

Statement of the Public Defender of Georgia
On the Situation of Human Rights and Freedoms in Georgia in 2018
December 10, Human Rights Day

In 2018, the Public Defender has been monitoring the situation of human rights and freedoms in the country within the mandate granted by the Constitution of Georgia.

According to the data of 11 months of 2018, 7350 applications were submitted to the Public Defender's Office of Georgia. Most of them concerned the criminal justice issues; however, an increased number of applications were filed from the regions of Georgia concerning various issues, including the violations of child's rights. In 2018, the Public Defender's Office received 3395 citizens and 8089 calls. The Public Defender prepared 90 recommendations/proposals as a result of studying individual applications. In addition, the Public Defender's Office prepared 11 special reports.

The practice of the Public Defender shows that despite the improvement of legislative sphere and strengthening of institutional mechanisms, a number of challenges remain in the protection of human rights and freedoms in Georgia.

The Parliamentary Report of the Public Defender of Georgia 2018 deals with the [right to life](#) and the problems identified in this direction. The killing of teenagers on Khorava Street should be underlined in the first place. The state has a special responsibility to conduct effective and thorough investigation into the cases of violation of the right to life. As a result of studying the case materials, the Public Defender concluded that a number of urgent and necessary investigative actions had not been conducted. As a result, the state failed to bring all perpetrators to justice. In addition, examination of the case showed the necessity of bringing certain public officials to justice for their culpable inactivity. However, no investigation is ongoing in this direction, while the internal inquiry results are still unavailable for the public and the Public Defender. The killing on Khorava Street demonstrated significant systemic problems in the investigation system that need to be quickly and effectively addressed by carrying out relevant reforms.

Apart from the above-mentioned case, it is important to inform public of the results of the investigation into the legality of the use of force during a special operation when Temirlan Machalikashvili was killed. Following the recommendation of the Public Defender of Georgia, on July 19, the Parliament of Georgia adopted a resolution and ordered the

Prosecutor's Office to complete the investigation. Regrettably, the investigation is still pending and the Public Defender's Office has no access to the case materials despite her numerous requests.

Even though little progress was achieved, the situation of [child's rights](#) remained difficult in 2018. Measures aimed at preventing child abuse, or protecting and assisting the victims of violence were insufficient given the scope of the problem.

According to the data of 10 months of 2018, the Public Defender studied 700 cases of violation of child's rights. Most of them concerned violence against children at home, educational institutions and state care institutions, as well as poverty and poor social conditions. The most vulnerable group is children living and working on the street, since the steps taken by the state for the protection of their rights are not effective and adequate enough.

Despite numerous recommendations of the Public Defender, child's corporal punishment has not yet been banned at the legislative level. The rate of bullying is worrying and requires additional attention and involvement of the relevant agencies.

The state took an important step for [promoting women's rights and gender equality](#) in the country by establishing the Human Rights Department at the Ministry of Internal Affairs of Georgia and introducing a risk assessment and monitoring instrument in 2018. However, women's participation in the decision-making process is still low; women's economic strengthening, the scale of violence against women and domestic violence remain problematic.

Another challenge is prevention of early marriage and engagement. The level of public awareness of women's reproductive health and rights is still low; effective use of the available services is also problematic.

Like previous years, a lot of challenges remain in the direction of the [realization of the rights of persons with disabilities](#). No important steps have been taken for the implementation of the UN Convention on the Rights of Persons with Disabilities; no state agency responsible for coordinating this process has been determined; the Optional Protocol to the Convention has not been ratified, which prevents the persons with disabilities from sending their cases to the relevant Committee of the United Nations.

It should be noted that funding for certain components of programmes¹ intended for persons with disabilities increased in 2018, but this cannot fully satisfy the mentioned persons' needs. Access to environment, information and services, quality of inclusive education, low employment of persons with disabilities, degrading living conditions in the institutions for persons with mental health problems, lack and inefficiency of habilitation/rehabilitation programmes for children and adults remain serious problems.

Mental health care still remains a challenge in Georgia. Despite the existence of a strategic document on mental health development and Action Plan for 2015-2020, the implementation of the Action Plan is significantly delayed. Unfortunately, mental health care in mental health establishments is still limited to treatment with medications. In addition, **physical environment in some mental health establishments can be described as inhuman and degrading treatment of patients**. The Public Defender generally welcomes the ongoing repairs of the Surami mental health institution, aimed at eliminating inhuman conditions there, although she notes that extremely difficult conditions remain in the Khoni and Bediani mental health establishments, which requires immediate measures. The Public Defender considers that provision of minimal conditions in the institutions should not be the ultimate solution and that the development of community services and promotion of deinstitutionalization are important for the development of the mental health sector.

Prevention of ill-treatment and prosecution of allegedly responsible persons is of special interest for the Public Defender.

In 2018, the Public Defender's Office sent 8 letters to the Prosecutor's Office of Georgia and requested the punishment of ill-treatment and the launch of investigation into specific cases containing reasonable suspicions of ill-treatment of persons deprived of liberty. Even though investigation has been launched, unfortunately, like previous years, the Public Defender's Office is still not informed of whether charges were brought against any particular person responsible for ill-treatment. The Public Defender of Georgia hopes that the State Inspector's Office will ensure effective investigation and punishment of perpetrators in 2019. The Public Defender's Office intends to actively monitor this process and closely cooperate with the Inspector's Office.

In terms of studying the **prisoners' rights**, it is problematic that the Public Defender's Office has no access to certain categories of personal data. For example, in case of the death of a

¹ Social rehabilitation and child care state programme, Mental health state programme.

prisoner, the Public Defender has no access to information about the prisoner's health, name, surname or other personal information. Another restriction is that the executive and judicial authorities only literally and formally interpret certain passages of the law. Since examination of such information is of great importance for the effective functioning of the Public Defender's Office, the Public Defender recommended the Parliament of Georgia to make relevant amendments to the legislation. In addition, the Public Defender proposed the Parliament of Georgia to grant her Office access to the materials of certain categories of criminal cases (that deal with investigation of ill-treatment and/or violation of the right to life). The above-mentioned will facilitate the study of criminal cases and effective detection of human rights violations.

At the same time, for the purpose of eliminating ill-treatment, the Public Defender's Office has been actively inspecting closed institutions in 2018, within the framework of the National Preventive Mechanism.

The Public Defender of Georgia welcomes the closure of Penitentiary Establishment No 7, arrangement of a special space for visiting prisoners in Establishment No 8 and the steps taken to improve the prisoners' rights situation. The provision of health insurance packages for the employees of the penitentiary institutions was also a positive step forward.

Despite the above-mentioned positive changes, a lot of problems and challenges remain in the system. The criminal subculture in the establishments creates a serious danger of inhuman treatment of prisoners. Unfortunately, the policy remains unchanged in relation to high risk establishments. The existing approaches cannot positively change the behavior of convicts, ensure their rehabilitation or reintegration into the society.

The lack of rehabilitation activities in the penitentiary establishments is a general problem, especially in the establishments, where prisoners spend 23 hours in the cells and have no opportunities to be engaged in interesting or valuable activities. Another major challenge in the penitentiary system is mental health care. It is problematic to timely identify mental health problems, provide relevant services and prevent deterioration of mental health.

The problem of prevention of ill-treatment of the detainees by police was identified as a result of monitoring. In particular, it is problematic that the injuries of the detainees are not documented in the temporary isolators fully, in accordance with the Istanbul Protocol, and no continuous training of medical personnel is provided in this direction. Registration of

detainees is faulty. Provision of a lawyer's service at the early stage of detention is another important challenge.

The pre-election period, especially during the second round of the [presidential elections](#), was characterized by tenseness, polarization and use of hate speech. Regrettably, local observation organizations became a target of unprecedentedly aggressive and offensive campaign, due to which, the Public Defender called on the Government to observe the principles of the UN Declaration and the OSCE Guidelines on the Protection of Human Rights Defenders.

In the election period, reports had been spread about alleged pressure and bribery of public servants, employees of the private sector and various groups of the constituency. Reports about assaults on the supporters of specific presidential candidates were alarming. The Public Defender of Georgia underlines that such incidents significantly hamper free and peaceful pre-election environment, which ultimately affects the quality of democratic development of the country. Consequently, it is necessary to prevent crime, timely identify offenders and take measures against them in accordance with law.

The [right to assembly and demonstration](#) was generally protected in the reporting period. However, peaceful demonstrations were in many cases hampered by counter-demonstrations organized by aggressive groups. Due to this, citizens often had to hold a rally under strengthened police protection, although even this could not fully prevent cases of attacks and violence. The Public Defender also identified the cases of restriction of [freedom of assembly](#), when representatives of the Ministry of Internal Affairs did not allow demonstrators to set up tents, without referring to the relevant legal grounds. With regard to this case, the Public Defender filed a suit with the Constitutional Court of Georgia and an amicus curiae brief with the Tbilisi City Court. I once again call on the law enforcement bodies and other responsible agencies not to hamper the realization of the freedom of assembly on artificial and lawless grounds.

The situation of [safety at work](#) remained difficult in the country in 2018. 77 people were killed and 35 were injured² when performing their labour duties only in the first half of the year. In March 2018, the Law on Safety at Work was adopted, which envisages a number of fundamental principles of the International Labour Organization and provides a mechanism for fulfilling liabilities in the field of safety at work. However, the law applies only to heavy, harmful and hazardous jobs. At the same time, the supervisory body does not have

² Letter N MIA 3 18 02775107 of the Ministry of Internal Affairs of Georgia of 14 November 2018.

unconditional access to the employer.³ In order to ensure safety at work in accordance with international standards, it is necessary that labour inspectors, equipped with a sanction mechanism, had the right to check any workplace freely, any time during day or night, without any preliminary notification. It should be assessed positively that a draft organic law on Safety at Work, which envisages above-mentioned fundamental principles, has been submitted to the Parliament of Georgia. The draft law was adopted on October 31 in the first reading, but consideration of the law in the second reading has not been started yet. The Public Defender reiterates the importance of timely adoption and enforcement of this law.

The situation of the [rights of conflict-affected persons](#) has been difficult in 2018. Movement at the dividing line and illegal detentions, social problems, violation of the property rights and freedom of expression are just an incomplete list of violations daily encountered by persons living in occupied Abkhazia and the Tskhinvali region/South Ossetia, as well as alongside the dividing line.

In 2018, the de facto authorities of the Tskhinvali region violated the illegally detained person's right to life, which further worsened the rights situation of conflict-affected persons and halted the negotiation process. The Public Defender of Georgia is concerned about the increasing cases of gender-based violations. Unfortunately, 2018 was characterized by pressure on female activists.⁴

Large scale resettlement of IDPs took place in 2018. It is welcome that construction of new residential buildings for IDPs continues across Georgia. However, the general analysis of IDPs' rights shows that IDPs' major problems remain the same over the years. The issue of damaged buildings remains unresolved. Despite the fact that the resettlement of IDPs from damaged buildings has been prioritized, there still remain a number of similar buildings across Georgia. Postponement of resettlement of IDPs in safe buildings may have grave consequences.

³ The supervisory body is authorized to carry out selective control only once a year and inspect an enterprise for inquiring an accident that took place in the workplace or check the remediation of previously identified violations. Otherwise, supervision can only be carried out on the basis of the court order (paragraph 5 of Article 16 of the Law of Georgia on Safety at Work).

⁴ The de facto Prosecutor's Office of Akhgori launched four criminal cases against Akhgori activist Tamar Mearakishvili. Irina Kelekseeva, a journalist working in Tskhinvali, was fired for preparing a critical article about the de facto president, following the physical and verbal pressure exerted by representatives of law enforcement agencies.

Apart from the resettlement of IDPs, active efforts are needed to provide needs-based assistance. It is important to study the socio-economic situation of IDPs and provide them with needs-based assistance.

Protection of the [right to equality](#) still faces many challenges in Georgia. The legislative amendments, which have been requested by the Public Defender of Georgia since 2015 in order to improve the anti-discrimination legislation and which can make the Public Defender's mandate more effective, have not been implemented so far. According to the amendments, inter alia, physical and legal persons of private law will be obliged to provide information requested by the Public Defender and results of the consideration of the Public Defender's recommendation to the Public Defender's Office, while the three-month period for appealing to court will be increased to a year.

Women, persons with disabilities and members of the LGBT+ community remain the most vulnerable groups in terms of discrimination, like previous years. The number of applications filed with the Public Defender's Office concerning sexual harassment has significantly increased in 2018, the reason of which might be the start of discussion about this problem by certain part of the society. Cases of alleged discrimination most frequently occur in pre-labour and labour relations. Cases of alleged discrimination occur in the process of getting social benefits as well.

Despite the increased response to alleged hate crimes, their prevention remains a problem. In light of the strengthening of neo-Nazi radical groups and growing use of hate speech, it is particularly alarming that one of the citizens of Georgia was allegedly murdered on the ground of ethnicity-based hatred in 2018. The number of hate crimes committed against the LGBT group was high as well.

Most of the issues related to [civil integration and protection of the rights of national minorities](#) remain unresolved like previous years. Low level of participation of national minorities in the decision-making process is still a major problem. National minorities are only nominally involved in the decision-making processes in the central and city governance, as well as in regions densely populated by national minorities.⁵ In spite of certain progress achieved, effective teaching of the state language remains a significant challenge in the regions populated by national minorities. Quality textbooks, curriculums, training of teachers and education in general remain problematic.

⁵ None of the Deputies of the Marneuli Mayor, Chairman of Municipal Council or his Deputies, none of the Heads of the City Hall or Municipal Council commissions or services are representatives of national minorities; no national minorities are represented in the Samtskhe-Javakheti governor's administration.

Despite the programmes implemented by the Public Broadcaster, it is still problematic to timely inform national minorities of the ongoing events in the country. National minorities get information about the ongoing events in Georgia mainly from foreign news sources. The construction efforts at Tbilisi's Petros Adamian Theater should be praised, but it is still impossible to rehabilitate other monuments of cultural heritage of national minorities, which needs to be addressed.

Adequate categorization of **crimes committed on the ground of religious intolerance** has been improved (crimes committed on grounds of religion had not been adequately categorized over years). However, effective and timely response to the cases is still problematic.

Religious associations still face problems relating to the use of property and construction of religious buildings; no steps have been taken to launch the restitution process. For years, religious minorities have been demanding the return of historical religious property confiscated during the Soviet ruling, but in vain.

It should also be noted that the Constitutional Court delivered crucial judgments in two cases in 2018. In particular, it declared the norms regulating unjustified tax privileges and restrictions on land transfer to religious communities unconstitutional. According to the judgments, the legislative body should make appropriate legislative amendments by the end of the year on how to ensure equality of religious grounds.

With respect to **health care**, high prices of drugs, as well as arrangement of ambulatory facilities in the regions and geographical accessibility, remain a significant problem in the country. The problems identified in the previous reporting period in relation to the work of the State Medical Activities Regulation Agency relating to the delayed consideration of complaints and determination of sanctions for non-performance or improper performance of duties by visiting experts, remain unresolved.

Problems in ecology, air pollution and maintenance of green cover in the country are important challenges in terms of realizing the right to live in a healthy environment. The legislative regulations pertaining to the compensation for environmental damage are faulty and cannot prevent the damage or compensate for its outcome. The necessity for planning an energy policy, as well as studying the economic benefits of projects planned in the field of energy, remains a challenge.

The grave socio-economic situation of [older persons](#) remains problematic. Despite the fact that the Government of Georgia approved the concept of state policy and national action plan for 2017-2018 on population aging, the majority of obligations set forth in the document have not been fulfilled.

The Public Defender's practice shows that a large number of older persons still lack access to social services and adequate housing. Programmes intended for them are not enough. The measures taken at the local level cannot satisfy the needs of older persons. The home care programme operates only in several municipalities; both its accessibility and quality represent challenges.

The realization of the [homeless persons'](#) right to adequate housing has not been resolved. A number of municipalities have no rules or methodology for registering homeless persons or providing a shelter for them. It was also revealed that programmes for providing a shelter for persons unable to take care of themselves due to physical and/or mental health reasons are not available in Tbilisi either.

The recent years' wars and conflicts in the world have turned millions of people into [refugees](#), which was somewhat reflected in Georgia too. It is now even more important that the state ensure protection of human rights and freedoms of not only its citizens, but citizens of foreign countries as well.

In spite of the obligations undertaken by the state relating to the effective protection of the rights of the above-mentioned persons, improvement of the legislation, determination of the status of refugees and increased access to shelter procedures on the border, the overall indicator of granting a status has been significantly deteriorated (75% in 2015, 20% in 2017). The Public Defender of Georgia expresses hope that the state will guarantee effective protection of the rights of persons with international protection.

Monitoring the [protection of human rights in defense](#) also falls within the mandate of the Public Defender. The Public Defender's Office studied several applications and paid a number of preventive visits in 2018. As a result, infrastructural problems were identified as a major challenge in most military units of the Ministry of Defense. The infrastructural situation is grave in the prison perimeter security department, as well as the diplomatic mission and national treasury security departments of the Border Police of the Ministry of Internal Affairs.

Compulsory military servicemen in these systems are not provided with food or transportation, do not have proportional remuneration. The number of personnel in military units is insufficient, due to which, servicemen work overtime without additional remuneration or cannot properly realize their right to vacation. At the same time, the Government's Decree No 4 on Monetization of Social Benefits of 11 January 2007, which provided for monthly subsidy (GEL 22) for any person who had been fighting for the territorial integrity, freedom and independence of Georgia, was amended in 2009 and 2012 and only those who had reached the retirement age were determined as the beneficiaries of the subsidy. This restriction applies only to the fighters who applied for the subsidy after 5 November 2009. The Public Defender of Georgia has been demanding the abolition of this discriminatory rule for years. The issue has repeatedly been underlined in the Public Defender's Parliamentary Report as well. The Parliament of Georgia shared the Public Defender's demand and according to Decree N3148 of 19 July 2018, the Government was ordered to eliminate the inequality. However, the state budget 2019 does not provide for finances in this direction, due to which, the Public Defender decided to appeal to the Constitutional Court.

Finally, I would like to briefly touch upon the building of the Public Defender's Office. Since August 2018, the Public Defender's Office has been working in a rented building, since its major building is damaged. Despite our constant efforts and intensive communication with state agencies, no permanent building could be provided for the central office of the Public Defender of Georgia. Consequently, we call on the state agencies to timely provide us a permanent building, which will enable us to save the budgetary funds spent on renting an office and to address them at human rights activities.