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The Permanent Mission of Georgia to the United Nations Office and other international organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and in response to the letter of the Chairperson of the Working Group on the issue of human rights and transnational corporations and other business enterprises dated on 5 May, 2017 concerning the report on the access to remedy in relation to business-related human rights abuses has the honour to convey the response of the Government of Georgia.

The Permanent Mission of Georgia to the United Nations Office and other international organizations in Geneva avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 18 July 2017

Office of the United Nations
High Commissioner for Human Rights
Geneva



Encl. 6 pages.

**Questionnaire on Access to Remedy in relation to
Business-related Human Rights Abuses**

Question 1. Does the Constitution or domestic laws of your country recognize the rights to an effective remedy for violation of human rights? If yes, please provide details.

Georgian domestic legislation provides effective remedies for violation of human rights. The Constitution of Georgia enshrines the principle of the fair trial for any person, entrepreneur and legal entity - everyone shall have the right to apply to the court for protection of his/her rights and freedoms (Article 42.1). Additionally, any person, who has illegally sustained damage inflicted by the State, Autonomous Republics, or self-government bodies and officials, shall be guaranteed by the court to receive full compensation accordingly from the funds of the State, Autonomous Republic, and local self-government (Article 42.7).

Also, the Constitution of Georgia guarantees the remedy for the violation of the provisions which concern the human liberty. Specifically, a person arrested or detained unlawfully shall have the right to compensation (Article 18.7).

It is noteworthy that supervision over protection of human rights and freedoms within the territory of Georgia shall be exercised by the Public Defender of Georgia (Article 43.1).

Apart from the Constitution, all the relevant laws, including Civil, Criminal and administrative codes envisage the right of an effective remedy in any case of violation of the human rights. More information on the various types of remedies please, see below (*question 3*).

Question 3. Please provide information about the types of remedies (e.g., compensation, criminal prosecution, administrative fine, public apology) available under different domestic laws for business-related human rights.

The various types of remedies are available under the national laws which protect any natural person and legal entity from an illegal interference exercising by the authorities/official powers.

- The Criminal Code of Georgia provides for criminal liability for *Official Misconduct (chapter XXXIX)*. In particular, *abuse of official powers* by an official or by a person equal thereto to the detriment of public interests, in order to gain some benefit or advantage for himself/herself or for another person, which has resulted in substantial violation of the rights of physical or legal persons, or of the lawful interests of the

public or the state and abuse of official powers by a public political official is punished by the fine or imprisonment for the relevant terms and amount of money.

Apart from the abovementioned crime, the criminal liability is also envisaged for *exceeding official powers, bribe taking and bribe-giving, as well as for influence peddling*. Specifically, in the latter case, whoever in his/her own interests or in those of another person promises, offers or grants money, securities, other assets, material benefit or any other unlawful advantage, directly or indirectly, to a person claiming or confirming that he/she can exert an unlawful influence, for his/her own or another person's benefit, on the decisions of an official or a person equal thereto, regardless of whether or not such influence has been exerted and/or the desirable outcome of such influence has been obtained is punished by a fine or corrective labor for up to two years, or with restriction of liberty for the same term or with imprisonment for up to two years.

The Criminal Code of Georgia also provides liability for the *abuse of powers* in private enterprise (Article 220): abuse of managerial, representative or other special powers in an enterprise or other organization against the lawful interests of this organization for acquiring benefits or advantage for oneself or another person, which has resulted in considerable damage.

Also, criminal liability is envisaged for the *interference with lawful entrepreneurial activities* (Article 190). Particularly, an unjustified refusal to register an enterprise, or to issue a permit or license, or restriction of the right or freedom to carry out economic activities, exercise of control over the operation of the enterprise in violation of the legislation of Georgia, or interference with the activities of an enterprise, which has resulted in considerable damage.

The Civil Procedure Code secures for the victims of above and other crimes a right to claim damages from the offender which claim should be supported by a final court judgment (in criminal case) or an administrative act on commission the administrative offence issued by the relevant judicial or administrative authority/official. Such a judgment or administrative act by itself is a confirmation of the criminal or administrative offence by judicial notice. The claimant, therefore, does not have to prove the fact of offence. Unless the court judgment or administrative act in question indicates the amount of damages, dispute may arise with respect to the amount of inflicted damages (Articles 309¹⁷, 309²⁰).

- The Civil Code of Georgia provides liability of the State for the damage caused by its employees: if a public employee or a public servant breaches his/her official duty in relation to other persons intentionally or by gross negligence, then the State (Municipality) or the body by which the employee or the servant is employed shall pay for the damage caused.
- Moreover, it should be underlined, that the damage inflicted to a rehabilitated person by illegal conviction, illegal prosecution, illegal detention as a measure of restraint, improper imposition of an administrative penalty in the form of administrative detention or corrective labor shall be reimbursed by the State irrespective of the fault of the investigation, prosecution or court officials. If the damage is caused intentionally or by gross negligence, these persons and the State shall be jointly and severally liable (Article 1005).
- The Civil Code of Georgia also envisages the remedies for violation of business reputation and defamation (Article 18). A person may protect in court, according to the procedures laid down by law, his/her honour, dignity, privacy, personal inviolability or business reputation from defamation. If information defaming the honour, dignity, business reputation or privacy of a person has been disseminated in the mass media, then it shall be retracted in the same media. If such information is contained in a document issued by an organization, then this document shall be corrected and the parties concerned shall be informed of the correction.

The values referred to in this article shall be protected regardless of the culpability of the wrongdoer. And, if the violation has been caused by culpable action, a person may claim damages. Damages may be claimed in the form of the profit accrued to the wrongdoer. In the case of culpable violation, the injured person may also claim compensation for non-property (moral) damages. Moral damages may be recovered independently from the recovery of property damages.

- Along with the Civil and Criminal laws certain remedies are guaranteed by the administrative legislation of Georgia. In accordance with the Administrative Procedure Code, a claim on annulment and declaring invalid an administrative act may be filed by any person or legal entity, as well as the claim on issuing an administrative act, on performing an action or an action for acknowledgement (Articles 22-25). Each of these categories of claims provides the control of the legality of administrative acts and actions performed by the administrative bodies. These procedural rules are based on the principles envisaged by the General Administrative Code of Georgia.

Question 7. Please share information whether the unique experiences and expectations of groups who may be particularly vulnerable to human rights abuse, such as children, women, people with disabilities, migrant workers and indigenous people are taken into account in providing for access to effective remedy for business related human rights abuses.

- According to the amendments to the Civil Code of Georgia, adopted April, 2015, the status of a 'single parent' was introduced, who has the guarantees for social and legal protection determined under the legislation of Georgia. Consequently, according to Tax Code of Georgia, article 82, income tax shall not be levied on taxable income up to GEL 3 000 earned by the single mother during a calendar year.
- Besides, the Interagency Coordinating Council on Private Law Reform has been working on a new Law of Georgia on Entrepreneurs. The prepared draft is aimed to approximate domestic legislation law with the EU directives, provided by the Association Agreement between the European Union and Georgia. Firstly, it gives clear and modern rules regarding maintenance and alteration of the capital to ensure equivalent protection for both shareholders and creditors. New provisions about corporate governance and general functioning of different types of companies will guarantee proper balance between the interests of shareholders and managers. Additionally, the provisions on transparency will support national bodies in efficient supervision of market. The new draft law will also promote the rights of minority shareholders to protect the questioned rights.

It should be separately mentioned that the draft provides minimum acceptable requirements and thus, gives independence to companies to create more extensive rules within their charter. This by its part, at the same time provides entities with the possibility to modify some fields of their regulations and fit it to their daily and strategic goals and also, provides small or individual shareholders and creditors, with an effective legal means of control.

- Functioning of the Insolvency System of Georgia has been in the center of attention of international organizations and local experts for several years. Georgia, which is on leading positions in terms of doing business in the World Bank's ranking, is characterized by weak insolvency system (106th place in 190 economies). This is to some extent caused by the stigma that attaches to the existing insolvency system: the law clearly gives priority to secured creditors and the interests of other creditors are usually undermined; the law includes neither incentives to start the insolvency proceedings in a timely fashion, nor flexible mechanisms for rehabilitation of a

business; the overwhelming majority of insolvency cases are finished by bankruptcy of a company etc.

Since the beginning of 2016 the working group operating under the Project of the European Union - Contribution to the Private and Administrative Law Reform in Georgia, is working on the new Insolvency Law. The advantages of the draft law are the following: the restrictions on the right of a creditor to initiate insolvency proceedings will be abolished, the rules and conditions of the implementation of moratorium will be provided in details, participation of all types of creditors will be insured while voting on significant decisions for the company, new principle of voting will be introduced for certain decisions (meaning that the majority of the creditors as well as the majority of their voting rights should be present to reach a decision), the satisfaction of secured and unsecured creditors will be more balanced, certain amount of the demand of employees will be given preference with respect to other unsecured creditors, etc.

Question 8. Are civil society organizations and human rights defenders assigned any specific role in your jurisdiction for facilitating access to effective remedy in cases related to business-related human rights abuses. If yes, please provide information.

Georgian domestic law has established a new and effective instrument to represent business sector and facilitate their interests. The law 'On the Business Ombudsman of Georgia' is intended to facilitate the protection of rights and legitimate interests related to the performance of entrepreneurial activities of persons in the territory of Georgia.

This new institution (adopted in May 2015) which was introduced in order to protect business interests is equipped with various rights and obligations which are the following:

The Business Ombudsman shall supervise the protection of rights and legitimate interests related to the performance of entrepreneurial activities of persons in the territory of Georgia, and detect violations of these rights and legitimate interests, and facilitate the restoration of violated rights of persons in compliance with the rule established by this Law.

The Business Ombudsman shall protect the rights and legitimate interests of persons related to the performance of entrepreneurial activities through:

- a) responding to individual and joint applications;
- b) detecting deficiencies in the legislation of Georgia and in practice;

c) carrying out informational and advisory activities.

Within the scope of his/her authority, the Business Ombudsman shall be entitled to:

- a) request and obtain information/documents from administrative bodies in the cases provided for by the legislation of Georgia and in accordance with established rules;
- b) enter into agreements with administrative bodies for the exchange of information/documents and for issues of cooperation;
- c) address to professionals, scientific and/or educational institutions to obtain interpretations/opinions for official purposes;
- d) set up a working group that may be composed of representatives of administrative bodies and the private sector;
- e) in certain cases, act as Amicus Curiae in the Constitutional Court of Georgia.

The Business Ombudsman shall keep confidential the information acquired in the course of exercising his/her powers.

Transfer of information/document to the Business Ombudsman shall not be subject to a fee payable for the service.

Within the scope of his/her authority, the Business Ombudsman shall:

- a) issue individual legal acts;
- b) enter into contracts with administrative bodies and natural and legal persons;
- c) invite specialists for a term necessary to perform works on the basis of the contract;
- d) exercise other powers provided for by this Law and other legislative and subordinate acts of Georgia.

The Business Ombudsman shall be entitled to submit a request to appropriate administrative bodies on the basis of applications of interested parties; and take measures provided for by the legislation of Georgia within the scope of his/her authority if it tends to protect the rights and legitimate interests related to the performance of entrepreneurial activities of these parties.