



საქართველოს სახალხო დამცველი
PUBLIC DEFENDER (OMBUDSMAN) OF GEORGIA

**Input on the Role of National Human Rights Institutions
in Facilitating Access to Effective Remedy for Business-related Human
Rights Abuses**

Info Submission

to Working Group on Business and Human Rights

Submitted by

**The National Human Rights Institution – Public Defender
(Ombudsman) of Georgia**

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Correspondence should be addressed to:
Office of Public Defender (Ombudsman) of Georgia
David Agmashenebeli Avenue 150
0112 Tbilisi
Georgia

info@ombudsman.ge

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Information for Working Group on Business and Human Rights

Background

The Public Defender (Ombudsman) of Georgia is a **constitutional institution (NHRI with “A” Status)**, which oversees the observance of human rights and freedoms within its jurisdiction on the territory of Georgia. It advises the government on human rights issues and scrutinizes the state’s laws, policies and practices, in compliance with international standards, and provides relevant recommendations. **It identifies human rights violations and contributes to the restoration of the violated rights and freedoms.** *The Constitution of Georgia, the Organic Law of Georgia on Public Defender of Georgia* and other legislative acts regulate the Public Defender’s status and competencies.

The Public Defender of Georgia studies the facts of human rights violations both on the basis of received applications and on its own initiative. The Public Defender studies the cases relating to:

- Decisions of public institutions;
- Violations of human rights and freedoms during the court proceedings;
- Violations of the rights of detainees, prisoners or individuals whose liberty had been otherwise restricted;
- Compliance of normative acts with the Second Chapter of the Constitution of Georgia;
- Constitutionality of the norms regulating the referendums and elections, as well as the elections (referendum) held or to be held on the basis of these norms.

Besides, the Public Defender is authorized to examine the cases of human rights violations guaranteed by the Georgian legislation and international treaties and agreements, to which Georgia is a party.

In order to ensure the protection of human rights and freedoms, the Public Defender of Georgia:

- Submits proposals, comments and recommendations concerning the Georgian legislation and draft laws to the Parliament of Georgia or other relevant bodies;
- Addresses the state agencies, local self-government bodies, public institutions and public officials with proposals and recommendations concerning the restoration of the violated human rights and freedoms;
- Addresses relevant investigative authorities with proposals to launch investigation and/or criminal persecution;
- Addresses relevant agencies with proposals concerning disciplinary or administrative responsibilities of the individuals, whose actions caused violations of human rights and freedoms;
- Performs the *amicus curiae* function at Common Courts and the Constitutional Court of Georgia;
- Submits constitutional claims to the Constitutional Court;

- Appeals to the President and Prime Minister in writing, if s/he considers that the means in disposal of the Public Defender are not sufficient;
- In special cases, appeals to the Parliament of Georgia to set up a temporary investigative commission and consider a specific issue.

The Public Defender of Georgia performs 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. In this capacity, the Public Defender regularly checks the situation and treatment of the detainees, prisoners or individuals whose liberty had been otherwise restricted, convicts, as well as the inmates of psychiatric institutions, houses for older persons and orphanages.

Moreover, on 27 October 2014, the Public Defender of Georgia was named as the **structure for ensuring implementation, promotion and protection of the Convention on the Rights of Persons with Disabilities**.

Additionally, together with the *Organic Law of Georgia on Public Defender of Georgia*, the *Law of Georgia on Gender Equality* (Article 14(1)) **empowers the Public Defender to protect gender equality**, monitor the given field and respond to the violations of gender equality within the framework of its competencies. The Public Defender contributes to the elimination of gender inequality through effective and accountable management of cases and monitors the compliance of government and public institutions with national and international obligations on human rights and gender equality. Activities of the Public Defender in the field of gender equality cover both, internal institutional development, as well as contribution to the process of achieving gender equality. **Public Defender is also a Femicide Monitoring Watch in the country.**

The mandate of the Public Defender was further strengthened by the adoption of *the Law of Georgia on Elimination of All Forms of Discrimination* by the Parliament of Georgia on 2 May 2014 (hereinafter the “Anti-Discrimination Law”), which authorizes the Public Defender to supervise the implementation of the Anti-Discrimination Law and eliminate all forms of discrimination and ensure equality (Article 6). It also determined the Public Defender and courts of general jurisdiction as legal remedies for the right to equality. It is noteworthy that following recent legislative amendments the Public Defender is entitled to refer to the national courts and **demand the enforcement of the recommendations addressed to both - public authorities/institutions and legal persons of private law**, in cases where the perpetrator fails to take into consideration and fulfil the recommendation of the Public Defender.

Questionnaire on the role of national human rights institutions in facilitating access to effective remedy for business-related human rights abuses

I. The role and mandate of NHRIs in facilitating access to effective remedy for business-related human rights abuses:

1. *Does your NHRI have an explicit or implicit mandate to handle complaints concerning alleged business-related human rights abuses? If yes, what methods (e.g. mediation or conciliation) can be used to facilitate access to remedy for human rights abuses?*

General mandate to promote and protect human rights

The Public Defender of Georgia is a constitutional institution which supervises the protection of human rights and freedoms and independently examines the facts of human rights violations based on both submitted applications and its own initiative.

Second Chapter of the Constitution of Georgia enlists and determines human rights and freedoms. This list is not exhaustive - the Constitution does not deny other universally recognized rights that are not expressly referred to in the Constitution but stem inherently from its principles. Article 35(1) of the Constitution of Georgia determines that the supervision over the protection of these rights shall be exercised by the Public Defender of Georgia. Therefore, the Public Defender's mandate covers all categories of rights, including civil, political, social, economic, cultural, and etc.

Pursuant to Article 13 of the *Organic Law of Georgia on Public Defender of Georgia*: “*The Public Defender of Georgia shall examine statements and appeals of **citizens of Georgia, foreign citizens and stateless persons, as well as legal entities under private law, [...], regarding actions or acts of state and local self-government authorities, public institutions and officials violating the rights and freedoms defined in the Constitution and laws of Georgia, and in treaties and international agreements to which Georgia is a party**”.* Based on this, Public Defender's mandate, generally covers business-related human rights issues as well. Therefore, legal entities under private law can complain to the Public Defender of Georgia on violations of their rights. On the other hand, the Office of Public Defender of Georgia (PDO) studies the applications from the individuals (physical persons), regarding effectiveness of responses provided by state institutions in case of business-related human rights violations as well as guarantees prescribed under national legislation in order to prevent such incidents or to ensure access to effective remedy.

Special mandate as equality body

Under the Anti-Discrimination Law the Public Defender is designated as an equality body and therefore, its mandate is even broader when supervising the implementation of the abovementioned law, especially in terms of examining complaints concerning alleged discrimination in business sector. The Public Defender of Georgia is explicitly authorised to receive and handle complaints, as well as proactively start investigation of the case by own initiative, on alleged facts of discrimination by businesses (Article 6(2) (a) and (b)).

According to recent amendments, private individuals are obliged to provide information to the Public Defender, as well as to consider the Public Defender's recommendations and provide information about the results. Non-fulfilment of these obligations will qualify as an

administrative offense and be punished with a fine. At the same time, the Public Defender has the right to sue private companies if they do not implement the recommendation. Earlier, the Public Defender could use such a possibility only in relation to the public sector.

To put it briefly, the Anti-Discrimination Law equips the Public Defender with the power to prepare and submit to relevant persons general proposals on preventing or combating discrimination; invite victims of discrimination and alleged discriminators in an attempt to settle a case by mutual agreement of the parties; submit recommendations to relevant persons in order to restore the rights of victims of discrimination, if it is impossible to settle the case by mutual agreement and there is sufficient evidence of discrimination; and apply to the court as an interested person, according to the *Administrative Procedure Code of Georgia* and request taking measures.

Moreover, the Public Defender of Georgia is also authorized to schedule oral hearing on the cases of discrimination under its consideration and try to reach mutual agreement between the parties; the implementation of mutual agreement is monitored by the Public Defender (Article 8(3)). Since 2014 the Public Defender has scheduled up to 25 oral hearings involving businesses as alleged perpetrators of discrimination, however, none has ended with mediation/conciliation.

Role of PDO in National Baseline Assessment and National Action Plan

PDO has actively participated in carrying out and undertaking the **National Baseline Assessment (NBA)**¹ on business and human rights and **specific chapter on business and human rights within National Human Rights Action plan (2018-2020)**.² Public Defender will evaluate the level of implementation of goals and objectives set forth in the above-mentioned chapter at the end of 2019.

Undertaken measures

It should be emphasized that PDO actively monitors the protection of labor rights as safe working environment remains a pressing issue in Georgia. According to the information provided by the Ministry of Internal Affairs of Georgia, accidents occurred at industries in 2018 resulted in the death of 59 and injuries of 199 individuals; In comparison to previous year, these numbers have significantly increased. In 2018 in Annual Report on the Situation of Human Rights and Freedoms in Georgia³ the Public Defender expressed concern about the fact that the enactment of the *Law of Georgia on Occupational Safety* has not improved the alarming situation in terms of safety and health care of employees, which results in substantial

¹ The Georgian NBA on business and human rights was published in 2017 and provided an analysis of the legal and policy gaps in UNGP implementation and identified the most salient human rights issues in the domestic business and human rights context.

² Human Rights Action Plan for 2018-2020, available at: <http://myrights.gov.ge/en/plan/Human%20Rights%20Action%20Plan%20for%202018-2020> (accessed 11.06.2019).

³ Annual Report of Public Defender (Ombudsman) of Georgia, “The Situation of Human Rights and Freedoms in Georgia”, available only in Georgian at: <http://www.ombudsman.ge/res/docs/2019042620571319466.pdf> (accessed 13.06.2019).

shortcomings of the document and ineffective inspection system (the supervisory body still lacks a mandate of unconditional access to the workplace).

Moreover, the Public Defender gave special attention to the absence of maximum number of daily working hours and overtime thresholds in the labor legislation of Georgia in the abovementioned report. The examined practice established at the agencies of specific operating conditions demonstrated that employees are always under threat to work at the risk of their health.

As a result, in the Annual Report for 2018 the **Public Defender addressed the Parliament of Georgia with the following proposals:**

- to equip labor inspectors with proper mandate in order to have a free access at industries and to the application of enforcement mechanisms (such as sanctions) in the process of inspecting compliance with the requirements of labor legislation;
- to determine in the labor legislation of Georgia maximum number of daily working hours (including for employees working in shifts at services with specific operating conditions and irregular working days), a minimum number of weekly uninterrupted holidays for workers and maximum threshold of the overtime work (including at services with specific operating conditions and irregular working days).

Furthermore, the implementation of the right to live in a healthy environment is a priority of the PDO. The Public Defender has stressed problems related to construction of hydroelectric power plants several times in annual reports. Namely, the decisions of the state authorities regarding this issue are generally made without informing and involving society, neither are the social-economic needs of the population considered, nor is an analysis made of the proportionality between profit to be gained and harm inflicted. Such attitude creates reasonable suspicion of the public that administrative proceedings mainly carry a formal character. The Public Defender actively advocates against such practice through addressing relevant state authorities with corresponding recommendations.

Facilitating access to complaint mechanism

PDO gives special attention to facilitation of access to its complaint mechanism by having its central office and 9 regional offices accessible for all applicants. Furthermore, complaints may be received from the official e-mail address (info@ombudsman.ge) and regularly functioning hot line (1481), which is free of charge.

2. *What types of remedies can your NHRI offer to individuals or communities affected by business-related human rights abuses? Do you consider those remedies to be effective?*

Under general mandate, based on the results of an inspection, the Public Defender of Georgia may, *inter alia*, submit proposals related to the legislation of Georgia and draft laws; send proposals and recommendations to relevant state and local self-government authorities, public institutions and officials to restore violated rights; request investigative authorities to launch investigation and/or criminal prosecution; in certain cases, act as *amicus curiae* in common

courts and the Constitutional Court of Georgia; include the decisions made into annual and special reports; and apply to the Constitutional Court with a constitutional appeal related to the constitutionality of a normative act or norms violating human rights and freedoms under the Constitution.

In discrimination cases, if a fact of discrimination is confirmed as a result of the examination of a complaint by the Public Defender and if the consequences of discrimination are not eliminated, the latter concludes the proceedings with a recommendation regarding measures to be taken in order to restore infringed equality (Article 9(3)). In case the business fails to respond and/or fulfil the Public Defender's recommendation on measures for the elimination of discrimination, the Public Defender is eligible to lodge a complaint before the National Courts and request the fulfilment of the recommendation (Article 14¹(2) (h¹)). This enforcement mechanism against businesses is new, therefore, its effectiveness could only be measured after certain period.

Public Defender can also try to settle the case by mutual agreement. The recommendations are not legally binding and by its nature cannot be directly enforced. Alleged victims of discrimination can only claim compensation for material and moral damages at the Court. The practice of the Public Defender shows that the case examination by the Public Defender enables alleged victims to gather evidences, build their case properly and file a comprehensive complaint before the Court afterwards.

3. *Does your NHRI have a mandate to investigate, conduct inquiry and adjudicate individual cases of alleged human rights abuses by businesses? If yes, please provide relevant statistics in relation to complaints received and adjudicated.*

The anti-discrimination mandate covers all alleged facts of discrimination carried out by public authorities/bodies and private individuals/companies. The Public Defender examines complaints from natural and legal persons, as well as investigates cases on its own initiative. The investigation of the complaint follows the process of thorough examination of the facts and evidences submitted in a written form or obtained by interviewing parties of the cases, as well as relevant witnesses and third parties, if any. The investigation process may also involve on spot examination and scheduling oral hearing, if deemed appropriate on case by case basis. The Public Defender can make a recommendation/general proposal⁴ against all perpetrators, including businesses, on the measures to restore the violated equality.

Following legislative amendments in the *Organic Law of Georgia on the Public Defender of Georgia* in May 2019, businesses are under obligation to provide information and materials/evidences with regards to alleged discrimination cases within 10 days (Article 18(b) and (c)), as well as inform the Public Defender about the fulfilment of the recommendation within 20 days (Article 24). Failure to comply with the abovementioned requests of the Public

⁴ Pursuant to the Anti-Discrimination Law, if a fact of discrimination is confirmed as a result of the examination of a complaint by the Public Defender and if the consequences of discrimination are not eliminated, the latter concludes the proceedings with a recommendation regarding measures to be performed to restore infringed equality (*Article 9(3)*); the Public Defender is also authorized to issue a general proposal in order to prevent discrimination (*Article 6(2) (c)*).

Defender would qualify as an administrative offence according to the *Georgian Code on Administrative Sanctions* and therefore, sanctions can be prescribed accordingly (Article 174³).

Since 2014 the Public Defender has received about 700 complaints related to the discrimination and more than 170 complaints (approximately 25%) were against private companies/legal entities of private law. Overall, 25 decisions (*recommendations/general proposals*) were issued against private companies - 15 recommendations on establishing the fact of discrimination and 10 general proposals on the prevention of discrimination.⁵

4. *Does your NHRI give any special attention to facilitate access to your complaint mechanisms by vulnerable or marginalised groups? If yes, what measures have been taken in this regard?*

In 2018 the Public Defender has actively started to hold information meetings with vulnerable groups, such as LGBT+ community and persons with disability in different Georgian regions, including non-governmental and community organisation, in order to raise awareness on the anti-discrimination mechanism and the existing legal remedies available for alleged victims of discrimination.

6. *What other measures does your NHRI undertake to facilitate access to remedy indirectly for business-related human rights abuses (e.g. raising awareness about rights and remedial mechanisms, providing legal assistance, building capacity of communities or businesses, assessing effectiveness of other grievance mechanisms, and recommending reform of the national legal system to strengthen access to remedy)?*

The Public Defender, as an equality body, conducts awareness raising trainings with both - right holders and duty bearers. These trainings aim to provide the information about the nature of discrimination based on various grounds occurring in different spheres of life; and what are international, regional and domestic legal standards and existing remedies. In relation to domestic remedies, the emphasis is also placed on the fact that the mandate of the Public Defender covers alleged facts of discrimination executed by natural persons and businesses, among other perpetrators.

In 2018, the Public Defender has conducted 6 trainings/information meetings for the private sector, in particular, representatives of maritime industry, educational establishments and several service provider private companies. These trainings mainly focused on gender equality and prohibition of discrimination based on sex/gender and participants were given insights on Georgian anti-discrimination framework, rights of women at the workplace, sexual harassment and gender stereotypes.

7. *How does your NHRI collaborate with other judicial or non-judicial remedial mechanisms (e.g. courts, labour tribunals, National Contact Points, and operational*

⁵ Decisions related to the discrimination are available at: <http://ombudsman.ge/eng/anti-diskriminatsiuli-elementi> (accessed 10.06.2019).

level grievance mechanisms) in dealing with complaints concerning business-related human rights abuses?

The Public Defender submits *amicus curiae* briefs to the national courts, related to the alleged discrimination, *inter alia*, in disputes where businesses are respondent parties. Since 2014 the Public Defender has submitted 15 *amicus curiae* briefs related to the discrimination disputes, out of which 5 were submitted on alleged discrimination undertaken by businesses – in particular, 4 concerned alleged violations of labour rights based on trade union membership⁶ and different opinions; and 1 alleged discrimination based on sexual orientation in accessing privately owned bars.⁷ *Amicus curiae* briefs do not aim to support the positions of either side; it identifies relevant regional and international legal standards and case-law on similar matters.

10. Where a National Action Plan on Business and Human Rights exists (or is under development), does it provide for a role for NHRIs in relation to access to remedy in case of business-related human rights abuses?

In specific chapter on business and human rights within the framework of the abovementioned National Human Rights Action Plan for 2018-2020 PDO is determined as a partner agency, which should:

1. Define relevant issues of human rights protection for companies providing public services and ensure retraining of respective staff members;
2. Raise awareness for the staff of judicial authority and investigate structures concerning business and human rights issues (objectives of the goal to ensure/support free entrepreneurship).

II. Challenges and limitations faced by NHRIs in facilitating access to effective remedy for business-related human rights abuses

While studying the cases of construction of hydroelectric power plants, the main challenge PDO faces is lack of competence to assess environmental impact, safety and profitability of such activity. Therefore the only measure the PDO can undertake is to evaluate whether decisions of state authorities are adequately substantiated, however it cannot examine the given evidence, especially whenever such decisions are broadly opposed.

Another drawback to facilitate access to effective remedy for business-related human rights abuses is the limited mandate, which does not cover examination of activities of physical or legal persons. As mentioned above, the only exception to this general rule is cases of alleged discrimination in business sector.

⁶ The Public Defender of Georgia, *2 Amicus Curiae Briefs concerning Alleged Discrimination on ground of trade union membership*, available at: <http://www.ombudsman.ge/eng/sasamartlos-megobris-mosazrebebi/public-defenders-amicus-curiae-brief-to-tbilisi-city-court>; <http://www.ombudsman.ge/eng/sasamartlos-megobris-mosazrebebi/public-defender-submits-amicus-curiae-brief-to-tbilisi-city-court> (accessed 10.06.2019).

⁷ The Public Defender of Georgia, *Amicus Curiae Briefs concerning Alleged Discrimination on grounds of Sexual Orientation*, 2 February 2018, available at: <http://www.ombudsman.ge/eng/sasamartlos-megobris-mosazrebebi/public-defender-files-amicus-curiae-brief-concerning-alleged-discrimination-on-grounds-of-sexual-orientation> (accessed 10.06.2019).

III. Good practices, innovations and recommendations to strengthen the role of NHRIs in facilitating access to effective remedy for business-related human rights abuses

1. *Can you share any good practice examples in which your NHRI was able to facilitate, directly or indirectly, effective remedies for business-related human rights abuses?*

The introduction of anti-discrimination mandate against businesses was a step forward to respond to human rights violations on discriminatory grounds. However, in the absence of effective enforcement mechanism (until May 2019), compliance with the decisions of the Public Defender was left solely on a good will of the businesses; therefore, good practices are only a few.

Two good examples of dialogue with businesses should be highlighted. In both cases, discrimination was eliminated and the perpetrators took into consideration the proposed measures that were necessary for the restoration of the violated equality right. On 18 May 2016, the Public Defender addressed the Ltd “Credo” with a recommendation to eliminate discrimination on the grounds of pregnancy in labor relations.⁸ Ltd “Credo” has fulfilled the recommendation and the victim of pregnancy-based discrimination was able to resume working after maternity leave, moreover, she was given full compensation for medical expenses and all the missed salaries.⁹ Another good example of co-operation with the business is JSC “Metro Georgia”, which has eliminated discriminatory gender-based practice of distribution of tickets and seats in transport facilitating segregation of women and men.¹⁰

⁸ The Public Defender of Georgia, *Recommendation on discrimination based on pregnancy*, 18 May 2016, available at: <http://www.ombudsman.ge/eng/akhali-ambebi/public-defender-recommends-private-company-to-eliminate-discrimination-on-grounds-of-pregnancy-in-labour-relationship> (accessed 10.06.2019).

⁹ The Public Defender of Georgia, *Ltd. Credo Fulfils Public Defender’s Recommendation on Elimination of Discrimination on Grounds of Pregnancy*, 21 June 2016, available at: <http://www.ombudsman.ge/eng/akhali-ambebi/ltd-credo-fulfils-public-defenders-recommendation-on-elimination-of-discrimination-on-grounds-of-pregnancy> (accessed 10.06.2019).

¹⁰ The Public Defender of Georgia, *JSC Metro Georgia implements the recommendation*, 27 September 2016, available at: <http://www.ombudsman.ge/eng/akhali-ambebi/jsc-metro-georgia-implements-public-defenders-recommendation-to-eliminate-discriminatory-practice> (accessed 10.06.2019).