ethical Trading Initiative incorporates enterprises (from different sectors), NGOs and professional unions. The main Code of the initiative, which shall be adopted by members include international standards of labor rights. Members of the organization may file a complaint on the violation of the Code by a member enterprise or its contractor.

Social Accountability International organization consists of 71 industries and grants certificates to enterprises, which meet SA8000 standard. Standard concerns to labour rights and to the management system related to them. Any person may file a complaint, in case of violation standards or national labour legislation by certified enterprise.

In Georgia, there is currently no initiative that will facilitate access to the mechanisms of complaints review established by multilateral initiatives.

Has the State supported access to organizational-based grievance mechanisms (including the union systems) through efforts such as dissemination of information and support for access?

Mechanisms of complaints review may exist at organizational level on the bases of professional unions, industry associations, business associations. Some of them may aim at the protection of consumers' rights in particular sector, for example, in Georgia micro-financial association has complaint review mechanism. Consumer may apply to

association, in case of violation of ethical code of the association by the member organization. Also, in Association of Insurance Companies of Georgia there is an insurance mediation mechanism, which are addressed by consumers in case of disputes related to the fulfillment of the insurance contract with the Association member company. Such mechanisms may exist in different associations or unions.

In Georgia, currently no initiative is revealed to facilitate access to complaint review mechanisms at the organizational level.

Has the State supported access to international grievance mechanisms through efforts such as dissemination of information, support for access (for example, through legal aid) as well as support for establishing contact between the claimant in international system?

Non-state mechanisms for review of the complaint may be introduced at the international level. Such mechanisms are, for example, the World Bank's Inspection Panel, an independent body of the Bank, which receives complaints from the victims who believe that they have been affected by the project funded by the bank.

Also, the Advisor/Ombudsman's Office (CAO) which represents an International Financial Corporation (IFC) and independent supporting mechanism of Multilateral Investment Guarantee Agency (MIGA). The obligation of the Ombudsman is to review the complaint of any person, community or other party affected by the projects implemented by the International Financial Corporation (IFC) and the Guarantee Agency for Mutual Investment (MIGA). The complaint shall refer to environmental or social impacts of the project.

No initiative or activities have been revealed in Georgia that would promote awareness rising and support access to complaint review mechanisms introduced on international level.

Has the State supported access to regional grievance mechanisms through efforts such as dissemination of information and support for access (for example, through legal aid)?

Non-state mechanisms of complaint reviews may be introduced at a regional level. Such mechanisms are mainly related to financial institutions. For example, regional banks, such as Asian Development Bank and European Bank for Reconstruction and Development, African Development Bank, Inter-American Development Bank, provide complaint mechanisms. Such mechanisms enable a person or group of people to file a complaint to the relevant financial institution concerning the project funded by them, which has led or allegedly caused a damage.

No initiative or activities have been revealed in Georgia that would promote awareness rising and support access to complaint review mechanisms introduced on regional level.

Has the State supported access to other grievance mechanisms through efforts such as dissemination of information and support for access?

IMPLEMENTATION STATUS

List the mechanisms that the State has supported access to, including how support was given.

In Georgia no law/regulation/policy/ initiative demonstrated, by which state supports the development to the effective Non-State remedies of complaint review in the field of business and human rights and access to them.

GAPS

Provide comments on the degree to which implementation status results reflect or do not reflect fulfillment of the GP, as clarified in the indicators and scoping questions, taking into account any commentary from stakeholders during consultation processes.

The results of the implementation status do not reflect the full performance of the requirements set out in principle

28. The principle 28 grants function of encouraging effective non-State mechanisms for reviewing the complaint, to the States. Such mechanisms may be administered by the company itself, alone, or with a group of stakeholders, or with regional associations or regional and international institutions.

The state should facilitate the access to compliant mechanisms at both the company as well as regional and international level. In order to achieve this goal, the Government can assist companies in introducing effective complaint review mechanisms, encourage business associations to create complaint mechanisms, support the involvement of civil society organizations and professional associations in the mechanisms established at the company level in order to fulfill their role of representative or mediator. The State must create a suitable environment for the development of labor regulatory systems.

As regards to regional and international mechanisms, governments may create more opportunities for entitled subjects to address regional and international institutions, raise awareness of such mechanisms and promote elimination of procedural and practical barriers, for example, by assisting entitled subjects in connecting with international and regional institutions and by providing legal consultations.

GUIDING PRINCIPLE 31

In order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be:

- (a) legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;**
- (b) Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;**
- (c) Predictable: providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;**
- (d) Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;**
- (e) Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;**
- (f) Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights;**
- (g) A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms;**

Operational-level mechanisms should also be:

- (h) Based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.**

COMMENTARY TO GUIDING PRINCIPLE 31

A grievance mechanism can only serve its purpose if the people it is intended to serve know about it, trust it and are able to use it. These criteria provide a benchmark for designing, revising or assessing a non-judicial grievance mechanism to help ensure that it is effective in practice. Poorly designed or implemented grievance mechanisms can risk compounding a sense of grievance among affected stakeholders by heightening their sense of disempowerment and disrespect by the process.

The first seven criteria apply to any State-based or non-State-based, adjudicative or dialogue-based mechanism. The eighth criterion is specific to operational-level mechanisms that business enterprises help administer.

The term “grievance mechanism” is used here as a term of art. The term itself may not always be appropriate or helpful when applied to a specific mechanism, but the criteria for effectiveness remain the same. Commentary on the specific criteria follows:

- (a) Stakeholders for whose use a mechanism is intended must trust it if they are to choose to use it. Accountability for ensuring that the parties to a grievance process cannot interfere with its fair conduct is typically one important

factor in building stakeholder trust;

(b) Barriers to access may include a lack of awareness of the mechanism, language, literacy, costs, physical location and fears of reprisal;

(c) In order for a mechanism to be trusted and used, it should provide public information about the procedure it offers. Time frames for each stage should be respected wherever possible, while allowing that flexibility may sometimes be needed;

(d) In grievances or disputes between business enterprises and affected stakeholders, the latter frequently have much less access to information and expert resources, and often lack the financial resources to pay for them. Where this imbalance is not redressed, it can reduce both the achievement and perception of a fair process and make it harder to arrive at durable solutions;

(e) Communicating regularly with parties about the progress of individual grievances can be essential to retaining confidence in the process. Providing transparency about the mechanism's performance to wider stakeholders, through statistics, case studies or more detailed information about the handling of certain cases, can be important to demonstrate its legitimacy and retain broad trust. At the same time, confidentiality of the dialogue between parties and of individuals' identities should be provided where necessary;

(f) Grievances are frequently not framed in terms of human rights and many do not initially raise human rights concerns. Regardless, where outcomes have implications for human rights, care should be taken to ensure that they are in line with internationally recognized human rights;

(g) Regular analysis of the frequency, patterns and causes of grievances can enable the institution administering the mechanism to identify and influence policies, procedures or practices that should be altered to prevent future harm;

(h) For an operational-level grievance mechanism, engaging with affected stakeholder groups about its design and performance can help to ensure that it meets their needs, that they will use it in practice, and that there is a shared interest in ensuring its success. Since a business enterprise cannot, with legitimacy, both be the subject of complaints and unilaterally determine their outcome, these mechanisms should focus on reaching agreed solutions through dialogue. Where adjudication is needed, this should be provided by a legitimate, independent third-party mechanism.

31.1. ALIGNMENT WITH THE EFFECTIVENESS CRITERIA

Does the State ensure that State-based non-judicial grievance mechanisms meet the effectiveness criteria?

Has the State taken measures to ensure that the mechanisms enable trust from the stakeholder groups for whose use they are intended (including that it has a firm mandate, is independent and transparent, includes ensuring non-interference with fair conduct, and includes feedback mechanisms for when foul play is detected)?

See information: in role of principles 2.7.2 NHRI (the role of claims review)

Has the State taken measures to ensure that the mechanisms are accessible (including language and literacy issues, cost associated with raising complaints, geographical issues, fear of reprisal, and vulnerability of claimant, for example, due to gender, age, religion, or minority status)?

See information: in role of principles 2.7.2 NHRI (the role of claims review)

Has the State taken measures to ensure that the mechanisms are predictable (including clear and public information about the procedure, timeframes for the procedure, and information on the process and outcome of the mechanism)?

See information: in role of principles 2.7.2 NHRI (the role of claims review)

Has the State taken measures to ensure that the mechanisms are equitable (including access of all parties to information, advice, and expert resources)?

See information: in role of principles 2.7.2 NHRI (the role of claims review)

Has the State taken measures to ensure that the mechanisms are transparent (including regular communication about grievance resolution progress as well as wider public information on cases received and in process in order to identify and address societal trends)?

See information: in role of principles 2.7.2 NHRI (the role of claims review)

Has the State taken measures to ensure that the mechanisms are rights-compatible (including that grievances are framed in terms of human rights when they do raise human rights concerns and that the institutions and authorities managing the mechanisms are aware of human rights and how these relate to the cases dealt with)?

See information: in role of principles 2.7.2 NHRI (the role of claims review)

Has the State taken measures to ensure that the mechanisms are a source of continuous learning (including State support for regular analysis of the frequency, patterns, and causes of grievances to promote a strengthening of the mechanism)? Has the State incorporated lessons learned through operation of the mechanisms to improve the mechanisms' effectiveness?

See information: in role of principles 2.7.2 NHRI (the role of claims review)

RECOMMENDATIONS

1. The Tax law should be examined from the angle of business and human rights principles. In addition regulations on encouraging corporate social responsibility should be considered.
2. Legislative changes should be made to the law of Georgia “on the elimination of all forms of discrimination”.
3. Relevant legislative changes should be prepared, ensuring human rights impact assessment is conducted before signing investment contracts and that this obligation to conduct such assessment is described in the agreement.
4. An accountable department shall be determined in the government of Georgia, in order to form uniform policies about business and human rights and effectively execute them.
5. Legislative changes shall be made to the legislation on construction providing better protection of the environment, safety of construction, fire safety measures, adapted environment for disabled people and protection of other public objectives.
6. Executive mechanisms should be more effective while supervising constructions; respect for corresponding norms must be effectively checked about fire safety, adaption of environment for disabled people and about other matters.
7. Encouraging mechanisms should be formed for protecting the environment –the positive impact of business subjects on the environment should be encouraged through economical or other types of incentives.
8. Through different effective ways business sector should get acquainted with the principles of human rights, as well as with special mechanisms (for example they can be informed about certain issues through rs.ge)
9. The standards of personal data protection should be provided to each business subject in a detailed and clear way.
10. The effectiveness of alternative dispute resolution mechanisms should be strengthened and increased, taking into account the principles of UNGP 13, appropriate people should be retrained about business and human rights issues.
11. Pursuing internal mechanisms for dispute settlements should be encouraged; awareness about nongovernmental mechanisms shall be increased.
12. Reform about consumer protection law should be implemented in a timely manner; it should cover the regulatory norms about quality of service, as well as food products safety and sanitary protection.
13. In private sector specific steps should be determined for fighting with corruption, as well as implementing corresponding legislative changes.
14. Protective mechanisms of whistleblowers in private sector should be determined.
15. Specific guiding documents should be enacted for State companies; furthermore relevant personnel must be retrained about protection of human rights.
16. Relevant issues about respecting human rights should be determined for public customer service companies;

Retraining of relevant personnel must be encouraged.

17. During execution of tenders protection of human rights shall be taken into account either at an encouraging or obligatory level.

18. Georgia is recommended to ratify the Convention for the Protection of All Persons from Enforced Disappearance;

19. Georgia is recommended to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families;

20. Georgia is recommended to ratify the optional protocol to the International Covenant on Economic, Social and Cultural Rights;

21. Georgia is recommended to ratify the Optional Protocol to the Convention on the Rights of Persons with Disabilities;

22. Georgia is recommended to join N81 and N129 Conventions concerning Labor inspection;

23. Georgia is recommended to join N155 Convention concerning Occupational Safety and Health;

24. Georgia is recommended to join N C176 Convention concerning Safety and Health in Mines;

25. Georgia is recommended to withdraw its reservations concerning the enforcement of the Article 30(2) of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence;

26. Georgia is recommended to join such important articles of the Social Charter as: Article 3 of the European Social Charter (the right to use safe and healthy working conditions), Article 9 (the right to vocational guidance), Article 21 (the right to information and consultation), Article 22 (the right to take part in the determination and improvement of the working conditions and working environment);

27. Georgia is recommended to join the OECD guidelines for multinational enterprises;

28. Georgia is recommended to make an official statement for the support and the implementation of the UN Guiding principles on Business and Human Rights;

29. Georgia is recommended to set up a special body to implement the United Nations Guiding principles on Business and Human Rights in Practice;

30. Georgia is recommended to take appropriate measures for increasing a public awareness on Business and Human Rights principles;

31. Georgia is recommended to develop an internal guiding document regarding United Nations Guiding principles on Business and Human Rights and arrange its introduction to the public.

32. Georgia is recommended to take appropriate measures in order to educate or raise awareness of public servants and citizens on UNGPs by the way of organizing trainings, conferences and other activities;

33. Ministry of Education and Science of Georgia should recommend educational institutions in Georgia to introduce elective or compulsory classes for Business and Human Rights;

34. Georgia is recommended to organize trainings for public servants, judicial authorities and investigative agencies on business and human rights issues;

35. Georgia is recommended to set criminal liability of the legal person for other serious violations, such as serious violation of workplace safety and health rules, serious violation of customer safety standards, serious and large-scale damage to the environment.

36. Georgia is recommended to make legal amendment for a possibility to charge legal entities with implementing preventive and restorative measures;

37. Georgia is recommended to make amendments in Georgian legislation in order to have a possibility to impose a due diligence obligation to the company;

38. Georgia is recommended to support those non judicial grievance mechanisms which are relevant to business and human rights;

39. Georgia is recommended to take all appropriate measures for the implementation of the recommendations issued by the committee on the rights of the child concerning the rights of the children in business sector;

40. Georgia is recommended to take all appropriate measures for the implementation of the recommendations issued by the Committee on the Elimination of Discrimination against Women concerning women's employment;

41. Georgia is recommended to support the increase of the mandate of the National Human Rights Institution in relation to Business and Human Rights. In particular. Granting the national institution the right to supervise and monitor the human rights violations by corporations;

42. Georgia is recommended to officially recognize the role of the National Human Rights institution in promotion and implementation of UN Guidelines (UNGPs).

43. Paragraph 4 of Article 8 of the Law on the Elimination of All Forms of Discrimination shall have such a wording as to obligate natural and legal persons in private law, alike administrative, central and local government bodies, to provide information to the Public Defender within 10 calendar days;

44. Article 8 of the Law on the Elimination of All Forms of Discrimination be added Paragraph 4¹ in the following wording: “If any administrative, local self-government and state body (including the Prosecutor’s Office, investigation and court bodies), legal and natural person of private law fails to transfer materials, documents, explanations and other information to the Public Defender and the case materials give rise to a reasonable doubt that the discrimination took place while the circumstances indicated in a complaint/application legally justify the claim, the complaint/application shall be satisfied, otherwise, the party shall be denied the satisfaction.”
45. Labor Code shall be amended, adding discrimination against persons with HIV Aids and denial to reasonable accommodation as the basis for discrimination;
46. Labor Code shall request the employer to reinstate employee on his/her previous position if it is established that this person was a victim of discrimination;
47. Interpret “third party interests” when used for the restriction on the right to strike;
48. Correct the list of services the employees of which are deprived a right to strike. Offer alternative methods of dispute resolution;
49. Detail the mediation rules in order to avoid risks to the right to strike;
50. Interpret the “objective circumstances” when used for justification of less than one year working contract;
51. Change the maximum working hours for those working in a specialized industrial units and set it as 40 hours;
52. Change the rule of extra pay for extra work and establish the official rest days;
53. Establish reasonable working hours per day;
54. Recognize equal pay for the work of equal value;
55. Establish the internship rules;
56. Define maternal leave rules in private sector;
57. Change the Decree according to which paternal leave is reimbursed only after death of mother;
58. The law shall regulate the order of using maternal leave for women who are employed in a private sector.
59. The Law on Social Protection of the Persons with Disabilities does not provide for enforcement mechanism;
60. The law shall encourage those employers who employ the persons with disabilities;
61. Include protection of migrant workers in the Labor Code;
62. The provisions on minimum wage shall be updated in accordance with the developments in economic and social life and the living wage;
63. The Health and safety Bill shall be amended. The rule of halting the working process shall be changed, amount of fees increased, and more focus be made on preventive measures.
64. The Fully fledged labor inspectorate shall be established;
65. The Tripartite Commission shall meet more often and work on effective labor policies;
66. The statistical information on children living and working in the street is absent;
67. The orphanages shall be opened in every region of the country and the number of social workers shall be increased;
68. The statistical information on persons with disabilities employed in private sector is not available;
69. Elaborate needs based policy on Persons with Disabilities.

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